

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

FILED
IN COMMON PLEAS COURT
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DENISE H. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY, OHIO
10 FEB 16 2010

Carl DiFranco
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9969 Mulberry Rd.
Chardon, Ohio 44024

) Case No.
)
)
) Judge

JUDGE DAVID L. FURRY

Andrew T. Wyatt
14771 Sisson Rd.
Chardon, Ohio 44024

Lisette Roy
Robert Roy
13645 Fisher Rd.
Burton, Ohio 44021

)
)
)
)
) CLASS ACTION
) COMPLAINT FOR DECLARATORY
) JUDGMENT AND OTHER RELIEF
) (JURY DEMAND ENDORSED HEREON)

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James F. Budzick)
Mary Jane Budzick)
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Plaintiffs,)

vs.)

First Energy)
76 South Main Street)
Akron, Ohio 44308)

and)

Cleveland Electric Illuminating)
Company)
c/o CT Corporation, Statutory Agent)
1360 E. 9th Street)
Cleveland, Ohio 44114)

and)

Ohio Edison Company)
76 South Main Street)
Akron, Ohio 44308)

Defendants.)

Plaintiffs, as identified in the caption of this Complaint, whose names are incorporated by reference herein, ("Plaintiffs") each on their own behalf and on behalf of all others similarly situated, complain as follows against Defendants, First Energy ("First Energy"), Cleveland Electric Illuminating Company ("CEI"), and Ohio Edison Company ("Edison"), (First Energy, CEI and Edison are collectively referred to herein as ("Defendants")), to wit:

INTRODUCTION

1. This action is brought by the named Plaintiffs, on their own behalf and on behalf of all other similarly situated customers of Defendants, who have been and continue to be harmed by Defendants unilateral breach of their prior oral agreements, covenants, representations and commitments inducing Plaintiffs, and all others similarly situated, to equip their homes with all electric heating systems and appliances ("all electric homes"), or electric hot water heating systems ("electric water heating"), and /or electric load management systems ("load management") in consideration for which Defendants agreed to charge Plaintiffs, and all others similarly situated, special volume based or off peak usage based rates commonly known as the all electric home rate, electric water heating rate, and load management discount rate indefinitely with no limit as to time. Additionally, Defendant agreed, covenanted, and represented to Plaintiffs, and others similarly situated, who installed electric heat pumps that they would receive a special discounted rate regardless if Defendants removed the rate from their filed rate schedule with the Ohio PUCO.

2. Plaintiff, and members of the Plaintiff Class, each were parties to the oral agreements, representations, covenants and inducements made by Defendants assuring Plaintiffs, and the Plaintiff class, that they would receive the all electric home rate, electric water heating rate and/or load management discount. In return for such promises, agreements and representations, Plaintiffs justifiably relied upon and partially or substantially performed by maintaining all electric homes, electric water heating systems, and/or load management equipment in their respective homes, in lieu of natural gas, oil or other equipment or appliances.

3. Plaintiffs, Glenn H. Frohring, Joretta Frohring, Eileen Fisco, Dana M. Dews, Connie J. Dews, Eleanor M. Spitz, Tom Janes, Lorraine Janes, and Robert E. Robertson were induced by Defendants' agreements, promises, covenants, and representations and justifiably relied on Defendants' agreements, promises, representations, and inducements into equipping their homes with electric load management devices that allowed Defendants' to manage electric load to their homes in exchange for Defendants' unlimited promise to provide said Plaintiffs, and others similarly situated, with a load management discount. These Plaintiffs are representative of all

of those homeowners in Geauga County and Northeastern Ohio designated as "all electric load" customers by Defendants, which customers constitute a subclass of the Plaintiff class in this action.

4. Plaintiffs, Gregg Soltis and Jeannine Soltis, were induced by Defendants' promises, covenants, agreements, and representations and justifiably relied on Defendants' agreements, promises, covenants, and inducements into equipping their home with electric water heating systems in exchange for Defendants' unlimited promise to provide said Plaintiffs, and others similarly situated, with an electric water heating discount. These Plaintiffs are representative of all of those homeowners in Geauga County and Northeastern Ohio designated as electric water heating customers, which customers constitutes another subclass of the Plaintiffs' Class in this action.

5. The Plaintiff Class, including both subclasses, upon information and belief, consists of more than 100,000 residential homeowners (and perhaps as many as 300,000 homeowners), residing in Geauga County and surrounding Northeast Ohio Counties who are customers of Defendants and it is impracticable to bring them all before the Court and would be contrary to the principles of judicial economy to do so; there are questions of law or fact presented which are common to the entire class, or respective subclasses accordingly; the claims of the named Plaintiffs, and named subclass representative Plaintiffs, respectively, are typical of the claims of the class, or respective subclass, as applicable; and the named Plaintiffs will fairly and adequately represent and protect the interest of the class and subclasses.

