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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)
The Ohio Home Builders Association)
and Medina Builders, L.L.C.,)
)
Complainants,)
)
vs.)
)
Ohio Edison Company, The Cleveland)
Electric Illuminating Company, and The)
Toledo Edison Company, Operating)
Companies of FirstEnergy, Corp.,)
)
Respondents.)

Case No. 01-2610-EL-CSS

**JOINT COMPLAINT
AND
REQUEST FOR INTERIM RELIEF**

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October 5, 2001

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**JOINT COMPLAINT
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REQUEST FOR INTERIM RELIEF**

Pursuant to Section 4905.26 of the Ohio Revised Code and Rule 4901-9-01 of the Ohio Administrative Code, the Ohio Home Builders Association, Inc. ("OHBA") and Medina Builders, L.L.C. ("Medina Builders") (collectively, "Complainants") respectfully file with the Public Utilities Commission of Ohio ("Commission") this Complaint against Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, operating companies of FirstEnergy Corp. (collectively, "FirstEnergy" or "FirstEnergy Operating Companies"). FirstEnergy has adopted a policy that has substantially increased its rates and charges and the cost of development in Ohio. This increase violates Ohio law and FirstEnergy's Stipulation and Recommendation approved by the Commission in Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and

99-1214-EL-AAM ("Stipulation").¹ In addition, the contribution in aid of construction ("CIAC") charges demanded by FirstEnergy is unjust, unreasonable, and unduly discriminatory.

PARTIES AND JURISDICTION

1. FirstEnergy is a public utility, electric light company, and electric utility pursuant to Sections 4905.02, 4905.03(A)(4), 4911.18(D), and 4928.01, Revised Code, and is subject to the Commission's regulatory jurisdiction pursuant to Sections 4905.04 through 4905.06, Revised Code.
2. OHBA is an Ohio non-profit organization and a statewide association of builders and developers, many of which develop and build homes within the FirstEnergy Operating Companies' service areas. OHBA has nearly 9,000 members.
3. Medina Builders is a home builder/developer with a planned 50 unit development in Ohio Edison's (a FirstEnergy Operating Company) service territory in Medina County, Ohio.
4. The Commission has jurisdiction over this Complaint pursuant to Sections 4905.26, 4928.16, 4928.18, and 4928.36, Revised Code. The Commission has authority to consider and grant interim relief under Section 4909.16, Revised Code.

STATEMENT OF FACTS

5. Complainants incorporate herein by reference paragraphs 1 through 4 above.

¹ See *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM, Stipulation and Recommendation (April 17, 2000), approved by the Commission on July 19, 2000.

6. The subject matter of this Complaint concerns the charges demanded by FirstEnergy from developers and builders as a CIAC, which FirstEnergy is demanding as a condition for installing facilities required to serve new customers. For example, the FirstEnergy Operating Company, Ohio Edison, has demanded that Medina Builders sign a “work approval contract” and pay \$64,450.33 for its new Brook Hollow Preserve development before it will install the underground facilities for the distribution of electricity to the development.
7. The CIAC demanded by FirstEnergy results from FirstEnergy’s change in its CIAC policy in effect on and after October 4, 1999 (the effective date of Amended Substitute Senate Bill 3 (“Am. S.B.3”)).
8. Section IV of FirstEnergy’s transition plan Stipulation requires, among other things, FirstEnergy to freeze distribution rates for all retail customers located within its service areas through December 31, 2007, except in limited circumstances (none of which are present here). Stipulation at 4. The Commission recognized and approved the rate freeze in its Order approving FirstEnergy’s Stipulation.²

[Section 4928.34(A)(6), Revised Code,] requires that the total of all unbundled components is capped and, during the market development period, will equal the total of rates in effect on the day before the effective date of S.B. 3. The cap will be adjusted for changes in taxes, the universal service rider, and the temporary rider under Section 4928.51, Revised Code.

Under the company’s filing, and in accordance with this prerequisite, the total of the companies’ unbundled rates (and proposed charges under contracts) is capped, with limited exceptions, during the market development period. Further, under the stipulation distribution rates are frozen for

² *FirstEnergy*, Case Nos. 99-1212-EL-ETP, *et al.*, Opinion and Order at 46 (July 19, 2000) (citations omitted).

an additional two years beyond the market development period, through the end of 2007.

