

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Debreczeni & Petrash CPA's Inc.,)	CASE NO. 21-928-EL-CSS
Complainant,)	
vs.)	
)	
The Cleveland Electric Illumination)	
Company,)	
Respondent.)	

MOTION FOR CONTINUANCE FILED BY COMPLAINANT

Pursuant to Ohio Adm. Code 4901-1-13 the Complainant in this matter moves for a continuance in the proceedings until the Ohio Supreme Court issues its ruling In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46 which is an appeal of an order issued by the Public Utilities Commission of Ohio in case No. 21-447-EL-UNC.

Said appeal was filed with the Ohio Supreme Court November 8, 2021, Case No. 2021-1374.

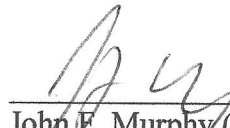
Complainant requests this continuance since the meaning of the term "customer" is at the heart of the issue that the Ohio Supreme Court has been asked to address In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46 and is also a key issue in the Complainant's matter.

Complainant moves this Commission for a continuance for a reasonable

time until after the Ohio Supreme Court has issued its decision concerning the definition of "customer" in order to effectively utilize the time of this Commission and the parties to this complaint and to aid in a just and correct outcome.

See attached Memorandum in Support.

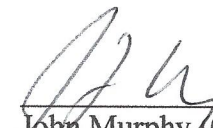
Respectfully submitted,



John F. Murphy (0013901)
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(Will accept service by Email)

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was served upon Mr. Christopher Rogers, Attorney at Law, Benesch Friedlander Coplan & Aronoff, LLP, 200 Public Square, Suite 2300, Cleveland, OH 44114-2378 by Email this 25th day of February, 2022, to CRogers@beneschlaw.com.



John Murphy (0013901)
Attorney for Complainant

MEMORANDUM IN SUPPORT

The Complainant's primary argument is that it has been excessively charged for various tariffs based upon the number of meters at its location rather than being based upon its status as "customer".

Complainant is not arguing about charges for actual electricity usage; rather, it is arguing that certain tariffs should be applied on a per customer, per month basis.

Examples of tariffs that Complainant states are being improperly charged are:

Rider AMI – Advanced Infrastructure / Modern Grid Rider, P.U.C.O. No. 13, Sheet 106, 30th Revised page 1 of 1 states, in part: "The charges listed above, except those for rate schedule STL, will be applied per customer, per month."

Rider GDR – Government Directives Recovery Rider, P.U.C.O. No. 13, Original Sheet 126, page 1 of 1 states, in part: "The charges listed above, except those for rate schedule STL, will be applied per customer, per month."

Rider NMB – Non-Market-Based Service Rider, P.U.C.O. No. 13, Sheet 119, 3rd Revised page 1 of 2 states in part: "Applicable to any customer who receives electric service under the Company's rate schedules".

FirstEnergy's Customer Guide for Electric Service – Ohio, June 2019, defines "**Customer**" as "Any person, partnership, association, corporation, or agency of municipal, county, state, or federal government receiving any service rendered by the Company at a contract location. This includes that party using the Company's service, or in applicable cases, the property owner, developer, or any party working on behalf of the customer such as an engineer, builder, contractor, or developer.

The relationship between the parties in this case are contractual in nature; and the terms of their contract are contained in FirstEnergy's Customer Guide for

Electric Services, as well as the various Tariffs governing charges.

The formation of the terms of a contract being found in brochures and related documents exchanged between institutions and individuals has been recognized in a number of cases here in Ohio. Cleveland State Univ. v. Simpson, 2019-Ohio-2240; 137 N.E. 3d 739; 2019 Ohio App. Lexis, 2316; 2019 WL 2395922; citing Leiby v. Univ. of Akron, 10th Dist. Franklin No. 05AP-1281, 2006-Ohio-2831, ¶ 15, citing Embrey v. Cent. State Univ., 10th Dist. Franklin No. 90AP-1302, 1991 Ohio App. Lexis 4886 (Oct. 8, 1991).

Ohio follows the “plain and ordinary” meaning rule in construing contract terms as covered in **Ohio Jurisprudence 3d**, Contracts, §121 Interpretation of words or phrases in contract.

