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PAGE 02

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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.)

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

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April 12, 2011

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	3
II. ARGUMENT.....	6
A. The FirstEnergy Companies' Attack on CKAP and Sue Steigerwald.....	4
1. The Creation of CKAP and Grendell's Lawsuit	4
2. CKAP's Alleged "Publicity Campaign".....	5
3. CKAP Intervention	7
4. CKAP's Alleged "Influence" at the Public Hearings	8
5. Ms. Steigerwald's Alleged "Inaccurate Information".....	9
B. FirstEnergy's Misdirection.....	10
C. PUCO's Charge of Finding a Long-Term Solution.....	11
IV. CONCLUSION.....	12

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ELECTRIC PROMISE (CKAP), SUE STEIGERWALD and JOAN
HEGINBOTHAM**

II. INTRODUCTION

Throughout the case and especially in the composition of their Post-Hearing Brief, the FirstEnergy Companies have employed many tactics in an attempt to divert the Commission's attention from the real issue of Case # 10-176-EL-ATA. The reason Case # 10-176-EL-ATA exists is that the FirstEnergy Companies removed the 35 year old all electric rate schedules and replaced those schedules with ineffective credits, and this caused significant rate shock among all electric customers.

The FirstEnergy Companies offered a discounted electric rate to entice existing homeowners to convert their utility source and equipment to electric and entice new homeowners to install electricity as the exclusive source of energy. Their employees have testified regarding the difficulty of selling all-electric living and made it clear that without the discounted rate sales would have been impossible. The FirstEnergy Companies required specific equipment and construction standards to qualify for the rate and that offer was accepted when those homes were built to those requirements. Now,

because the discounted rate “no longer works for them”, the FirstEnergy Companies are attempting a massive “bait and switch” campaign.

III. ARGUMENT

A. The FirstEnergy Companies’ Attack on CKAP and Sue Steigerwald

The FirstEnergy Companies would like to have you believe that the negative media attention, the hundreds of submissions to the PUCO docket, the numerous telephone calls to the PUCO, OCC and Governor’s office, the thousands of people who attended the Public Hearings in this matter and the hundreds who testified at those hearings are the result of the work of one woman, Sue Steigerwald and her grassroots organization, the Citizens for Keeping the All-Electric Promise. The FirstEnergy Companies have attempted to argue this point and spent a considerable amount of time focusing on this idea. They completely ignore the point that it was an all-electric discount rate that homeowners maintained for close to forty years that was partially taken away and caused massive increases in utility costs that spurred many of the all-electric homeowners to action. These homeowners sought aid and when they found each other they banded together to oppose the injustice carried out against them. Instead of focusing on key issues, the FirstEnergy Companies have taken many liberties with the testimony on record and have quoted it completely out of context in an attempt to create a record favorable to them.

1. The Creation of CKAP and Grendell’s Lawsuit

While the CKAP Parties prefers focusing on the real issues of the case, the serious mischaracterization of Ms. Steigerwald’s testimony requires correction. The FirstEnergy Companies have mischaracterized the creation of CKAP. The FirstEnergy Companies knowingly misstated the timeline of the creation of CKAP, by stating that it occurred “as

the commission was preparing to conduct public hearings" in October and November 2010.¹ The FirstEnergy Companies knew that Ms. Steigerwald testified that CKAP was organized in February 2010, months before preparation began for the public hearings.²

In their Brief, the FirstEnergy Companies continued to quote Ms. Steigerwald's testimony out of context with regards to meetings with State Senator Tim Grendell and the purpose of the class action lawsuit filed by Senator Grendell. The FirstEnergy Companies implied that Ms. Steigerwald somehow influenced Senator Grendell's decision to file the class action lawsuit.³ The FirstEnergy Companies, however, knew that Ms. Steigerwald's testimony showed that she was nothing more than an attendee at the meetings and that Senator Grendell came to the meeting to discuss *his own* idea of filing the lawsuit.⁴

Additionally, the FirstEnergy Companies knowingly misstated Ms. Steigerwald's testimony regarding the "primary purpose" of the lawsuit being to "put pressure" on the PUCO. In her deposition, the FirstEnergy Companies never even asked Ms. Steigerwald what the "primary purpose" of the lawsuit was, but simply asked her if the lawsuit could be used to "put pressure on the PUCO."⁵

2. CKAP's Alleged "Publicity Campaign"

In a section of their Brief entitled "The CKAP Publicity Campaign", the FirstEnergy Companies continued to quote Ms. Steigerwald out of context and knowingly stated the timeline of CKAP events out of order. The FirstEnergy Companies quoted from an email Ms. Steigerwald sent to Mr. John Funk of the *Plain Dealer* regarding her

¹ FirstEnergy Companies' Post-Hearing Brief at 18.

² Steigerwald Deposition at 36:23-25

³ FirstEnergy Companies' Post-Hearing Brief at 26.

⁴ Steigerwald Deposition 29:6-13; 28:6-7.

