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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

The Ohio Home Builders Association and Medina Builders, L.L.C.,	:	
Complainants	:	**Case No. 01-2610-EL-CSS**
v.	:	
Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company	:	
Respondents.	:	

MOTION TO INTERVENE
OF
EVERGREEN LAND DEVELOPMENT, LLC.

Pursuant to Ohio Rev. Code Sec. 4903.221, and Ohio Administrative Code 4901-1-11, Evergreen Land Development, LLC. ("Evergreen") respectfully moves the Commission for leave to intervene in this proceeding for the reasons set forth in the following Memorandum of Support.

Respectfully submitted,

Henry W. Eckhart

Henry W. Eckhart, Esq. (0020202)

50 West Broad Street, #2117
Columbus, Ohio 43215
Phone: (614) 461-0984
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Counsel for Evergreen Land
Development, LLC.

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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

In support of its Motion to Intervene Evergreen Land Development, LLC. states that it is a builder/developer of residential homes in the Ohio Edison service territory. It is presently beginning the fifth (5th) phase of a 450 home development known as Fox Meadow in Montville Township, Medina County, Ohio.

On September 11, 2001 Ohio Edison sent a letter, with a proposed "Regulated Services Contract" attached for the 5th phase of the Fox Meadow project, demanding an $81,432.62 payment for the 57 lots in Phase 5. After objection by Evergreen Land Development Ohio Edison sent a second proposed contract demanding payment of $54,000.00.

The September 11, 2001 letter stated

> " When Senate Bill 3 initiated restructuring of the electric industry on January 1, 2001, the formula for calculating the customer's cost of new line extensions was changed. At that time Ohio Edison <u>changed its policy and we no longer require deposits, but instead we bill the cost of construction minus a credit for revenue based on the number of lots.</u> The cost that will be required to install facilities in Phase 5 is $81,432.62. This cost was figured with the revenue credit based on 57 lots approximately ½ of those being all-electric. (Emphasis added)
>
> [A copy of the letter, with the contract, is attached hereto, marked Exhibit A, and incorporated by reference herein.]

This language was apparently meant to convey the impression to the reader that the authority, or the justification for the new policy was based on Senate Bill 3. No such interpretation of Senate Bill is justified.

Additionally, Evergreen had obtained its financing for Phase 5 and had submitted its application before January 2001, and therefore should have been "grandfathered" even under Ohio Edison's unjustified "change" in its policy.

Senate Bill 3 clearly intended to freeze the transmission and distribution rates of Ohio Edison as of October 4, 1999. This change of policy is clearly a rate increase for the distribution service and a violation of the intent of Senate Bill 3.

The Commission's approval of the Stipulation in Case No. 99-1212-El-ETP clearly also recognized the concept of the rate freeze when it stated:

> Under the company's filing, and in accordance with this prerequisite, the total of the companies' unbundled rates (and proposed changes under contracts) is capped, with limited exceptions, during the market development period. (Emphasis added)
>
> Opinion and Order, at 46 (July 19, 2000)

This "change of policy" by Ohio Edison is clearly a violation of Senate Bill 3, and of the Commissions Opinion and Order.

Evergreen's primary interest in filing this Motion to Intervene is to play a constructive role in protecting the homebuilding industry in Ohio, and the purchasers of new homes in the Ohio Edison service territory.

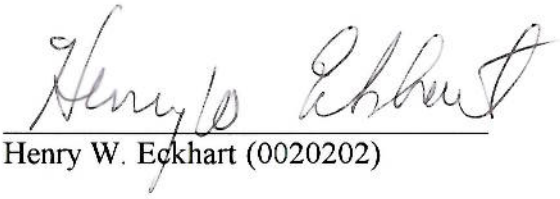
Evergreen is represented in this Motion by the same counsel that represents Medina Builders, L.L.C., one of the original complainant's in this case. Evergreen will coordinate its' intervention with the original complainant's and it will therefore not cause any undue delay in the processing of the case.

Evergreen has a real and substantial interest in the case that is not specifically represented by any other party. The Evergreen participation will contribute to the just

resolution of the issues involved in this proceeding. No party will be unjustly prejudiced by the Evergreen intervention.

WHEREFORE, Evergreen Land Development, LLC respectfully requests that its Motion to Intervene be granted.

