

ORIGINAL

IN THE SUPREME COURT OF OHIO

CARL DIFRANCO, et al.

Appellees,

v.

FIRSTENERGY CORP., THE
CLEVELAND ELECTRIC
ILLUMINATING COMPANY & OHIO
EDISON COMPANY

Appellants.

CASE NO. 2011-2025

On Appeal from the Geauga County
Court of Appeals, Eleventh Appellate
District

Court of Appeals
Case No. 2010-G-2990

APPELLANTS' REPLY BRIEF

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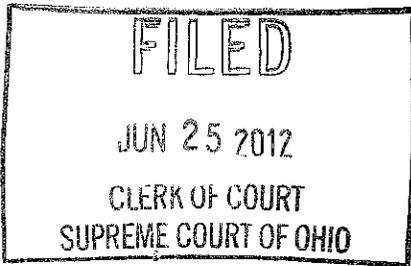


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I. INTRODUCTION

The merit brief submitted by Plaintiffs/Appellees is remarkable for its omissions. Appellees' fraud claim is based upon a supposed false promise made by the Defendants/Appellants.¹ Yet Appellees mightily avoid identifying just what the alleged promise was. According to their Complaint, the alleged promise at issue was that Appellees would receive a discounted electric rate apparently forever. The reason why Appellees go to great lengths to avoid identifying the alleged promise is obvious: to do so bars their claim from being presented in any forum other than the Public Utilities Commission of Ohio (the "Commission").

Appellees also fail to address, much less note, that the supposed promise that forms the basis of their fraud claim is the identical promise upon which they based their now-dismissed claim for breach of contract. The Court of Appeals affirmed the dismissal of the contract claim because it relates to rates and thus is subject to the exclusive jurisdiction of the Commission. Appellees did not appeal that decision. Yet Appellees offer no justification for why the same promise regarding the fraud claim warrants different treatment. It does not.

Appellees also conspicuously ignore that the Commission stated that it has jurisdiction to investigate the Companies' "rates and marketing practices." (Fifth Entry on Rehearing ¶ 13, Appx. 81.²) Appellees fail to address that the Commission held six public hearings at which dozens of individuals testified about "promised rates" and then heard testimony from the Companies and other parties on the Companies' practices about "discounted rates" to certain

¹ Defendants/Appellants are The Cleveland Electric Illuminating Company ("CEI"), Ohio Edison Company ("Ohio Edison") (collectively, the "Companies"), and FirstEnergy Corp. While FirstEnergy Corp. is a named defendant, it is not an electric utility and does not provide electric service. Nor does it charge rates for electric service to any customers. It is a holding company. CEI and Ohio Edison are wholly owned subsidiaries of FirstEnergy Corp.

² Citations to "Appx." are to documents attached to the Companies' Merit Brief.

types of customers. The Commission specifically rejected any claim that the Companies had acted improperly, especially given the facts that: (1) customers who used electricity to heat their homes and who had previously received special rates at these addresses were *still* enjoying discounts from standard residential rates; and (2) at all times, the Companies' actions complied with the Commission-approved tariffs, rules and regulations. On these points, Appellees' brief also is silent.

Appellees seek to paint this case as being about an all-electric "program," "status" and "less costly source" of energy, hoping to convince this Court that their fraud claim is not about electric rates, and thus is not subject to the exclusive jurisdiction of the Commission. But the opposite is true. To reach this conclusion, this Court need only note two things. First, the Complaint, through and through, advances allegations about the rates that Appellees supposedly were promised, and further about the rates that they were to be charged in the wake of changes to certain riders that were approved by the Commission. A simple review of the words used in the Complaint to support the fraud claim makes that abundantly clear.

Second, Appellees repeatedly argue that this case is a "pure fraud" claim, undeserving of the expertise of the "bureaucrats" at the Commission. (Appellees' Merit Brief ("Appellees' Br.") at 10.) Again, Appellees overlook that to establish both that there was a false promise and the amount of their damages, a tribunal would need to determine, among other things: (1) the rates that Appellees supposedly were promised by the Companies; and (2) the rates that they actually were charged. The difference in these rates would then need to be applied to the customer's usage over time. These determinations relate to rates (and the terms and conditions relating thereto), customer electricity usage levels and the Commission's rate-setting function, and thus are squarely within the Commission's – and not a court's – expertise. Appellees erroneously

claim that the historical information about the discounted rates provided in the Companies' brief is "irrelevant." Whether Appellees' fraud claim has any merit can only be determined through understanding the special electric rates that have been charged to electric heating customers for all relevant periods.

