

LARGE FILING SEPERATOR SHEET

CASE NUMBER:

Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2080-EL-ATA,
03-2081-EL-AAM, 05-724-EL-UNC, 05-725-EL-UNC,
06-1068-EL-UNC, 06-1069-EL-UNC & 06-1085-EL-UNC

FILE DATE:

1/23/08

SECTION:

1 OF 7

NUMBER OF PAGES:

200

DESCRIPTION OF DOCUMENT:

Redacted Documents filed
pursuant to October 24, 2007
Order by M. Dortch on behalf
of DE-Ohio.

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KRAVITZ, BROWN & DORTCH, LLC
Attorneys at Law

Max Kravitz (1946 - 2007)
Janet Kravitz
Paula Brown
Michael D. Dortch
Lori A. Catalano
Kristopher A. Haines

65 East State Street - Suite 200
Columbus, Ohio 43215-4277
614.464.2000
fax 614.464.2002
mdortch@kravitzllc.com

Of Counsel:
William H. Bluth*
*Also admitted in NY

January 23, 2008

Ms. Renee Jenkins
Chief, Docketing Division
Public Utilities Commission of Ohio
180 E. Broad Street, 13th Floor
Columbus, Ohio 43215

Via Courier

Re: In The Matter of: The Consolidated Duke Energy Ohio, Inc.
Rate Stabilization Plan Remand and Rider Adjustment Cases
Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2080-EL-ATA,
03-2081-EL-AAM, 05-724-EL-UNC, 05-725-EL-UNC,
06-1068-EL-UNC, 06-1069-EL-UNC & 06-1085-EL-UNC

Dear Ms. Jenkins:

Enclosed please find an original and three copies of the redacted, sealed documents to be filed with the Commission by DE-Ohio and its affiliates, as Ordered in the Commission's October 24, 2007 Order on remand in the above-referenced proceedings. A disc containing an additional electronic copy is enclosed. As stated in the Commission's October 24, 2007 Order, this information is subject to a protective order for a period of 18 months beginning March 18, 2007.

A list of the documents filed herein is attached.

Due to the volume of the documents to be filed, DE-Ohio is unable to electronically serve these documents upon the parties. DE-Ohio is serving upon all parties a CD containing the same documents filed herein. As always, please contact me if you have any questions concerning this filing. Thank you.

Very truly yours,


Michael D. Dortch

Enclosures

cc: Counsel of Record for Each Party

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2008 JAN 23 PM 3:49
PUCO

Redacted Documents Filed Pursuant to October 24, 2007 Order

Document Number	Document Description	Date Originally Filed
1	Confidential Version of Motion for Subpoena Duces Tecum and Subpoena Duces Tecum	02/05/2007
2	Confidential Excerpts and Exhibits from Deposition of Charles Whitlock	02/14/2007
3	Confidential Testimony of Beth Hixon	03/09/2007
4	Confidential Transcript and Exhibits from Deposition of Denis George	03/15/2007
5	Confidential Transcript and Exhibits from Deposition of Gregory Ficke	03/15/2007
6	Confidential Transcript and Exhibits from Deposition of James Ziolkowski	03/15/2007
7	Confidential Version of Cinergy Corp.'s Reply to OCC's Memorandum Contra Motion for Protective Order	03/15/2007
8	Confidential Version of Duke Energy Ohio's Reply to OCC's Memorandum Contra Motion for Protective Order	03/15/2007
9	Confidential Version of Duke Energy Retail Sales' Reply to OCC's Memorandum Contra Motion for Protective Order	03/15/2007
10	Confidential Deposition of Beth Hixon with Stipulation and Recommendation and Exhibits	03/16/2007
11	Confidential Merit Brief of Duke Energy Ohio	04/13/2007
12	Confidential Merit Brief of Cinergy Corp. and Duke Energy Retail Sales	04/13/2007
13	Confidential Reply Brief of Duke Energy Ohio	04/27/2007
14	Confidential Reply Brief of Cinergy Corp. and Duke Energy Retail Sales	04/27/2007
15	Confidential Remand Rider Reply Brief of Duke Energy Ohio	05/30/2007

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV

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PUCO

In the Matter of the Application of)
Duke Energy Ohio To Modify Its)
Market-Based Standard Service Offer.)

Case No. 06-986-EL-UNC

In the Matter of the Application of)
The Cincinnati Gas & Electric Company)
To Modify its Non-Residential Generation)
Rates to Provide for Market-Based Standard)
Service Offer Pricing and to Establish a Pilot)
Alternative Competitively-Bid Service Rate)
Option Subsequent to Market Development)
Period.)

Case No. 03-93-EL-ATA

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated)
with The Midwest Independent Transmission)
System Operator.)

Case No. 03-2079-EL-AAM

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its)
Electric Transmission and Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be Effective)
After the Market Development Period.)

Case No. 03-2081-EL-AAM
Case No. 03-2080-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio, Inc. to Modify Its)
Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

Case No. 06-1068-EL-UNC

In the Matter of the Application of the)
Cincinnati Gas & Electric Company to)
Modify Its Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

Case No. 05-725-EL-UNC

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Adjust and Set its	)	Case No. 06-1069-EL-UNC
System Reliability Tracker.)	
 In the Matter of the Application of Duke)	
Energy Ohio, Inc. to Adjust and Set its	)	Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)	
 In the Matter of the Application of)	
Duke Energy Ohio, Inc.	)	Case No. 06-1085-EL-UNC
To Adjust and Set the Annually Adjusted)	
Standard Service Offer.)	

**MOTION FOR
SUBPOENA DUCES TECUM
(UNREDACTED VERSION)**

Now comes the Office of the Ohio Consumers' Counsel ("OCC") and, pursuant to Ohio Adm. Code 4901-1-25, hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena *duces tecum* compelling Cinergy Corp. ("Cinergy," including any of its predecessor organizations), an affiliate of Duke Energy Ohio Inc.¹ ("Duke Energy," a party to all the above-captioned cases), to provide a witness or witnesses to appear for oral deposition as on cross-examination on February 14, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time). The OCC asks that the deponent(s) be required to attend from day to day until the deposition(s) is completed to provide

¹ The affiliation is shown in certification regarding Duke Energy Retail Sales, LLC, located in Case No. 04-1323-EL-CRS.

testimony and information concerning agreements that involve Cinergy Corp. in connection with service to customers of Duke Energy. These documents may have an important bearing on the above-captioned cases, including the remand from the Ohio Supreme Court on November 22, 2006 in Case Nos. 03-93-EL-ATA et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The deponent(s) should be knowledgeable in the aforementioned matters and the documents that are more fully described below. A deponent should have first-hand knowledge of (i.e. shall have participated in) the negotiations of the agreements.

The subpoena should also compel the deponent(s) to bring with him/her/them, and provide to OCC at 10:00 a.m. on said day and at said place, i) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between Cinergy [REDACTED] [REDACTED] for the period January 1, 2000 to the date of the deposition(s), ii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to these agreements or pertaining to the aforementioned agreements (by way of example only, with [REDACTED] iii) all

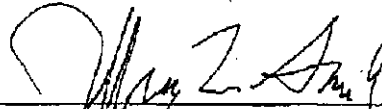
² As an example of a change in ownership and name [REDACTED]

documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) related to electric service to [REDACTED] and to the [REDACTED] (including, but not limited to, electric service to [REDACTED], both parties to the above-captioned cases, iv) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to electric service to [REDACTED] and to the [REDACTED] (including, but not limited to, electric service to [REDACTED] or pertaining to such electric service, v) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements for electric service to customers of Duke Energy Ohio, Inc. not previously mentioned, and vi) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to the aforementioned agreements (i.e. in section (v)) for electric service to other customers of Duke Energy Ohio, Inc. or pertaining to such agreements for electric service. The period of time covered by the aforementioned materials should begin on January 1, 2000 and continue to the date of the examination.

Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jeffrey L. Small, Trial Attorney

Ann M. Hotz

Larry S. Sauer

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 (telephone)

(614) 466-9475 (facsimile)

small@occ.state.oh.us

hotz@occ.state.oh.us

sauer@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio To Modify Its	)	Case No. 06-986-EL-UNC
Market-Based Standard Service Offer.)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company)	
To Modify its Non-Residential Generation)	
Rates to Provide for Market-Based Standard	)	Case No. 03-93-EL-ATA
Service Offer Pricing and to Establish a Pilot)	
Alternative Competitively-Bid Service Rate)	
Option Subsequent to Market Development)	
Period.)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting	)	Case No. 03-2079-EL-AAM
Procedures for Certain Costs Associated)	
with The Midwest Independent Transmission)	
System Operator.)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting	)	Case No. 03-2081-EL-AAM
Procedures for Capital Investment in its	)	Case No. 03-2080-EL-ATA
Electric Transmission and Distribution)	
System And to Establish a Capital)	
Investment Reliability Rider to be Effective)	
After the Market Development Period.)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Modify Its)	
Fuel and Economy Purchased	)	Case No. 06-1068-EL-UNC
Power Component of Its Market-Based)	
Standard Service Offer.)	
In the Matter of the Application of the)	
Cincinnati Gas & Electric Company to)	
Modify Its Fuel and Economy Purchased	)	Case No. 05-725-EL-UNC
Power Component of Its Market-Based)	
Standard Service Offer.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Adjust and Set its	)	Case No. 06-1069-EL-UNC
System Reliability Tracker.)	
 In the Matter of the Application of Duke)	
Energy Ohio, Inc. to Adjust and Set its	)	Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)	
 In the Matter of the Application of)	
Duke Energy Ohio, Inc.	)	Case No. 06-1085-EL-UNC
To Adjust and Set the Annually Adjusted)	
Standard Service Offer.)	

MEMORANDUM IN SUPPORT

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Cinergy to provide a witness or witnesses to appear and to submit to oral deposition as on cross-examination on February 14, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time) and attend from day to day until the deposition(s) is completed by the OCC in the above-captioned proceedings.

The above-captioned cases all involve Duke Energy's standard service charges. The agreements entered into by Duke Energy, directly or indirectly using Duke Energy's affiliated companies (including Cinergy), is expected to be central to the issue of side agreements that is the subject of the Ohio Supreme Court's recent remand of Case Nos. 03-93-EL-ATA, et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The side agreements figured prominently in the Court's recent decision, and were the subject of a November 29, 2006 Entry by the PUCO issued in

many of the above-captioned cases. Side agreements also figured prominently in a recent Complaint filed by a former Duke Energy employee John Deeds³ and where the subject matter of a previously issued subpoena regarding Duke Energy Retail Sales, LLC.⁴ Mr. Deeds claims that Duke Energy used side agreements to circumvent the requirement that Duke Energy properly charge its customers for electric service. The OCC has reason to believe, as the result of its previous discovery inquiries in these cases, that these side agreements involved [REDACTED] and the [REDACTED] [REDACTED], as well as [REDACTED] in an effort by Duke Energy and its affiliated companies to prevent public revelation of agreements that were connected with the litigation before the PUCO. A deponent knowledgeable about any agreements entered into by Cinergy, including their negotiation, will be able to provide in-depth information regarding these matters. The full participation of the deponent(s) in the examination will facilitate a full and complete development of the cases before the PUCO, including the ultimate record upon which the Commission will base its decision.

Additionally, the OCC requests the PUCO to command the deponent(s) designated by Cinergy to bring with him/her/them, for delivery to OCC at 10:00 a.m. on said day and at said place, i) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between Cinergy and [REDACTED] for the period

³ *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

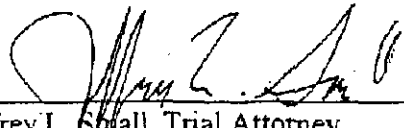
⁴ Pursuant to subpoena, a deposition was conducted of a Duke Energy Retail Sales, LLC representative on January 9, 2007.

January 1, 2000 to the date of the deposition(s), ii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to these agreements or pertaining to the aforementioned agreements (by way of example only, with [REDACTED] [REDACTED], iii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) related to electric service to [REDACTED] and to the [REDACTED] (including, but not limited to, electric service to [REDACTED]), both parties to the above-captioned cases, iv) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to electric service to [REDACTED] and to the [REDACTED] (including, but not limited to, [REDACTED] or pertaining to such electric service, v) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements for electric service to customers of Duke Energy Ohio, Inc. not previously mentioned, and vi) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to the aforementioned agreements (i.e. in section (v)) for electric service to other customers of Duke Energy Ohio, Inc. or pertaining to such agreements for electric service. The period of time covered by the aforementioned materials should begin on January 1, 2000 and continue to the date of the examination.

This information is central to understanding and addressing the issues related to Duke Energy's proposed standard service charges and the support that has been shown by some parties for Duke Energy's proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

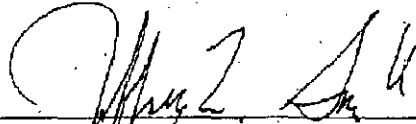


Jeffrey L. Small, Trial Attorney
Ann M. Hotz
Larry S. Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)
small@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Hearing Examiner's e-mail) the 5th day of February 2007. The public version (i.e. redacted) was served on persons on the e-mail service list other than Duke Energy.



Jeffrey L. Small
Assistant Consumers' Counsel

STATE OF OHIO
PUBLIC UTILITIES COMMISSION
180 EAST BROAD STREET
COLUMBUS, OHIO 43266-0573



Ted Strickland
GOVERNOR

THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

TO: Cinergy Corp.
c/o C T Corporation System, Statutory Agent
36 East Seventh Street, Suite 2400
Cincinnati, Ohio 44202

Upon application of Counsel for the Office of the Ohio Consumers' Counsel ("OCC"), Cinergy Corp. is hereby required to provide a witness or witnesses to appear for oral deposition on February 14, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. and submit to oral deposition as on cross-examination by the OCC regarding Case Nos. 06-986-EL-UNC, 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA, 06-1068-EL-UNC, 05-725-EL-UNC, 06-1069-EL-UNC, 05-724-EL-UNC, and 06-1085-EL-UNC, all cases related to Duke Energy Ohio, Inc.'s standard service offer charges. The deponent(s) shall attend from day to day until the deposition(s) is completed to provide testimony and information concerning agreements that involve Cinergy Corp. in connection with service to customers of Duke Energy Ohio, Inc. The deponent(s) shall be knowledgeable in the aforementioned matters and the documents that are more fully described below. A deponent shall have first-hand knowledge of (i.e. shall have participated in) the negotiations of the agreements.

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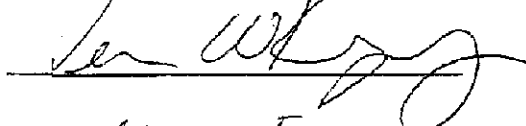
In addition, you are required at 10:00 a.m. on said day and said place to provide to the OCC i) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between Cinergy and [REDACTED] [REDACTED] for the period January 1, 2000 to the date of the deposition(s), ii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to these agreements or pertaining to the aforementioned agreements (by way of example only, with [REDACTED] [REDACTED]), iii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) related to electric service to [REDACTED] and to [REDACTED] (including, but not limited to, electric service to [REDACTED], both parties to the above-captioned cases, iv) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to electric service to [REDACTED] and to the [REDACTED] (including, but not limited to, electric service to [REDACTED]) or pertaining to such electric service, v) all documents in the possession or control of Cinergy (all forms of documents, including

hard copies of information stored on electronic media) containing agreements for electric service to customers of Duke Energy Ohio, Inc. not previously mentioned, and vi) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to the aforementioned agreements (i.e. in section (v)) for electric service to other customers of Duke Energy Ohio, Inc. or pertaining to such agreements for electric service. The period of time covered by the aforementioned materials should begin on January 1, 2000 and continue to the date of the examination.

The deponent(s) shall be knowledgeable regarding the aforementioned matters..

Dated at Columbus, Ohio, this 5th day of February, 2007.

BY:



TITLE:

Attorney Examiner

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Duke Energy:
Ohio to Modify its : Case No. 06-986-EL-UNC
Market-Based Standard :
Service Offer. :

Consolidated Duke Energy : Case Nos. 03-93-EL-ATA
Ohio, Inc. Rate : 03-2079-EL-AAM
Stabilization Plan Remand : 03-2081-EL-AAM
and Rider Adjustment : 03-2080-EL-ATA
Cases. : 05-724-EL-UNC
: 05-725-EL-UNC
: 06-1068-EL-UNC
: 06-1069-EL-UNC
: 06-1085-EL-UNC

- - -

DEPOSITION

of Charles R. Whitlock, taken before me, Maria
DiPaolo Jones, a Notary Public in and for the State
of Ohio, at the Offices of the Ohio Consumers'
Counsel, Ten West Broad Street, 18th Floor, Columbus,
Ohio, on Tuesday, January 9, 2007, at 1:20 p.m.

- - -

ARMSTRONG & OKEY, INC.
185 South Fifth Street, Suite 101
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Mr. Michael J. Pahutski
 Assistant General Counsel
 Duke Energy Americas, LLC
 139 East Fourth Street
 Cincinnati, Ohio 45202
 On behalf of Duke Energy Americas.
 6 Mr. Paul A. Colbert
 and Mr. Rocco O. D'Ascenzo
 Duke Energy Corporation
 139 East Fourth Street
 Cincinnati, Ohio 45202
 On behalf of Duke Energy - Ohio.
 10 Ms. Ariane Johnson
 Duke Energy Corporation
 1000 East Main Street
 Plainfield, Indiana 46168
 12 On behalf of Duke Energy Corporation
 13 Janine L. Migden-Ostrander
 Ohio Consumers' Counsel
 By Mr. Jeffrey L. Small
 and Ms. Kimberly Bojko
 and Mr. Larry S. Sauer
 Assistant Consumers' Counsel
 Ten West Broad Street, Suite 1800
 Columbus, Ohio 43215-3485
 On behalf of the Residential Ratepayers
 of Duke Energy - Ohio.
 19 McNeese, Wallace & Nurick, LLC
 By Mr. Daniel J. Neilsen
 Fifth Third Center, Suite 1700
 21 21 East State Street
 Columbus, Ohio 43215-4228
 22 On behalf of Industrial Energy Users -
 23 Ohio.
 24

Tuesday Afternoon Session,
 January 9, 2007.

STIPULATIONS

5 It is stipulated by and among counsel for the
 6 respective parties that the deposition of Charles R.
 7 Whitlock, a witness called by the Office of
 8 Consumers' Counsel under the applicable Rules of
 9 Civil Procedure, may be reduced to writing in
 10 stenotypy by the Notary, whose notes thereafter may
 11 be transcribed out of the presence of the witness;
 12 and that proof of the official character and
 13 qualification of the Notary is waived.

1 APPEARANCES (continued):

2 Boehm, Kurtz & Lowry
 By Mr. David F. Boehm
 3 1510 URS Center
 36 East Seventh Street
 Cincinnati, Ohio 45202
 On behalf of the Ohio Energy Group.
 6 Boehm, Kurtz & Lowry
 By Mr. Michael L. Kurtz
 7 1510 URS Center
 36 East Seventh Street
 Cincinnati, Ohio 45202
 On behalf of the Ohio Energy Group and
 9 Kroger.
 10 Marc Dann, Ohio Attorney General
 Public Utilities Section
 By Mr. Thomas W. McNamee
 12 Assistant Attorney General
 180 East Broad Street, 9th Floor
 Columbus, Ohio 43215
 On behalf of the Staff of the Public
 14 Utilities Commission.
 15 Mr. Richard L. Sites
 Ohio Hospital Association
 16 155 East Broad Street, 15th floor
 Columbus, Ohio 43215-3620
 On behalf of the Ohio Hospital
 18 Association.
 19

20 ALSO PRESENT:

21 Ms. Anita Schafer.
 22 ---
 23
 24

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1 WHITLOCK DEPOSITION EXHIBITS IDENTIFIED
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 16 SECRET)
 17 20 - 1/25/05 Option Agreement 125
 18 (CONFIDENTIAL PROPRIETARY TRADE
 19 SECRET)
 20
 21
 22
 23
 24

1 CHARLES R. WHITLOCK
 2 being by me first duly sworn, as hereinafter
 3 certified, deposes and says as follows:
 4 EXAMINATION
 5 By Mr. Small:
 6 Q. This deposition is taken by subpoena of
 7 Duke Energy Retail Sales, LLC, which I will refer to
 8 as "DERS." Do you understand that?
 9 A. I do.
 10 Q. The terminology. Good.
 11 The subpoena was issued in 06-986-EL-UNC
 12 as well as 03-93-EL-ATA and numerous dockets that
 13 were consolidated with the 03-93 case. The subpoena
 14 was issued for last week, January 3rd, 2007; by
 15 agreement with counsel it was moved to today, January
 16 9th.
 17 MR. SMALL: The easiest way to explain
 18 the beginning of this portion, I'm just going to
 19 attach, there won't be any questions about it, the
 20 subpoena as Deposition Exhibit 1.
 21 (EXHIBIT MARKED FOR IDENTIFICATION.)
 22 Q. And I think the way we're going to
 23 progress here is if I have exhibits, I will give them
 24 to counsel and then you can use them to answer the

1 question, and then if you would just set them aside,
 2 because in some questions we may go back to an
 3 earlier exhibit. Once you put them in a pile and
 4 we're done, you give it to the court reporter, those
 5 will be her exhibits, all right?
 6 A. (Witness nods head.)
 7 Q. You don't need to look at that, but that
 8 will be the first one.
 9 MR. PAHUTSKI: That's the subpoena?
 10 MR. SMALL: Yes. Just a copy.
 11 Q. Would you please state your name and
 12 spell your last name for the record?
 13 A. Charles Robert Whitlock, W-h-i-t-l-o-c-k.
 14 Q. My name is Jeff Small, and I represent
 15 the office of the Ohio Consumers' Counsel.
 16 Mr. Whitlock, have you ever had your deposition
 17 taken?
 18 A. No, sir.
 19 Q. Have you ever testified?
 20 A. No.
 21 Q. However, you have submitted testimony; is
 22 that correct?
 23 A. I have submitted testimony.
 24 Q. You've submitted testimony in one of the

1 consolidated cases that had been consolidated with
 2 03-93, correct?
 3 A. I have.
 4 Q. All right. Well, due to those
 5 circumstances I think it may be more important, than
 6 other circumstances, to go through a few ground
 7 rules. Please respond to my questions audibly; it
 8 makes it easier for the reporter to take down your
 9 answers. Let me know if you don't understand the
 10 question. Let me know if you think of something that
 11 requires a revision of one of your earlier responses.
 12 Let me know if you need a break. We can
 13 take a break as long as there is no question pending.
 14 I expect we'll take at least one break; I may need it
 15 with my voice. Today I may need the break more than
 16 you do.
 17 Also we're reviewing documents for our
 18 counsel here, we're reviewing documents and there
 19 will probably be a short break and then we'll ask
 20 additional questions having to do with those
 21 documents.
 22 Your counsel may interject objections.
 23 After the objection please respond to the question
 24 unless your counsel instructs you to not respond.

1 Do you have any impairment, medication,
2 or anything else that would reduce your ability to
3 respond to my questions here today?

4 A. No.

5 Q. This next question's a little bit
6 unusual, but who is your counsel? And I ask you that
7 question because I notice Mr. Colbert is listed as
8 the trial attorney, Mr. D'Ascenzo is listed as
9 another counsel in a motion for protection filed by
10 DERS, and later on January 2nd Mr. Pahutski and
11 Ariane Johnson were on a separate pleading. So could
12 you clear up that matter?

13 A. I mean, there are a variety of attorneys
14 that DERS uses, all of those attorneys are employees
15 of Duke Energy Shared Services and so we make
16 ourselves -- we use any one of those attorneys, but
17 Michael Pahutski is my attorney for the deposition.

18 Q. Fine. So you are referring to all four
19 of those have represented DERS at one point or
20 another.

21 A. Yes, sir.

22 MR. SMALL: Go off the record for a
23 second.

24 (Discussion held off the record.)

1 MR. SMALL: Let's go back on the record.

2 Q. You mentioned, I believe it was Duke
3 Energy Shared Services; is that correct?

4 A. Yes, sir.

5 Q. That was a reference -- were you
6 referring to they have a common legal department
7 among the Duke affiliates?

8 A. Yes.

9 Q. And which other attorneys have
10 represented DERS besides the four that we just
11 mentioned?

12 A. I don't recall any others. I don't know.

13 Q. Don't know of any others that have
14 represented DERS?

15 A. I'm not sure if others have. There might
16 have been others, but I'm not sure.

17 Q. I'm, of course, aware that there has been
18 a lawsuit filed against Duke Energy Corporation in
19 Cincinnati, and in that complaint in paragraph 14
20 there's a reference to the vice president and general
21 counsel, "counsel" is spelled like an attorney. Can
22 you tell me who that vice president and general
23 counsel of Commercial Business, can you tell me what
24 that person's name is?