9. On November 21, 2000 and December 7, 2000, the Commission approved, with modifications, FirstEnergy's transition plan compliance tariffs.³ However, in its December 7 Entry the Commission explicitly stated that it would continue to consider whether further modifications to FirstEnergy's line extension policy would be warranted. The Commission noted that "although [the Commission] [has] approved provisions in the tariffs regarding line extension policies, the Commission will continue to consider whether further modifications of these policies are warranted."⁴
10. OHBA and its members have attempted to resolve the issues raised herein through discussions with FirstEnergy over the last nine and a half months. Medina Builders has also attempted to resolve its issues with FirstEnergy to no avail.

APPLICABLE LAW

11. Complainants incorporate by reference paragraphs 1 through 10 above.
12. Section 4905.26, Revised Code, permits complaints and hearings against a public utility concerning the imposition of unjust, unreasonable, unjustly discriminatory, unjustly preferential, unlawful, or insufficient rates, services, and practices by the public utility. Section 4905.26, Revised Code, also authorizes the Commission to fix a time for hearing a complaint stating reasonable grounds. Furthermore,

³ See *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM, Entries (November 21, 2000 and December 7, 2000).

⁴ *Id.*, December 7 Entry at 2 (Finding No. 3).

Section 4905.61, Revised Code, provides relief to the injured party in the form of treble damages sustained as a consequence of the violations by the public utility.

13. Section 4905.22, Revised Code, provides that “[e]very public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”
14. Section 4905.32, Revised Code, prohibits utilities from charging, demanding, exacting, receiving, or collecting a different rate or charge for services rendered, or to be rendered, than that which is specified in the utility’s tariff filed with the Commission and in effect at the time.
15. Section 4905.33(A), Revised Code, provides that “[n]o public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered . . . than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.”

16. Section 4905.35(A), Revised Code, provides that “[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.”
17. Section 4928.16, Revised Code, authorizes the Commission to determine whether an electric utility has violated or failed to comply with any provision of Sections 4928.01 through 4928.15 and 4928.35(A) or (D), Revised Code, or any Commission rule adopted pursuant to those sections. Section 4928.16, Revised Code, further provides that after reasonable notice and hearing, the Commission may order any remedy or forfeiture provided by Sections 4905.54, 4905.60, and 4905.64, Revised Code.
18. Section 4928.18(A), Revised Code, authorizes the Commission to protect customers of retail electric service supplied by an electric utility from any adverse effect of the utility’s provision of a product or service other than retail electric service.
19. Section 4928.36, Revised Code, authorizes the Commission to determine whether an electric utility has failed to implement its transition plan in conformance with an order under Section 4928.33, Revised Code.
20. Section 4928.34(A)(6), Revised Code, imposed an upward limit on FirstEnergy’s rates and charges based upon the rates and charges in effect on October 4, 1999.
21. Section 4928.36, Revised Code, also provides that, after reasonable notice and hearing provided in Section 4905.26, Revised Code, the Commission may enforce compliance with a transition plan order by implementing remedies provided by

Sections 4928.18(C)(1) to (3) and (D)(1) and (2), Revised Code, in addition to any other remedies provided by law.

22. Section 4909.16, Revised Code, authorizes the Commission to act under its emergency authority to prevent injury of the type FirstEnergy is imposing through its CIAC demands.

CLAIMS AND BASES FOR RELIEF

23. Complainants incorporate by reference paragraphs 1 through 22 above.
24. Section 4905.22, Revised Code, prohibits the charging of unjust and unreasonable rates. FirstEnergy is demanding a significant increase in CIAC from builders and developers in order to connect new customers to FirstEnergy's distribution system. FirstEnergy's imposition of the increased charges for the new facilities, including line extensions, is unlawful, unjust, and unreasonable pursuant to Section 4905.22, Revised Code. FirstEnergy's new CIAC policy imposes charges on customers in excess of the charges in effect on October 4, 1999 and violates Section 4928.34(A)(6), Revised Code. Additionally, FirstEnergy is demanding CIAC charges that are not specifically authorized by its Commission-approved tariff in violation of Section 4905.32, Revised Code.
25. Section 4905.33(A), Revised Code, requires a public utility to charge all parties equivalent compensation for the provision of like and contemporaneous service under substantially the same circumstances and conditions. Similarly, Section 4905.35(A), Revised Code, prohibits the utility from discriminating conduct and affording any person undue or unreasonable preference. FirstEnergy's imposition of the increased CIAC for new facilities that is intended to recover charges

associated with connecting new customers to FirstEnergy's distribution system is unduly and unreasonably discriminatory, advantageous, and preferential pursuant to Ohio law. See Sections 4905.35(A) and 4905.33(A), Revised Code. FirstEnergy's new CIAC policy commenced on or about January 1, 2001. Customers seeking connection before and after this date are being treated differently and the differential treatment is unjust, unlawful, and unreasonable. The effect of FirstEnergy's new CIAC policy is to transfer unlawfully to OHBA's members and Medina Builders, as well as other builders and developers, responsibility for capital that FirstEnergy claims to require to install new facilities. FirstEnergy's new policy also includes a "tax gross-up" charge, which FirstEnergy claims is required to pay the federal income tax that arises from its new CIAC charges. In sum, FirstEnergy's new CIAC policy is imposing significant and unacceptable new costs on OHBA's members, Medina Builders, all home builders and developers, and ultimately the owners or occupants of new dwellings in FirstEnergy's service areas.