⁵ *Id.* at 33:4-7.

concerns that the rate shock experienced by all electric customers had not been publicized.⁶ The FirstEnergy Companies failed to mention that this email was dated January 12, 2010, several weeks before CKAP was even formed and at a time when there had not been any publicity in the media, whatsoever, regarding the impact of the rate shock experienced by all electric customers.⁷

The FirstEnergy Companies also tried to invent dishonest relationships between Ms. Steigerwald and the media, especially with Mr. Funk. The FirstEnergy Companies quoted a line from an email marked as "Deposition Exhibit Steigerwald 21," in which Mr. Funk told Ms. Steigerwald that he would make room in his story for more information. The FirstEnergy Companies were implying that this was a common practice between Ms. Steigerwald and Mr. Funk. However, the FirstEnergy Companies fail to mention that the story Mr. Funk was writing was the first media story published on the all- electric rate shock. The story was published in January 2010, well before CKAP was even formed, and Ms. Steigerwald was simply interviewed for the story as a regular homeowner.

The FirstEnergy Companies continued to invent a dishonest relationship between Ms. Steigerwald and the media by stating that some members of the media became members of CKAP.⁸ However, the FirstEnergy Companies coincidentally left out the fact that those media members joined CKAP because they were all electric homeowners.

The CKAP Parties reiterate that while they would prefer focusing on the real issue of the case, the removal of a portion of the all-electric discount that caused rate shock but the numerous errors made by the FirstEnergy Companies in their Brief demand

⁶ FirstEnergy Companies' Post-Hearing Brief at 21.

⁷ FirstEnergy Companies' Exhibit 13.

⁸ FirstEnergy Companies' Post-Hearing Brief at 22.

correction. For instance, the FirstEnergy Companies devoted nearly two pages of their Company Brief to concoct the appearance that all customer letters filed in the Docket were copied from text provided by Ms. Steigerwald, and therefore should not be considered by the Commission.⁹ However, the FirstEnergy Companies were only able to provide 52 copies of what they call "verbatim copies."¹⁰ These letters, while containing similar language in some instances, are not "verbatim copies" of Ms. Steigerwald's text, and would only amount to 3.8% of the total of 1,361 entries in the Docket to date, certainly not indicative of any mass letter copying campaign.

3. CKAP Intervention

Given the sheer number of errors in truth the FirstEnergy Companies made in their Post-Hearing Brief, it is quite ironic that they accused Ms. Steigerwald of taking "liberties with the truth" with regards to whether the OCC could adequately represent the rights of all electric homeowners.¹¹ The CKAP Parties also regret that the Commission needs to waste time addressing this issue again, as the Commission has already granted CKAP Intervener status. Nevertheless, in their Brief the FirstEnergy Companies attack the CKAP Parties reference to the OCC as "allies" as proof that the OCC could have adequately represented all electric homeowners in the case.¹² However, as the CKAP Parties successfully argued with the Commission, the CKAP Parties intervened to represent the exclusive interests of the all electric customer, something the OCC could

⁹ FirstEnergy Companies' Post-Hearing Brief at 28-29.

¹⁰ FirstEnergy Companies' Exhibit 39.

¹¹ FirstEnergy Companies' Post-Hearing Brief at 23.

¹² Id. at 24-25.

not do because they needed to represent not only the all electric customer, but the gas customer as well.¹³

4. CKAP's Alleged "Influence" at the Public Hearings

In their Brief, the FirstEnergy Companies continued to distort the truth by stating that "CKAP influence[d] the public hearings."¹⁴ While Ms. Steigerwald should be flattered that the FirstEnergy Companies thought her powerful enough to influence public hearings, the idea is simply ludicrous. Both Ms. Steigerwald and the OCC merely encouraged home owners to attend one of the public hearings and distributed "talking points" to help the homeowners craft their testimony. Ms. Steigerwald expressly told CKAP members: "This is a chance to TELL YOUR VERSION OF THE STORY."¹⁵

Furthermore, the FirstEnergy Companies inaccurately accused Ms. Steigerwald of "ignoring the prohibition on a party" from offering testimony at a public hearing. The CKAP Parties fully obliged by the prohibition and none of the named parties on the CKAP Motion to Intervene offered Public Testimony. The FirstEnergy Companies knew that the CKAP Parties had already informally discussed this technicality with Examiner Price during Pre-Conference Hearings. Tellingly, the FirstEnergy Companies made no objection to any CKAP member's testimony at any of the six public hearings. Nevertheless, the FirstEnergy Companies tried to have all CKAP testimony thrown out at the Evidentiary Hearing, but subsequently lost that argument.¹⁶

The FirstEnergy Companies continued their tactics of distorting the truth in the Company Brief when they knowingly made the false statement: "[Ms. Steigerwald's]

¹³ OCC's Motion to Intervene in Support of CKAP.

¹⁴ FirstEnergy Companies' Post-Hearing Brief at 25.

¹⁵ FirstEnergy Companies' Exhibit 16 (emphasis in original).