1 MR. PAHUTSKI: Objection. Chuck has been
2 called here to, and in accordance with the subpoena,
3 to testify to matters regarding these proceedings and
4 regarding certain contracts that DERS may or may not
5 have entered into. He's not here to testify
6 regarding any other complaint that may be filed
7 against the company. I'm going to have to instruct
8 the witness not to answer that question.

9 MR. SMALL: My question was not about the
10 complaint. My question was who is the vice president
11 and general counsel of the Commercial Business unit.

12 MR. PAHUTSKI: We'll permit him to answer
13 that question as you have just stated it.

14 A. I believe it's Jeffrey Gollomp.

15 Q. Could you spell that last name, please?

16 A. G-o-l-l-o-m-p.

17 Q. And he is an attorney?

18 A. I believe so.

19 MR. PAHUTSKI: Can we go off the record
20 for a second?

21 MR. SMALL: Sure.

22 (Discussion held off the record.)

23 MR. SMALL: Let's go back on the record.

24 Q. When we went off the record, counsel for

1 DERS made a statement about Mr. Gollomp, who is no
2 longer hired with the Duke-affiliated companies; is
3 that fair to say?

4 MR. PAHUTSKI: That's fair to say.

5 MR. SMALL: Okay.

6 Q. And he stated that he is not, Mr. Gollomp
7 is not the vice president and general counsel of
8 Commercial Business unit. It's not clear to me, is
9 that because he doesn't work with the company
10 anymore, or because he was never in that position?
11 Did he ever have that position?

12 MR. PAHUTSKI: May I assist?

13 MR. SMALL: Yes.

14 Q. Well, I'm really -- I really would like
15 to know where you got the name Jeff Gollomp. You're
16 the one who came up with the name.

17 A. Yeah, he was the vice president and
18 general counsel of the Commercial Business unit.

19 Q. At one point in time.

20 A. Yes, sir.

21 Q. And you're not aware of when he left
22 or -- that position.

23 A. Other than when we just went off the
24 record and I became aware of that.

1 Q. That response was something like December
2 2006 that he left the company, right?

3 A. (Witness nods head.)

4 Q. This is not from your personal knowledge,
5 it's --

6 A. Yes.

7 Q. Okay. Now, Mr. Whitlock, you are the
8 president of DERS, correct?

9 A. Yes.

10 Q. All right. When I refer to "DERS" for
11 the purposes of this deposition, I'm going to be
12 referring to Duke Energy Retail Sales, LLC as well as
13 its predecessor, Cinergy Retail Sales. Did that have
14 an LLC on it, too?

15 A. I believe so.

16 Q. Okay. But I mean both of the entities;
17 do you understand that?

18 A. I do.

19 Q. And if there's a distinction, if I ask a
20 question and there's a distinction between DERS and
21 CRS, please point it out to me, in other words, if
22 the response would be different for one company
23 versus the other, all right? Otherwise, I'll be
24 referring to them collectively as "DERS." Do you

1 Q. Sure. I'm looking at the bottom of page

2 1 and the top of page 2 where it reads "Specifically,

3 I have responsibility to maintain the safe, reliable,

4 and economic supply of fuel, power, emission

5 allowances, and capacity to Duke Energy - Ohio's" --

6 abbreviated DE-Ohio -- "marked-based standard service"

7 offer" -- abbreviated MBSSO -- "consumers." I'll

8 give you the entire document.

9 A. That's fine.

10 Okay.

11 Q. It's not meant to be an exhibit. Why

12 don't you give it back?

13 A. I'm sorry.

14 Q. The question is you just used -- in

15 response to my earlier question you used the term

16 "nonregulated business." Did you mean to include in

17 the nonregulated business the supply of services to

18 the customers of the MBSSO?

19 A. I did.

20 Q. Now, do you have any other business

21 cards, for instance one that shows that you're the

22 president of DERS?

23 A. I don't.

24 Q. This is the business card that you

1 understand that?

2 A. I do. The only distinction would be one
3 of time.

4 Q. Okay.

5 A. All right. So --

6 Q. Okay. Do you have a business card?

7 A. I do.

8 Q. Could I see it?

9 Okay. This card labels you as President
10 of Commercial Asset Management, Duke Energy Americas.
11 Can you explain what that position is?

12 A. Yeah. In that position I have the
13 responsibility to manage the commodity risk
14 associated with Duke Energy's nonregulated generation
15 fleet as well as all the commercial analytics related
16 to that generation fleet.

17 Q. I am a little confused with that answer.
18 The reason is that you've submitted testimony in
19 05-725 as well as other cases where you refer to your
20 association with the provision of services for Duke
21 Energy - Ohio's market-based standard service offer;
22 is that correct?

23 A. Can I see the document that you're
24 referring to?

1 normally use?

2 A. Yes.

3 Q. Okay.

4 MR. PAHUTSKI: Can we go off the record
5 for a second?

6 MR. SMALL: Sure.

7 (Discussion held off the record.)

8 MR. SMALL: Let's go back on the record.

9 Q. Mr. Whitlock, I believe you want to make
10 a clarification.

11 A. Yeah, the card says "President." Those
12 cards are dated. Now the title's changed from that
13 card.

14 Q. What's your title now?

15 A. It's either Group Vice President or
16 Senior Vice President. I believe it's Senior Vice
17 President. It recently changed.

18 Q. And that title, Senior Vice President, is
19 of the Commercial Business unit for Duke Energy
20 Americas; is that correct?

21 A. Commercial Asset Management.

22 Q. Okay. So everything else except for the
23 title's right on the card.

24 A. Yeah.

1 Q. Yes.
 2 MR. PAHUTSKI: Can we go off the record
 3 once more?
 4 MR. SMALL: Sure.
 5 (Discussion held off the record.)
 6 MR. SMALL: Let's go back on the record.
 7 Q. Any more clarifications?
 8 A. No.
 9 Q. Okay. Who is Duke Energy Americas?
 10 What's their relationship to other corporations? For
 11 instance, are they owned by another Duke corporation?
 12 A. I don't know.
 13 Q. What does Duke Energy Americas do?
 14 A. It holds Duke Energy's unregulated
 15 businesses.
 16 Q. How many employees does Duke Energy
 17 Americas have?
 18 A. I don't know.
 19 Q. Do you have an approximate number? Is it
 20 a thousand? A hundred? Ten?
 21 A. I want to say north of 2,000.
 22 Q. Two thousand plus?
 23 A. I believe so.
 24 Q. And are you counting just the Duke Energy

1 Americas or all of the unregulated affiliates that it
 2 owns?
 3 A. Your question was Duke Energy Americas.
 4 Q. Yes, it was.
 5 A. That's how I answered it.
 6 Q. What's the relationship between Duke
 7 Energy Americas and DERS?
 8 A. I don't know.
 9 Q. Well, you stated that it holds Duke's
 10 unregulated businesses. Is DERS an unregulated
 11 business?
 12 A. DERS is an unregulated business.
 13 Q. Should I conclude from that, then, that
 14 it is owned by -- either directly or indirectly by
 15 Duke Energy Americas, or you don't know?
 16 A. I don't know the relationship of Duke
 17 Energy Americas. I can tell you how DERS is related
 18 to Cinergy Capital and Trading, LLC and Cinergy
 19 Investments, but I don't know how those three
 20 entities are related to Duke Energy Americas.
 21 Q. Let's go through that. DERS is owned by
 22 Cinergy Capital and Trading, Incorporated; is that
 23 correct?
 24 A. Yes.

1 Q. And Cinergy Capital and Trading,
 2 Incorporated is owned by Cinergy Investment,
 3 Incorporated; is that correct?
 4 A. Yes.
 5 Q. Cinergy Investment, Incorporated is owned
 6 by Cinergy Corporation; is that correct?
 7 A. I believe so.
 8 Q. Cinergy Corporation is owned by Duke
 9 Energy Corporation; is that correct?
 10 A. Yes.
 11 Q. That, of course, I've taken from your
 12 certificate case at the Public Utilities Commission.
 13 Where does Duke Energy Americas fit into that?
 14 A. I don't know.
 15 Q. Do you have any position or title with
 16 any of the entities that I just named?
 17 A. Yes.
 18 Q. Which corporation, and what is the title?
 19 A. I'm the president of DERS.
 20 Q. All right.
 21 A. I'm a vice president of Cinergy Capital
 22 and Trading.
 23 Q. All right. Is that it?
 24 A. Yes.

1 Q. So in the Duke-affiliated companies you
 2 hold three positions, one with DERS, one with Cinergy
 3 Capital and Trading, and one with Duke Energy
 4 Americas; is that correct?
 5 A. Yes.
 6 Q. Who issues your paycheck?
 7 A. Duke Energy Shared Services.
 8 Q. That's a different corporation than the
 9 three names that you just gave me, isn't it?
 10 A. Yes.
 11 Q. Then you must have a position with a
 12 fourth entity, Duke Energy Shared Services, don't
 13 you?
 14 A. Yes.
 15 Q. And what position is that?
 16 A. With Duke Energy Shared Services?
 17 Q. Yes.
 18 A. Senior Vice President and Commercial
 19 Asset Management.
 20 MR. PAHUTSKI: Could we go off the record
 21 for a minute?
 22 MR. SMALL: Okay, let's go off the
 23 record.
 24 (Discussion held off the record.)

1 MR. SMALL: Let's go back on the record.

2 Q. I don't mean to -- did your consultation
3 result in any clarification?

4 A. No.

5 Q. Is the title that you just gave me the
6 same title that you have for Duke Energy Americas, or
7 are you a senior vice president?

8 MR. PAHUTSKI: We're going to object at
9 this point. You know, we're here to answer questions
10 regarding the subject matter of the subpoena, so if
11 it's a matter of knowledge that DERS had regarding
12 these proceedings that the subpoena's filed or issued
13 under, or agreements that DERS may or may not have
14 entered into, this -- this other material we're
15 getting to simply isn't appropriate under the
16 subpoena to be getting into these other areas of the
17 Duke Energy family of companies.

18 I'm going to instruct the witness not to
19 answer that question.

20 Q. Well, you've been instructed not to
21 answer; that doesn't mean that we won't at some point
22 want to revisit that at another time, that will be a
23 matter for the Commission. In other words, I am not
24 conceding that we can't investigate the relationship

1 not sure exactly what you call it. A certification
2 application, yes. Page 10 and 11 are affiliates of
3 DERS. Why don't I find Duke Energy Shared Services
4 here listed on this exhibit?

5 A. I don't know.

6 MR. PAHUTSKI: Can I go off the record
7 for a second?

8 MR. SMALL: Sure.

9 (Discussion held off the record.)

10 MR. SMALL: Let's go back on the record.

11 Q. I think you had a clarifying answer.

12 A. Yeah. Duke Energy Shared Services
13 doesn't -- this is a list of companies that provide
14 electric at wholesale or retail in North America, and
15 Duke Energy Shared Services does not do that.

16 Q. The Shared Services provides expertise of
17 various kinds, but doesn't actually supply commodity
18 gas or electricity; is that the idea?

19 A. Yes.

20 Q. And one of these affiliates that it
21 provides those services to is DERS; is that correct?

22 A. Yes.

23 Q. Okay. I'd like to ask a few questions
24 about your personal background so we'll understand

1 between the corporate entities in this deposition.

2 MR. PAHUTSKI: Mr. Small, are we still on
3 the record?

4 MR. SMALL: Let's go off the record.
5 (Discussion held off the record.)

6 MR. SMALL: Can I have the last question
7 read back, please?

8 (Question read.)

9 MR. SMALL: I'm going to mark Deposition
10 Exhibit 2, it's a filing by Duke Energy Retail Sales,
11 LLC received at the Commission August 3rd.
12 Actually, the document's dated August 2nd, but it's
13 received at the Commission August 3rd, in case
14 04-1323-EL-CRS, the certification case for DERS. In
15 this case it was Cinergy Retail Sales -- I'm sorry,
16 it was DERS.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. PAHUTSKI: Can we go off the record?
19 (Discussion held off the record.)

20 MR. SMALL: Let's go back on the record.

21 Q. (By Mr. Small) We may be coming back to
22 this document from time to time during this
23 deposition. I have a question for you right now.
24 Could you turn to page 10 of that application? I'm

1 that part. I understand you have a Bachelor's of
2 Business degree in accounting from Alaska at
3 Anchorage; is that correct?

4 A. Yes.

5 Q. And you attended the Mahler School of
6 Advanced Management Skills program?

7 A. Yes.

8 Q. Can you tell me what that is?

9 A. Executive charm school, really.

10 Q. How long did it last?

11 A. It was four weeks. It lasted over a
12 year, and it was five days of class over four
13 different weeks.

14 Q. And you attended the Center for Creative
15 Leadership's Developing Strategic Leadership program;
16 is that correct?

17 A. Yes.

18 Q. Can you tell me what that is?

19 A. More of the same, executive charm school.
20 It's really about leadership in Colorado Springs.

21 Q. How long did that last?

22 A. I want to say it was four days, again.

23 Q. Four days total?

24 A. I believe so.

1 Q. And you've studied business management?
2 You've studied business management as well, at
3 Harvard?

4 A. Yeah, I took like five classes at Harvard
5 when I lived in Boston.

6 Q. No degree came from that.

7 A. No, sir.

8 Q. Are there any other --

9 A. Unfortunately.

10 Q. Any other educational experiences that
11 led to degrees?

12 A. I attended a Bible college for two years
13 and I got a, some kind of -- I don't think it's a
14 degree, but I went for two years and I got some kind
15 of diploma from there, or a certificate of
16 graduation.

17 Q. Do you hold any licenses?

18 A. Driver's license.

19 Q. Nothing like a CPA or anything like that.

20 A. No.

21 Q. And you started with Cinergy in May 2000;
22 is that correct?

23 A. Yes.

24 Q. And what positions did you have

1 those all Shared Services positions?

2 MR. PAHUTSKI: Objection. We're, again,
3 heading down this path of really deviating quite far
4 from the confines of the subpoena. Mr. Whitlock,
5 again, is here as a Duke Energy Retail Sales
6 representative to answer questions regarding these
7 proceedings as well as questions on contracts that
8 may or may not have been entered into.

9 We want to limit this to the matters that
10 were noted in the subpoena as well as limited by the
11 Attorney-Examiner's entry in this proceeding as well.

12 I'm going to ask Mr. Whitlock not to
13 answer any further questions regarding any companies
14 other than Duke Energy Retail Sales at this point.

15 MR. SMALL: Well, I consider these to be
16 foundation questions to find out what his capacity
17 is. DERS has represented that he has certain
18 knowledge, I think I'm entitled to find out what his
19 background is.

20 MR. PAHUTSKI: We're not representing
21 that he is an expert witness. He's simply here to
22 represent DERS and DERS's knowledge regarding the
23 matters mentioned in the subpoena, and that's what
24 he's here for today.

1 chronologically for that six-year period?

2 A. I was a manager of Realtime Price Risk; I
3 managed Day-Ahead Power book; then I began
4 supervising the short-term traders; then I had a
5 responsibility for managing all of the proprietary
6 trading business.

7 Q. What does "proprietary trading business"
8 mean?

9 A. Speculative trading business.

10 Q. What period of time are we up to at this
11 point?

12 A. January 2004ish.

13 Q. Okay. And after that?

14 A. Then I had responsibility for managing --
15 I was a vice president of Portfolio Optimization,
16 which is a precursor to the Commercial Asset
17 Management Group, and that was in February of 2004.

18 At the merger with Duke I became the
19 president of Commercial Asset Management.

20 Q. That was 2006?

21 A. Yes, sir.

22 I became president of Duke Energy Retail
23 Sales June 14th of 2006. Or June.

24 Q. Okay. That's a bunch of groups, but are

1 MR. SMALL: All right. Well, I'll put on
2 the record that I can't fully explore my -- the
3 agreements that we're here to discuss unless I get
4 foundation of who it is that I'm deposing here today,
5 so we may have to just disagree about those
6 foundation questions and we may have to reconvene
7 regarding that.

8 I will do my best to make the questions
9 that I have consistent, but I do have other
10 additional questions having to do with Mr. Whitlock's
11 background.

12 Q. (By Mr. Small) In your capacity as
13 president of DERS who do you report to?

14 A. Tom O'Connor.

15 Q. And what is Mr. O'Connor's position?

16 A. Actually, could I clarify that? I mean,
17 in my capacity at DERS I report to the CEO who is
18 Paul Barry right now, but he's now -- he's been moved
19 out of that position and Tom O'Connor has taken his
20 position, and I don't think we've made officer
21 appointments to make Tom O'Connor my boss, right?
22 Does that help?

23 Q. All right. Let me see if I can get that.

24 A. Okay.

1 Q. I think maybe, as I understood your
2 answer, the official stated CEO was Paul Barry. Can
3 you spell that last name? B-e-r-r-y?
4 A. I believe it's B-a-r-r-y.
5 Q. Okay. Functionally he's been replaced.
6 Tom O'Connor --
7 A. Yes.
8 Q. -- is serving in that capacity as CEO?
9 A. Yes.
10 Q. Likely to be named in that position in
11 the near future?
12 A. Yes.
13 Q. And that's CEO of DERS; is that correct?
14 A. Yes.
15 Q. Is there any other chain of command that
16 goes above that? Does he report to anybody?
17 A. I don't know.
18 Q. Who reports to you at DERS?
19 A. I don't have any employees.
20 Q. You mean to say that DERS has no
21 employees?
22 A. Right.
23 Q. How does DERS get its work done without
24 any employees? Who does the work for DERS?

1 A. Again, it relies on Duke Energy Shared
2 Services.
3 MR. SMALL: I'm going to mark an exhibit.
4 This is a letter dated April 19th, 2005, received
5 by the Commission April 25th, 2005. It's a
6 submission, again, in 04-1323-EL-CRS. It's the
7 certification case, again.
8 (EXHIBIT MARKED FOR IDENTIFICATION.)
9 Q. Are you ready?
10 A. Yeah.
11 Q. Mr. Whitlock, the document that I gave
12 you appears to be a notice of current officers as of
13 the date of the filing. First of all, as a matter of
14 clarification, can you explain the redactions in the
15 document?
16 A. I can't.
17 Q. I want to be clear. Do you know why
18 portions of this document were redacted?
19 A. I don't.
20 Q. Do you know the information that has been
21 redacted from this document?
22 MR. PAHUTSKI: Just to note that if --
23 Mr. Whitlock's answer may very well be designated
24 confidential. If he knows the answers, knows what

1 was redacted, we'll have to hold that in confidence.
2 MR. SMALL: I'm very confused by this
3 document because I can't figure out why titles of
4 officers are redacted.
5 Let's go off the record.
6 (Discussion held off the record.)
7 MR. SMALL: Let's go back on the record.
8 Q. Do you --
9 A. Could you repeat your question?
10 Q. Let's start again.
11 A. Okay.
12 Q. Do you understand why materials, why a
13 title for a person would be redacted in the document?
14 It does not appear to be explained by the document.
15 A. I do not.
16 Q. Okay. Is this list up to date? In other
17 words, have there been any changes since this
18 document was filed?
19 A. Yes.
20 Q. Okay. What are those changes?
21 A. I'm an officer. I'm currently President
22 of DERS.
23 Q. Okay. Did you replace Ms. -- I'm not
24 sure -- Mr. Good?

1 MR. PAHUTSKI: Object; there's no
2 evidence that Ms. or Mr. Good had been president on
3 this sheet here. Object to the form of the question.
4 Q. All right. Who did you replace in your
5 position as President of DERS?
6 A. I don't know.
7 Q. There's always a possibility this wasn't
8 redacted, it just looks that way on the Commission
9 website. Or it could be shaded, not redacted, which
10 sort of would eliminate the objection for
11 confidentiality.
12 MR. SMALL: What was our last question?
13 (Question read.)
14 Q. Can we have a response to that question?
15 A. I don't know.
16 Q. Which of these individuals continues to
17 have a capacity with DERS?
18 A. None of these people, I believe, are
19 currently officers of DERS.
20 Q. Has there been some filing that states
21 who the officers of DERS are?
22 A. I don't know.
23 MR. SMALL: Let's go off the record here.
24 (Discussion held off the record.)

1 (Hearing Examiners Kingery and Farkas
2 joined via speakerphone.)

3 EXAMINER FARKAS: We don't feel that the
4 OCC should be limited under cross-examination
5 regarding DERS and its affiliates and its
6 relationship to DE-Ohio, and we reviewed the subpoena
7 and believe that it doesn't necessarily limit OCC's
8 cross-examination on that along those lines.

9 Notwithstanding that, this isn't to say
10 that evidence that would be presented at a hearing in
11 cross-examination or regarding evidence would
12 necessarily be considered relevant and/or admissible.
13 So we would agree to allow OCC to continue its
14 cross-examination, but putting everybody on notice
15 that that doesn't necessarily mean that that would be
16 admissible at the hearing.

17 MR. SMALL: Scott, may I ask a clarifying
18 question?

19 EXAMINER FARKAS: Sure.

20 MR. SMALL: Of course there is, to my
21 knowledge, I haven't inquired entirely into this, but
22 to my knowledge there isn't any direct -- I haven't
23 seen a document that says there's a, you know,
24 100 percent ownership or something relationship like

1 MR. PAHUTSKI: Just to be clear, so what
2 your ruling is, is that OCC may inquire into the
3 relationship of DERS and affiliates of DERS with
4 DE-Ohio.

5 EXAMINER KINGERY: I think the entire
6 corporate structure should -- I don't see any reason
7 why --

8 EXAMINER FARKAS: There should be any
9 limitation on that.

10 EXAMINER KINGERY: Right. This is only
11 discovery at this point.

12 MR. PAHUTSKI: Well, that helped to
13 clarify that.

14 MR. SMALL: I guess we're done. Thank
15 you very much.

16 EXAMINER FARKAS: Okay.

17 EXAMINER KINGERY: Okay.

18 MR. PAHUTSKI: Thank you.

19 MS. BOJKO: Thank you.

20 EXAMINER KINGERY: Just so that you all
21 know, neither one of us is necessarily here past
22 4 o'clock.

23 MR. SMALL: We understand. Thank you.

24 EXAMINER KINGERY: Okay.

1 that between DERS and DE-Ohio, and -- I just want to
2 make sure. You know, there are a lot of affiliates
3 around. The deponent has basically stated today that
4 he's in one way or another affiliated with four
5 different Duke affiliates.

6 You made the statement that the OCC can
7 inquire into matters as far as a link between DERS
8 and -- well, somewhere in there was a statement about
9 its connection with DE-Ohio, and I wanted to make
10 sure that we didn't get off the phone here and then
11 have another problem because I wasn't talking about
12 DERS or DE-Ohio, but, you know, that affiliate --
13 those affiliates that kind of stand in relationship
14 to those entities, that I couldn't inquire into those
15 as well.

16 EXAMINER FARKAS: No; you can inquire
17 into those as well.

18 MR. SMALL: I think I'm clear.

19 Do you have any questions?

20 EXAMINER FARKAS: I don't have any
21 questions.

22 MR. SMALL: I'm sorry, Scott, I was
23 talking to Mike.

24 EXAMINER FARKAS: Okay.

1 MS. BOJKO: Thanks.

2 (Discussion held off the record.)

3 MR. SMALL: Let's go back on the record.

4 Q. (By Mr. Small) Mr. Whitlock, I'm going to
5 go back and ask a few questions having to do with the
6 Duke family of companies. A little while back you,
7 and I apologize, I've lost my train of thought here a
8 little bit in that period of time, but we went over a
9 number of your positions with Cinergy since May of
10 2000, or with what we're calling now the
11 Duke-affiliated companies. Your association started
12 in May 2000, and you named a number of positions.
13 Now, those positions that you named, what corporate
14 affiliation were they with?

15 MR. PAHUTSKI: We're going to object and
16 voice a standing objection. We're going to allow the
17 witness to answer, but we're going to object as to
18 the relevance of any of the questions that are --
19 with respect to Duke Energy Retail Sales and its
20 relationship to affiliates and corporate structures
21 of Duke Energy Companies.

22 But we'll permit the witness to answer
23 the question.

24

1 Q. Mr. Whitlock?

2 A. Can you read the question, or you repeat
3 the question, or somebody read it back to me?

4 MR. SMALL: We'll let the court reporter.
5 (Question read.)

6 A. Duke Energy Shared Services or the
7 precursor of that, so it might have been Cinergy
8 Shared Services.

9 Q. All those positions.

10 A. Yes.

11 Q. With the exception of the DERS
12 appointment in June 2006?

13 A. Yes.

14 Q. All right. In your capacity as the
15 commercial asset -- strike that.

16 Getting back on track with where we were
17 in the questions, I asked some questions and you
18 responded with names of Paul Barry and Tom O'Connor.
19 Do you remember those questions and answers?

20 A. Yes.

21 Q. Now, I believe your response was you
22 didn't know who they reported to, but in the chain of
23 corporate affiliations would the head of, I think you
24 called it a CEO, the head of DERS report to somebody

1 the fuel, I manage the emission allowance position
2 related to the generation that was dedicated under
3 the MBSSO or the rate stabilization plan to Duke
4 Energy - Ohio.