Appellees' contract claim, which all agree was properly dismissed, is about one thing – the rates that they supposedly were promised by the Companies. Appellees' fraud claim involves the same parties, the same promise and the same rates. Under settled law, the fraud claim also is subject to the exclusive jurisdiction of the Commission and therefore was properly dismissed by the trial court.

II. ARGUMENT

A. **The Complaint Demonstrates That The Fraud Claim Is About Rates, Regardless of Appellees' Attempts to Mischaracterize Their Own Pleading.**

According to Appellees, "[t]his is **NOT** a case about the appropriateness of rates charged by Appellants." (Appellees' Br. at 1; emphasis in original.) Rather, they argue that the case is about holding the Companies "accountable" for "misleading and misrepresenting" something to "all-electric homeowners." (*Id.*)

But what was the misrepresentation? Appellees are slow to say. In the first several pages of their brief, Appellees generically state that the Companies "made representations to all-electric homeowners to induce the over 300,000 homeowners into buying or converting to all-electric homes by using all-electric heating and appliances, instead of using natural gas or other heating sources." (*Id.* at 2.) But Appellees leave the Court to wonder what was in fact misrepresented.

When they finally get to addressing the asserted "misrepresentations" (at page 7), Appellees are less than candid. They describe the purported misrepresentation this way: "that

the 'all-electric home' program would be 'permanent' or unlimited as to time", and that "the all-electric home status would not be affected or forfeited by the elimination of the program and that this would be 'guaranteed' as long as they wished to use it." (Id. at 7, citing Compl. ¶¶ 19, 20 (emphasis added).)

In contrast to their brief, Appellees' Complaint specifically uses the term "rate" or "rates" over a dozen times throughout that pleading. The Complaint alleges that electric heating customers were induced to act "in consideration for which Defendants agreed to charge Plaintiffs . . . 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." (Compl. ¶ 1, Appx. 42.) The Complaint further alleges that the Companies promised a "special discounted rate" to customers who installed electric heat pumps. (*Id.*) The Complaint then identifies subclasses of customers who were promised a "load management discount" (*id.* ¶ 3, Appx. 42), and "electric water heating discount" (*id.* ¶ 4, Appx. 43), and alleges that the Companies "agreed to provide an all electric home discount" (*id.* ¶ 15, Appx. 45), upon which Appellees "justifiably relied" (*id.* ¶ 17, Appx. 45). What Appellees now refer to as a "program" or "status" is, in fact, a discounted rate that Appellees alleged in their Complaint they were due.

Indeed, Appellees go so far in their brief as to seemingly rewrite their Complaint. In their brief, they cite to paragraph 20 of their Complaint and relate that homeowners were promised that "the all-electric status," a "program" that would be guaranteed. (Appellees' Br. at 7.) Although they do not quote paragraph 20 of the Complaint, Appellees restate it in their brief almost word for word, to wit:

Appellants knowingly and falsely represented to Homeowners residing in Geauga County and Northeast

Ohio [including Thomas M. Logan, and others similarly situated], as far back as 1988, that the all-electric home *status* would not be affected or forfeited by the elimination of the *program* and that *this* would be “guaranteed” as long as they wished to use it.

(*Id.* (brackets in original, emphasis added).) Notably, Appellees’ restatement of paragraph 20 of their Complaint eliminates the word “rate,” which appears three times in this paragraph of the Complaint:

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.

(Compl. ¶ 20, Appx. 46 (emphasis added).)

Appellees next cite to paragraphs 21 and 23 of their Complaint, although it appears they intended to cite Paragraphs 21 and 22. Appellees’ brief alleges that the Companies maintained this all-electric “program” or “status” until May 2009:

To induce Homeowners, and others similarly situated, to purchase or convert to 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, Appellants maintained and provided the all-electric *program* to Homeowners and others similarly situated until May, 2009. (Complaint ¶23).

Until May, 2009, Appellants admitted and agreed that owners of all-electric homes were “grandfathered” or permanently entitled to the all-electric home *status*. (Complaint ¶21).