26. FirstEnergy has violated Section 4928.02(A), Revised Code, by failing to ensure the availability to consumers of adequate, nondiscriminatory, and reasonably priced retail electric service throughout the state, for which remedy may be granted pursuant to Section 4928.16, Revised Code. The imposition of increased charges to obtain electric service is unreasonable and discriminatory, affecting the availability of service to customers.
27. FirstEnergy submitted and had approved its Stipulation as part of its transition plan proceeding. Section IV of FirstEnergy's transition plan Stipulation requires, among

other things, FirstEnergy to freeze distribution rates for all retail customers located within its service areas through December 31, 2007, except in limited circumstances (none of which are present here). As indicated above, the Commission approved such rate freeze consistent with Section 4928.34, Revised Code. See Stipulation at 4. FirstEnergy, however, has increased distribution rates by demanding an increased charge to connect customers to FirstEnergy's system. FirstEnergy has also changed the terms and conditions by which a customer may connect and obtain distribution service by charging the customers' home builders and developers unreasonable CIAC for main line extensions. Consequently, FirstEnergy is operating and will continue to operate in violation of its transition plan Stipulation approved by this Commission, for which a remedy may be pursued pursuant to Section 4928.36, Revised Code.

28. As a result of FirstEnergy's CIAC demands, OHBA's members and Medina Builders, as well as all builders and developers, are being harmed and are at risk for potential future harm. All developers and builders, including OHBA's members and Medina Builders, are currently harmed by the increased CIAC and the discriminatory application of FirstEnergy's new policy. Additionally, all developers and builders, including OHBA's members and Medina Builders, are harmed by the uncertainty surrounding these additional costs imposed by FirstEnergy due to its change in CIAC policy, or the change in the implementation of its CIAC policy. Present harm and the potential for future harm exist, and the conditions warrant the Commission granting interim relief to require FirstEnergy to cease and desist from demanding CIAC charges under its new policy. See Sections 4909.16 and

4928.18(A), Revised Code. Complainants do not object to FirstEnergy's ability to demand CIAC charges in accordance with FirstEnergy's prior CIAC method.

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request the Commission to:

1. Direct FirstEnergy to cease and desist from demanding charges based upon FirstEnergy's new CIAC policy.
2. Determine that FirstEnergy is failing to furnish necessary and adequate service and facilities to new customers at just and reasonable rates in violation of Sections 4905.22 and 4928.02(A), Revised Code.
3. Find that FirstEnergy is demanding unjust and unreasonable charges from OHBA's members and Medina Builders under its new CIAC policy to connect new customers to FirstEnergy's distribution system in violation of Sections 4905.22, 4928.18(A), and 4928.02(A), Revised Code.
4. Find that FirstEnergy is demanding new CIAC charges that are not specifically authorized by its Commission-approved tariff in violation of Section 4905.32, Revised Code.
5. Find that FirstEnergy's new CIAC policy violates Section 4928.34(A)(6), Revised Code, by demanding charges in excess of those in effect on October 4, 1999.
6. Find that FirstEnergy is violating Sections 4905.33(A), 4905.35(A), and 4928.02(A), Revised Code, by imposing unduly discriminatory rates on members of OHBA and Medina Builders.
7. Find, pursuant to Section 4928.16 of the Revised Code, that FirstEnergy has failed to comply with its Stipulation and related Commission orders.

8. Direct FirstEnergy to comply with the requirements of its transition plan Stipulation pursuant to Section 4928.36, Revised Code.
9. Order all remedies authorized by Ohio law, and grant such other relief as the Commission deems just and necessary.

Respectfully submitted,

 *by Samuel C. Randazzo*

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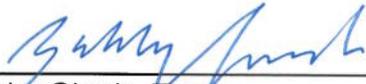
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Complaint and Request for Interim Relief* was served upon the following parties of record this 5th day of October 2001, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.



Bobby Singh, Esq.

Arthur Korkosz, Esq.
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On Behalf of FirstEnergy Corp.