5 Q. So you're basically making decisions
6 concerning purchases for inputs for DE-Ohio, the
7 provider of services?

8 A. Sure, I manage the SRT, the -- you know.

9 Q. And who do you report to in your
10 capacity -- in that capacity?

11 A. Tom O'Connor. I should say for the
12 record, right, I mean we talked about Duke Energy
13 Americas, and I'm going to get lost between the
14 functional organization, right? So Duke Energy
15 Americas and the legal entities. I am not an expert
16 on the legal structure of the Duke Corporation -- the
17 Duke Energy Corporation, so if my answer seemed
18 nonresponsive, it's just because candidly I don't
19 know.

20 Q. That's fine. My questions will be, the
21 next one will be about just what relationships you
22 have.

23 A. Okay.

24 Q. You report to Mr. O'Connor in your

1 in Cinergy Capital and Trading, the company that owns
2 DERS?

3 A. I don't know, but that seems logical to
4 me.

5 Q. Okay. Do you have any -- what services
6 in your position with Duke Energy Shared Services do
7 you provide to DE-Ohio? When I say "DE-Ohio," I'm
8 referring to the distribution company that provides
9 electricity to residential, commercial, and
10 industrial customers in the Cincinnati area.

11 A. Could you repeat the first part of the
12 question?

13 Q. What services do you provide, what link
14 do you have between what you do and the business of
15 DE-Ohio?

16 A. The link's the MBSSO.

17 Q. And what do you do regarding the MBSSO?

18 A. It was probably articulated most clearly
19 in the testimony that I filed in the case that you
20 showed me earlier, right?

21 Q. Would you give a little summary of that?

22 A. Yeah. I mean, I try to maintain a
23 reliable and economic supply of energy and I do that
24 through managing commodity price risks, so I buy all

1 capacity as an employee of Duke Energy Shared
2 Services; is that correct?

3 A. I do.

4 Q. And what is Mr. O'Connor's capacity, the
5 capacity that you report to?

6 A. He's my boss. I'm not sure what his
7 title is. I think he's Group Vice President. I'm
8 not sure.

9 Q. And what does that group do that he's the
10 vice president of?

11 A. He's, obviously, my boss. He's
12 responsible for an inside-of-the-fence generation
13 company we have called Duke Energy Generation
14 Services. He is responsible for our international
15 assets. He was responsible for our proprietary
16 trading; that has been sold. He has responsibility
17 for a broadband-through-power-lines business. I'm
18 just trying to think in my head through his direct
19 reports.

20 Q. How many people are in this functional
21 group that Mr. O'Connor manages?

22 A. I'm going to say it's about the same
23 number that we said before in that Duke Energy
24 Americas, so I think it's in the north of 2,000

1 employees.

2 Q. Okay. And in that capacity, I mean your
3 capacity having to do with Duke Energy Shared
4 Services, are there people who report to you?

5 A. Yes, sir.

6 Q. How many?

7 A. Approximately 50.

8 Q. Are they subdivided into groups?

9 A. Yeah, I have four direct reports.

10 Q. I'm sorry?

11 A. I have four direct reports.

12 Q. And who --

13 A. A commodity logistics organization, a
14 risk management organization, a commercial analytics
15 and fundamentals organization, and then a realtime
16 operations organization.

17 Q. Could you describe, summarize what those
18 four groups do?

19 A. Sure. I mean the first one, the
20 Commodity and Logistics group does the commodity and
21 logistics, so schedules the coal, schedules natural
22 gas.

23 Q. Buying those commodities.

24 A. Schedules them. Handles the logistics.

1 Q. Do you know who Mr. O'Connor reports to
2 in his group vice presidency position?

3 A. Again, I'm not sure if he's a group vice
4 president, but I do.

5 Q. Pardon?

6 A. I do know who he reports to. I don't
7 know if he's a group vice president.

8 Q. All right. You just, I think I used the
9 terminology you have, but you're not sure that's his
10 title.

11 A. Yeah. That's what I said in the previous
12 answer I believe.

13 Q. And who does he report to?

14 A. Jim Rogers.

15 Q. What is his title?

16 A. I believe CEO, Duke Energy.

17 Q. Okay. You're performing functions for
18 DE-Ohio? I'll continue to use "DE-Ohio" as being the
19 distribution company; do you understand that? It
20 will be the distribution company that provides
21 electricity to residential, commercial, and
22 industrial customers.

23 A. I understand that.

24 Q. All right. You provide services to them.

1 Q. Schedules the delivery of them?

2 A. Yes.

3 The next group is the Risk Management
4 group that monitors markets, buys and sells
5 commodities whether it's emission allowances, coal,
6 natural gas power capacity --

7 Q. Okay.

8 A. -- FTRs are in there.

9 And then the Commercial Analytics and
10 Fundamentals group builds the models that we use to
11 generate our positions, does structuring of
12 transactions, and provides fundamental analysis on
13 markets.

14 Q. Modeling? Modeling of markets?

15 A. The fundamental analysis on modeling, no.
16 Fundamental analysis on markets.

17 Q. I'm asking if they're a modeling group.

18 A. Yeah. That was the first thing I said, I
19 believe.

20 Q. Okay.

21 A. And then the last group is the Operations
22 group that handles the generation dispatch unit
23 commitment and interfaces with MISO, forecasts load,
24 and there's two meteorologists in that organization.

1 Do you have any reporting responsibilities to
2 DE-Ohio, the distribution company?

3 A. I don't.

4 Q. Who do you -- do you deal with anyone at
5 the distribution company; DE-Ohio?

6 A. I mean, we have code of conduct between
7 the wire side of our business and the generation side
8 of our business, so I don't -- no, I don't deal with
9 them.

10 Q. All right. I think what you're saying is
11 you're on the generation side of the business.

12 A. Right.

13 Q. That generation you're talking about is
14 owned by the distribution company, though.

15 A. It's --

16 MR. PAHUTSKI: Let me object here. The
17 notion that DE-Ohio is a distribution company, I
18 think that's causing some confusion.

19 MR. SMALL: I realize that the
20 terminology is loose. I mean DE-Ohio.

21 MR. PAHUTSKI: The regulated utility?

22 MR. SMALL: The regulated -- well, that's
23 difficult terminology in itself. I will attempt to
24 use "DE-Ohio" when I'm referring to the company that

1 provides electric service to residential, commercial,
2 and industrial and not other customers, we'll skip
3 the characterization of what functions they serve.

4 MR. PAHUTSKI: Okay. I think
5 Mr. Whitlock is still somewhat confused. Can you
6 restate that?

7 Q. (By Mr. Small) DE-Ohio owns the power
8 plants; is that correct?

9 A. Yes.

10 MR. PAHUTSKI: So for clarity, Mr. Small,
11 when you refer to "DE-Ohio," you'll be referring to
12 the legal entity that provides generation,
13 transmission, and distribution services to retail
14 residential --

15 MR. SMALL: Customers.

16 MR. PAHUTSKI: -- yeah, commercial,
17 industrial customers.

18 MR. SMALL: Correct.

19 Q. That's clear?

20 A. Yes. For now it's clear. I'm sure it
21 will get fuzzy again.

22 Q. All right. Are there people at DE-Ohio
23 that you deal with regarding generation since you
24 seem to be on the generation side of things?

1 A. We're peers.

2 Q. Peers? And you're providing shared
3 services to DE-Ohio in that capacity.

4 A. I don't understand the question.

5 Q. You're kind of a technical expert for
6 them; is that the gist of your job?

7 A. Yes. Technical expert.

8 Q. Do you know who Mr. Davis reports to?

9 A. He reports to Tom O'Connor.

10 Q. Mr. O'Connor reports to Mr. Rogers.

11 A. Yes.

12 Q. Do you know who the president of DE-Ohio
13 is? I ask because I don't see a president in the
14 link -- in the chain that you just gave me.

15 A. Yeah, I think the president of DE-Ohio is
16 Sandra Meyer.

17 Q. Yes. Where does she fit into that chain?

18 A. She's not in that chain.

19 Q. Doesn't Mr. Curtis Davis, is he an
20 employee of DE-Ohio?

21 A. I don't believe so.

22 Q. Are all the people that you named Shared
23 Services people?

24 A. I believe so. I've got to be candid with

1 A. Yes.

2 Q. And who are those individuals?

3 A. Curtis Davis. The power plant managers.

4 Q. He's one of them?

5 A. He --

6 Q. Or is he over all of them?

7 A. Over all of them, and then they have
8 power plant managers that I deal with.

9 Q. And you deal with them because you're
10 doing -- your function is to provide logistics and
11 also purchasing of inputs for those plants; is that
12 correct?

13 A. Yeah, and then I monetize the outputs
14 and -- yeah.

15 Q. Could you describe "monetize the
16 outputs"?

17 A. Sell power, excess power.

18 Q. Excess power generated that isn't needed
19 by DE-Ohio's customers. I'm just trying to define
20 what "excess power" is.

21 A. Yeah, power that's not committed under
22 the MBSSO.

23 Q. Okay. And, I'm sorry, what's your
24 relationship with Mr. Davis?

1 you, man; I barely know who I work for. I care who
2 pays my paycheck and I don't know, you know, I really
3 don't know, but I believe he is an employee of Duke
4 Energy Shared Services.

5 Q. Would you move back to Exhibit 2, it's in
6 your packet? It's a thick one.

7 A. Is this it?

8 Q. Yeah. Could you verify, is the
9 information on page 1 of -- you're looking at the
10 letter and I'm going to move to the application
11 itself, the form, which is also labeled page 1.
12 Could you verify the information on page 1? Is the
13 information correct there?

14 A. It is.

15 Q. Okay. Do you see the website address
16 there, cres.duke-energy.com?

17 A. Yes.

18 Q. When I go to that address, I reach an
19 invitation to contact DERS to buy five megawatts of
20 load individually or in aggregate accounts. Have you
21 been to that web address?

22 A. I have not.

23 Q. Do you know what happens if a user
24 provides a name, company, and e-mail address that's

1 requested on that form?

2 A. I don't.

3 Q. Do you have something on the order of
4 customer contact representatives -- and when I say
5 "you," I mean DERS, I realize that you have no
6 employees. But in the capacity of taking shared
7 employees from Duke Energy Shared Services is there
8 something like a customer contact that provides
9 services to DERS?

10 A. No. Not right now.

11 Q. Okay. Was there ever a person in that
12 capacity? The website invites a customer to contact
13 them. Was there ever anybody on the other side to
14 respond to that inquiry?

15 A. There are contacts for the company. I
16 mean, we fill out our annual report, Uma Nanjundan is
17 the contact person that's referenced on our -- and
18 you can call her and contact her at that number.

19 Q. And there's a telephone number listed on
20 the website; 800-920-5039. What happens if I call
21 that number?

22 MR. PAHUTSKI: Object; the question
23 assumes facts not established. We don't have the
24 website in front of us.

1 Q. Let's take this back in time a little

2 bit. Do you know whether there's ever been a person
3 that contacted a customer -- in a customer contact
4 capacity at DERS or its predecessor, CRS?

5 A. Yes.

6 Q. And who would that person be?

7 A. Jason Barker.

8 Q. When was he serving in that capacity?

9 A. I don't know.

10 Q. How do you know that Mr. Barker filled
11 that role?

12 A. How do I know he filled that role?

13 Q. Well, I mean, you came up with a name.
14 You just didn't come up with that --

15 A. I'm trying to --

16 Q. You must know Mr. Barker.

17 A. I do know Mr. Barker. I'm trying to
18 figure out how I knew that he was the contact. I
19 don't know how I knew that.

20 Q. And when did he stop being the contact?

21 A. I don't remember when he stopped being --
22 I presume when he left the company.

23 Q. When was that?

24 A. I don't know.

1 Q. What happens if I call the telephone
2 number that's on the website?

3 A. I don't know. I've never called it.

4 Q. DERS doesn't have an 800 number?

5 A. I've never called -- I've never called
6 the 800 number listed here, so I don't know what
7 happens.

8 Q. Do I understand -- do I understand your
9 answer that the only way to get ahold of DERS is to
10 contact the people listed on your certification
11 application? You mentioned Ms. -- this is a woman,
12 right? -- Nanjundan. That's a woman, right? That's
13 a woman.

14 A. Yes, it is a woman.

15 Q. Is she the contact person for DERS with
16 customers?

17 A. She's the contact person for Commission
18 Staff use.

19 Q. I know. That wasn't the question.

20 A. What was the question?

21 Q. Is she the contact person for customers?

22 A. Customers could contact her, but . . .

23 Q. Is there anybody else?

24 A. I don't know.

1 Q. Was it part of the merger situation?

2 A. I don't know. I believe it was before
3 the merger.

4 Q. And Mr. Barker worked with Shared
5 Services, again?

6 MR. PAHUTSKI: Could I ask you to repeat
7 that question? I'm sorry.

8 Q. Did Mr. Barker work for Shared Services?
9 And really what I mean is his paycheck was issued by
10 Shared Services.

11 A. I don't know who paid Jason.

12 Q. And are you saying that he filled that
13 capacity, but nobody replaced him when he left?

14 MR. PAHUTSKI: Objection; that
15 mischaracterizes the witness's testimony. He didn't
16 say --

17 MR. SMALL: It's a question.

18 A. I said I didn't know, I believe, and I'll
19 tell you the same thing, I don't know.

20 Q. Do you know who Kim Twele, T-w-e-l-e, is?

21 A. Kim Twele, yes, I do.

22 Q. And who is that?

23 A. She's a contract administrator.

24 Q. Is she still a contract administrator for

1 DERS?
 2 A. Again, I believe she works for Duke
 3 Energy Shared Services, but I'm not sure.
 4 Q. She is providing services to DERS?
 5 A. She or other contract administrators
 6 would provide services to DERS --
 7 Q. And what is --
 8 A. -- if they need it.
 9 Q. What does a contract administrator do?
 10 A. Administers contracts.
 11 Q. What does that mean?
 12 A. I mean, we have enabling agreements with
 13 counterparties, we have forms that need to be filled
 14 out, and they will maintain those forms and submit
 15 those forms, they'll -- I mean, that's basically what
 16 they do.
 17 Q. What is an enabling agreement?
 18 A. An ISDA is an enabling agreement.
 19 Q. I'm sorry, I didn't --
 20 A. An ISDA.
 21 Q. ISDA. What is an ISDA --
 22 A. I believe it's the International Swap
 23 Dealers Agreement.
 24 Q. That's a trading agreement.

1 A. Yes. EEI is on --
 2 Q. Are these agreements with DERS or some
 3 other entity?
 4 A. They could be for any of those entities.
 5 You were asking me what a contract administrator did,
 6 so I was trying to answer that. In the capacity --
 7 again, I thought their capacity was a Duke Energy
 8 Shared Service employee.
 9 Q. Does DERS have any ISDA, I-S-D-A,
 10 agreements?
 11 A. Not to my knowledge.
 12 Q. So those services would be provided to
 13 one of the other companies.
 14 A. Yeah.
 15 Q. Okay. What does Miss Twele do for DERS?
 16 I notice she's listed on Exhibit 2 --
 17 A. Right.
 18 Q. -- as the person who submitted this.
 19 What capacity was she filling when she submitted
 20 that? Is this one of the forms?
 21 A. Yeah. This would be a form, sure.
 22 Q. Okay. Who is -- you kind of jumped the
 23 gun here. Who is Uma Nanjundan, or what are her
 24 duties?

1 A. Right now she buys all of the natural gas
 2 for our gas assets.
 3 Q. And is that purchasing natural gas to be
 4 burned by DE-Ohio's power plants?
 5 A. Yes. She also in her capacity for DERS
 6 did most of the work on the financial statements,
 7 most of the heavy lifting on the financial
 8 statements. She did structuring for various
 9 transactions that the CRS has looked at in the past
 10 and will likely do that kind of structuring for deals
 11 that we'll look at in the future.
 12 Q. What past deals are you referring to?
 13 A. I'm sorry?
 14 Q. I think you were referring to past deals
 15 that then would be done again in the future.
 16 A. Well, for example, I mean the DERS has
 17 looked at participating in retail auctions in states
 18 outside of Ohio. She did a lot of the heavy lifting
 19 around the analysis. She probably -- she did a lot
 20 of the historic pricing analysis to figure out what
 21 our offer was going to be in those auctions.
 22 She did analysis in the Illinois auction.
 23 She, I believe, has done some analysis on other
 24 utilities in Ohio about whether or not there was an

1 opportunity for us to use the CRS or DERS to
 2 aggregate load in those jurisdictions.
 3 Q. Has DERS participated in any auctions?
 4 A. Have we participated or won any auctions?
 5 Q. First, participation.
 6 A. I believe so.
 7 Q. Which ones?
 8 A. I believe the New Jersey auction.
 9 Q. The BGS auction?
 10 A. Yeah. And I'm not sure if they did the
 11 Illinois auction or not.
 12 Q. And did the DERS, did it gain any
 13 customers or any load through those auctions?
 14 A. Not to -- no.
 15 Q. Let's go on to Exhibit 4.
 16 (EXHIBIT MARKED FOR IDENTIFICATION.)
 17 Q. Now, Exhibit 4 is a letter filed at the
 18 Commission in the certificate case 04-1323, it's
 19 dated August 8th, 2005, received by the Commission
 20 August 9th, 2005. I see Mr. Barker listed there,
 21 was he -- did he have Ms. Nanjundan's position before
 22 her position?
 23 A. No. Again, I mean, you had asked earlier
 24 about the contact person for the --

1 Q. Yes.

2 A. -- for the CRS or for DERS, and I stated
3 that it was Jason Barker and, indeed, from this
4 document it appears to me that he indeed was that
5 person, and this person -- and he's -- effective
6 August 9th, 2005, says that Mr. John Deeds will
7 assume responsibility as the contact person for
8 Cinergy Retail Sales.

9 Q. Wasn't the contact person we just spoke
10 about, wasn't that Uma Nanjundan?

11 A. We talked about her being the contact
12 person for the Commission requests.

13 Q. I see.

14 A. I think there are various points of
15 contact, right? I mean, they could contact me as the
16 president, or they could contact the CEO, Tom
17 O'Connor.

18 Q. Let's go back to Exhibit 2.

19 MR. PAHUTSKI: Excuse me, exhibit which
20 number, Mr. Small?

21 Q. Exhibit 2.

22 A. That's the thick one?

23 Q. Yes. I'm looking at what's labeled page
24 2 of the form, it's the third page on your

1 Q. Yes. Which is maybe the reason why we
2 should stick with DERS --

3 A. Okay.

4 Q. -- because it's easily distinguished from
5 that word that starts with a C. The world of
6 acronyms.

7 A. I didn't invent them.

8 Q. Has DERS provided any services to a
9 residential customer?

10 A. We have not.

11 Q. At any point in time?

12 A. No. I would say no, not to the best of
13 my knowledge.

14 Q. On the form it refers to Exhibit B-1 of
15 the form, not to be confused with our Exhibit 2 which
16 is what I've labeled it, Jurisdiction of Operations,
17 it's labeled as page 15 of the form. Are you there?

18 A. I believe so. Page 15?

19 Q. Yes.

20 A. Yep.

21 Q. And it references "... qualified to do
22 business in Ohio, Delaware, Illinois, and New
23 Jersey." I just want to make sure, are the
24 operations in those states, did you previously state

1 attachment. Do you know why the Residential box is
2 marked on this form, and Commercial, Mercantile,
3 Industrial are not marked?

4 A. Yes.

5 Q. Why is that?

6 A. This is a change, right? And,
7 previously, we had selected the other boxes,
8 Commercial, Mercantile, and Industrial, and we didn't
9 select Residential, and this is a change to say that
10 we're going to include -- in the text of the letter
11 it says "This Application also includes the addition
12 of the Residential class under Section A-10." So
13 it's basically simply the CRS wants to do business
14 with residential customers.

15 Q. And the CRES we're referring to is DERS?

16 A. Yeah. I'm going to use those
17 interchangeably as you do.

18 Q. I've never used the term "CRES."

19 A. Whatever. Cinergy Retail Sales, right?

20 Q. Oh, I'm sorry. "CRES" means competitive
21 retail electric supplier.

22 A. Fair enough.

23 Q. So that's a little bit confusing.

24 A. Okay. Our CRS.

1 what those operations are, which is -- I believe you
2 said participation, but no customers in New Jersey,
3 and you didn't know whether there was participation
4 in the Illinois auction. Does that summarize the
5 operations in those jurisdictions?

6 A. Yeah. I mean, this exhibit says that we
7 are qualified to do business in Ohio, Delaware,
8 Illinois, and New Jersey.

9 Q. Right, and I'm asking what business you
10 actually do in those states.

11 A. We have no current business in those
12 states.

13 Q. No current customers?

14 A. No, sir.

15 Q. And no current revenues.

16 A. No, sir.

17 Q. Have you ever had customers -- ever had
18 any revenues? And when I say "you," I mean DERS, its
19 predecessor CRS.

20 A. I don't know.

21 Q. Could you, to the best of your knowledge,
22 could you give a history of DERS, that is landmarks
23 in its development and so forth? For instance, its
24 formation, when did that take place?

1 A. In 2003.

2 Q. I don't mean to disagree with you, could
3 it be January 2004?

4 A. I believe it was in 2003 is when it was
5 incorporated.

6 Q. Okay. Incorporation in Delaware.

7 A. Yeah.

8 In about 15 minutes I'm going to, or 10
9 minutes, so whenever you get to a point that you can
10 break, I'd like to take a break. A bio break.

11 Q. Understandable. We're approaching a
12 breaking point.

13 A. Okay.

14 Q. What was its first business operation or
15 attempt to make a business operation? For instance,
16 you mentioned the BGS auction. What was its first
17 auction?

18 A. I don't know. I mean, I assumed
19 responsibility for this organization in 2006, right?
20 So the history, I mean, I can tell you about
21 significant things in the history, but I don't know
22 when -- I can tell you why it was formed.

23 Q. I'm sorry?

24 A. I said I can tell you why it was formed.

1 A. I think I stumbled across it one time,
2 yeah.

3 Q. You notice that your company is listed
4 there in the third --

5 A. Yes.

6 Q. -- row. And it shows a C under Active
7 Marketing; do you see that?

8 A. Yes.

9 Q. Do you know what that designation means?
10 Is DERS engaged in some activity that would be
11 described as active marketing?

12 A. Could you repeat the question?

13 Q. Is DERS engaged in some activity that
14 would be described as active marketing?

15 A. I don't know.

16 Q. Do you know who provided the information
17 to Duke Energy --

18 A. I don't.

19 Q. -- regarding DERS?

20 A. I don't.

21 Q. Okay.

22 MR. SMALL: Let's take a break until 10
23 to, something like that.

24 (Recess taken.)

1 Q. Okay. Why don't you tell me that.

2 A. It was formed because in Ohio, right, and
3 in other states, generation was being deregulated and
4 we needed a vehicle to participate in retail
5 auctions, and that was why this company was created.

6 Q. And when did it become -- when did CRS
7 become DERS? Presumably sometime after the April
8 2006 merger.

9 A. Indeed.

10 Q. And probably soon afterwards? Long
11 enough to make the name changes and that sort of
12 thing, correct?

13 A. Yeah.

14 Q. Summer of 2006, something like that?

15 A. I believe so.

16 MR. SMALL: Let's try Exhibit 6. There's
17 no Exhibit 5; I'm just going to live with that.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. SMALL: I'm just not going to use an
20 Exhibit 5. Just, there is no Exhibit 5. I don't
21 want to disrupt my numbering system.

22 Q. Mr. Deeds -- do you have Exhibit 6? And
23 have you ever visited the Duke Energy website showing
24 the list of certified suppliers?

1 MR. SMALL: Let's go back on the record.

2 Q. At this point I'm going to ask you a few
3 people whose names have popped up from various
4 exhibits and filings at the PUCO having to do with
5 DERS. Can you tell me who Timothy Duff is? Do you
6 know Mr. Duff?

7 A. I've met Mr. Duff.

8 Q. And what position does he hold? Is he
9 currently an employee of Duke-affiliated companies?

10 A. Yes.

11 Q. And what position does he hold?

12 A. I have no idea.

13 Q. He works for -- I'm going to abbreviate
14 this, I'm going to say "Shared Services" every time I
15 mean Duke Energy Shared Services; do you understand
16 that?

17 A. (Witness nods head.)

18 Q. Okay. Does he work for Shared Services?

19 A. I don't know.

20 Q. How do you know Mr. Duff?

21 A. I've been at a couple of meetings with
22 Tim.

23 Q. What capacity did he serve in those
24 meetings?

1 A. To be honest with you, I don't remember.

2 Q. And you haven't had any business dealings
3 with him other than seeing him at meetings.

4 A. No, I've talked to -- I've talked to Tim
5 when I was reviewing some of these documents that we
6 were going to provide or have provided for you, I
7 talked to him about -- because his name will appear
8 on those. So I talked to him about his perspective
9 on those agreements in preparing for this deposition.