(Appellees’ Br. at 7, citing Compl. ¶¶ 21, 23, emphasis added.) Paragraphs 21, 22 and 23 of the Complaint, however, mention “discounts” and refer to a specific electric rate charge:

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' [sic] and others similarly situated, entitled to the all electric home status were charged *1.9 cents per k wh*.

(Compl. ¶¶ 21-23, Appx. 46 (emphasis added).)

Likewise, Appellees' brief cites to paragraph 25 of the Complaint in discussing water heating customers. (Appellees' Br. at 8.) But Appellees conveniently omit that the Complaint alleged a promise of a "special discounted charge for electricity usage." (Compl. ¶ 25, Appx. 46.)³

Appellees later maintain that "[n]o specific scheduled rate is at issue." (Appellees' Br. at 8-9.) Appellees assert that homeowners were told they would be part of a "program" in which they were promised electricity that was "less costly" or "less expensive" than other energy sources. (*Id.*) Paragraph 30 of the Complaint, cited by Appellees, makes the same allegation about alternative sources of energy that "may have been less costly." (Appellees' Br. at 8, citing Compl. ¶ 30.) Of course, what made the promised electricity "less costly" was the "rate" – a discounted one, in fact – that Appellees allege they were promised.

Similarly, Appellees' alleged damages in the form of supposedly lower home values arise allegedly because of the cost of converting an "all-electric home" to one that can use a "less

³ These examples demonstrate that Appellees' brief reflects a conscious effort to re-label, miscite and omit key words from their own Complaint. This, from parties and their counsel who accuse *the Companies* of "doublespeak, misleading and conveniently edited quotes" (Appellees' Br. at 2) – a charge that Appellees fail to substantiate.

expensive energy source (e.g. natural gas).” (*Id.* at 9.) These supposedly reduced home values and the need for a “less expensive energy source,” in turn, arise from the alleged improper increase in Appellees’ electric rates (or, in Appellees’ view, the elimination of the discounts that they claim they are due).

Having drafted and filed the Complaint, Appellees are not free to pretend that it does not exist or that it says something that it doesn’t say. The simple truth is that Appellees believe that they were promised a rate which, they believe, was improperly changed. Under the case law discussed in the Companies’ initial brief – case law Appellees do not even bother to rebut or distinguish – complaints alleging that improper rates were charged can only be heard by the Commission.⁴ The same is true relating to claims regarding a utility’s marketing practices regarding its rates. Indeed, as demonstrated in the Companies’ initial brief, the Commission has already exercised its jurisdiction to hear and resolve the issues raised by Appellees’ claims here.⁵

B. The Promise Underlying The Fraud Claim Also Was The Same Promise That Was The Basis Of The Properly Dismissed Contract Claim.

In affirming the dismissal of the breach of contract claim, the Court of Appeals held that “the act that is actually being challenged by appellants with respect to their contract claims is the imposition of the higher rate following the elimination of the all-electric program. It should be obvious that charging a customer based on rates approved by the PUCO is a practice normally authorized by the utility.” *DiFranco v. FirstEnergy Corp.*, 2011-Ohio-5434, (“App. Op.”) at ¶ 59, Appx. 22-23. The “contract” was based upon a supposed promise of a special electric heating rate that would never expire. Appellees did not appeal that ruling. (Appellees’ Br. at 3, n.2.)

⁴ See Companies’ Merit Brief (“Companies’ Br.”) at 19-24.

⁵ Companies’ Br. at 11-14.

The “promise” that underlies the fraud claim is the same promise upon which the contract claim is based – the promise of special electric rates for an indefinite time. (Companies’ Br. at 33.) Indeed, Appellees’ Complaint repeatedly refers to “agreements, misrepresentations and fraudulent inducements” together, making no distinction between the contract claim and the fraud claim. (*Id.* at 23, citing Compl. at ¶ 10, 16, 17, 18, 29, 30, 31.) Appellees alleged in pleading their fraud claim that the Companies “falsely represented to Plaintiffs . . . that if they maintained all electric homes . . . Defendants would permanently include them as all electric home . . . at a reduced rate.” (*Id.*, citing Compl. ¶ 49.)

Appellees’ brief is silent on offering any justification for treating these claims differently, when they are based on the same alleged promises regarding appropriate utility rates. In fact, none exists.