Respectfully submitted,

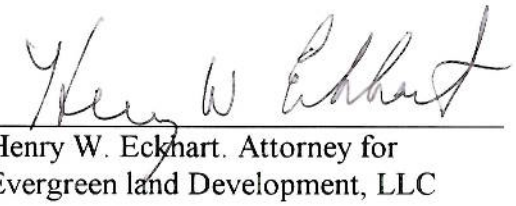


Henry W. Eckhart (0020202)

50 West Broad Street, #2117
Columbus, Ohio 43215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing Motion To Intervene, and the Memorandum In Support of Motion, on Helen L. Liebman, at Jones, Day, Reavis & Pogue, 1900 Huntington Center, 41 South High Street, Columbus, Ohio, 43215. and on Samuel C. Randazzo, Esq. at McNees, Wallace & Nurick LLC, Fifth Third Center, 21 East State Street, 17th floor, Columbus Ohio, 43215, by ordinary first class mail, postage prepaid, this 30th day of October, 2001.



Henry W. Eckhart. Attorney for
Evergreen land Development, LLC

evergreenmtn

OhioEdison
A FirstEnergy Company

1910 West Market Street
Akron, Ohio 44313-6912

SEP 13 2001

September 11, 2001

EXHIBIT A

Fox Meadow Phase 5
Attn: Mr. Joe Beccia
7976 Broadview Rd
Suite 1
Broadview Hts, OH 44147

Dear Mr. Beccia:

Please find the enclosed Work Approval Contract for your review. This contract includes a description of the services we will be providing for you at Fox Meadow Phase 5. Previously, we may have considered this development grandfathered since you had made application before January 2001, but you must have also met the requirement of having our facilities installed before the June 30, 2001 deadline to still be considered grandfathered. According to the engineer we did not receive a final plot plan from you till the end of June 2001 so that we could complete our design and your installation is scheduled in November 2001 thus this will not be considered grandfathered. When Senate Bill 3 initiated restructuring of the electric industry on January 1, 2001, the formula for calculating the customer's cost of new line extensions was changed. At that time Ohio Edison changed its policy and we no longer require deposits, but instead we bill the cost of construction minus a credit for revenue based on the number of lots. The cost that will be required to install facilities in Phase 5 is $81,432.62. This cost was figured with the revenue credit based on 57 lots approximately 1/2 of those being all-electric.

If you are in agreement with this proposal, please sign the enclosed contract and initial the Terms and Conditions portion of this contract. Please return both pages with payment of the total price amount in the envelope provided. Please include Work Request #490785 on your check, payable to Ohio Edison. Construction will typically commence within 4-6 weeks of your payment. If you have any questions, please contact me at 330-384-5090, or fax at 330-384-7912.

Sincerely,
Nora Swanson
Customer Service Specialist

Ohio Edison Company
CENTRAL REGION SERVICES
REGULATED SERVICES CONTRACT
FORM X-2474 (07-01)

WORK REQUEST DATE
October 19, 2001

SECTION 1 - CUSTOMER INFORMATION FOR INITIAL BILLABLE REQUEST (Please Print)

CUSTOMER NAME		ACCOUNT NO.	DAY PHONE NO.	EVENING PHONE NO.
Fox Meadow Phase 5				
SERVICE ADDRESS	SUITE NO.	CITY	STATE	ZIP CODE
Fox Glen Dr		Montville Township	OH	
MAILING ADDRESS	SUITE NO.	CITY	STATE	ZIP CODE
7976 Broadview Rd	1	Broadview Heights	OH	44147

PERSON REQUESTING SERVICE	OHIO EDISON REPRESENTATIVE	REPRESENTATIVE COMPANY PHONE NO
Joe Beccia	Nora Swanson	(330) 384-5090

DESCRIPTION OF WORK REQUESTED

Installation of underground facilities to provide service to 57 lots in Fox Meadow Phase 5

IF THERE ARE ANY QUESTIONS CONCERNING THIS WORK, PLEASE CALL OHIO EDISON COMPANY AT **1-800-633-4766.**
FAX THIS FORM TO CUSTOMER SERVICE **330-384-7912** OR **825/7912** INTER-OFFICE

SECTION 2 - BILLABLE INFORMATION FOR WORK REQUESTED

CREWS NO.	WORK DESCRIPTION	PRICE
490785	Install 10,186' of #2AL primary, 1,298' of 4/0AL and 1,865' of 350AL secondary,	$81,432.62
	11 - 50KVA, 1 - 25KVA and 1 - 100KVA pad mount transformers, 23 handholes	

THE CUSTOMER WILL INCUR A $7 CHARGE FOR ANY CHECKS RETURNED FOR NON-SUFFICIENT FUNDS. ENCLOSE CHECK (If Applicable) AND MAIL IN THE ENVELOPE PROVIDED TO:

CUSTOMER SERVICES, CSC 1
OHIO EDISON COMPANY
1910 WEST MARKET STREET
AKRON, OHIO 44313-6912

SUB TOTAL	$81,432.62
IF APPLICABLE, SALES TAX OR TAX EXEMPT NO.	
TOTAL PRICE	$81,432.62

This contract does not include any cost for trenching, backfilling, and/or landscape restoration unless clearly specified above in "WORK DESCRIPTION".