10 Q. Okay. And what was his connection with
11 the documents?

12 A. He prepared the option agreements that we
13 have with various counterparties, he prepared
14 Exhibits A and B, which is the strike and the option
15 premium.

16 Q. We are going to get to those agreements
17 in a little bit, but do you mean the payment by the
18 DERS?

19 A. Yeah, the premium that we pay for the
20 option that we have to put power to these customers.

21 Q. I apologize, did you say that he set
22 those?

23 A. No, he crafted -- he wrote the exhibits.

24 Q. He wrote the exhibits. And do you know

1 conversations or e-mail traffic with Mr. Duff? Any
2 other communications other than personal?

3 MR. PAHUTSKI: Objection; that question
4 mischaracterizes Mr. Whitlock's testimony.
5 Mr. Whitlock never said that he had communications
6 regarding his personal matters with Mr. Duff.

7 MR. SMALL: Personal matters? I didn't
8 mention any personal matters.

9 A. Anyway --

10 MR. PAHUTSKI: Could you repeat the
11 question?

12 (Question read.)

13 MR. SMALL: When I said "personal," I
14 mean head to head, not --

15 MR. PAHUTSKI: Person to person.

16 MR. SMALL: Yeah.

17 MR. PAHUTSKI: Okay.

18 A. I would say -- repeat the question again,
19 sorry.

20 (Question read.)

21 A. Yes.

22 Q. And what were those communications over?

23 A. I don't remember.

24 Q. Did they have anything to do with the

1 that from conversations that you've had with him, or
2 is his name on some documents, or --

3 A. A conversation that I had with him.

4 Q. How did you know to speak with him in the
5 first place regarding those agreements?

6 A. I don't remember.

7 Q. I take it that Mr. Duff has something to
8 do with DERS if he was crafting their agreements,
9 right?

10 A. Yeah. I mean, those agreements are
11 between the CRS and the counterparties, so he helped
12 write Exhibits A and B, right.

13 Q. Do you recall when your first contact
14 with Mr. Duff was?

15 A. No.

16 Q. When was your last contact with him?

17 A. Two days ago.

18 Q. And that was regarding the --

19 A. It was in preparation for this
20 deposition.

21 Q. Had he helped to identify documents to be
22 produced here?

23 A. I don't know.

24 Q. Have you ever had any telephone

1 agreements?

2 A. I just told you about a conversation that
3 I had with him about these agreements in preparing
4 for this deposition.

5 Q. And that would be a telephone
6 conversation.

7 A. Yeah.

8 Q. Okay.

9 A. Yes.

10 Q. Did you call him, or did he call you?

11 A. I called him.

12 Q. How did you know to call him?

13 MR. PAHUTSKI: Objection; asked and
14 answered.

15 Q. Who else did you have contact with
16 regarding the documents that were prepared for today?

17 A. I talked to some accountants.

18 Q. Please, names if you have them.

19 A. Talked to Mark Krabbe.

20 Q. He's an accountant?

21 A. Yes, sir.

22 I talked to Brian Savoy, his boss.

23 Q. You said his boss?

24 A. Uh-huh.

1 I talked to Uma Nanjundan. And, again,
2 these conversations are all in preparation, right?
3 Because I was trying to get the history of the CRS
4 and these people were all involved and I'd seen their
5 names on documents.

6 Q. For instance, the documents we've been
7 looking at that have been filed at the Commission?

8 A. Yeah. So I didn't -- so I talked to Uma
9 and I believe she's the one that told me, when I was
10 talking about the option agreements, that I should
11 call Timothy, but I don't -- Tim Duff, but I don't
12 recollect who specifically told me.

13 Q. Okay. What did your contact with
14 Mr. Mark Krabbe amount to? What did you discuss?

15 A. I asked him about the financial
16 statements. I asked him if I could see the trial
17 balances for the company off the ledger so that I
18 could verify -- so that I could have an understanding
19 of the financials of the company.

20 Q. Okay. Are those financial agreements in
21 the materials or provided?

22 MR. PAHUTSKI: Objection. I think you've
23 characterized them as "financial agreements."

24 THE WITNESS: I'm talking about the --

1 Q. And he confirmed that.

2 A. Yes.

3 Q. And what transpired between you and Uma
4 Nanjundan?

5 A. I asked -- again, I was trying to get
6 historical perspective about the agreements that we
7 were producing here and her historical knowledge of
8 activities that the CRS participated in -- that DERS
9 has participated in, and particularly these
10 agreements.

11 Q. Okay. What information did she provide?
12 What did you get out of your contact with her?

13 A. A historical perspective, that she did
14 the structuring, she did a lot of the structuring.
15 She was the structurer that was involved in pricing
16 the option agreements and doing the analysis of the
17 loads for the customers that we have these option
18 agreements with.

19 Q. What do you mean by "pricing option
20 agreements"?

21 A. Valuing the options. There's a value for
22 those options and she helped determine the value of
23 the options.

24 Q. Are those reported in some documents,

1 MR. SMALL: "Financial statements" are I
2 think his words.

3 Q. I'm referring to whatever financial
4 statements you just responded.

5 A. No; what I was talking about there was
6 the 2005 annual report that we submitted that's a
7 matter of public record --

8 Q. Okay.

9 A. -- already, so that's what I was talking
10 to him about.

11 Q. Okay.

12 A. I don't know if they're in these
13 documents, I don't think they are, but it's public
14 record.

15 Q. It's upcoming.

16 A. I'm sorry?

17 Q. It's upcoming. I have it in my stack.

18 A. Okay.

19 Q. What transpired between you and Mr. Brian
20 Savoy?

21 A. I talked to Brian to see if Mark Krabbe
22 was the guy to talk to. I assumed that it was and I
23 went to Brian, his boss, to make sure that that was
24 the right individual.

1 that valuation?

2 A. I don't know.

3 Q. Did you have any conversation with her
4 about that?

5 A. I didn't.

6 MR. SMALL: Does counsel know whether
7 those are included in the documents? I believe
8 they're covered by --

9 MR. PAHUTSKI: I don't know.

10 MR. SMALL: Let's go off the record.
11 (Discussion held off the record.)

12 MR. PAHUTSKI: Just seeking
13 clarification, when you say "those documents," which
14 are you referring to, Mr. Small?

15 MR. SMALL: I understand from the witness
16 that Uma Nanjundan did some valuation and, you know,
17 presumably that valuation that Mr. Whitlock just
18 referred to is committed to paper in some fashion.

19 MR. PAHUTSKI: I think Mr. Whitlock
20 testified that he wasn't sure whether or not there
21 was paper.

22 MR. SMALL: I know.

23 MR. PAHUTSKI: I don't know whether or
24 not that is in this stack.

1 MR. SMALL: Because it appears to be
2 covered by the subpoena, could you check on that for
3 me?

4 MR. PAHUTSKI: Well, you have the
5 documents as well, you can determine whether they're
6 in there. I'd have to look through these, you know,
7 one by one to determine whether that is in there.

8 MR. SMALL: Okay. Tried to shortcut the
9 process a little bit by just asking, but we can look
10 through the documents.

11 Q. (By Mr. Small) Okay, Mr. Whitlock, do you
12 know Jim Gainer?

13 A. I've met Jim.

14 Q. Okay. Have you had dealings with
15 Mr. Gainer in connection with DERS business?

16 MR. PAHUTSKI: Objection. Mr. Gainer is
17 and has been acting as an attorney with the company
18 and any of those communications would be subject to
19 attorney-client privilege.

20 MR. SMALL: Well, I asked the witness who
21 his attorneys were, and Mr. Gainer's name never came
22 up.

23 MR. PAHUTSKI: The witness also said
24 there are perhaps other attorneys working for DESS

1 this deposition to the extent that Mr. Gainer's not
2 serving as an attorney, the company isn't able to --
3 isn't entitled to claim an attorney-client privilege,
4 and I believe the witness just said he didn't deal
5 with him in a legal capacity.

6 MR. PAHUTSKI: Mr. Gainer has in the past
7 served as an attorney. I don't know whether he is
8 now or not serving as an attorney for the company,
9 but he has, and any of those past communications
10 would be subject to attorney-client privilege.

11 MR. SMALL: Just for the record, although
12 this is a delicate matter, I think we could delve
13 into Mr. Gainer's activities that are legal and
14 separate it from his nonlegal capacities, but I'll
15 move on with this.

16 Q. You recognize the title Managing Director
17 of Commercial Asset Management? That's you, right?

18 A. No.

19 Q. No? Do you recognize that title?

20 A. I don't.

21 Q. Okay. How about you mentioned Vice
22 President and General Counsel of the Commercial
23 Business, I think you identified that as Jeff Gollomp
24 previously. Is there a position like that today?

1 who have represented DERS from time to time and,
2 nevertheless, even if -- well, although Mr. Whitlock
3 did not name Jim Gainer as one of the attorneys
4 representing DERS, Mr. Gainer may have had
5 communications with Mr. Whitlock regarding other
6 matters.

7 I'm instructing the witness not to answer
8 that question.

9 MR. COLBERT: DE-Ohio would also point
10 out that Mr. Gainer is an attorney of record in these
11 proceedings.

12 Q. Why don't we ask the witness, the
13 president of DERS, have you sought legal advice from
14 Mr. Gainer?

15 A. No.

16 Q. So your contacts with him have been
17 nonlegal.

18 MR. PAHUTSKI: Objection. Whether or not
19 he's had contact with Mr. Gainer is still the subject
20 of attorney-client privilege.

21 Instruct the witness not to answer that
22 question.

23 MR. SMALL: I'll mark this as a matter
24 that might have to be inquired into in a repeat of

1 A. Not to my knowledge.

2 Q. Do you recognize the title Director of
3 Regulatory Initiatives?

4 A. No.

5 Q. Vice President of Trading?

6 A. Yes.

7 Q. Is that Mr. -- would that be Mr. Farley?

8 A. I was Vice President of Trading at one
9 time.

10 Q. At one time?

11 A. Yeah.

12 Q. Okay.

13 A. I don't know if we covered that in the
14 previous question, but you can add it.

15 Q. I recall you saying that you had a couple
16 positions in the trading capacity.

17 A. Okay.

18 Q. Who succeeded you in that position?

19 A. Kevin Paley.

20 Q. Kevin Paley? Could you spell that last
21 name?

22 A. P-a-l-e-y.

23 Q. Is that Mr. Paley currently employed as a
24 vice president of Trading?

1 A. No.
 2 Q. Okay. Was he succeeded by somebody?
 3 A. Yes.
 4 Q. Who was that?
 5 A. I believe it was Jack Farley.
 6 Q. Okay. And has Mr. Farley left that
 7 position?
 8 A. He's no longer an employee of the Duke
 9 companies.
 10 Q. Did somebody succeed him in that
 11 position?
 12 A. We sold the business.
 13 Q. Now, at various times, and we're going to
 14 have a look at an option agreement later on, but
 15 you've referred to option agreements. Generally
 16 speaking, option agreements have provided for
 17 payments by DERS to certain other parties to those
 18 option agreements; is that correct?
 19 (CONFIDENTIAL PORTION EXCERPTED.)
 20
 21
 22
 23 Q. Okay.
 24 MR. PAHUTSKI: We need to designate that

1 MR. SMALL: I tried to segregate this to
 2 the end of the deposition, and we are getting to that
 3 portion, but there may or may not be sections that
 4 are still confidential coming up.
 5 MR. PAHUTSKI: Let's try this: We shall
 6 on the record designate all of this material to be
 7 confidential from this point forward unless -- until,
 8 Mr. Small, you identify something that perhaps is
 9 not, as you've framed the question, doesn't pertain.
 10 MR. SMALL: Okay.
 11 MR. PAHUTSKI: That way --
 12 MR. SMALL: I have something coming up
 13 and I will ask him again.
 14 MR. BOEHM: Excuse me, can I interrupt
 15 and ask a housekeeping question I guess? Maybe it's
 16 in one of the subpoenas or answers. How long do you
 17 folks expect to go this afternoon, Jeff?
 18 MR. SMALL: I think it may be around
 19 6 o'clock.
 20 MR. BOEHM: 6 o'clock.
 21 MR. SMALL: The court reporter was asked
 22 to be here until 6 o'clock.
 23 MR. BOEHM: Okay. If we're not finished
 24 today, do you plan to continue to tomorrow or the --

1 answer as confidential under the confidentiality
 2 agreements we signed with the parties here and the
 3 protective agreements signed with OCC here today.
 4 MR. SMALL: Okay.
 5 MR. PAHUTSKI: And a continuing
 6 designation, again, any discussion regarding the
 7 option agreements or the predecessors will be
 8 designated confidential material, among other things.
 9 MR. SMALL: We will have a series of
 10 questions here, so I'll consider all these questions
 11 to be covered by the confidentiality agreement.
 12 MR. PAHUTSKI: Thank you, Mr. Small.
 13 MR. COLBERT: If I might, will everything
 14 from this point on be confidential, Mr. Small, or is
 15 there a way that we could do it so that we aren't
 16 going back and forth to the public part of the
 17 transcript?
 18 MR. SMALL: I can't tell. I just don't
 19 know. We're getting towards that part where sections
 20 of it will be, but I can't completely anticipate how
 21 you will treat or how Mr. Pahutski will treat
 22 matters.
 23 MR. COLBERT: I was trying to make it
 24 easy for the court reporter.

1 MS. JOHNSON: No, this is not a
 2 continuing deposition.
 3 MR. SMALL: I think we'll be able to
 4 complete this today.
 5 MR. BOEHM: Okay.
 6 (CONFIDENTIAL PORTION EXCERPTED.)
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- - -
CONFIDENTIAL EXCERPTS

FROM THE DEPOSITION OF

CHARLES R. WHITLOCK

TUESDAY, JANUARY 8, 2007
- - -

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19 A. That's typical of option agreements where
20 somebody pays a premium to the writer of the option.
21 The holder of the option pays a premium to the writer
22 of the option.
23
24

1 handled by Accounts Payable. And so I don't know how
2 many people can actually process the payment.
3 Q. All right. Let me go back to your
4 statement that you authorized payments in 2006. What
5 were you doing?
6 A. I was authorizing the payments.
7 Q. And that doesn't need to be done anymore?
8 A. No; the payments are calculated, right?
9 And then there's a signature saying, yeah, process
10 the payment, right? I don't know who all can do
11 that. I did that. I don't know who all can do that.
12 Q. People in Accounts Payable can do that.
13 A. I believe so. I don't know who all can.
14 Q. Those are Shared Services employees.
15 A. I think so.
16 MR. SMALL: I'm going to mark an exhibit
17 7.
18 (EXHIBIT MARKED FOR IDENTIFICATION.)
19 Q. Exhibit 7 is renewal application to the
20 Public Utilities Commission, again, certificate
21 number -- certificate case 04-1323-EL-CRS. I don't
22 see a date stamp on it, but the stamp at the bottom
23 says "October 3rd, 2006."
24 I'm going to direct your attention to

1
2
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5
6 Q. (By Mr. Small) Back to the option
7 agreements, who's authorized for DERS to pay out the
8 amounts in the option agreements? Do you understand
9 the question?
10 A. I believe I do.
11 Q. Okay.
12 A. Someone in Accounts Payable is authorized
13 to process payments.
14 Q. Can you authorize a payment under the
15 option agreement?
16 A. I believe I have authorized some
17 payments, actually, in early-2006, so yes.
18 Q. How many people would have such
19 authorization?
20 A. I think for clarity I should say this,
21 right, I mean, once the premium -- once the option
22 agreement is reached, right, the calculation of the
23 premium and the payment of that is really governed by
24 the transaction and the actual payment is going to be

1 Exhibit C-3, it looks like this. It's about midway
2 through the document. And I'm starting with -- there
3 are actually many exhibits called C-3, so you have to
4 go to the first one.
5 That's fine, you're in the right place.
6 Now, I'm on an Exhibit C-3 that shows the
7 name Lon Mitchell at the top. Are you there?
8 A. Yes.
9 Q. Do you know who Mr. Mitchell is?
10 A. I do.
11 Q. Who is he?
12 A. He's the chief financial officer and
13 treasurer of Duke Energy Retail Sales, LLC.
14 Q. Would you give that to me again?
15 Chief --
16 A. It's actually on the document.
17 Q. Okay. Chief Financial Officer?
18 A. Yeah. I just read what it said.
19 Q. Very practical.
20 A. Thank you.
21 Q. Do you know Mr. Mitchell?
22 A. Help me with the word "know," right?
23 Q. I'm sorry?
24 A. Help me with the word "know."

1 Q. Well, the question is of the nature of
2 you're the president of DERS.

3 A. Yeah.

4 Q. This is the chief financial officer of
5 DERS. I think it's a natural question to ask whether
6 you know the chief financial officer of your
7 corporation.

8 A. Yeah, I know him.

9 Q. Okay. What are his responsibilities?

10 A. He does financial -- he keeps the
11 financial records and he does -- performs a treasury
12 function for DERS. He maintains the --

13 MR. PAHUTSKI: You've answered the
14 question.

15 THE WITNESS: Yeah.

16 Q. Is he a Shared Services employee?

17 A. I believe so.

18 Q. Does he provide financial record-keeping
19 functions for other Duke entities?

20 A. I don't know.

21 Q. Would you turn to the next page? You can
22 see here I have a balance sheet, December 31st,
23 2005, and we have some accounts receivables and
24 accounts payable by DERS. Do you see that?

1 has not had revenues in the past, correct?

2 A. I believe that's what I said. I'm not --

3 we should look at the transcription and see, I hope
4 that's the right word, "transcription," to see if
5 that's what I said.

6 Q. Between the two I see a very large
7 decrease in Administrative and General Expenses
8 between 2005 and 2006. Do you know what the reason
9 for that is?

10 A. I don't.

11 It's probably the allocation of time,
12 right? When I spend time as a Shared Service
13 employee and I spend time on DERS activities, I'll
14 take my -- my time will get processed through a, you
15 know, an intercompany accounting system, I don't know
16 what the name of it is, but it's probably -- probably
17 reflecting, at least the idea that the budget in 2006
18 said that there was going to be less time by Shared
19 Service employees being allocated to Duke Energy
20 Retail Sales. That's the only thing that I can
21 surmise from that.

22 Q. And "less time" means reduced level of
23 activities?

24 A. Just less time. Could also be that --

1 A. I do.

2 Q. What documents or agreements govern the
3 intra-Duke affiliate transactions that are
4 represented by those balance sheet accounts?

5 A. I don't know.

6 Q. Is Mr. Mitchell the person who would
7 know?

8 A. I can't speak to what Mr. Mitchell knows
9 or doesn't know.

10 Q. Is there anybody besides Mr. Mitchell
11 that deals with the financial accounts of DERS?

12 A. In one of my previous questions I told
13 you that there were two individuals, Brian Savoy and
14 Mark Krabbe.

15 Q. Thank you for refreshing my memory. I
16 forgot about them.

17 A. That's fine.

18 Q. Let's move on to the income statements,
19 2005 is on the next page -- sorry, they're all
20 labeled C-3 -- and the following page is the budgeted
21 statement December 31st, 2006. Do you have those
22 two statements?

23 A. I do.

24 Q. Now, you said that DERS has no revenues,

1 MR. PAHUTSKI: You've answered the
2 question.

3 THE WITNESS: \$285,000. I don't know.
4 (Discussion held off the record.)

5 Q. Now, the losses that are shown here, the
6 operating loss which was a little over \$14 million in
7 2005 and a little over \$22 million for the budgeted
8 statement for 2006, do you know how that is accounted
9 for on the books of the affiliated companies?

10 MR. PAHUTSKI: Objection; the question
11 assumes facts not established. There's been no
12 discussion about whether or not affiliated companies
13 have any relationship to these operating losses.

14 Q. Mr. Whitlock, in the filing to the Public
15 Utilities Commission you've seen, haven't you,
16 consolidated books for the affiliated companies?

17 A. I don't understand the question.

18 Q. Well, there are financial statements for
19 consolidated Duke entities or predecessors, not just
20 for their individual companies; isn't that correct?

21 A. You're going to have to repeat the
22 question. Sorry.

23 (Question read.)

24 A. Yes.

1 Q. Okay. And, again, when these losses are
2 consolidated in that fashion, what are they
3 consolidated with?

4 A. What accounts? I don't know.

5 Q. Do you know who would know? One of these
6 three accounting people that you mentioned?

7 A. I don't know if they would know.

8 Q. Okay. Back to the option premium which
9 is shown on both of these exhibits, both of these
10 income statements, one for 2005, one for 2006, 2005
11 there's \$13.8 million, in 2006, \$22.2 million.

12 MR. PAHUTSKI: Let the record reflect
13 those are approximations.

14 MR. SMALL: Yeah, those are round-ups.
15 Proper round-ups.

16 Q. Do you know if there were any payments
17 before 2005?

18 A. No, but I don't think there were.

19 Q. Okay. What is the purpose of the
20 payments?

21 A. The purpose of the payments is so that
22 DERS has the ability to, if prices go lower, to put
23 load to these customers and serve them, actually
24 provide electricity and capacity at a predetermined

1 we compete in an auction and we win load in a
2 wholesale auction or we serve retail customers, we
3 will do it at a margin that produces margins.

4 Q. Yeah, that struck me. A little while
5 back you told me that DERS was formed because of
6 generation deregulation in order to provide the
7 ability to participate in retail auctions. Now,
8 these option payments are not in connection with any
9 retail auction, are they?

10 A. The option payments are with retail
11 customers.

12 Q. That wasn't the question. The question
13 is whether they're in connection with an auction.

14 A. I believe that, and we can go back to the
15 record, but I believe that I said that we were
16 talking about why Duke Energy Retail Sales was
17 created, and one of those -- one of those reasons was
18 to participate in wholesale auctions, and I believe
19 we talked about New Jersey and Illinois at the time.
20 Does that answer your question?

21 Q. Well, you said it was formed for that
22 purpose.

23 A. It was formed for a variety of purposes,
24 right? I mean, it can serve retail load in Ohio. It

1 price. We bought a put option. And right now on the
2 financial statements all you see is the premium paid.

3 Q. And what do you mean by "right now"?

4 A. I was talking about C-3 that you saw,
5 basically in 2005 we didn't exercise the puts and
6 sell electricity at the strike price to any of the
7 customers that DERS has.

8 Q. And you didn't do it --

9 A. And in 2006 the budgeted statement of
10 income assumes the same thing.

11 Q. And putting aside the assumption, DERS
12 did not exercise those options during 2006.

13 A. That's true. They were out of the money.

14 Q. How does your corporation -- well, yours,
15 you're the president. How does the company survive
16 year after year with only losses, no revenues?

17 A. I mean, there are a lot of companies that
18 don't make money, right? We have two years of
19 business where we don't have revenues. I don't know
20 if that's, you know, we paid for options, those
21 options are not in the money. It would be foolish
22 for us to exercise those options, right? This
23 business vehicle is -- it's not -- there's days --
24 this company will make money some day, right? When

1 could participate -- if we had an auction in Ohio, it
2 could participate in that auction. It did the -- it
3 could participate in the New Jersey auction. It
4 could participate in the Illinois auction.

5 If we chose to go to Texas, and I'm not
6 familiar with the laws in Texas, but if we had to
7 have a certified retail supplier, this is the entity
8 that we would use to participate in those auctions.
9 That's what I believe I said.

10 Q. Would you turn to Exhibit C-7 in what we
11 have as Exhibit 7?

12 MR. PAHUTSKI: Let the record reflect
13 that Mr. Small is still referring to Exhibit 7.

14 MR. SMALL: Whitlock Deposition Exhibit
15 7.

16 MR. PAHUTSKI: Thank you.

17 Q. And you are looking at the first full
18 page of content, that's what I'm going to ask you
19 about.
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19 (OPEN RECORD.)
20 MR. SMALL: Well, I've kind of overshoot
21 the mark, but the real question is are we out of
22 confidential information? I'm not sure we are.
23 We're looking at -- we're looking at public
24 documents.