C. Appellees’ Fraud Claim Requires The Commission’s Expertise Regarding Rates.

The distinction drawn by the Court of Appeals between Appellees’ fraud and contract claims fails to consider properly all of the elements of the fraud claim that Appellees would be required to prove. In its opinion, the Court of Appeals focused solely on Appellees’ need to prove the Companies’ state of mind, which the court concluded would not relate to rates or Commission expertise. Thus, the appellate court reasoned, the fraud claim here is like any other common law tort claim. (App. Op. at ¶¶ 55, 59, Appx. 20-23.) Appellees seize on this to argue, without support, that this case is “no different than any other tort action for fraud.” (Appellees’ Br. at 10-11.) This argument, however, ignores the fundamental rule that to establish a claim for fraud, Appellees must first demonstrate that the Companies made a misrepresentation. *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St. 3d 54, 55, 514 N.E.2d 709 (1987).

The Court of Appeals correctly recognized as appropriate and applicable here this Court's standard articulated in *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St. 3d 301, 2008-Ohio-3917, 893 N.E.2d 824. But the court incorrectly concluded that Commission expertise would not be required to resolve appellees' fraud claim. (App. Op. ¶ 58, Appx. 22.) The test established under *Allstate* asks whether the Commission's expertise is required to resolve the issue in dispute, and if the act complained of constitutes a practice normally authorized by the utility. 119 Ohio St. 3d at ¶ 12. In this case, the answer to both questions is "yes." The Commission's expertise is required to determine what rates Appellees were promised and charged, and the charging of rates is a practice normally authorized by the Companies, as well as by the Commission.⁶

As Appellees' Complaint demonstrates, the supposed misrepresentation related to the electric rates that Appellees were to be charged. Thus, to prove their fraud claim, Appellees would need to establish what rates they were promised. In addition, to prove that the promise was false, they would need to show the rates that they actually were charged and how those differed (if at all) from the rates that were promised. The difference between the rates, as promised, and the rates, as charged, would also be a component of Appellees' damages. In short, an inquiry into electric rates would be as much a part of Appellees' fraud claim as would be for Appellees' contract claim.

In attempting to avoid the Commission's exclusive jurisdiction over rate-based cases, Appellees demean the Commission as "regulators or bureaucrats" who, apparently, are unfit to hear the fraud claim, which is to be "based on the evidence as to the nature of the

⁶ Given that Appellees allege that the Companies have misrepresented the availability and duration of special electric heating rates to more than 300,000 customers over decades (Compl. ¶¶ 5, 15, Appx. 43, 45), it would be hard to argue that this alleged continuous and long-standing practice was not authorized by the Companies.

misrepresentations and the reasonableness of the injured party's reliance on those misrepresentations." (Appellees' Br. at 10.) Because the "nature of the misrepresentations" relates to rates, however, Appellees' fraud claim falls squarely within the Commission's expertise.

Appellees wrongly argue that information related to special electric rates set forth in the Companies' brief was "irrelevant" and included "for the purpose of confusing the issue before this Court by trying to disguise the Homeowners' common law claim as a rate case." (*Id.* at 13.) They describe the key decisions by the Commission as a "plethora of irrelevant PUCO orders." (*Id.* at 4.) But this information is directly relevant for at least three reasons. First, these decisions show the Commission's involvement regarding the creation of these special rates. Second, they show how the rates changed over time, and why. Third, they further demonstrate that even after 2009 – the date when Appellees allege the all-electric "program" was improperly "eliminated" – electric heating customers continued to receive "discounts" without interruption. In sum, determining whether Appellees were promised a "discount" and whether they, in fact, received a "discount" requires an understanding of the rates that Appellees were charged, when those rates were charged and why. The Commission not only possesses the unique expertise to make these determinations, but it, in fact, *exercised* that expertise in deciding these very claims of whether the Companies misrepresented the availability and duration of special electricity rates, in the 10-176-EL-ATA case.⁷

⁷ Curiously, despite their claims that all of this information is "irrelevant," Appellees cite to it supposedly to support their claim that "First Energy [*sic*] also previously admitted that First Energy [*sic*] unilaterally acted contrary to its prior all-electric home representations." (Appellees' Br. at 2.) The Companies' brief in the Court of Appeals makes no such "admission." Instead, the brief shows that *the Commission approved changes* to various rates to comply with directives from the General Assembly in Senate Bill 3 and then in Senate Bill 221.