PARTIES/JURISDICTION/VENTUE

6. The named Plaintiffs are residents and residential property owners and/or occupants residing in Northeast Ohio, sixty (60) of the named Plaintiffs reside in Geauga County, Ohio.

7. The named Plaintiffs are customers of Defendants. Defendants, First Energy, and its affiliated companies, CEI and Edison, conduct business in Ohio and Defendant, First Energy, by and through CEI, conducts business in Geauga County, Ohio, including, without limitation, entering into contracts with the Geauga County residents named as Plaintiffs and thousands of similarly situated residents residing in Geauga County, Ohio.
8. The real property owned by the Geauga County residents named as Plaintiffs, and thousands of similarly situated Geauga County residents, adversely affected by Defendants' breach of contract, tortious, and statutory misconduct described below is located in Geauga County, Ohio.
9. Defendants, First Energy and CEI maintain facilities, equipment and employees in Geauga County, Ohio
10. The Contractual agreements, misrepresentations, and fraudulent inducements, complained of below, as to the Geauga County residents named as Plaintiffs, occurred in Geauga County, Ohio.
11. This action is brought for Declaratory Relief pursuant to O.R.C Chapter 2721.
12. This Court has Jurisdiction over the genuine contract disputes and genuine tort claims raised in this Complaint even though the case involves public utilities; to clarify, this action is not a "rate" setting case but rather a case related to contractual rights existing between Plaintiffs and members of Plaintiff Class, and Defendants by reason of a contract entered between said parties.
13. Plaintiffs are entitled to access to this Court to redress their genuine tort claims and genuine contract claims pursuant to the Ohio Constitution.

14. The Ohio Public utilities Commission is not a court of general jurisdiction and has no power to issue a declaratory judgment or to determine finally the legal rights and liabilities with regard to Plaintiffs' contractual rights as to programs promised by Defendants; nor to determine finally Defendants' liability for their tortious conduct alleged in this Complaint.

BACKGROUND

15. During the last approximately forty (40) years, Defendants, at various times, entered into oral agreements with Plaintiffs and other similarly situated, whereby Defendants agreed to provide an all electric home discount in consideration of Plaintiffs equipping their homes with all electric heating systems and appliances.
16. Defendants placed no time limitations on their agreements, covenants, promises, and inducements as to the all electric homes programs.
17. Plaintiff and others similarly situated justifiably relied on Defendants' agreements, covenants, representations and inducements and equipped their homes with all electric heating equipment, appliances, geothermal heating systems and other electric used in lieu of natural gas or oil operated heating systems and appliances.
18. Numerous Plaintiffs and others similarly situated purchased their homes in reliance on Defendants' "all electric home" agreements, promises, and inducements, which were not limited or conditional as to duration.
19. Defendants, by and through their agents, distributors, representatives, or employees represented that the "all electric home" program would be "permanent" or unlimited as to time or would be perpetual as long as the homeowners maintained the all electric usage.

20. Defendant, First Energy's affiliate represented to Plaintiffs residing in Geauga County and Northeast Ohio, Thomas M. Logan, and others similarly situated, as far back as 1988, that the all electric home program rate would not be affected or forfeited, by the removal of the rate from the files and that this rate would be "guaranteed" as long as they wished to use it.
21. To induce Plaintiffs, and others similarly situated, to purchase all electric homes or to continue to use electric appliances and heating systems in their homes in lieu of natural gas or other appliances or utilities, Defendants' maintained and provided to Plaintiffs and others similarly situated discounts until May, 2009.
22. Until May, 2009, Defendants admitted and agreed that owners of all electric homes were "grandfathered" or permanently entitled to the all electric home discount.
23. Plaintiffs' and others similarly situated, entitled to the all electric home status were charged 1.9 cents per k wh.
24. Since Defendants unilaterally breached their agreement, promise and commitment to Plaintiffs, and others similarly situated, with respect to all electric home status, Defendants have increased their charge to 4 cents or more per k wh.
25. Defendants also induced the named subclass Plaintiffs, and other similarly situated, in the electric water heating subclass into installing and/or maintaining electric water heating system at those homeowners cost, by promising those individuals a special discounted charge for electricity usage.
26. Defendants unilaterally terminated that electric water heating commitment, promise, and agreement in May, 2009.