1 off of their website, indeed in the lower left-hand
2 corner is dnb.com/scripts. I have no idea when this
3 was done.
4 Q. Is it also -- it's possible that it's
5 incorrect as well? It's not an internal document.
6 A. It's a D&B document.
7 Q. Okay. I'm asking whether it could be
8 incorrect.
9 A. I don't know.
10 Q. Do you know if there's ever been an
11 employee of DERS?
12 A. We talked about some of the employees.
13 Jason Barker was an employee of DERS.
14 Q. Actually employed by DERS?
15 A. No. Wait a second. Sorry, he was a
16 Shared Service employee.
17 Q. Right.
18 A. Well, I don't know.
19 Q. Okay. You don't know of any employees of
20 DERS.
21 A. No.
22 Q. And annual sales, I think from our
23 previous questions and answers we established DERS
24 has had zero revenues. Do you know where the 300

1 MR. PAHUTSKI: Yeah, I would consider
2 these public documents not to be confidential.
3 MR. SMALL: This is not part of the
4 confidential record.
5 (OPEN RECORD.)
6 Q. Do you see the four employees on that
7 sheet?
8 A. I do.
9 Q. Do you know why it says four employees?
10 A. I assume because they had four employees.
11 Q. At what point in time? And the "they,"
12 this is DERS; is that correct?
13 A. Correct. I'm saying at this time, right,
14 I don't know when this document was prepared, but at
15 the time of this document there were four employees
16 in DERS, or at this time Cinergy Retail Sales.
17 Q. The date I've got on this for docketing
18 in the PUCO is October 3rd, 2006, not very long
19 ago.
20 A. Okay. This is a D&B report, and I'm
21 saying I don't know the date of this D&B report --
22 Q. I see.
23 A. -- right? I mean, this D&B report, you
24 can print it out of D&B. This looks like a printout

1 comes from?
2 A. No idea.
3 Q. All right. Let's go of the record.
4 (Recess taken.)
5 MR. SMALL: Let's go back on the record.
6 I have a couple of -- in order to best segment the
7 record into confidential and nonconfidential, I have
8 a couple of follow-ups on things I'm pretty sure are
9 nonconfidential and then we'll go into the
10 agreements, okay?
11 Q. Previously you made a statement, well,
12 actually you made statements about not knowing
13 certain people's functions in the Duke-affiliate
14 structure. Regarding this separation of the
15 generation and the -- what did you call it, the wires
16 function? Does that sound fair?
17 A. I don't remember. Go ahead and ask your
18 question.
19 Q. The generation from the nongeneration
20 portion of it. How do you know what side of the
21 business somebody's on so you know whether you can
22 talk to them or not?
23 A. Well, let me say this, right, I mean the
24 people that I talk to -- I sit on a very wide-open

1 floor that is restricted, has restricted access,
2 there are places that I just can't go, so I know
3 those places that I can't go because my card key, you
4 know, alarms will go off and people will -- so that's
5 one way I know.

6 The other way I know is that, you know,
7 I'm trying to -- that's primarily the way. But the
8 people that I deal with day in and day out, I have
9 the ability to deal with. And if I have to have
10 conversations with somebody where I have a question,
11 I'll typically consult an attorney to find out that
12 I'm not going to get in the briar patch of code of
13 conduct.

14 Q. That's when you're going further afield?

15 A. If I had a question, I would ask. So I
16 would say I generally know who I can talk to. If I
17 have a question about who I can talk to, I will ask
18 someone.

19 Q. There's no guide, there's no book,
20 there's no --

21 A. There's all kinds of training on code of
22 conduct, right? I mean, I --

23 Q. That's not what I meant. I meant books
24 that would identify a person with one side of the

1 A. Well, I mean, let's go to one of the
2 documents. I thought I saw his name on some of these
3 documents.

4 I might have been mistaken.

5 Q. But you previously described people who
6 were able to -- I believe we had some questions and
7 answers regarding the authorization of certain
8 payments --

9 A. Right.

10 Q. -- and you discussed there would be
11 certain people, accounting type people, processing
12 type people, who could authorize those payments or
13 who process those payments, and are you saying
14 Mr. Ziolkowski is one of those people?

15 A. I seem to remember seeing a document with
16 his name on it and it was processing a payment.

17 Q. Okay.

18 MR. SMALL: I believe this is the time.

19 MR. PAHUTSKI: Thank you.

20 Mr. Small has indicated that we're going
21 to begin a discussion of the option contract or the
22 contracts that DERS may or may not be entered into,
23 and we consider all of the answers to these questions
24 and perhaps the questions themselves, to the degree

1 business or another.

2 A. I don't want to say there isn't. If
3 there is, I haven't seen it.

4 Q. Okay. I have a couple of other names
5 that I would like to know if you can identify these
6 individuals. Jim Ziolkowski, Z-i-o-l-k-o-w-s-k-i.

7 A. I've seen his name on some of the
8 documents that we produced for you on the payments.

9 Q. Yes.

10 A. So I recognize his name.

11 Q. He's labeled Rate Services, does that
12 tell you where he works?

13 A. Sounds like Rate Services.

14 Q. What is Rate Services?

15 A. I don't know.

16 Q. I thought you might know better than I
17 do, but okay.

18 You don't know him personally.

19 A. No.

20 Q. Okay. And you don't know whether he has
21 any connection or not with the DERS.

22 A. Well, he has a connection in that he
23 processes the payments, right, but --

24 Q. Processes payments?

1 they reference substantive matters with respect to
2 those contracts, to be confidential under the
3 confidentiality agreement signed by the parties today
4 and the protective agreement signed by OCC and DERS
5 today.

6 MR. SMALL: And, therefore, this portion
7 will be marked as Confidential in the transcript.

8 MR. PAHUTSKI: Yes. Thank you.

9 (CONFIDENTIAL PORTION EXCERPTED.)

1
2
3
4
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6
7
8
9 Q. Mr. Whitlock, are you familiar with the
10 organization and the actual party in this case I
11 refer to as the 03-93 case on remand, the
12 organization called the [REDACTED]
13 A. I'm more familiar with the agreements by
14 the counterparty terms as opposed to broad
15 categorizations, but if we go to a document, I can --
16 Q. Okay.
17 MR. COLBERT: Excuse me, Mr. Small. To
18 make sure, the documents that you're putting on the
19 chair back there, those are confidential documents to
20 be collected at some point?
21 MS. BOJKO: Yes.
22 MR. SMALL: I know.
23 MR. COLBERT: Thank you.
24 MR. SMALL: The problem is they appear to

1 be made as -- do you want to see one? They are
2 supposed to be two-sided documents, some of them are
3 one-sided, but I think we have enough two-sided ones
4 to do the job.
5 MR. COLBERT: We tried to provide the
6 whole thing.
7 MR. SMALL: It's our poor copying.
8 MR. COLBERT: I see.
9 MR. SMALL: I'll put them down here.
10 MR. COLBERT: I wanted to make sure they
11 wouldn't leave this place.
12 MR. SMALL: Say no more.
13 (EXHIBIT MARKED FOR IDENTIFICATION.)
14 Q. (By Mr. Small) And we have marked that as
15 Exhibit 10, and I haven't referred to an Exhibit 8 or
16 9 yet, but I may yet. Now, just a moment ago you
17 were talking about -- what I have here as Exhibit 10
18 is a document on one side called 2006 CRS Option
19 Payment Budget, on the reverse side appears to be
20 some -- the feature seems to be actuals through June
21 of 2005.
22 MR. COLBERT: Mr. Small, can you
23 reference a Bates number so we can follow?
24 MR. SMALL: Yes.

1 MR. COLBERT: Thank you.
2 MR. SMALL: Thank you, that's very
3 useful.
4 The page with the actuals on it is 517,
5 Bates stamp 517, and the page with the title
6 "2006 CRS Option Payment Budget" is Bates stamped
7 516.
8 MR. COLBERT: Thank you.
9 Q. (By Mr. Small) Now, I referred to [REDACTED]
10 You said you were more familiar with the -- I'm
11 sorry, you were more familiar with what? I don't
12 want to mischaracterize it.
13 A. The counterparties.
14 Q. Counterparties, right. This document
15 appears to organize them into groups. Is it my
16 understanding that [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 A. Not really.
22 Q. Okay. Do you understand the designation
23 [REDACTED]
24 A. Is it [REDACTED] Is that

1 right?
2 Q. [REDACTED]
3 A. Okay.
4 Q. They're a party to the case.
5 A. Okay.
6 Q. [REDACTED]
7 [REDACTED]
8 A. Okay.
9 Q. I only say that because they're parties
10 to the case.
11 A. Okay.
12 Q. What is your understanding of what these
13 rows are [REDACTED]
14 A. That they're [REDACTED]
15 [REDACTED]
16 is that what --
17 Q. How do you arrive at these numbers?
18 A. These look like [REDACTED]
19 [REDACTED]
20 Q. Go ahead.
21 A. -- by those categories.
22 Q. And what are those categories? [REDACTED]
23 [REDACTED]
24 A. [REDACTED]

1 [REDACTED]
 2 Q. [REDACTED]
 3 the terminology you're using?
 4 A. No.
 5 Q. So who are the counterparties?
 6 A. That's where I'm going to have to -- the
 7 [REDACTED]
 8 [REDACTED] They're -- I mean, we provided the
 9 documents.
 10 Q. Okay.
 11 A. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 Q. Okay.
 16 A. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. Okay. And these total on the sheet to
 23 [REDACTED] Do you see that on the 2006?
 24 A. I do.

1 Q. And going back to Exhibit 7, do you
 2 remember we did that C-3, the income statements?
 3 A. Yeah.
 4 Q. It's before.
 5 A. Oh, C-3? I thought you said "C-7," I'm
 6 sorry.
 7 Q. C-3.
 8 A. Okay.
 9 Q. Now, I see a number for [REDACTED]
 10 [REDACTED] do
 11 you see that?
 12 A. What page of C-3 are you on? I'm sorry.
 13 Q. Budgeted statement income for the year
 14 ended December 31st, 2006.
 15 A. Yep, I see that.
 16 Q. And since they both appear to be budgets,
 17 they should be -- they're comparable. In other
 18 words, they're both budgets for 2006 option payments;
 19 is that correct?
 20 A. Yes.
 21 Q. So nearly all of the budgeted -- I'm a
 22 little bit confused. [REDACTED]
 23 [REDACTED]
 24 A. I don't know.

1 Q. [REDACTED]
 2 [REDACTED]
 3 A. Yes.
 4 Q. Okay. Do you know who the -- let's move
 5 on to [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 A. Again, I know the counterparties, it
 9 would be helpful if you grouped them by the [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 Q. Okay, let's mark this as an exhibit; 11.
 14 (EXHIBIT MARKED FOR IDENTIFICATION.)
 15 MR. BOEHM: Jeff, does that have a Bates
 16 number?
 17 MR. SMALL: Yes, it does. Exhibit 11 is
 18 Bates stamped 320 through 326.
 19 MR. BOEHM: Thank you.
 20 MR. SMALL: Very good clarification. I
 21 didn't have the documents earlier, so I'm not
 22 organized according to Bates stamps.
 23 Q. Do you see at the top the date November
 24 22nd, 2004?

1 A. Yes.
 2 Q. This is an agreement between DERS'
 3 predecessor, CRS, and certain member organizations
 4 that for the purposes of the 03-93 case were
 5 identified as [REDACTED]
 6 MR. SMALL: I hope I haven't gone too
 7 far, David, but it was in your motion to intervene.
 8 [REDACTED] I'm sorry? I didn't catch
 9 it.
 10 MR. SMALL: These are your members and
 11 those were in your motion to intervene.
 12 [REDACTED] Sure.
 13 Q. Do you recognize these as counterparties
 14 to option agreements?
 15 A. I do.
 16 Q. Now, I would turn to the last page, I
 17 see --
 18 (Discussion held off the record.)
 19 Q. Would you turn to paragraph 7 of the
 20 agreement? I'd forgotten this part of the question
 21 and answer we just went through, but do you recognize
 22 this as an agreement between what we've been calling
 23 DERS, which includes CRS, and these identified
 24 parties in the first paragraph? This is a DERS

1 contract, isn't it?
 2 A. [REDACTED]
 3 Q. Let's just stick with this agreement.
 4 A. Fair enough.
 5 Q. Is this agreement with DERS?
 6 A. Yes.
 7 Q. Okay. Now if you could move to paragraph
 8 7. In paragraph 7 there's a reference to Cincinnati
 9 Gas & Electric Company's next distribution base rate
 10 case; do you see that?
 11 A. I do.
 12 Q. There's an agreement there that says
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Do you see that?
 17 A. I do.
 18 Q. That's a provision that includes --
 19 that's a provision involving Cincinnati Gas &
 20 Electric which we've been otherwise referring to as
 21 DE-Ohio. Why is that in a DERS contract?
 22 A. I wasn't a party to negotiating these
 23 contracts, so I couldn't tell you why it was in
 24 there, but it seems odd to me because DERS could not

1 compel Cincinnati Gas & Electric Company to do
 2 anything really other than to say -- to ask for that
 3 filing, but they can't compel the Cincinnati Gas &
 4 Electric Company to do anything.
 5 Q. [REDACTED]
 6 [REDACTED]
 7 A. [REDACTED]
 8 Q. Okay. [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 A. Yes.
 12 MR. SMALL: All right, let's mark this as
 13 Exhibit 12.
 14 (EXHIBIT MARKED FOR IDENTIFICATION.)
 15 Q. Now, we're going to be using Exhibit 11
 16 and Exhibit 12. [REDACTED] is the first identified
 17 counterparty in paragraph 1 of Exhibit 11, right?
 18 A. Yes.
 19 Q. And Exhibit 12, what is that document
 20 Bates stamped 1 through 14?
 21 A. That's [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 Q. I just asked you what [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 A. Yes. It's in -- yes.
 6 Q. Where did you see that? I think you --
 7 where did you spot the [REDACTED]
 8 A. 9.7 of the contract, of the option
 9 payment contract.
 10 I should also point out that these
 11 agreements --
 12 Q. I'm sorry?
 13 A. [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Q. Those paragraph numbers?
 17 A. I'm sorry, it's page 5, Bates stamp 324.
 18 Q. Go a little more slowly. I can't follow
 19 you.
 20 A. All right. Bates stamp 324.
 21 MR. SMALL: 324? I'm on 11.
 22 MR. PAHUTSKI: We're on the Exhibit 11,
 23 Mr. Small.
 24 MR. SMALL: Okay.

1 Q. I'm sorry. What was the number?
 2 A. 324.
 3 Q. Yes.
 4 A. There's -- I think it's 12A where it
 5 says, [REDACTED]
 6 [REDACTED] right?
 7 Q. Yes.
 8 A. [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 Q. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 A. [REDACTED]
 22 [REDACTED]
 23 Q. Yes.
 24 A. We had an option -- we had -- let me find

1 the language.
 2 What was the question again, I'm sorry?
 3 (Question read.)
 4 A. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. We'll go back to Exhibit 11.
 8 A. Okay.
 9 Q. First paragraph; [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 A. Yes.
 13 Q. Are the terms, many terms of the
 14 agreement in what's marked as Exhibit 11, is there a
 15 general correspondence between those terms and the
 16 terms of the option agreement, Exhibit 12?
 17 A. No. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 Q. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. No. It's not correct.
 24 (Discussion held off the record.)

1 Q. There's an agreement with [REDACTED] there's --
 2 [REDACTED] Objection. There's no
 3 evidence --
 4 MR. SMALL: Okay.
 5 [REDACTED] -- exhibits or anything
 6 showing that [REDACTED]
 7 MR. SMALL: All right. There's an
 8 agreement with counterparties that have been
 9 identified in this case as [REDACTED]
 10 (EXHIBIT MARKED FOR IDENTIFICATION.)
 11 Q. Mr. Whitlock, I'm going to go back to
 12 Exhibit 11 and paragraph 2, option A. At the bottom
 13 of that paragraph, it's labeled as option A, there's
 14 a reference, the last words in that paragraph are
 15 [REDACTED] Do
 16 you see that?
 17 A. I do.
 18 Q. [REDACTED]
 19 [REDACTED]
 20 A. I don't.
 21 Q. [REDACTED]
 22 [REDACTED]
 23 [REDACTED] which I
 24 have labeled as Exhibit 11?

1 A. Yes.
 2 Q. Let's go back to paragraph 12. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 A. I don't believe so.
 8 Q. Well, in the FPP case that you're
 9 testifying in, [REDACTED]
 10 [REDACTED]
 11 A. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Q. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 A. Yes.
 20 Q. [REDACTED]
 21 A. Yes.
 22 Q. All right. There are more than one
 23 agreement with the same parties, and we'll get to
 24 Exhibit 13 in a little bit. Sorry if we're out of

1 order.
 2 MR. SMALL: Let's make this Exhibit 14.
 3 (EXHIBIT MARKED FOR IDENTIFICATION.)
 4 MR. PAHUTSKI: I'm sorry, this was
 5 exhibit?
 6 THE REPORTER: Fourteen.
 7 MR. PAHUTSKI: Thank you.
 8 MR. BOEHM: And what's the Bates number?
 9 MR. SMALL: It's 327 to 332.
 10 Q. (By Mr. Small) This agreement, let's
 11 compare it with Exhibit 11. This agreement is also
 12 with [REDACTED] is that correct?
 13 A. No.
 14 Q. [REDACTED]
 15 A. Yes.
 16 Q. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 A. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

1 A. I don't know. I wasn't a party to the
2 negotiating of these contracts, so I don't know
3 exactly.

4 Q. Were you involved in the creation in any
5 way of the option agreements, for instance, Exhibit
6 12?

7 A. I was not.

8 Q. Okay. I'm going to mark Exhibit 15 Bates
9 stamped 333.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Now, this agreement -- I'm sorry, this
12 document is dated [REDACTED] which is after
13 the option agreement; is that correct? Or let me go
14 back.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] Correction for the record.

19 The letter refers to [REDACTED]

20 MR. SMALL: I'm sorry, [REDACTED]

21 [REDACTED]
22 [REDACTED] Could you reread the
23 question, Mr. Small? I'm sorry, I lost it.

24 MR. SMALL: Let me start over again.

1 Q. Let's go to Exhibit 13.

2 [REDACTED] Mr. Small, do you have
3 another copy of Exhibit 13?

4 Thank you.

5 Q. Mr. Whitlock, do you know the reason why
6 there are multiple agreements with certain parties in
7 this, as we've gone through Exhibits 11, 14, 15, and
8 the option agreement 12? You have Exhibit 12, don't
9 you?

10 A. I do.

11 Q. Okay. Do you know why there are multiple
12 agreements with these parties?

13 A. I don't.

14 Q. Did you have any part or play any role in
15 negotiating them?

16 A. I did not.

17 Q. When did your role start with the option
18 agreements? Was that just to process payments?

19 A. It was -- yeah. So it was in -- that was
20 the first thing that I did relative to the option
21 payments was to process the payments or approve
22 payments.

23 Q. Now, Exhibit 13, which starts at Bates
24 stamp 334, has an agreement and it mentions [REDACTED]

1 Q. Mr. Whitlock, is there a option agreement
2 between DERS and [REDACTED] and is there an option agreement
3 between DERS and [REDACTED] that predates [REDACTED]

4 A. [REDACTED]
5 Q. [REDACTED]
6 [REDACTED] Mr. Small, if there is
7 such an agreement, it would be in the materials we
8 produced. Mr. Whitlock obviously is having
9 difficulty locating that, but if there is one, it
10 would be in the materials we produced.

11 MR. SMALL: This is kind of foundational.
12 I believe there is an agreement.

13 Q. The next question is going to be what is
14 the purpose of this [REDACTED] letter which
15 is Exhibit 15? If you can answer that without going
16 through the document book, that would be fine.

17 A. [REDACTED]
18 [REDACTED]

19 Q. And would that be in a preexisting option
20 agreement?

21 A. [REDACTED]
22 [REDACTED]

23 Q. And that's when it's amended.

24 A. That's what it appears to me.

1 this case; do you see that? The first paragraph.

2 A. I do.

3 Q. So these are -- the named parties are
4 [REDACTED] is that your understanding?

5 A. I mean, the agreement says it's between
6 Cinergy Corp. through its agent Cinergy Retail Sales
7 and [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 Q. So the agreement is with [REDACTED]

11 A. I don't know what "further benefit"
12 means.

13 [REDACTED] Objection. Objection. I
14 think that mischaracterizes what Mr. Whitlock just
15 testified to.

16 MR. SMALL: He just read it. I asked for
17 his interpretation.

18 [REDACTED] Object in that it could
19 call for -- that calls for a legal conclusion as to
20 contract interpretation, and Mr. Whitlock's not an
21 attorney trained to interpret these contracts from a
22 legal perspective.

23 Q. Now, Mr. Whitlock, is this agreement in
24 effect?

1 A. No.
2 Q. And why not?
3 A. Because it was superseded by option
4 agreements with [REDACTED]
5 [REDACTED]

6 The other thing that I should point out
7 is on page 338 that this agreement, again, has
8 [REDACTED]
9 [REDACTED]

10 Q. And that was Bates stamp 338?

11 A. Yes, sir.

12 MR. SMALL: And let's mark this as
13 Exhibit 14.

14 [REDACTED] What are we marking
15 Exhibit 14?

16 MR. SMALL: Sixteen.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 [REDACTED] 341 is now Exhibit No. 16?

19 THE REPORTER: Yes.

20 MR. SMALL: Why, is there some confusion?

21 MS. BOJKO: It was not marked previously.

22 MR. NEILSEN: Okay, we were just talking
23 and the agreement you were just talking about with
24 the witness that was number --

1 members named therein?

2 MR. COLBERT: What Bates number are you
3 looking at now, Jeff?

4 MR. SMALL: Bates stamped 50 is Exhibit
5 No. 17.

6 [REDACTED] Can you repeat the
7 question, Mr. Small?

8 (Question read.)

9 Q. And what I mean "members named therein,"
10 I mean [REDACTED] was named in Exhibit 13 and 16.
11 So this would supersede the agreement with --

12 involving [REDACTED]

13 A. It does on Bates stamp 59, right, it
14 talks about [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. And, again, you didn't have anything to
18 do with negotiating or creating this, you came in at
19 the point where you were processing payments.

20 A. These were existing agreements.

21 Q. Okay. Does DERS have agreements with
22 [REDACTED]

23 A. Not to my knowledge.

24 Q. Have you ever heard of [REDACTED] He

1 MS. BOJKO: The [REDACTED] agreement, that
2 is Bates stamped 334.

3 MR. NEILSEN: Yes. That is exhibit
4 number what?

5 MR. SMALL: Thirteen.

6 MR. NEILSEN: Thirteen?

7 MS. BOJKO: Yes.

8 MR. NEILSEN: Thank you.

9 Q. (By Mr. Small) And No. 16 is an earlier
10 agreement?

11 [REDACTED] Can you clarify? Earlier
12 than what?

13 MR. SMALL: Earlier than the Exhibit 13
14 agreement.

15 A. It appears to be, yeah.

16 Q. Do you know why there were multiple
17 agreements?

18 A. I don't.

19 Q. Now, I have an option agreement as
20 Exhibit 17.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. This is an option agreement involving
23 [REDACTED] and is it your understanding that
24 [REDACTED]

1 would be legal counsel for them.

2 A. No.

3 Q. Have you in the -- and when I say "you,"
4 DERS --

5 A. Yes.

6 Q. -- have agreements with the city of
7 Cincinnati?

8 A. Yes.

9 No? No.

10 Q. All right.

11 MR. SMALL: I thought the answer was no,
12 but ...

13 Q. Have you had dealings with [REDACTED]
14 [REDACTED] or with [REDACTED]

15 A. Not to my knowledge.

16 Q. Does DERS have any agreements with
17 [REDACTED]

18 A. Yes.

19 Q. And that was [REDACTED]
20 That's all right, let's move on.

21 Does DERS have any agreement with [REDACTED]

22 A. No.

23 I think we provided the documents and all
24 the agreements that DERS's a party to.

1 Q. I'm just doing a little housekeeping
2 here.
3 A. That's fair.
4 Q. Have there been any agreements with DERS
5 with [REDACTED]
6 A. I don't know.
7 Q. Is there any agreement between DERS and
8 [REDACTED] or have you ever heard of
9 [REDACTED]
10 [REDACTED] objection; compound
11 question. Can you ask that twice?
12 Q. Is there any agreement between [REDACTED]
13 [REDACTED] and DERS?
14 [REDACTED] Again, as Mr. Whitlock has
15 indicated earlier, agreements between DERS and
16 customers of Duke Energy - Ohio that are parties to
17 these proceedings have been provided in the documents
18 we provided today.
19 Q. Okay. Looks like your answer is "I don't
20 know," that I should look in the documents.
21 A. Yes. To both.
22 Q. Huh?
23 A. Yes to both. I don't know, and you
24 should look in the documents.