Likewise, in arguing that their fraud claim is not about the “propriety of a specific rate,” Appellees wrongly claim that their fraud damages are not related to rates. Rather, they argue that their “damages are based on the diminution of their property values, reduction in marketability, and costs to connect to an alternative, less expensive energy source. None of these damages are based on a rate differential,” (Appellees’ Br. at 14.) But to determine if another energy source is “less expensive,” Appellees will have to establish the rates that they are being charged for electricity. As explained in the Companies’ initial brief, Appellees have been subject to a number of different riders and discounts, which have changed over the years. (Companies’ Br. at 3-10.) The Commission considered this rate-related evidence, and is in the best position to render a decision on it. Moreover, according to Appellees, the reason why Appellees’ homes are supposedly worth less money, and why homeowners allegedly are faced with a choice between selling their homes for less money or switching to another energy source, is based on the increased electric rates that Appellees claim they now are wrongly being charged.

Appellees cite to the Commission’s Fifth Entry on Rehearing and argue that even the Commission “recognized that it lacked jurisdiction to determine Homeowners’ claim ‘based on reliance.’” (Appellees’ Br. at 5 citing Fifth Entry on Rehearing at ¶ 13; see also Appellees’ Br. at 13.) As they did with references to their Complaint, Appellees are not forthright in their treatment of this Commission Order. The Commission held that it was going to “exercise our jurisdiction over FirstEnergy’s rates and marketing practices . . . and the parties are not precluded from conducting discovery regarding these issues nor from presenting evidence during the hearing provided that such evidence is otherwise properly admissible.” (Fifth Entry on Rehearing ¶ 13, Appx. 81.) The “marketing practices” included claims about what promises or inducements the Companies made to customers about special electric heating rates. The

Commission went on to state that, consistent with *Allstate* and other settled law, it did not have jurisdiction “to hear ‘pure contract’ claims, including claims based on reliance or promissory estoppels or claims seeking equitable remedies.” (*Id.*)

Yet, the Commission’s observation about “pure contract” cases is irrelevant to this matter. The remaining claim at bar alleges fraud. Under this Court’s decision in *Hull v. Columbia Gas of Ohio*, 110 Ohio St. 3d 96, 2006-Ohio-3666, 850 N.E.2d 1190, the fraud claim alleged here is not a “pure tort” claim because the claim here cannot be said to have “nothing to do with a utility’s service or rates.”⁸ 110 Ohio St. 3d at ¶ 34.

More to the point, following the Fifth Entry on Rehearing, the Commission went on to address the very issues that Appellees seek to raise with their fraud claim. Indeed, Appellees’ fraud claim is precisely the same claim over which the Commission exercised jurisdiction in the 10-176-EL-ATA case, hearing the same evidence, from the same witnesses, of promises of special electric heating rates that supposedly would never expire, as Appellees alleged in their Complaint. The Commission’s action – rather than one sentence of dicta from an order – speaks volumes as to what the Commission thought about the scope of its jurisdiction. Because the fraud claim is subject to the Commission’s exclusive jurisdiction, it may not proceed before a court of common pleas.

D. Appellees’ Reliance on *Milligan* is Misplaced.

Faced with a substantial volume of case law supporting the Companies’ position, Appellees generally do not dispute it. Instead, they first argue that it is not relevant, because, they believe, this case is not about utility rates. (Appellees’ Br. at 13-14.) That position, as

⁸ Notably, Appellees never address the *Hull* case or its application to their fraud claim.

already demonstrated, is inconsistent with the face of the Complaint, to say nothing of the nature of the case.

Appellees next cite *Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St. 2d 191, 383 N.E.2d 575 (1978). (Appellees' Br. at 14.) *Milligan*, however, does not offer Appellees' the support they claim, for a number of reasons. First, the tort at issue in *Milligan* plainly was not related to rates. In that case, the plaintiff advanced three causes of action: for charging an unreasonable rate; for wrongful termination of service; and for invasion of privacy. 56 Ohio St. 2d at 192. The Court dismissed the first two claims because those claims related to rates and thus were subject to the Commission's exclusive jurisdiction as being related to rates and service. Only the claim for invasion of privacy could proceed in court. Unlike invasion of privacy, Appellees' fraud claim relates to the rates that they allegedly were promised and the rates that they were charged. Appellees' fraud claim is much more akin to the claim in *Milligan* related to charging for an unreasonable rate, which was properly dismissed by the Court in that case.