27. Defendants also induced the named subclass Plaintiffs, and others similarly situated, in the load management subclass into installing load management equipment in their homes in exchange for a load management discount that allowed Defendants to manage electric usage service provided to those homes.
28. The named subclass Plaintiffs, and others similarly situated, justifiably relied on Defendants' agreements, covenants, promises, and inducements and installed load management devices at those Plaintiffs', and others', cost.
29. By Defendants actions and practices over forty (40) years, Defendants have admitted that Plaintiffs, and others similarly situated, are entitled to participate in the all electric home, electric water heating program, and load management discount programs as a result of Ohio contract law based on oral contracts, inducements, justifiable reliance on those inducements, and the partial performance doctrine.
30. In justifiable reliance on Defendant's representations and inducements, Plaintiffs, and others similarly situated, (a) purchased all electric homes; (b) installed, maintained, and replaced, electric appliances and heating systems in their homes, and refrained from using natural gas, heating oil or other non-electric utility services or appliances in their homes, even though such alternative may have been less costly.
31. In reliance on Defendants' oral agreements, covenants, promises, and representations as to all electric home, electric water heating, and load management discounts, Plaintiffs, and others similarly situated, partially performed their obligations, duties, and conditions with respect to said contracts by purchasing and maintaining all electric homes and electric water heating and load management systems.
32. Defendants benefited by Plaintiffs actions by selling off-peak electricity in Geauga County and Northeast Ohio, and now having a captive electric usage reliant group of homeowners in Geauga County and Northeast Ohio.

CLASS ALLEGATIONS

33. The named Plaintiffs bring this action on behalf of a class of all other persons similarly situated which class consists of all persons who satisfy the following criteria:
- a. They are customers of Defendants who prior to May 2009, were classified by Defendants as all electric home customers, or for subclass purposes, as electric water heating and/or load management.
 - b. They had received the lower charges attributed to the all electric homes or electric water heating or load management classifications.
 - c. After June 1, 2009, they no longer are so classified by Defendants and no longer receive the full discount attributable to those classifications; and
 - d. They are and have been residential customers of Defendants.
34. Upon information and belief, the Plaintiff class, including the subclasses, consists of at least 106,000 customers of Defendants and is sufficiently numerous that joinder of all members is impractical.
35. There are questions of law and fact common to the class, which questions predominate over any questions peculiar to individual class members.
36. The named Plaintiffs, and named subclass Plaintiffs, have the same claims as the members of the class, and subclasses, respectively. All of the claims are based on the same factual and legal theories.
37. The named Plaintiffs, and named subclass Plaintiffs, will fairly and adequately represent the interest of the class, and subclass, members and have retained experienced counsel. There is no reason why the named Plaintiffs and their counsel

will not vigorously pursue this action.

38. Certification of a class pursuant to Ohio R. Civ. P. 23 (b)(1)(a) or (b)(2) or (3) is appropriate. A class action is the only appropriated means of resolving this controversy. In the absence of a class action, a failure of justice will result.

COUNT ONE

DECLARATORY JUDGMENT

39. Plaintiffs incorporate by reference paragraphs 1 through 38 above as if fully rewritten herein.

40. Plaintiffs assert and maintain that Defendants have entered into an oral agreement with Plaintiffs, and others similarly situated with respect to the all electric home, electric water heating and load management discounts, Plaintiffs, and others similarly situated, justifiably relied on Defendants' oral covenants, and promises by installing, and maintaining all electric homes, electric water heating systems, and load management systems at Plaintiffs' cost and to their detriment.

41. Defendants assert and maintain that they have no contractual duty or obligation to Plaintiffs or others similarly situated with respect to the all electric home, electric water heating or load management programs or that the Ohio PUCO somehow had the power to absolve Defendants of their contractual commitments and agreements with Plaintiffs and other similarly situated, despite Defendants' approximately forty (40) years of conduct and practices to the contrary.

42. A controversy exists between the parties as to the contractual duties owned by Defendants to Plaintiffs and others similarly, situated with respect to the all electric home, electric water heating, and load management programs.

43. This action is brought under O.R.C Section 2721.03 and 2721.04 and involves an actual controversy between the parties, Plaintiff class members and Defendants for which there is no adequate remedy at law.

44. Plaintiffs, and Plaintiffs' class, are entitled to a declaratory judgment ordering that Defendants are contractually obligated to classify Plaintiffs, and Plaintiffs' class, as customers entitled to the all electric home, electric water heating, and load management discounts that they received as of April, 2009, retroactive to June 1, 2009, and ordering Defendants to refund all excess funds obtained by Defendants from Plaintiffs and the Plaintiffs' class as a result of Defendants unilateral termination of the all electric home, electric water heating, and load management program.