¹⁶ Transcript of Evidentiary Hearing 523:19-25;524:1-6.

suggestions regarding the decrease in home values were largely her own invention."¹⁷

Furthermore, the FirstEnergy Companies made incorrect statements when it stated that no witnesses presented any proof that their property values had declined or their homes were difficult to sell. In fact, many witnesses testified about this topic, including Dale Finley who was successful in getting his property devalued by \$50,000 due to evidence that it would cost between \$30,000 to \$40,000 to convert his home to gas.¹⁸ Carolyn Dragics testified about her experience trying to sell her all electric home. She testified that the first question potential buyers asked her was if the home was gas or all electric, and they promptly lost interest upon discovering it was all electric.¹⁹

In addition to the corroborating witness testimony, the CKAP Parties ask the Commission to use the test of "common sense" as it relates to the potential loss of the all electric discount and its effect on home values. The CKAP Parties offer that it is merely common sense that if two homes are identical except that one home has significantly higher utility costs, the home with lower utility costs will sell first. The loss or substantial reduction in the all electric discount will cause the utility costs of all electric homes to skyrocket compared to gas heated homes. Thus, it is only logical that all electric homes will indeed lose significant value and marketability if this happens.

5. Ms. Steigerwald's Alleged "Inaccurate Information"

The FirstEnergy Companies inaccurately accused Ms. Steigerwald of "spread[ing] inaccurate information."²⁰ The Companies claimed that Ms. Steigerwald spread inaccurate information by making statements that the all electric discount had been

¹⁷ FirstEnergy Companies' Post-Hearing Brief at 27.

¹⁸ Transcript Strongsville at 143.

¹⁹ Id. at 173-174.

²⁰ FirstEnergy Companies' Post-Hearing Brief at 27.

eliminated. The FirstEnergy Companies argued that the "credits" offered in place of the original all electric discount schedules still constituted an "all electric discount." The CKAP Parties counter that this is a case of semantics and that most customers, legislators, and media use the term "all electric discount" to refer to the original all electric discount customers received under the all electric rate schedules. These all electric rate schedules were indeed eliminated, causing the rate shock experienced by customers.

The FirstEnergy Companies also accused Ms. Steigerwald of spreading inaccurate information in a document regarding the history of subsidies and the all-electric discount.²¹ The document clearly related to the fact that the gas customer did not subsidize the all electric customer over the last 35 years, as was admitted by the FirstEnergy Company itself.²²

The fact that the FirstEnergy Company spent so much time focusing on the testimony of Ms. Steigerwald, either quoting her out of context or completely fabricating her testimony illustrates the FirstEnergy Company's ongoing tactic of diverting the Commission's attention away from the real issue of Case # 10-176. As the CKAP Parties stated earlier in this Reply Brief, the real issue is that the original all electric rate schedules were eliminated, and as a result, all electric customers experienced significant rate shock.

B. FirstEnergy's Misdirection

The FirstEnergy Companies have tried to divert the Commission's attention from this core issue in other ways too. The FirstEnergy Company has given many excuses for their actions, especially blaming S.B. 3, S.B. 221, RCP, Case No. 07-551-EL-AIR, ESP,

²¹ Id. at 28.

²² William Ridman Pre-filed testimony at 8-9.

and Rider RDD.²³ However, the fact remains that NONE of these bills or cases *required* the Companies to remove the original special schedules. Instead, the bills and cases simply *allowed* it to happen, and the FirstEnergy Companies chose to do so. The FirstEnergy Companies have admitted that "the electric heating rates initially offered benefits to both utilities and consumers."²⁴ The CKAP Parties contend that the fact that special heating rates no longer benefit the FirstEnergy Company is not a valid reason to remove them. This is especially true when all electric customers have made capital investments in equipment based on these special rate schedules, and without similar discounts, the heating costs for such customers will become unaffordable.

C. PUCO's Charge of Finding a Long-Term Solution

The PUCO has been charged with finding a long-term solution to this matter. In order to aid in that effort, the PUCO held six Public Hearings throughout the State of Ohio. Thousands of people attended those hearings and hundreds testified about the rate shock that they suffered and the hardship the rate changes imposed on them. Hundreds more sent letters in to the PUCO providing similar testimony. The testimony was similar due to the same conditions being imposed on these homeowners and the detrimental and sometimes devastating effect on their personal finances in the form of substantially higher utility costs and loss of property value. That testimony was provided to the PUCO not because someone told them what to say but because these people were, and are, experiencing these impacts first-hand.

The PUCO staff failed to cite to any Public Hearing testimony and FirstEnergy dismissed the value of that testimony. The fact that it contained hundreds of people

²³ FirstEnergy Companies' Post-Hearing Brief at 5-14.

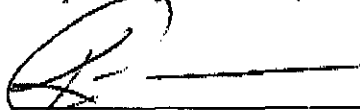
²⁴ *Id.* at 3.

testifying to the negative impact of the rate change is difficult to ignore. The testimony of several former FirstEnergy employees is impossible to ignore. These former employees testified to the manner in which the discount was sold to customers and the long-term nature of the discounted rate. These former employees were on the frontline of the sales effort. Their testimony should carry more weight due to their unique sales position. Their testimony made it clear that the discount rate was designed to make a homeowner's utility costs affordable permanently.

IV. CONCLUSION

The Commission should order the restoration of the previously available all-electric discount rates for the reasons stated in the CKAP Parties' briefs. These rates have been fair 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.

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 12th day of April 2011.



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