Second, Appellees ignore the Court's more recent distinction of *Milligan* in *Allstate*. In *Allstate*, the Court cited *Milligan* and held that, in the past, a plaintiff might have avoided Commission jurisdiction by simply alleging that his claim sounded in tort. (Companies' Br. at 22, citing *Allstate* at ¶ 8.) The Court made clear in *Allstate* that "in cases involving public utilities, jurisdiction is not conferred based solely on pleadings," *Allstate* at ¶ 8, but rather on the substance of the underlying claim. Here again, the substance of the fraud claim relates to a "promised" utility rate.

Notwithstanding Appellees' argument to the contrary (Appellees' Br. at 4), this Court's decision in *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St. 3d 147, 573 N.E.2d 655 (1991), is directly on point. As this Court observed in that case, regardless of how a plaintiff

tries to cast her allegations, a court must inquire into the substance of the claim to determine whether it relates to utility rates or services, and thus is subject to exclusive jurisdiction of the Commission. 61 Ohio St. 3d at 150-153. To the same end is this Court's opinion in *State ex rel. Columbia Gas of Ohio, Inc. v. Henson*, 102 Ohio St. 3d 349, 2004-Ohio-3208, 810 N.E.2d 953, ¶ 18. There, the plaintiff alleged a tort, tortious interference with a business relationship based upon a fraudulent act. Because the substance of the claim – regardless of the label that the plaintiff gave it – related to the utility's service, the claim was subject to the Commission's exclusive jurisdiction. After all, "the mere fact that [Plaintiff] cast its allegations in the underlying case to sound in tort is insufficient to confer jurisdiction upon the common pleas court." *Id.* at ¶ 19.

Appellees wrongly argue that the Companies' position is contrary to the holding in *Allstate* because, according to Appellees, it would prevent any tort claim from proceeding in court upon "a utility's mere assertion that a rate could be discussed." (Appellees' Br. at 11.) Appellees offered hypothetical is unavailing. Specifically, Appellees posit an employee who is fraudulently "induce[d] . . . to work for a utility involv[ing] a representation of a reduced utility rate." They then ask how that employee's claim could be prevented from proceeding in court. (*Id.* at 12.) Putting aside the preposterousness of the hypothetical⁹, if that employee's claim required a determination of the rates that the utility represented to him would be charged -- compared with the rates that it actually did charge -- then that claim, just like Appellees' fraud claim in this case, would be properly before the Commission, not a common pleas court.

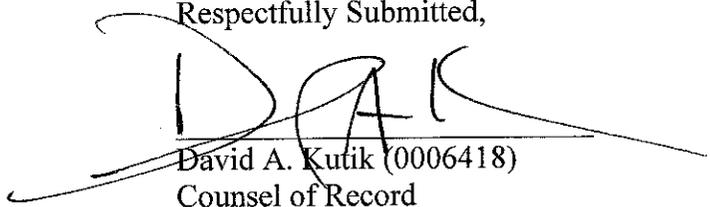
⁹ Employees are "induced" to take a job by factors such as salary, job responsibility and working conditions, not rates.

Equally without merit is Appellees' assertion that if the Companies' position is adopted, utilities will have "free reign to defraud Ohioans." (*Id.*) Indeed, Appellees ignore what occurred in the 10-176-EL-ATA case before the Commission. The Commission heard these very same claims, including a significant amount of evidence and witness testimony – including the very same evidence from Mr. Logan that Appellees' cite to in paragraph 20 of their Complaint. (Companies' Br. at 12-14, 31.) The Commission then compared what promises were made to customers to "induce" them to having all-electric homes to the "discounted" rates they actually were charged and continue to be charged today. The Commission ultimately issued a ruling. Far from "free reign," there was an abundance of accountability regarding the special rates offered to electric heating customers, how the rates were marketed and what rates these customers will be charged in the future. These allegations were found to be without merit, which is why Appellees labor so mightily to avoid the Commission.

III. CONCLUSION

For the foregoing reasons, this Court should reverse the reinstatement of Plaintiffs' fraud claim by the appellate court.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellants' Reply Brief was served by First-Class U.S. Mail, this 25th day of June, 2012 upon the following parties:

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A large, stylized handwritten signature in black ink, appearing to read 'DAK', is written over a horizontal line.

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