COUNT TWO

BREACH OF CONTRACT

45. Plaintiffs incorporate by reference paragraphs 1 through 44 above as if fully rewritten herein.

46. Defendants have breached their contractual obligation and commitments to Plaintiffs, and Plaintiffs' Class, by unilaterally terminating the all electric home, electric water heating, and load management programs.

47. As a result of Defendants' breach, Plaintiff and the Plaintiffs' class, have been damaged and continued to be damaged economically by the excess charges resulting from Defendants and unilateral conduct in an amount that exceeds Fifty-Million Dollars (\$50,000,000.00) as shall be more fully shown at trial, to which Plaintiffs and Plaintiffs class are entitled to judgment and relief.

COUNT THREE

FRAUDULENT INDUCEMENT/JUSTIFIABLE RELIANCE

48. Plaintiffs incorporate by reference paragraph 1 through 47 as if fully rewritten herein.
49. During the period starting in the early 1990's until spring 2009, Defendants, by and through their agents, representatives and/or employees, falsely represented to Plaintiffs, and the Plaintiffs' class, that if they maintained all electric homes, electric water heating, and/or load bearing devices, Defendants would permanently include them as all electric home, electric water heating and/or load management customers, as applicable, at a reduced rate, which in the case of all electric home customers was approximately 1.9 cents in January, 2009.
50. Plaintiffs, and members of Plaintiffs' class, justifiably believed and relied on said representations by Defendants and purchased and maintained all electric homes, refrained from purchasing homes with non-electric heat and appliances, installed electric water heating systems, and/or installed load management devices, all at their expenses.
51. Plaintiffs, and members of Plaintiffs class, would not have taken the actions described in paragraph 50 above except for the fact that they relied upon the false representations made as alleged above, and as a result Plaintiffs and the Plaintiffs Class have suffered injury, damage and loss in excess of Fifty-Million Dollars (\$50,000,000.00) shall be shown at trial.

COUNT FOUR

INJUNCTIVE RELIEF

52. Plaintiffs incorporates by reference paragraph 1 through 51 above as if fully rewritten herein.

53. To the extent Defendants breach of its agreement with Plaintiffs, and the Plaintiffs' class members, and Defendants' tortious conduct has resulted in Defendants charging Plaintiffs and Plaintiffs' class members two to three times the monthly amount that was charged under the all electric home, electric water heating and/or load management programs, numerous Plaintiffs, and class members are at risk of losing their electricity service, receiving a bad credit rating, or the reduction in the market value of their property; all of which harm is irreparable and is not redressed by an adequate remedy at law.

54. Unless preliminarily and permanently enjoined, Defendants' actionable conduct will continue to cause irreparable harm to numerous Plaintiffs and members of the Plaintiff class.

55. To prevent such ongoing irreparable harm, Plaintiffs, and Plaintiffs' Class, are entitled to an order preliminarily and permanently enjoining Defendants from collecting or pursuing collections against Plaintiffs, and Plaintiffs' class, in excess of the charges assessed as of January 1, 2009, with respect to the all electric home, electric water heating, and load management programs.

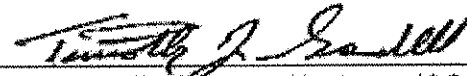
WHEREFORE, Plaintiffs request that this Court grant the following relief in their favor, on their own behalf and on behalf of the Plaintiff class, and subclasses, as applicable, and against Defendants, as appropriate, to wit:

- A. To certify this action as a class action and the class and subclasses above pursuant to Ohio Civil Rule 23;
- B. On Count One, A declaratory judgment ordering that Defendants are contractually obligated to classify Plaintiffs, and Plaintiffs' class members, as customers entitled to the all electric home, electric water heating, and load management discounts effective as of January, 2009 and ordering Defendants to refund all excess funds collected to date to Plaintiffs and Plaintiff class member;
- C. On Counts Two and Three, a judgment in favor of Plaintiff and the Plaintiff Class and against Defendants in excess of Fifty-Million Dollars

(\$50,000,000.00) as shall be more fully shown at trial;

- D. On Count Four, an order enjoining Defendants collections of excess charges as described in paragraph 55 of the Complaint;
- E. For compensatory, incidental, and consequential damages, in such amount as shall be determined at trial;
- F. For attorney's fees, litigation expenses, and costs to the extent permitted by law; and
- G. For such other relief as this Court deems equitable, necessary, proper or just.

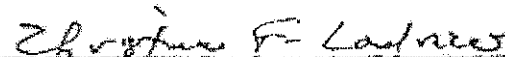
Respectfully submitted,



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JURY DEMAND

Plaintiffs demand a trial by jury as to all factual issues in this action, including, without limitation, any factual issues predicate to the declaratory judgment claim in Count One of the Complaint.



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