1 Q. Can you give an example -- there's a
2 statement in one of your pleadings, meaning DERS's
3 pleadings, [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 We've looked at several of these option
10 agreements, [REDACTED]
11 [REDACTED] Do you know of any
12 provisions like that?
13 A. [REDACTED]
14 Q. What exhibit number are you on?
15 A. I don't know. Exhibit 17.
16 Q. All right. Please.
17 A. [REDACTED]
18 Q. Bates stamped?
19 A. On Bates stamp 059, page 10 of the
20 agreement [REDACTED]
21 Q. Okay.
22 [REDACTED] Mr. Small, we're
23 approaching 6 o'clock. Are we about to wrap up?
24 MR. SMALL: We are about to wrap up.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)
2 [REDACTED] Mr. Small, just for
3 convenience sake, are we through with exhibits up
4 through Exhibit 17 so Mr. Whitlock can just organize
5 this side of the table here?
6 MR. SMALL: I think so.
7 [REDACTED] Thank you. So he just
8 needs to have in front of him at this point Exhibit
9 18?
10 MR. SMALL: Yes.
11 [REDACTED] Thank you.
12 MR. SMALL: I may have to go back to one
13 in a little bit, but right now I'm going to ask about
14 18.
15 MR. COLBERT: 18 which is Bates stamp
16 number?
17 MR. SMALL: It's 347.
18 MR. COLBERT: Thanks.
19 Q. (By Mr. Small) Have you seen this
20 agreement before? Have you looked at this agreement
21 before?
22 A. I have seen it.
23 Q. [REDACTED]
24 [REDACTED]

1 [REDACTED]
2 A. I'm assuming that it's on Bates stamp
3 352, it's Exhibit 1 of the agreement.
4 Q. [REDACTED]
5 A. I would assume. It says -- in fact, it
6 does, the first sentence, right. It says the
7 agreement -- attached agreement Exhibit 1.
8 Q. Very well, thank you.
9 A. You're welcome.
10 MR. SMALL: Exhibit 19.
11 (EXHIBIT MARKED FOR IDENTIFICATION.)
12 Q. Mr. Whitlock, this agreement superseded
13 the -- "this agreement" being Exhibit 19, superseded
14 the agreement shown in Exhibit 18?
15 A. Yes.
16 Q. And now I'm going to go to Exhibit 20,
17 Bates stamped 204.
18 (EXHIBIT MARKED FOR IDENTIFICATION.)
19 Q. Mr. Whitlock, the option agreement,
20 similar to the previous situations in Exhibit 20,
21 [REDACTED]
22 [REDACTED]
23 A. Yes, I take it at 212, Bates stamp 212,
24 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 Q. I'm not -- where are you?
 6 A. Your Exhibit 19.
 7 Q. Yes.
 8 A. I'm trying to -- I'm trying to keep track
 9 of --
 10 Q. Nineteen, okay. I'm on the wrong
 11 exhibit.
 12 A. Bates stamp 356, Exhibit 19.
 13 [REDACTED]
 14 [REDACTED]
 15 Q. Okay. Let's go back to Exhibit 19 for a
 16 second.
 17 A. Okay.
 18 Q. [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 A. I do.
 22 Q. [REDACTED]
 23 A. I do not.
 24 Q. [REDACTED]

1 [REDACTED]
 2 A. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 Q. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 A. I don't know.
 9 Q. You don't know.
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED] Mr. Small, we're going to
 14 ask that the option agreements speak for themselves.
 15 [REDACTED]
 16 [REDACTED]
 17 MR. SMALL: Okay.
 18 Q. Mr. Whitlock, if you would return to
 19 Exhibit 13, Bates stamped 337.
 20 A. Give me a second, would you please?
 21 Q. Yeah.
 22 A. Exhibit 13?
 23 Q. Yes.
 24 A. I have it.

1 Q. Bates stamped 337 and paragraph 4.
 2 A. Yes.
 3 Q. [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 A. I do.
 7 Q. [REDACTED]
 8 [REDACTED]
 9 A. I do not.
 10 Q. [REDACTED]
 11 [REDACTED]
 12 A. I'd answer it the same way as I answered
 13 your previous question in the other agreement. No, I
 14 don't know.
 15 Q. [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 A. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

1 Sorry.
 2 MR. SMALL: Let's just go off the record
 3 for a moment.
 4 (Discussion held off the record.)
 5
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(OPEN RECORD.)

MR. SMALL: Mr. Whitlock, my questions are at an end, and I thank you very much for your cooperation. I know it's been a little bit long and that my voice has been kind of hard to hear.

While we're still on the record, we do not waive signature. We would like to get a copy of the transcript and review that, have an opportunity to review it and sign the transcript, so while on the record we would like that to be recorded.

(Thereupon, the deposition concluded at 6:06 p.m.)

CERTIFICATE

State of Ohio :

SS:

County of Franklin :

I, Maria DiPaolo Jones, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Charles R. Whitlock was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 11th day of January, 2007.

Maria DiPaolo Jones, Registered
Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.
(MDJ-2046)

--

State of Ohio :
: SS:

County of _____ :

I, Charles R. Whitlock, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, January 9, 2007; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

Charles R. Whitlock

I do hereby certify that the foregoing transcript of the deposition of Charles R. Whitlock was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2007.

Notary Public

My commission expires _____, _____.

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[REDACTED]

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ALSO
SEE

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Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and

[REDACTED]

[REDACTED]

[REDACTED] (Customers), effective this [REDACTED]

[REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between Customers and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind the Customers and Cinergy to the terms and conditions set forth herein.

This Agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-Parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this Agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall immediately notify the other party. The Parties shall defend the confidentiality of this Agreement. The Parties shall not circulate the Agreement, or its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the Agreement.

The Parties, for good consideration, agree to the following terms and conditions:

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1. The Parties expect that the Provider of Last Resort (POLR) charge of the Cincinnati Gas & Electric Co. (CG&E) will consist of these components: [REDACTED]

2. The Customers may, individually and on an individual account basis, select one of the following options for competitive retail electric service no later than [REDACTED]

Option A

A. Beginning no earlier than [REDACTED] and ending [REDACTED] each Customer [REDACTED]

[REDACTED] Case No. 03-93-EL-ATA. Cinergy shall [REDACTED]

[REDACTED] made to CG&E
The effect of such [REDACTED]

For any Customer who elects this Option A and has a CRES contract extending [REDACTED] but ending no later than [REDACTED] Cinergy shall [REDACTED]

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Beginning no earlier than [REDACTED] and ending [REDACTED]

[REDACTED] facilities may purchase competitive retail electric service from a Cinergy affiliated CRES [REDACTED]

[REDACTED] Cinergy shall [REDACTED]

Under this Option A, Cinergy may [REDACTED]

Option B

B. Each Customer may accept CG&E's market based standard service offer price, including the price to compare and POLR charges approved by the Commission in Case No. 03-93-EL-ATA and retain the right through [REDACTED] to switch to a CRES under the terms and conditions of the Commission's Order. During any time between [REDACTED] and [REDACTED]

Customers choosing Option B [REDACTED]

3. Under both Option A and Option B, this Agreement constitutes Customers' contract with a credit worthy CRES to provide firm generation service for their full capacity, energy and transmission requirements from [REDACTED] through [REDACTED] and satisfies to the maximum extent [REDACTED]

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possible the requirements of Case No. 03-93-EL-ATA that the
[REDACTED]

4. If, prior to [REDACTED] any of the Customers add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds a Customer's combined (all accounts) maximum demand as of [REDACTED]
[REDACTED]
[REDACTED]

5. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. Customers shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]
[REDACTED]

6. Cinergy will comply with all regulatory requirements necessary to be certified as a competitive retail electric service provider to offer competitive retail electric service to Customers as required by paragraph one (1) of this Agreement.

7. In the Cincinnati Gas & Electric Company's next distribution base rate case that results in a change in the Customers' rates, CG&E will file a cost of service study reflecting actual cost of service for all rate classes. [REDACTED]

[REDACTED]
all legal rights in The Cincinnati Gas & Electric Company's next distribution base rate case, including but not limited to, rights to litigate and settle the case. The filing of the cost of service does not in any way constitute a guarantee regarding the outcome of the case. The Cincinnati Gas & Electric Company
[REDACTED]

8. [REDACTED]
[REDACTED]

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[REDACTED]

9. If a Customer had shopped for competitive generation and is subject to a minimum stay with CG&E that extends beyond January 1, 2005, [REDACTED]

[REDACTED]

10. Nothing in this Agreement modifies or limits any settlement agreement reached by the Parties or their agents in Case No. 99-1658-EL-ETP.

11.

[REDACTED]

12. If an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E [REDACTED]

[REDACTED]

This Agreement terminates after [REDACTED] or as follows:

A.

[REDACTED]

B.

[REDACTED]

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[REDACTED]

C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

[REDACTED]

To Cinergy:

[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made in a commercially practicable manner such as by check, ACH or wire transfer to the account designated by the payee from time to time.

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Cinergy and the Customers shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third Parties regarding the enforcement or breach of this Agreement arising from or in connection with the performance of this Agreement.

This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning party.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 

On behalf of Cinergy

On Behalf of the Customers



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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]

This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited
liability company, [REDACTED]
[REDACTED]

RECITALS

WHEREAS, [REDACTED]
purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on
metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified
Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at
retail;

WHEREAS, CRS and [REDACTED]

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the
Parties agree as follows:

ARTICLE I
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect

Cinergy Corporate Records

04-016280



Document Code

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to [REDACTED] CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means [REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive [REDACTED]

"Full Requirements Energy" means, except as provided herein, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS of [REDACTED]

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ARTICLE II
OPTION

- 2.1 [REDACTED] currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by [REDACTED] that it will purchase generation electric service from CG&E starting no later than [REDACTED] accordance with applicable CG&E tariff requirements.
- [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III
CRS POWER CONTRACT TERMS

- 3.1 In the event [REDACTED]
- [REDACTED]

a. Energy Quantity and Type [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.

c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

e. Term. The term of the power sale agreement shall be through [REDACTED]

f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.

g. Adjusted Base Contract Price [REDACTED]

ARTICLE IV
TERM OF AGREEMENT

4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall [REDACTED]

[REDACTED], unless terminated earlier in accordance with the terms of this Agreement ("Term").

4.2 Agreement Termination. [REDACTED]

- 4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V
BILLING

5.1 Payment. [REDACTED]

ARTICLE VI
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
 - 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
 - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or

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transferee entity fails to assume all of the obligations of such Party under this Agreement;

6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or

6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party,

[REDACTED]

ARTICLE VII
DUTY TO MITIGATE

7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII
GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.

8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the

right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by [REDACTED]. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in

accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS [REDACTED] provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between [REDACTED]. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

[REDACTED]

FORM APPROVED
JSB
ATTORNEY

Exhibit A:

Customer Group:

5083887

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EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Exhibit C:

Customer Group: [REDACTED]
[REDACTED]

This agreement pertains [REDACTED]
[REDACTED]

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Agreement

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the [REDACTED]

[REDACTED] (Customers), effective this [REDACTED]. This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. As to [REDACTED]

[REDACTED] It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and [REDACTED] (Parties); it may not be amended except by the written agreement of the parties.

This agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall immediately notify the other party. The Parties shall defend the confidentiality of this agreement. The Parties shall not circulate the agreement, or its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for

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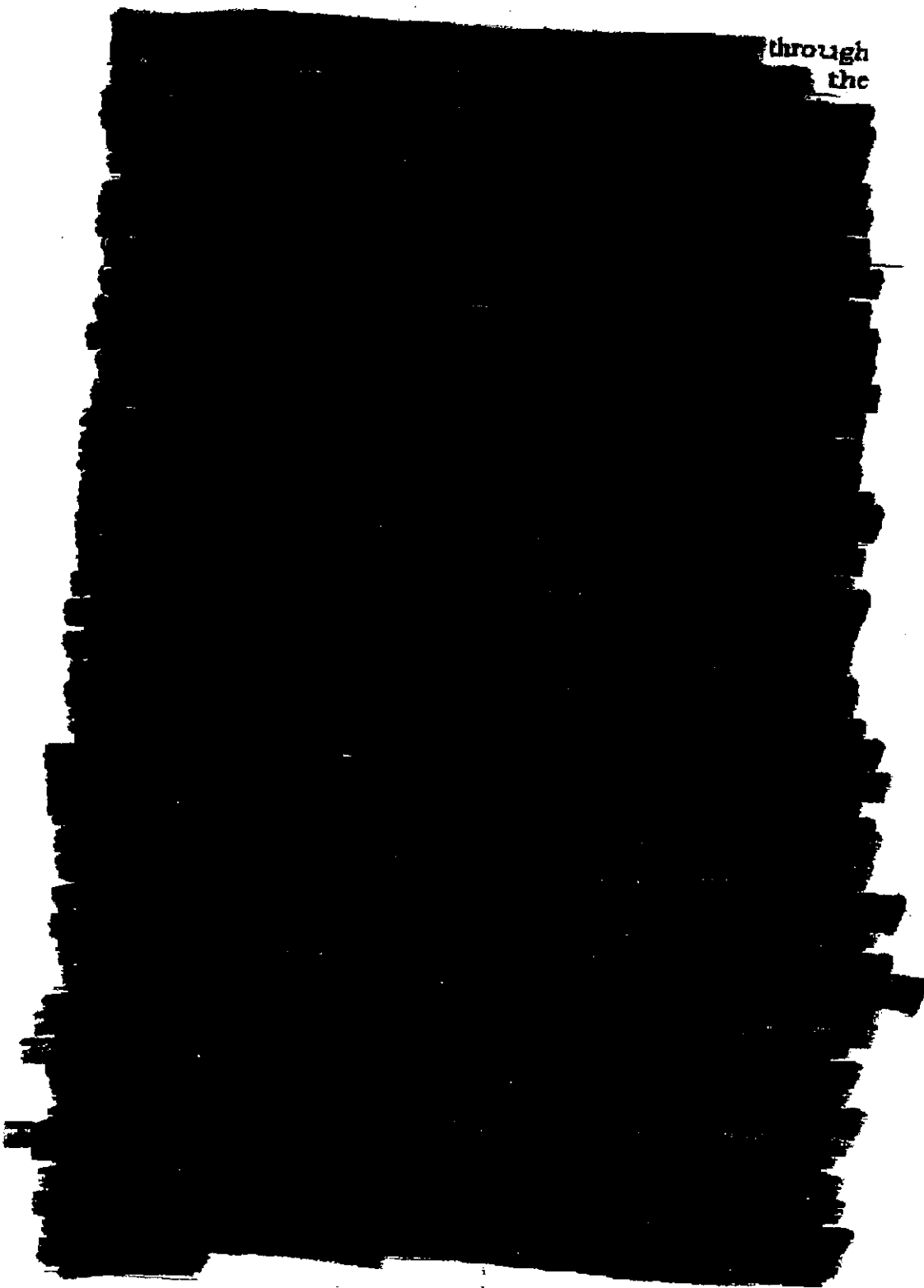
the purpose of effectuating the agreement. For purposes of this paragraph, the term Parties includes the Customers.

The Parties, for good consideration, agree to the following terms and conditions:

1. Beginning

Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy-affiliated competitive retail electric service

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through
the

(C169103)

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2. If, [REDACTED] the Customers add additional load on accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds the Customer's combined (all accounts) maximum demand as of [REDACTED]

3. Customers purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall be deemed to have provided, through this agreement, such written notice as may be required prior to the end of such purchase contract. [REDACTED]

4. [REDACTED]

5. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. Customers shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]

Customers, or their appointed representative, retain all rights to participate in Commission and Federal Energy Regulatory Commission proceedings that may affect the rates, terms, or conditions of distribution and transmission service.

6. [REDACTED]

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7. Cinergy

8.

This agreement terminates after [REDACTED] or as follows:

A.

B.

C.

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[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt.

To Customers:

[REDACTED]

To Cinergy:

Cinergy
[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and the Customers shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

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This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of the affected Customers as well as Cinergy provided, as long as the Customers, they continue to display substantially similar heat and usage characteristics as those that presently exist. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent shall not be unreasonably withheld.

This agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 14th day of November.

On behalf of Cinergy

On behalf of the Customers

[REDACTED]

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Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and

[REDACTED]
[REDACTED]
(Customers), effective this [REDACTED]. It is the intent of the Parties to this Agreement to bind the Customers to the terms and conditions set forth herein.

This Agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-Parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this Agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the Party before such court or administrative agency shall immediately notify the other Party. The Parties shall defend the confidentiality of this Agreement. The Parties shall not circulate the Agreement, or its existence, to any employee, agent, or assignee of the Party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the Agreement.

The Parties, for good consideration, agree to the following terms and conditions:

1. The Customers may, individually and on an individual account basis, [REDACTED]

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- a. Beginning [REDACTED] and ending [REDACTED] each Customer [REDACTED] may purchase competitive retail electric generation service from Cinergy at their current tariffed unbundled generation rate approved by the Commission in case no. 99-1658-EL-ETP and also known as Big G, [REDACTED]

[REDACTED]
approved by the PUCO. It is agreed that for any Customer [REDACTED]

[REDACTED] with The Cincinnati
Gas & Electric Company [REDACTED]

[REDACTED] may be [REDACTED]
unless the parties agree otherwise. Cinergy shall [REDACTED]

[REDACTED] paid to The Cincinnati Gas & Electric Company.
The effect of such [REDACTED] shall be that Customers
will [REDACTED] in Case No.
99-1658-EL-ETP [REDACTED] Cinergy may [REDACTED]

[REDACTED]
or,

- b. Each Customer may accept The Cincinnati Gas & Electric Company's market-based standard service offer price,
[REDACTED]

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retain the right to switch to a competitive retail electric service provider under the terms and conditions of the Commission's order. Upon switching to a competitive retail electric service provider, Cinergy

thereafter paid to The Cincinnati Gas & Electric Company. If a Customer is taking service from a non-Cinergy affiliated competitive retail electric service provider on Cinergy shall

the period and b) this notice constitutes

2. If, prior to any of the Customers add in The Cincinnati Gas & Electric Company's certified territory which exceeds a Customer's combined (all accounts) maximum demand as of January 1, 2005,

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[REDACTED]
any accounts representing new load beyond the foregoing limit are not included under this Agreement.

3. Customers shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.

4. [REDACTED]

5. In the Cincinnati Gas & Electric Company's next distribution base rate case that results in a change in the Customers' rates, CG&E will file a cost of service study reflecting actual cost of service for all rate classes.

6. [REDACTED]

7. If a Customer had shopped for competitive generation and is subject to a minimum stay with CG&E [REDACTED] then the [REDACTED] effective [REDACTED]

8. Nothing in this Agreement modifies or limits any settlement agreement reached by the Parties or their agents in Case No. 99-1658-EL-ETP.

9. The Parties agree to work in good faith to [REDACTED]

Cinergy will [REDACTED]

10. If an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E but which renders invalid or ineffective any provision of this Agreement to the [REDACTED]

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[REDACTED]

This Agreement terminates after [REDACTED] or as follows:

A.

B.

C.

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

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To Cinergy:

[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and the Customers shall defend, indemnify, and hold harmless the non-breaching Party from any and all claims by third Parties regarding the enforcement or breach of this Agreement arising from or in connection with the performance of this Agreement.

This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning Party.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

On behalf of Cinergy

On Behalf of the Customers

[REDACTED]

The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

[REDACTED]

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CINERGY.
SERVICES

139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960

April 4, 2005

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

As you are aware, in the course of negotiating the [REDACTED] with [REDACTED] members existing [REDACTED] it was agreed that the terms and conditions of their [REDACTED] More specifically with respect to [REDACTED] it was [REDACTED]

[REDACTED] While both parties have and continue to agree to this handling of the RTR accounts, I am writing on behalf of [REDACTED] with the purpose of clarifying and gaining written confirmation of the agreement that was reached with respect to the [REDACTED]

The [REDACTED] on behalf of its members, and Cinergy Retail Sales, LLC (the Parties), hereby agree that under the [REDACTED] between [REDACTED]

[REDACTED] The [REDACTED]

Please confirm your agreement to the above by signing and returning the duplicate copy of this letter.

[REDACTED]

[REDACTED] attorney for the [REDACTED]

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Agreement

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the [REDACTED]

[REDACTED] for the benefit of [REDACTED] and [REDACTED] (Customers), effective this [REDACTED] As to

[REDACTED] this agreement is effective only to [REDACTED]

[REDACTED] It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and [REDACTED] (Parties); it may not be amended except by the written agreement of the parties.

This agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall immediately notify the other party. The Parties shall defend the confidentiality of this agreement. The Parties shall not circulate the agreement, or its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the agreement. For purposes of this paragraph, the term Parties includes the Customers.

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The Parties, for good consideration, agree to the following terms and conditions:

1. Beginning [REDACTED] or at such later time as may be specified herein for any accounts of each Customer that may be presently receiving competitive retail generation service from a supplier not affiliated with Cinergy, [REDACTED]

[REDACTED] Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall [REDACTED]

Compliant contracts to implement the above described service relationship between Customers and CRS shall be executed as soon as reasonably possible and shall terminate no later than [REDACTED]

Cinergy [REDACTED]

Commission in case no. 99-1658-EL-ETP and Cinergy shall [REDACTED]

[REDACTED] to The Cincinnati Gas & Electric Company; (2) [REDACTED]

[REDACTED]

to The Cincinnati Gas & Electric
Company; (4)

[REDACTED]

2. If [REDACTED] the Customers add additional
[REDACTED] in The Cincinnati Gas & Electric Company's

[REDACTED]

[REDACTED] day accounts

3. [REDACTED]

3. Cinergy shall [REDACTED]

4. Customers shall pay The Cincinnati Gas & Electric Company's
otherwise applicable transmission and distribution rates as

approved by the Commission. Customers, or their appointed representative, retain all rights to participate in Commission and Federal Energy Regulatory Commission proceedings that may affect the rates, terms, or conditions of distribution and transmission service.

5. Nothing in this agreement shall affect the terms and conditions agreed to by [REDACTED]

[REDACTED] and Cinergy, pursuant to the agreement [REDACTED]
[REDACTED]

6. Cinergy will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service provider to supply competitive retail electric service to Customers as required by paragraph one (1) of this agreement.

7. The [REDACTED]
filed by The Cincinnati Gas & Electric Company and the [REDACTED]
[REDACTED] No. 03-93-EL-ATA subject to such reservation as
[REDACTED]

This agreement terminates after [REDACTED] or as follows:

- A. [REDACTED]
B. [REDACTED]
C. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

[REDACTED]

To Cinergy:

Cinergy

[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and the Customers shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of the affected Customers as well as

Cinergy provided, as to the Customers, they continue to display substantially similar load and usage characteristics as those that presently exist. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent shall not be unreasonably withheld.

This agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

On behalf of Cinergy

On Behalf of the Customers

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS"), a
Delaware limited liability company, and [REDACTED]

RECITALS

WHEREAS, [REDACTED] for the purposes of this agreement only refers to
[REDACTED] located within the retail delivery service
territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, [REDACTED] an option to CRS to provide electric service and CRS
desires to provide electric service pursuant to the terms outlined herein;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

(C17158:1)

Cinergy Corporate Records

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid [REDACTED] RS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive [REDACTED]

"Full Requirements Energy" means, except as provided herein, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

[REDACTED]

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS [REDACTED]

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OPTION

2.1 [REDACTED] receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") [REDACTED]

[REDACTED] take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3 [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III
CRES POWER CONTRACT TERMS

3.1 In the event [REDACTED]
shall include, among others, the following terms:

a. Energy Quantity and Type [REDACTED]

b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

- [REDACTED]
- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change in Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest.
- [REDACTED]
- e. Term. The term of the power sale agreement shall be through [REDACTED]
- [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]
- [REDACTED]

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DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
 - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
 - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
 - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
 - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party,
- [REDACTED]

- 6.3 Other Termination Events.
- [REDACTED]

prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND [REDACTED] DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

[REDACTED] INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN [REDACTED] AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

7.2 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES.

BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the

arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms,

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conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without [REDACTED] such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable [REDACTED] CRS' consent provided such assignment is to any other direct or indirect subsidiary [REDACTED] and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than [REDACTED]. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, leaders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supercedes and replaces in its entirety the agreement between CRS and [REDACTED]. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy [REDACTED] pursuant to the agreement dated [REDACTED] to the settlement of certain issues in PUCO Case No. 99-1658-EL-EIP.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

By: [REDACTED]

By: [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]
D [REDACTED]

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Title: _____

Date: _____

Date: _____

As to clause 9.7:

CINERGY CORP

By: _____

Title: _____

Date: _____

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Customer Group:

0123456789101112131415161718192021222324252627282930313233343536373839404142434445464748495051525354555657585960616263646566676869707172737475767778798081828384858687888990919293949596979899100101102103104105106107108109110111112113114115116117118119120121122123124125126127128129130131132133134135136137138139140141142143144145146147148149150151152153154155156157158159160161162163164165166167168169170171172173174175176177178179180181182183184185186187188189190191192193194195196197198199200201202203204205206207208209210211212213214215216217218219220221222223224225226227228229230231232233234235236237238239240241242243244245246247248249250251252253254255256257258259260261262263264265266267268269270271272273274275276277278279280281282283284285286287288289290291292293294295296297298299300301302303304305306307308309310311312313314315316317318319320321322323324325326327328329330331332333334335336337338339340341342343344345346347348349350351352353354355356357358359360361362363364365366367368369370371372373374375376377378379380381382383384385386387388389390391392393394395396397398399400401402403404405406407408409410411412413414415416417418419420421422423424425426427428429430431432433434435436437438439440441442443444445446447448449450451452453454455456457458459460461462463464465466467468469470471472473474475476477478479480481482483484485486487488489490491492493494495496497498499500501502503504505506507508509510511512513514515516517518519520521522523524525526527528529530531532533534535536537538539540541542543544545546547548549550551552553554555556557558559560561562563564565566567568569570571572573574575576577578579580581582583584585586587588589590591592593594595596597598599600601602603604605606607608609610611612613614615616617618619620621622623624625626627628629630631632633634635636637638639640641642643644645646647648649650651652653654655656657658659660661662663664665666667668669670671672673674675676677678679680681682683684685686687688689690691692693694695696697698699700701702703704705706707708709710711712713714715716717718719720721722723724725726727728729730731732733734735736737738739740741742743744745746747748749750751752753754755756757758759760761762763764765766767768769770771772773774775776777778779780781782783784785786787788789790791792793794795796797798799800801802803804805806807808809810811812813814815816817818819820821822823824825826827828829830831832833834835836837838839840841842843844845846847848849850851852853854855856857858859860861862863864865866867868869870871872873874875876877878879880881882883884885886887888889890891892893894895896897898899900901902903904905906907908909910911912913914915916917918919920921922923924925926927928929930931932933934935936937938939940941942943944945946947948949950951952953954955956957958959960961962963964965966967968969970971972973974975976977978979980981982983984985986987988989990991992993994995996997998999100010011002100310041005100610071008100910101011101210131014101510161017101810191020102110221023102410251026102710281029103010311032103310341035103610371038103910401041104210431044104510461047104810491050105110521053105410551056105710581059106010611062106310641065106610671068106910701071107210731074107510761077107810791080108110821083108410851086108710881089109010911092109310941095109610971098109911001101110211031104110511061107110811091110111111121113111411151116111711181119112011211122112311241125112611271128112911301131113211331134113511361137113811391140114111421143114411451146114711481149115011511152115311541155115611571158115911601161116211631164116511661167116811691170117111721173117411751176117711781179118011811182118311841185118611871188118911901191119211931194119511961197119811991200120112021203120412051206120712081209121012111212121312141215121612171218121912201221122212231224122512261227122812291230123112321233123412351236123712381239124012411242124312441245124612471248124912501251125212531254125512561257125812591260126112621263126412651266126712681269127012711272127312741275127612771278127912801281128212831284128512861287128812891290129112921293129412951296129712981299130013

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Exhibit C:

Customer Group: [REDACTED]
[REDACTED]

This agreement pertains to the [REDACTED]
[REDACTED]

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Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the hospitals shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED]. It is the intent of the parties to this agreement to bind Cinergy and [REDACTED] the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the [REDACTED] it may not be amended except by the written agreement of the parties.

This agreement is binding on the parties regarding the subject matter herein and both the terms and existence of the agreement are to remain confidential among the parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the agreement.

The parties, for good consideration, agree to the following terms and conditions:

1. Beginning [REDACTED], and through [REDACTED] Cinergy will offer to sell retail electric generation service to the Hospitals for all their CQ&E accounts at a [REDACTED] tariff rate of The Cincinnati Gas & Electric Company's [REDACTED] approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP [REDACTED] approved in the same case [REDACTED], except that [REDACTED] and [REDACTED] shall purchase competitive retail electric generation service from Cinergy at a [REDACTED] they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The [REDACTED] offer indicated above will be an [REDACTED]
2. Cinergy shall [REDACTED] the [REDACTED] to The Cincinnati Gas & Electric Company by [REDACTED] purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall [REDACTED]
3. If, [REDACTED] in The Cincinnati Gas & Electric Company's certified territory, such [REDACTED] except that new load relative to dual feeds shall be subject to the terms and conditions set forth in paragraph six (6) of this agreement.
4. Cinergy shall pay the [REDACTED]
5. The Hospitals shall comply with the terms and conditions of the order of the Public Utilities Commission of Ohio in case no. 03-93-EL-ATA including the payment of regulatory transition charges and provider of last resort charges [REDACTED]

6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to [REDACTED]. The Cincinnati Gas & Electric Company may amend its tariffs for dual feed where there is a significant increase in load or for new dual feed consumers pursuant to an application approved by the Public Utilities Commission of Ohio.
7. Hospitals purchasing generation service pursuant to existing tariff load management riders as of [REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED].
8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio.
9. The [REDACTED] shall cause the [REDACTED] to [REDACTED] filed by The Cincinnati Gas & Electric Company and [REDACTED] in case no. 03-93-EL-ATA, and any related litigation.

This agreement terminates after [REDACTED]

- A. [REDACTED] The Cincinnati Gas & Electric Company [REDACTED]
- B. [REDACTED]
- C. [REDACTED]

All notices, demands, and statements to be given hereunder shall be

given in writing to the parties at the addresses appearing herein below
and will be effective upon actual receipt:

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

To Cinergy:

Cinergy

[REDACTED]
[REDACTED]

or such other address as is provided in writing by the recipient from time
to time. Payments shall be made by ACH or wire transfer to the account
designated by the payee from time to time.

Cinergy and [REDACTED] shall defend, indemnify, and hold harmless the
non-breaching party from any and all claims by third parties including
the government regarding the enforcement or breach of this agreement,
including but not limited to, property damages, environmental damages,
contract damages, fines, or penalties arising from or in connection with
the provision or acceptance of competitive retail electric service arising
from or in connection with the performance of this agreement.

This agreement is for the exclusive benefit of the parties and may
not be assigned without the written consent of the non-assigning party.

This Letter Agreement shall be governed by and construed in
accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

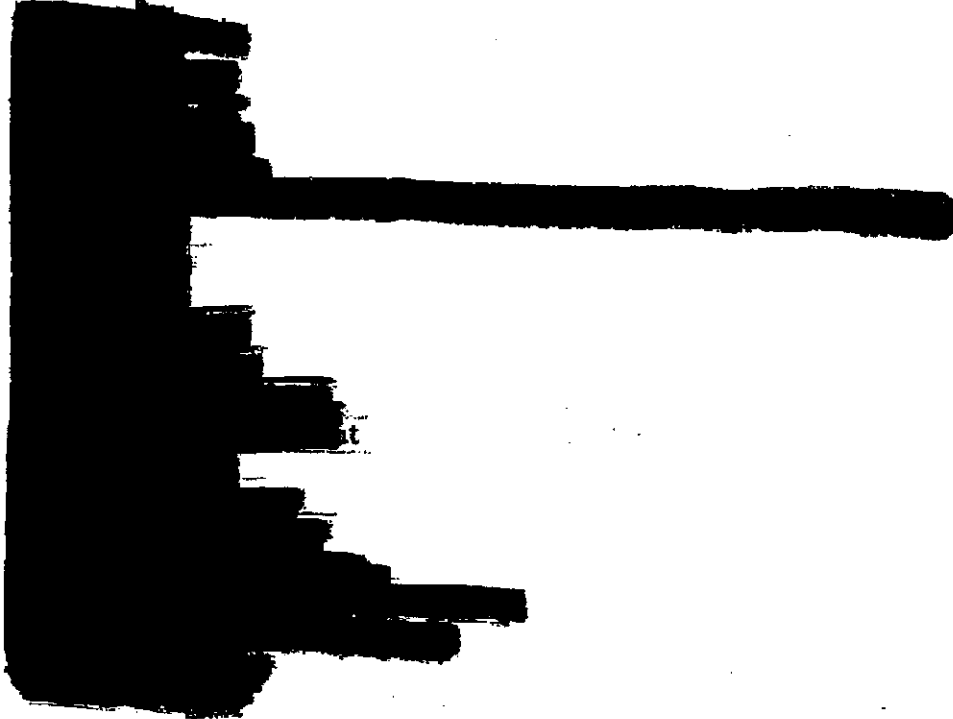
On behalf of Cinergy

On Behalf

The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

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Agreement Exhibit One



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Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the [REDACTED] shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED]. This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. It is the intent of the parties to this agreement to bind Cinergy and [REDACTED] to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the [REDACTED] it may not be amended except by the written agreement of the parties.

This agreement is binding on the parties regarding the subject matter herein and both the terms and existence of the agreement are to remain confidential among the parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the agreement.

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The parties, for good consideration, agree to the following terms and conditions:

1. Beginning [REDACTED] and through [REDACTED] Cinergy will offer to sell retail electric generation service to the [REDACTED] for all their CG&E accounts at a [REDACTED] of The Cincinnati Gas & Electric Company's [REDACTED] approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP [REDACTED] and [REDACTED] competitive retail electric generation service from Cinergy at a [REDACTED] they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The [REDACTED] offer indicated above will be an [REDACTED]

2. Cinergy shall [REDACTED]
3. If, prior to [REDACTED] add [REDACTED] in The Cincinnati Gas & Electric Company's [REDACTED]

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- such [REDACTED]
4. Cinergy [REDACTED] upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy.
5. The [REDACTED]
6. [REDACTED] The Cincinnati Gas & Electric Company may amend its tariffs for dual feed where there is a significant increase in load or for new dual feed consumers pursuant to an application approved by the Public Utilities Commission of Ohio.
7. [REDACTED], may continue to purchase generation service pursuant to such load management riders through [REDACTED]
8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED] shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]
9. The [REDACTED] The Cincinnati Gas & Electric Company [REDACTED]

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[REDACTED] made by The Cincinnati Gas & Electric Company in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

A.

[REDACTED]

B.

[REDACTED]

C.

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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or such other address as is provided in writing by the recipient from time to time. Payments shall be made by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and [REDACTED] shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

This agreement is for the exclusive benefit of the parties and may not be assigned without the written consent of the non-assigning party.

This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 8th day of November.

On behalf of Cinergy

On Behalf [REDACTED]

[REDACTED]

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OPTION AGREEMENT
BY AND BETWEEN
CINERGY RETAIL SALES, LLC

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AND

[REDACTED] This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
(the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware
limited liability company, and [REDACTED] ("Counterparty"), a [REDACTED] corporation (each
individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [REDACTED]
located within the retail delivery service territory of The Cincinnati Gas & Electric
Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means [REDACTED]

Cinergy Corporate Records
04016264



Document Code

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[REDACTED]

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]

2.2 [REDACTED]

2.3

In exchange [REDACTED]

2.4 [REDACTED]

2.5 [REDACTED]

ARTICLE III CRES POWER CONTRACT TERMS

3.1 [REDACTED]

a. Energy Quantity and Type. [REDACTED]

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.

c. Contract Price. The Contract Price is set forth in Exhibits A and B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to

the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]

- c. Term. The term of the power sale agreement shall be through [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

[insert account information]

ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

To Counterparty:

[REDACTED]

[REDACTED]

508371

CONFIDENTIAL PROPRIETARY
TRADE SECRET

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty d [REDACTED] and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

CONFIDENTIAL PROPRIETARY
TRADE SECRET

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

Title: [REDACTED]

Date: [REDACTED]

As to clause 9.7:

CINERGY CORP.

Title: [REDACTED]

Date: [REDACTED]

Exhibit A:
Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50 8371

CONFIDENTIAL PROPRIETARY
TRADE SECRET

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50 8371

CONFIDENTIAL PROPRIETARY
TRADE SECRET

EXHIBIT B:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

Exhibit C:

Customer Group: [REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

Customer Group: [REDACTED]

[REDACTED]

This agreement pertains to the following [REDACTED]

[REDACTED]

OCC EXHIBIT _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc. Rate	)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider	)	03-2079-EL-AAM
Adjustment Cases.	)	03-2080-EL-ATA
	)	03-2081-EL-AAM
	)	05-724-EL-UNC
	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC

CONFIDENTIAL

PREPARED TESTIMONY

of

BETH E. HIXON

***ON BEHALF OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad St., Suite 1800
Columbus, OH 43215***

Date: March 9, 2007

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BEH - ATTACHMENTS
CONFIDENTIAL

1	Beth E. Hixon - Utility Testimony
2	[REDACTED] Agreement between CRS and [REDACTED]
3	[REDACTED] Agreement between CRS and [REDACTED]
4	[REDACTED] Agreement between Cinergy Corp., through its agent CRS, and [REDACTED]
5	[REDACTED] Agreement between Cinergy Corp. and [REDACTED]
6	[REDACTED] Agreement between CRS and [REDACTED]
7	[REDACTED] Documents from [REDACTED]
8	[REDACTED] Agreement between CRS and [REDACTED]
9	[REDACTED] Agreement between CRS and [REDACTED]

- 10 [REDACTED] Agreement between Cinergy Corp., through its agent CRS,
and [REDACTED]
- 11 [REDACTED] Agreement between Cinergy Corp. and [REDACTED]
- 12 [REDACTED] Agreement between CRS and [REDACTED]
- 13 Documents from [REDACTED]
- 14 [REDACTED] Voucher
- 15 [REDACTED] Invoice
- 16 November 2004 DERS Response to OCC Interrogatory No. RI51
- 17 Option Agreements
- 18 Chart of CRS Agreements
- 19 Requests for Payments
- 20 DE-Ohio Response to OCC Interrogatory No. RI 103
- 21 [REDACTED] E-mail from [REDACTED] to [REDACTED]
- 22 DERS Financial Statements
- 23 [REDACTED] E-mail from [REDACTED] to [REDACTED]
- 24 [REDACTED] notification letters to CG&E

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.***

4 ***A1.*** My name is Beth Hixon. My business address is 10 West Broad Street, Suite
5 1800, Columbus, Ohio 43215-3485. I am employed by the Office of the Ohio
6 Consumers' Counsel ("OCC" or "Consumers' Counsel") as Assistant Director of
7 Analytical Services.

8

9 ***Q2. WOULD YOU PLEASE SUMMARIZE YOUR EDUCATIONAL AND***
10 ***PROFESSIONAL HISTORY?***

11 ***A2.*** I received a Bachelor of Business Administration degree in accounting from
12 Ohio University in June 1980. For the period June 1980 through April 1982, I
13 was employed as an Examiner in the Field Audits Unit of the Ohio
14 Rehabilitation Services Commission ("ORSC"). In this position I performed
15 compliance audits of ORSC grants to, and contracts with, various service
16 agencies in Ohio.

17

18 In May 1982, I was employed in the position of Researcher by the OCC. In
19 1984, I was promoted to Utility Rate Analyst Supervisor and held that position
20 until November 1987 when I joined the regulatory consulting firm of Berkshire
21 Consulting Services. In April 1998, I returned to the OCC and have
22 subsequently held positions as Senior Regulatory Analyst, Principal Regulatory
23 Analyst and Assistant Director of Analytical Services.

1 **Q3.** ***WHAT EXPERIENCE DO YOU HAVE IN THE AREA OF UTILITY***
2 ***REGULATION?***

3 **A3.** In my positions with the OCC, and as a consultant with Berkshire Consulting
4 Services, I have performed analysis and research in numerous cases involving
5 utilities' base rates, fuel and gas rates and other regulatory issues. I have worked
6 with attorneys, analytical staff and consultants in preparation for, and litigation
7 of, utility proceedings involving Ohio's electric companies, the major gas
8 companies and several telephone and water utilities. At the OCC I also chair the
9 OCC's cross-functional internal electric and gas teams, participate and/or direct
10 special regulatory projects regarding energy issues and provide training on
11 regulatory technical issues.

12
13 **Q4.** ***HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE***
14 ***REGULATORY COMMISSIONS?***

15 **A4.** Yes. I have submitted testimony before the Public Utilities Commission of Ohio
16 ("PUCO" or "Commission") in the cases listed in Attachment 1. As shown on
17 this Attachment, I have also submitted testimony in a case before the Indiana
18 Utility Regulatory Commission.

19

1 **Q5. WHAT DOCUMENTS HAVE YOU REVIEWED IN THE PREPARATION OF**
2 **YOUR TESTIMONY?**

3 **A5.** I reviewed various documents from Duke Energy Ohio's Case No. 03-93-EL-
4 ATA and the cases consolidated with that case for hearing and decision in 2004.
5 ("Post-MDP Service Case") Since the Post-MDP Service Case began when the
6 regulated electric distribution utility now known as Duke Energy Ohio was
7 known as Cincinnati Gas & Electric I will refer to that utility in my testimony as
8 either Duke Energy Ohio ("DE-Ohio") or Cincinnati Gas and Electric. ("CG&E")
9 Documents from the Post-MDP Service Case which I reviewed include the
10 PUCO's December 9, 2003 Entry, September 29, 2004 Opinion and Order and
11 November 23, 2004 Entry on Rehearing and various CG&E filings in the case.
12 From the portion of the current case after the remand from the Supreme Court of
13 Ohio in 2006 ("Post-MDP Remand Case") I have reviewed responses to OCC
14 discovery issued after the Remand, documents provided pursuant to subpoenas by
15 the OCC and transcripts of depositions taken by the OCC.

16

17 **II. PURPOSE OF TESTIMONY**

18

19 **Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
20 **PROCEEDING?**

21 **A6.** The purpose of my testimony is to bring to the attention of the Commission
22 certain side agreements and arrangements made by CG&E-affiliated companies
23 with [REDACTED]

1 [REDACTED]
2 [REDACTED] The side agreements were a part of CG&E's efforts to obtain support
3 for PUCO approval of a rate stabilization plan acceptable to CG&E. I
4 recommend the Commission review and take into consideration these side
5 agreements in this Post-MDP Remand Case.
6

7 **III. CASE OVERVIEW -- POST-MDP SERVICE AND POST-MDP REMAND**
8

9 ***Q7. WHEN DID THIS CASE COMMENCE?***

10 ***A7.*** PUCO Case No. 03-93-EL-ATA was initiated when CG&E filed an Application
11 on January 10, 2003 to modify its non-residential generation rates to provide for
12 market-based standard service offer pricing and to establish an alternative
13 competitive-bid service rate option subsequent to the market development period.
14 This 2003 CG&E proposal for a competitive bidding process ("CBP") and a
15 market-based standard service offer ("MBSSO") were collectively described as a
16 Competitive Market Option ("CMO").¹ Numerous parties and the Commission's
17 staff ("Staff") filed comments in March and April 2003 on CG&E's proposals.
18

19 On December 9, 2003, the Commission issued an entry that, among other things,
20 consolidated various pending matters regarding CG&E and requested that CG&E
21 file a "rate stabilization plan"² ("RSP") in keeping with the Commission's policy

¹ January 2003 Application at 1

² Entry at 5 (December 9, 2004).

1 statements regarding the post-MDP pricing of generation service by other utilities
2 in Ohio. In several electric cases, the PUCO established three goals for a rate
3 stabilization plan:

- 4 (1) rate certainty for consumers,
5 (2) financial stability for the utility and
6 (3) the further development of competitive markets³

7
8 ***Q8. WHAT WAS CG&E'S RESPONSE TO THE PUCO'S DECEMBER 2003***
9 ***REQUEST TO FILE AN RSP?***

10 ***A8.*** On January 26, 2004 CG&E filed an Electric Reliability and Rate Stabilization
11 Plan ("ERRSP") with the PUCO. CG&E asked the Commission to either (1)
12 adopt the Competitive Market Option filed by CG&E in January 2003, "consistent
13 with the language and intent of R.C. Chapter 4928," or (2) adopt the ERRSP
14 CG&E had just filed in January 2004, which contained rates for generation
15 service proposed by CG&E that included non-bypassable charges.⁴

16
17 ***Q9. HOW DID THE POST-MDP SERVICE CASE PROCEED AFTER JANUARY,***
18 ***2004?***

19 ***A9.*** Following CG&E'S filing of its ERRSP, numerous parties moved to intervene in
20 this proceeding, a procedural schedule was set by the Attorney Examiner and
21 discovery was conducted by parties. CG&E submitted pre-filed testimony on

³ First Energy, Case No. 03-1461-EL-UNC, Entry at 4-5 (September 23, 2003); Cincinnati Gas & Electric, Case No. 03-93-EL-ATA, Order at 15 (September 29, 2004).

⁴ January 2004 Application at 8,10 and 11.

1 April 15, 2004 in which it described a "revised ERRSP." Staff filed testimony on
2 April 22, 2004 and intervenors, including the OCC, filed testimony on May 6,
3 2004.

4
5 An evidentiary hearing began on May 17, 2004 but was subsequently delayed
6 when a stipulation was filed on May 19, 2004 ("Stipulation") in these cases that
7 described another plan of service ("ERRSP Stipulation Plan"). CG&E, the
8 PUCO's Staff, [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED] executed the Stipulation. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] - did not execute the Stipulation.

19
20 **Q10. HOW DID THE FILING OF THIS STIPULATION IMPACT THE POST-**
21 **MDP SERVICE CASE?**

22 **A10.** The parties who did not execute the Stipulation were permitted a very short period
23 during which they could inquire into the Stipulation by means of discovery. The

1 OCC sought copies of side agreements between CG&E and other parties to the
2 Post-MDP Service Case, and CG&E refused to provide copies of such
3 agreements. The first witness appeared at hearing on May 20, 2004 (based on
4 pre-filed testimony not related to the Stipulation). The OCC began the hearing on
5 May 20, 2004 with an oral Motion to Compel Discovery of the side-agreements.
6 The Motion to Compel Discovery was denied.⁵

7
8 CG&E filed supplemental testimony on May 20, 2004 in support of the
9 Stipulation, and Staff Witness Cahaan submitted testimony supporting the
10 Stipulation on May 24, 2004. The OCC and [REDACTED] submitted testimony in
11 opposition to the Stipulation on May 26, 2004. The hearing resumed on May 26,
12 2004 (after two days in recess) for the presentation of the testimony by witnesses
13 for CG&E, the OCC, [REDACTED] and the Staff.

14
15 ***Q11. WHAT WERE THE MAJOR POST-HEARING LANDMARKS IN THESE***
16 ***PROCEEDINGS?***

17 ***A11.*** The Commission's Order in the Post-MDP Service Case was issued on September
18 29, 2004, which approved the May 19, 2004 Stipulation with modifications and
19 conditions. Several parties, including CG&E and the OCC, filed applications for
20 rehearing on October 29, 2004. CG&E asked the PUCO to either i) approve its
21 original CMO proposal; ii) approve the May 19, 2004 Stipulation (i.e. unaltered
22 by the PUCO); or iii) approve a new alternative proposal rate plan ("Alternative

⁵ Tr. Vol. II at 9 - 15.

1 Proposal"). This Alternative Proposal had an array of new and different charges
2 that had not been investigated or been subject to a hearing.

3
4 CG&E's Alternative Proposal was built on the four conditions placed by the
5 PUCO on the Stipulation in its September 29, 2004 Order and introduced new
6 charges and modified previously proposed charges. In a November 23, 2004 First
7 Entry on Rehearing, the PUCO adopted (in principal part) the Alternative
8 Proposal. The Commission ordered CG&E to make certain filings with the
9 PUCO before some of the rate increases provided for in the Alternative Proposal
10 could be placed into effect.

11
12 The OCC submitted its second application for rehearing, which was denied in a
13 Second Entry on Rehearing dated January 19, 2005. The Commission's last
14 action was an "Order on Rehearing" on April 13, 2005, that addressed the return
15 pricing methodology for nonresidential shopping customers.

16
17 The OCC filed a Notice of Appeal on May 23, 2005. After argument before the
18 Supreme Court of Ohio, the Court issued an opinion on November 22, 2006. The
19 Court decided that the PUCO erred by failing to compel the disclosure of side
20 agreements and erred by failing to properly support modifications to post-MDP
21 rates and made in its entry on rehearing.⁶ The Court remanded the case for
22 additional consideration by the Commission.

⁶ *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789 at ¶95
("Consumers' Counsel 2006").

- 1 An abbreviated timeline is illustrated by the chart below showing some of the key
2 activities in the Post-MDP Service Case which I have discussed.

Post-MDP Service Case: DE-Ohio (CG&E) Case No. 03-93-EL-ATA et al.	
Date	Filing/Event/Activity
1/10/03	CG&E Competitive Market Option Application
3/03 & 4/03	Comments on CG&E's CMO
12/9/03	Entry requesting CG&E to file an RSP
1/26/04	CG&E Proposed CMO or ERRSP Application
3/9/04	Objections to CG&E proposed ERRSP
5/17/04	Evidentiary hearing begins
5/19/04	Stipulation between CG&E and parties filed
5/20/04	Evidentiary hearing
5/20/04	Supplemental Testimony of CG&E filed
5/24/04	Supplemental Testimony of PUCO Staff filed
5/26/04	Evidentiary Hearing
5/26/04	Supplemental Testimony of Intervenors filed
9/29/04	PUCO Opinion and Order
10/29/04	Applications for Rehearing (including CG&E's Alternative Proposal)
11/23/04	First Entry on Rehearing
12/27/04	Second Applications for Rehearing
1/19/05	Second Entry on Rehearing
4/13/05	Order on Rehearing on return pricing
5/23/05	OCC Notice of Appeal to Supreme Court
11/22/06	Supreme Court Order remanding to PUCO

3

1 ***Q12. WHAT HAS OCCURRED SUBSEQUENT TO THE SUPREME COURT'S***
2 ***NOVEMBER 2006 DECISION IN THIS CASE?***

3 ***A12.*** On November 29, 2006, the Attorney Examiner issued an Entry in the above-
4 captioned cases⁷ that provided for a "hearing . . . to obtain the record evidence
5 required by the court" and ordered that a prehearing conference be held on
6 December 14, 2006.⁸ The above-captioned cases were consolidated ("Post-MDP
7 Remand Case"). A procedural Entry was issued on February 1, 2007 that, among
8 other matters, set a cut-off date for discovery and a hearing date for March 19,
9 2007.