In Clifton Steel Co. v. Trinity Equip. Co., 2018-Ohio-2186; 115 N.E.3d 10; 2018 Ohio App. Lexis 2404, the Ohio Eighth Appellate District Court states that the standard of review regarding contracts follows:

“The construction of a written contract is a matter of law that we review de novo. Our primary role is to ascertain and give effect to the intent of the parties. We presume that the intent of the parties to a contract is within the language used in the written instrument. If we are able to determine the intent of the parties from the plain language of the agreement, then there is no need to interpret the contract. (Citations omitted.) Saunders v. Mortensen, 101 Ohio St. 3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶ 9. [*P18] “Contractual language is considered ambiguous where the meaning of the language cannot be determined from the four corners of the agreement, or where the language is susceptible to two or more reasonable interpretations.” Co. Wrench v. Andy's Empire Constr., Inc., 8th Dist. Cuyahoga No. 94959, 2010-Ohio-5790, ¶ 19. When ambiguity is found, courts interpret the parties' intent, and thus, the meaning of the contract based on extrinsic evidence. Kelly v. Med. Life Ins. Co., 31 Ohio St.3d 130, 132, 31 Ohio B. 289, 509 N.E.2d 411 (1987). [*P19] Generally, in interpreting the parties' intent, contracts are to be construed against their drafters. Known as the doctrine of contra proferentum, this [***10] rule in construing contract terms against the drafter, however, “is a secondary rule of contract construction and is not applicable [**16] when a primary rule of contract construction clarifies the meaning of the contract.” Michael A. Gerard, Inc. v. Haffke, 8th Dist. Cuyahoga No. 98488, 2013-Ohio168, ¶ 14, citing Malcuit v. Equity Oil & Gas Funds, Inc., 81 Ohio App.3d 236, 610 N.E.2d 1044 (9th Dist.1992). In fact, “Ohio courts have generally

resolved contract ambiguities against the drafter only where parties lacked equal bargaining power to select contract language." Id.; see also T.A.P. on Tap, Inc. v. Sardis, 8th Dist. Cuyahoga No. 75755, 2000 Ohio App. LEXIS 2740, *13 (June 22, 2000) ("[T]he doctrine is applied only when the contract is deemed ambiguous and parol evidence has not revealed the parties' intent. * * * Where contract terms are ambiguous, contra proferentum is not preferred as a tool of interpretation although it is most appropriately utilized in situations where the parties did not have equal bargaining positions.").

In this matter now before this Commission we have two opposing parties that are hardly of equal bargaining power; it is more like the Biblical epic of David vs. Goliath.

All terms contained in all written documents have been drafted by Goliath (aka FirstEnergy) in a take it or leave it relationship. If you don't like the terms figure out another way to get your electricity.

Based upon the foregoing, the Complainant respectfully request that further proceedings be continued until the Ohio Supreme Court issues its ruling and decides the meaning of the term "customer" In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46 in which the Ohio Manufacturers' Association Energy Group filed its Notice of Appeal on 11/08/2021; Case No. 2021-1374. (Copy of docket attached.)

Respectfully submitted by:



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THE SUPREME COURT OF OHIO

CASE DOCKET

In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46.

<u>Case Information</u>	Number 2021-1374 Type Appeal from Public Utilities Commission Date Filed 11/08/2021 Status Open Prior Jurisdiction Public Utilities Commission Prior Decision Date 09/08/2021 Prior Case Numbers 21-447-EL-UNC
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Parties

The Ohio Manufacturers' Association Energy Group; Appellant
Represented by:
 Bojko, Kimberly Wile (69402), Counsel of Record
 Donadio, Thomas Vincent (0100027)

Public Utilities Commission of Ohio; Appellee
Represented by:
 Bair, Jodi Jenkins (62921), Counsel of Record
 Jones, John Holland (51913)
 Shepherd, Thomas Mason (100164)
 Yost, David Anthony (56290)

Ohio Power Company; Appellee
Represented by:
 Nourse, Steven Trent (46705), Counsel of Record

<u>Docket</u>	<u>Date Filed</u>	<u>Description</u>	<u>Filed By</u>
	11/08/2021	Notice of appeal of The Ohio Manufacturers' Association Energy Group	Appellant
	11/08/2021	Agency decision	Appellant
	12/08/2021	Record	
	12/08/2021	Clerk's notice of filing of record	
	12/08/2021	Index of record on appeal	
	12/17/2021	Motion to intervene as appellee	Appellee
		01/04/22 Granted. See announcement at 2022-Ohio-5 (https://supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-ohio-5.pdf).	
	01/18/2022	Appellant's merit brief	Appellant
	01/18/2022	Amended appellant's merit brief	Appellant
	01/26/2022	Stipulation of Public Utilities Commission of Ohio to extension of time to file merit brief to 3/9/22	Appellee

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Commission of Ohio Docketing Information System on**

2/25/2022 1:33:44 PM

in

Case No(s). 21-0928-EL-CSS

Summary: Motion Motion for Continuance filed by Complainant electronically filed
by Mr. John F Murphy on behalf of Debreczeni & Petrash CPA's Inc.