*** I request to have Ohio Edison perform the work described above at the above address. I agree that final scheduling of this work will not begin until payment of the agreed price above is received by Ohio Edison Company. I understand that quoted prices remain in effect for only 90 days unless otherwise stated.***

CUSTOMER NAME (Print)	CUSTOMER SIGNATURE	DATE SIGNED

INITIALS	
DATE	

TERMS AND CONDITIONS

Ohio Edison Company ("Edison") and Owner agree the terms and conditions herein shall constitute the complete and final agreement between the parties, superseding all other agreements, written or oral. These terms and conditions may not be modified hereafter except by written agreement of Edison.

CONDITIONS

BILLING AND PAYMENT

In the event that Edison performs the agreed to work prior to payment, Edison will invoice Owner for the work performed pursuant to this Agreement. Payment shall be made to Edison upon Owner's receipt of invoice. All invoices past due thirty (30) days or more shall be charged the lesser of one and one-half percent (1 ½%) per month or the maximum rate of interest allowable by law. Owner agrees to reimburse Edison in full for all costs of collection, including attorney fees, incurred or paid by Edison in connection with collecting, or attempting to collect, any amounts due under this Agreement.

INDEMNIFICATION

Owner agrees for itself, its successors and assigns, to defend, indemnify and save Edison, its successors and assigns, harmless from all claims, demands, damages, losses, judgments, actions or causes of actions, costs or expenses, including litigation expenses and legal fees, in connection therewith or related thereto, including lack of authority to enter into this Agreement, asserted by or for any person or persons for personal injuries, death, or property damage caused by, arising out of, or in any way related to the work performed by Edison under this Agreement, unless initiated or proximately caused by the sole negligence of Edison. Notwithstanding the foregoing, Edison shall have no responsibility to the Owner or third parties if the work scope as defined by Owner violates the rights of or causes damage to any third party or governmental authority.

LIMITATION OF LIABILITY

Neither Edison, its affiliated companies, its subcontractors, nor its employees shall be liable for loss of anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, service interruption, claims of Owner's customers, subcontractors, vendors or suppliers, cost of money, loss of use of capital or revenue arising out of Edison's work or out of or in connection with Owner's use, or inability to use, the facilities, or for any special, incidental or consequential damages of any nature, arising at any time or from any cause whatsoever.

FORCE MAJEURE

Neither party shall be liable to the other for any expenses, loss or damage resulting from delays or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, strike, civil commotion, governmental or military authority, insurrection, riots, embargoes, unavoidable delays in transportation, acts of God, or public enemy.

ASSIGNMENT

This Agreement shall be binding upon and insure to the benefit of the parties hereof, their successors and assigns. Owner, however, shall not assign to any other person or association not affiliated with Owner any rights or privileges hereby granted, or authorize any person or association not affiliated with Owner the exercise of any rights or privileges herein provided for, without the written consent of Edison.

ARBITRATION

Any question in dispute between the parties arising out of the Agreement (except any claim for damages because of bodily injuries, including death at any time resulting therefrom, except for any claim for damages because of injuries to or destruction of property and, except for major breach or repudiation with respect to this Agreement) which Is not amicably settled shall be submitted to final and binding arbitration. Such arbitration shall be conducted in Akron, Ohio, before an arbitrator mutually acceptable to the parties; provided, however, that should the parties be unable to agree, the arbitrator shall be selected by the presiding Judge of the Court of Common Pleas of Summit County, Ohio. The request for arbitration shall be in writing setting forth the claim or claims to be arbitrated and the remedy sought. It shall be delivered to the other party within 90 days of the occurrence giving rise to the dispute. Any failure to request arbitration within such 90-day period shall be deemed a waiver of the right to arbitrate the claim upon which the dispute is based.

NON-WAIVER

The failure of either party to insist or enforce in any instance strict performance of any of the terms hereof or to exercise any of its rights herein shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms on any future occasion.

APPLICABLE LAW

This Agreement shall be governed in all respects by the laws of the State of Ohio and only the Courts of Ohio, or Federal Courts in Ohio shall have jurisdiction.