10

11 ***Q13. HAS THE OCC'S DISCOVERY REVEALED ANYTHING SIGNIFICANT***
12 ***THAT YOU BELIEVE SHOULD BE CONSIDERED BY THE***
13 ***COMMISSION?***

14 ***A13.*** Yes. The OCC's discovery activities in the Post-MDP Remand Case have
15 revealed the manner in which CG&E, using its affiliated companies and side
16 agreements never revealed in the Post-MDP Service Case hearings, was able to
17 eliminate the opposition by large users of electricity to CG&E's rate plan
18 proposals. My testimony discusses the many reasons the existence of these side
19 agreements is important for the Commission's consideration.

20

⁷ The Commission's November Entry did not include Case No. 06-1068-EL-UNC regarding proposed FPP rate increases for 2007. Case No. 06-1068-EL-UNC was added by the Attorney Examiner during the prehearing conference conducted on December 14, 2006.

⁸ November Entry at 3, ¶(7).

1 **IV. THE SIDE AGREEMENTS**

3 **A. THE PRE-PUCO ORDER AGREEMENTS**

5 ***Q14. WHAT ARE YOU REFERRING TO BY THE TERM "PRE-PUCO ORDER***
6 ***AGREEMENTS"?***

7 ***A14.*** I am using the term "Pre-PUCO Order Agreements" to refer to several agreements
8 made by CG&E-affiliated companies with [REDACTED]
9 [REDACTED] which were entered into prior to the PUCO's September 29, 2004
10 Order and which were also related to the May 19, 2004 Stipulation in this case.
11 The agreements were entered into [REDACTED]

13 ***Q15. WHO WERE THE PARTIES TO THESE AGREEMENTS?***

14 ***A15.*** I am aware of five Pre-PUCO Order Agreements between CG&E-affiliated
15 companies and Customer Parties to the Post-MDP Service Case, as shown in the
16 table below and contained in noted Attachments to my testimony. In four of
17 these agreements, the CG&E-affiliated company known as Cinergy Retail Sales,
18 LLC was involved, acting in one agreement as an "agent" for Cinergy Corp. In
19 the fifth agreement, the CG&E-affiliated company was Cinergy Corp.

1

Pre-PUCO Order Agreements			
Date	Agreement between:	And:	Attachment
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	2
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	3
[REDACTED]	Cinergy Corp through its agent, Cinergy Retail Sales, LLC	[REDACTED]	4
[REDACTED]	Cinergy Corp.	[REDACTED]	5
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	6

2

3 **Q16. WHAT IS THE COMPANY KNOWN AS CINERGY RETAIL SALES, LLC?**

4 **A16.** Cinergy Retail Sales, LLC ("CRS") was formed on December 9, 2003 in the state
5 of Delaware by Cinergy Capital & Trading, Inc., which is a subsidiary of Cinergy
6 Investments, Inc. Cinergy Investments, Inc. is a subsidiary of Cinergy Corp.⁹ At
7 the time of these Pre-PUCO Order Agreements; CRS was not a Certified Retail
8 Electric Supplier in Ohio. CRS applied for certification with the PUCO on
9 August 23, 2004 and was issued certification on October 7, 2004 effective
10 September 23, 2004.¹⁰ At the time of its certification application, CRS indicated
11 that it was not currently serving any retail or wholesale customers, but that its

⁹ August 23, 2004 Application by Cinergy Retail Sales, LLC at Exhibits A-13 and A-14, Case No. 04-1323-EL-CRS.

¹⁰ October 7, 2004 Certificate 04-124(1) issued in Case No. 04-1323-EL-CRS.

1 principal business interest was providing gas and electric service to retail
2 customers.¹¹

3
4 In April 2006 CRS changed its name to Duke Energy Retail Sales, LLC
5 ("DERS").¹² DERS remained a subsidiary of Cinergy Capital & Trading, Inc.
6 Cinergy Capital & Trading, Inc. remained a subsidiary of Cinergy Investments,
7 Inc. whose parent company is Cinergy Corp. Duke Energy Corporation owns
8 Cinergy Corp. DERS did not serve any customers as of December 31, 2005 and
9 had neither Ohio intrastate sales of electricity nor gross receipts for 2005.¹³

10
11 ***Q17. HOW ARE THESE PRE-PUCO ORDER AGREEMENTS RELATED TO THE***
12 ***POST-MDP SERVICE CASE?***

13 ***A17.*** While each Pre-PUCO Order Agreement had specific terms and conditions, the
14 common threads among these five agreements between CG&E-affiliated
15 companies and CG&E customers who were parties to the Post-MDP Service Case
16 ("Customer Parties") are that each agreement dealt with the (1) provision of
17 generation service to Customer Parties during the proposed ERRSP period, (2)
18 reimbursement of proposed ERRSP charges to Customer Parties, (3) support by
19 Customer Parties for CG&E's Stipulation in the Post-MDP Service

¹¹ August 23, 2004 Application by Cinergy Retail Sales, LLC at Exhibit A-14, Case No. 04-1323-EL-CRS.

¹² May 30, 2006 DERS filing, Case No. 04-1323-EL-CRS.

¹³ 2005 Intrastate Annual Report filed by DERS with the PUCO on August 3, 2006.

Case and (4) termination provisions tied to the outcome in the Post-MDP Service Case.

Q18. UNDER THE STIPULATION WHICH THE CUSTOMER PARTIES AGREED TO SUPPORT PURSUANT THE PRE-PUCO ORDER AGREEMENTS, WHAT WERE CG&E'S PROPOSED MBSSO COMPONENTS?

A18. CG&E proposed the following MBSSO components in its ERRSP Stipulation Plan in May, 2004:

Market Based Standard Service Offer (MBSSO) Components CG&E Stipulation (May 19, 2004) 9/29/04 PUCO Opinion & Order at 7-11		
	Residential (eff. 1/1/06)	Non-Res. (eff. 1/1/05)
Tariff Generation rate	Bypassable	Bypassable
Rate Stabilization Charge (RSC)	Bypassable for first 25% of load switching	Bypassable for first 25% of load switching
Annually Adjusted Component (AAC), including Emission Allowances (EA)	Non-bypassable	Non-bypassable
Fuel & Purchased Power (FPP)	Bypassable	Bypassable

Q19. HOW WERE THE PRE-PUCO ORDER AGREEMENTS RELATED TO THE PROVISION OF GENERATION DURING THE PROPOSED ERRSP PERIOD?

A19. In each Pre-PUCO Order Agreement, CG&E customers [REDACTED]

[REDACTED] As can be seen in all Agreements attached to my testimony, [REDACTED]

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Q20. DID THE PRE-PUCO ORDER AGREEMENTS CONTAIN

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A20.

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¹⁴ Attachment 2 at Bate stamp 348, Provision 1.

1 [REDACTED] As an example, under provisions in the [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5

6 *Q21. UNDER THE PRE-PUCO ORDER AGREEMENTS DID* [REDACTED]

7 [REDACTED]

8 *A21.* [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 The Stipulation referenced in this provision refers to the Stipulation filed on May

17 19, 2004 in the Post-MDP Service Case.

18

19

20

¹⁵ Attachment 2 at Bate stamp 348, Provision 2.

¹⁶ Attachment 2 at Bate stamp 349, Provision 9.

1 **Q22. WERE THE PRE-PUCO ORDER AGREEMENTS** [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 **A22.** [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 In this Agreement, the term "Cinergy" was used to refer to CRS.
13

14 **Q23. YOU HAVE USED THE CRS AND [REDACTED] AGREEMENT AS AN**
15 **EXAMPLE, HOW DID THE COMMON THREADS YOU DESCRIBE APPLY**
16 **TO THE OTHER PRE-PUCO ORDER AGREEMENTS?**

17 **A23.** The terms and conditions in the other agreements did differ from the CRS and
18 Hospitals agreement, but the common threads can be seen in each agreement's
19 specific provisions. For the [REDACTED]

20 [REDACTED] Customer Parties during [REDACTED]
21 [REDACTED]
22 [REDACTED]

¹⁷ Attachment 2 at Bate stamp 349, at B.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

¹⁸ Attachment 3 at Bate stamp 328, Provision 1(a).

¹⁹ Attachment 3 at Bate stamp 329, Provision 1 (b).

²⁰ Attachment 3 at Bate stamp 330, Provision 6.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 Cinergy in this agreement refers to CRS. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17
18 ***Q24. WHAT PROVISIONS IN THE PRE-PUCO ORDER AGREEMENT WITH***
19 ***IEU-OHIO WERE RELATED TO THE FOUR AREAS YOU HAVE***
20 ***DESCRIBED AS COMMON THREADS?***

21 ***A24.*** Part of the terms and conditions in the [REDACTED] Agreement between Cinergy
22 Corp, through its agent CRS, and [REDACTED] for the benefit of certain [REDACTED]

²¹ Attachment 3 at Bate stamp 330, Provision 10.

1 customers, related to [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19

²² Attachment 4 at Bate stamp 342, Provision 1.

²³ Attachment 4 at Bate stamp 343, Provision 1.

1 Under [REDACTED] Agreement:

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 The term "Cinergy" as used in this [REDACTED] Agreement refers to Cinergy
7 Corp, through its agent CRS.

8
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15
16 **Q25. DID THE PRE-PUCO ORDER AGREEMENT WITH [REDACTED] CONTAIN**
17 **PROVISIONS SIMILAR TO AGREEMENTS WITH [REDACTED]**

18 [REDACTED]
19 **A25. Yes. The Pre-PUCO Order Agreement with [REDACTED] did contain provisions**
20 **dealing with [REDACTED]**

21 [REDACTED]

²⁴ Attachment 4 at Bate stamp 344, Provision 7.

²⁵ Attachment 4 at Bate stamp 344, at A.

1 [REDACTED]
2 [REDACTED] However, the
3 Agreement with [REDACTED] in some respects differed from the three Agreements I've
4 just discussed.

5
6 First, the [REDACTED] Agreement is between Cinergy Corp. and [REDACTED] CRS is
7 not a party to the agreement and not mentioned in relationship to [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Thus, during the proposed
12 ERRSP period [REDACTED] from CG&E.

13
14 Second, under this Pre-PUCO Order Agreement, Cinergy Corp. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20

²⁶ Attachment 5 at 1 (first page not numbered), Provision 1.

²⁷ Attachment 5 at 2, Provision 2.

1 Provisions in this Pre-PUCO Order Agreement with [REDACTED] related to [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED] of the [REDACTED] Agreement provided:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 Provisions in this agreement also provided for [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12
13 ***Q26. DID THE PRE-PUCO ORDER AGREEMENT WITH [REDACTED] CONTAIN***
14 ***PROVISIONS WITH THE COMMON THREADS YOU HAVE DESCRIBED***
15 ***IN THE OTHER AGREEMENTS?***

16 ***A26.*** Yes, however, the Pre-PUCO Order Agreement with [REDACTED] is quite different
17 from and more complicated than the other four agreements. Yet despite the
18 differences and complexity, the common threads I have identified are in this
19 agreement with [REDACTED]
20

²⁸ Attachment 5 at 2, Provision 5.

²⁹ Attachment 5 at 2, at B.

1 The [REDACTED] Agreement between CRS and [REDACTED] is predicated on the fact
2 that for some time [REDACTED] had been [REDACTED]
3 [REDACTED]
4 [REDACTED] [CG&E & PSI Energy,
5 Inc.]³⁰. The agreements behind these [REDACTED] are
6 referenced in the "WHEREAS" clauses of the [REDACTED] Agreement shown in
7 [REDACTED] to my testimony.

8
9 I am aware that at the time of this agreement [REDACTED] was concerned about [REDACTED]
10 [REDACTED] in CG&E's proposed ERRSP that [REDACTED] might have to
11 pay. In his deposition on February 21, 2007, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17
18 In the [REDACTED] Agreement, terms and conditions relating to [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

³⁰ The Cinergy Operating Companies are defined as "The Cincinnati Gas & Electric Company ("CG&E") and PSI, Energy, Inc." in the December 14, 2000 Confirmation Letter Agreement with New Energy

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4
5 In [REDACTED] was expected to continue to have [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14
15 In [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20
21 Q27. DID [REDACTED]
22 [REDACTED]

³¹ Attachment 6 at Bate stamp 1175, Provision 1.

1 A27. Yes. Under [REDACTED] of this Agreement [REDACTED]

2 [REDACTED]

3

4 Q28. *COULD THE OUTCOME OF THE POST-MDP SERVICE CASE* [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A28. [REDACTED] A provision [REDACTED] similar to
8 those in the other Pre-PUCO Order Agreements, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19

20 Q29. *COULD PROVISIONS IN THESE FIVE PRE-PUCO ORDER*

21 *AGREEMENTS HAVE IMPACTED CG&E?*

³² Attachment 6 at Bate stamp 1178, at B.

³³ Attachment 6 at Bate stamp 1177, Provision 11.

1 A29. Yes. While CG&E was not a named party to these agreements, several of the
2 agreements between CRS and Customer Parties included provisions in which
3 CG&E appears to have made commitments. Examples of such agreement
4 provisions that committed CG&E to an action, or lack of action, include:

- 5 1. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
- 9 2. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
- 13 3. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

³⁴ Attachment 2 at Bate stamp 349, Provision 6.

³⁵ Attachment 2 at Bate stamp 349, Provision 7.

³⁶ Attachment 3 at Bate stamp 330, Provision 5.

- 1 4. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 5. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10
11 ***Q30. WAS CG&E INVOLVED IN NEGOTIATING THE PRE-PUCO ORDER***
12 ***AGREEMENTS THAT CRS AND CINERGY CORP. HAD WITH***

13 [REDACTED]

14 ***A30.*** I am aware that Mr. Greg Ficke, former President of CG&E, said in his
15 deposition of February 29, 2007 that he was involved for CG&E in the process
16 of the negotiations of agreements between CRS and other parties in the [REDACTED]
17 [REDACTED] He also stated that in negotiating these [REDACTED] agreements
18 there were a number of Cinergy Service employees that did work for a number of
19 different affiliates, such as legal staff.
20

³⁷ Attachment 3 at Bate stamp 330, Provision 7.

³⁸ Attachment 6 at Bate stamp 1176, Provision 4

1 An illustration of CG&E's awareness of and involvement in the process that led
2 to the Pre-PUCO Order Agreements can be seen in documents provided to the
3 OCC from [REDACTED] The OCC asked in discovery
4 for documents transmitted between DE-Ohio affiliated companies and [REDACTED]
5 with references to RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient
6 Return Notice Fee. Included in the responsive documents are the two e-mails
7 from [REDACTED] which indicate CG&E was involved in the discussions that
8 eventually led to the [REDACTED] In the
9 first e-mail, dated [REDACTED], [REDACTED] communicates to [REDACTED]
10 [REDACTED] and [REDACTED] about the [REDACTED] and
11 attached a document with [REDACTED] (In the
12 [REDACTED] [REDACTED] was listed as the party to whom notice
13 should be sent for Cinergy [i.e. CRS] and Mr. Colbert signed agreement "on
14 behalf of Cinergy" as "Senior Counsel, The Cincinnati Gas & Electric
15 Company") The terms attached to the e-mail included the offer of a Cinergy
16 affiliated CRES to [REDACTED]
17 [REDACTED]
18 [REDACTED] In response to this [REDACTED]
19 [REDACTED] responded on [REDACTED] with an e-mail that was copied
20 to [REDACTED]
21

³⁹ Attachment 7 - Ohio Hospital Association response to OCC No. RP6.

1 **Q31. OTHER THAN [REDACTED]**
2 **[REDACTED] YOU HAVE PREVIOUSLY DESCRIBED, DID THE**
3 **AGREEMENTS PROVIDE FOR [REDACTED]**
4 **[REDACTED]**

5 **A31. Provisions in two of the Pre-PUCO Order Agreements provided for [REDACTED]**

6 **[REDACTED]**
7 **[REDACTED] A provision in the [REDACTED]**
8 **[REDACTED]**
9 **[REDACTED]**
10 **[REDACTED]**
11 **[REDACTED]**
12 **[REDACTED]**

13
14 **B. THE PRE-REHEARING AGREEMENTS**
15

16 **Q32. WHAT ARE THE "PRE-REHEARING AGREEMENTS"?**

17 **A32. In order to distinguish a second group of agreements from the Pre-PUCO Order**
18 **Agreements I have just discussed, I am using the term "Pre-Rehearing**
19 **Agreements". These are agreements made by CG&E-affiliated companies with**
20 **[REDACTED] and entered into after the**
21 **Commission's September 29, 2004 Order and prior to the PUCO's November 23,**

⁴⁰ Attachment 2 at Bate stamp 348, Provision 4.

⁴¹ Attachment 4 at Bate stamp 343, Provision 3.

2004 Entry on Rehearing and which were also related to the CG&E's October 29, 2004 Alternative Proposal in this case.

Q33. WHO WERE THE PARTIES TO THESE AGREEMENTS?

A33. I am aware of five Pre-Rehearing Agreements between CG&E-affiliated companies and [REDACTED], as shown in the table below and contained in the noted Attachments to my testimony. Each of these Pre-Rehearing Agreements [REDACTED]

Pre-Rehearing Agreements			
Date	Agreement between:	And:	Attachment
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	8
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	9
[REDACTED]	Cinergy Corp through its agent, Cinergy Retail Sales, LLC	[REDACTED]	10
[REDACTED]	Cinergy Corp.	[REDACTED]	11
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	12

Q34. WHY WAS THERE A SECOND SET OF AGREEMENTS [REDACTED]

A34. The Pre-Rehearing Agreements were entered in to after the PUCO's September 29, 2004 Order which approved the Stipulation with modifications and conditions. Issuance of this PUCO Order in October, 2004 seems to have served as the impetus for these Pre-Rehearing Agreements. This can be seen through review of the provisions in these agreements, [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] In addition, I aware that in depositions
5 of [REDACTED] and [REDACTED] both who were employees of Cinergy
6 Services⁴² and familiar with the agreements, have said that [REDACTED]
7 [REDACTED]

8

9 ***Q35. HOW ARE THE PRE-REHEARING AGREEMENTS RELATED TO THE***
10 ***POST-MDP SERVICE CASE?***

11 ***A35.*** In a similar manner to the Pre-PUCO Order Agreements, each Pre-Rehearing
12 Agreement had specific terms and conditions, but again, common threads related
13 to the Post-MDP Service Case did exist among the agreements. Each agreement
14 dealt with the [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19

⁴² "Prior to the merger between Cinergy Corp. and Duke Energy Corp. Cinergy Service, Inc. provided various administrative services to the Cinergy companies. Following the merger between Cinergy Corp. and Duke Energy Corporation in April 2006, Cinergy Services became Duke Energy Shared Services." Second Supplemental Testimony of DE-Ohio Witness Steffen (2/28/07) at 1.

1 **Q36. UNDER THE ALTERNATIVE PROPOSAL CONTAINED IN CG&E'S**
 2 **APPLICATION FOR REHEARING,** [REDACTED]

3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]

6 **A36.** CG&E's proposed the following MBSSO components in its Alternative Proposal
 7 in October, 2004:

8

Market Based Standard Service Offer (MBSSO) Components CG&E Alternative Proposal (October 29, 2004) 11/23/04 Entry on Rehearing at 7 - 9		
	RES (effective 1/1/06)	Non-RES (effective 1/1/05)
Tariff Generation rate	Bypassable	Bypassable
Rate Stabilization Charge (RSC)	Bypassable for first 25% of load switching	Bypassable for first 50% of load switching
Annually Adjusted Component (AAC)	Bypassable for first 25% of load switching	Bypassable for first 50% of load switching
Fuel & Purchased Power (FPP), including Emission Allowances (EA)	Bypassable	Bypassable
Infrastructure Maintenance Fund (IMF)	Non-bypassable	Non-bypassable
System Reliability Tracker (SRT)	Non-bypassable	Non-bypassable

9

10 **Q37. HOW WERE THE PRE-REHEARING AGREEMENTS RELATED TO THE**

11 [REDACTED]
 12 [REDACTED]

13 **A37.** As was the case with the superseded agreements, in each Pre-Rehearing
 14 Agreements, [REDACTED]

15 [REDACTED]

1 [REDACTED] While some of the provisions related to [REDACTED]
2 [REDACTED]
3 [REDACTED] For example, in the [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16
17 ***Q38. DID THE PRE-REHEARING ORDER AGREEMENTS CONTAIN***

18 [REDACTED]
19 [REDACTED]

20 ***A38. Yes. These Pre-Rehearing Agreements contained provisions,*** [REDACTED]

21 [REDACTED]

⁴³ Attachment 8 at Bate stamp 354, Provision 1.

⁴⁴ Attachment 8 at Bate stamp 354, Provision 1.

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[REDACTED]
[REDACTED] Using the [REDACTED] Agreement between CRS and [REDACTED]

as an example, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Also different was a statement included that [REDACTED]
[REDACTED]
[REDACTED] The last part of this statement seems logical,

given that the PUCO's Order had made fuel adders bypassable and if [REDACTED]
[REDACTED]

[REDACTED] However, it does not seem logical that CRS and [REDACTED]
[REDACTED]
[REDACTED] when under the Commission's

September 29, 2004 Order, [REDACTED]

⁴⁵ Attachment 8 at Bate stamp 354, Provision 2.

⁴⁶ Attachment 8 at Bate Stamp 354, Provision 2.

⁴⁷ Attachment 8 at Bate Stamp 354, Provision 2.

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*Q39. UNDER THE PRE-REHEARING AGREEMENTS DID CUSTOMER
PARTIES*

A39.

⁴⁸ Order at 32-33 (September 29, 2004).

⁴⁹ Attachment 8 at Bate stamp 356, Provision 9

1 CG&E filed an Application for Rehearing on October 29, 2004 in the Post-MDP
2 Service Case.

3
4 **Q40. WERE THE PRE-REHEARING AGREEMENTS** [REDACTED]

5 [REDACTED]
6 **A40.** [REDACTED] Similar to the conditions in the Pre-PUCO Order Agreements, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 In this Agreement, the term "Cinergy" was used to refer to CRS.
18

19 **Q41. AS YOU HAVE AGAIN USED THE CRS AND** [REDACTED] **AGREEMENT**
20 **AS AN EXAMPLE, WOULD YOU PLEASE EXPLAIN HOW THE COMMON**
21 **THREADS YOU DESCRIBE APPLY TO THE OTHER PRE-REHEARING**
22 **ORDER AGREEMENTS?**

⁵⁰ Attachment 8 at Bate stamp 356, at B.

1 A41. Under the [REDACTED] Agreement between the CRS and [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] As seen here,
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20

⁵¹ Attachment 9 at Bate stamp 321, Provision 2(A).

⁵² Attachment 9 at Bate stamp 322, Provision 2(B).

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Under a [REDACTED],

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15 ***Q42. WERE THERE PROVISIONS IN THE PRE-REHEARING ORDER***

16

AGREEMENT WITH [REDACTED]

17

[REDACTED] YOU HAVE DESCRIBED?

18

A42. The [REDACTED]

19

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between Cinergy Corp, through its agent CRS, and [REDACTED] illustrating this is

21

[REDACTED] of the Agreement which states that [REDACTED]

⁵³ Attachment 9 at Bate stamp 323, Provision 8.

⁵⁴ Attachment 9 at Bate stamp 334, Provision 12.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5
6 For these customers, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] or
15 [REDACTED]
16 [REDACTED]
17
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] As in the superseded agreement this Pre-

⁵⁵ Attachment 9 at Bate stamp 335, Provision 1.

⁵⁶ Attachment 10 at Bate stamp 336, Provision 1.

⁵⁷ Attachment 10 at Bate stamp 338, Provision 8.

1 Rehearing Agreement had [REDACTED]
2 [REDACTED]
3 [REDACTED]
4

5 **Q43. DID CINERGY CORP. HAVE A PRE-REHEARING ORDER**
6 **AGREEMENT WITH [REDACTED] THAT CONTAIN PROVISIONS WITH**
7 **THE SAME COMMON THREADS AS THE OTHER PRE-REHEARING**
8 **AGREEMENTS?**

9 **A43:** [REDACTED]
10 [REDACTED] In this agreement [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14

15 Under [REDACTED] this Agreement, Cinergy Corp. would [REDACTED]
16 [REDACTED]
17 • [REDACTED]
18 • [REDACTED]
19 • [REDACTED]
20 [REDACTED]

⁵⁸ Attachment 10 at Bate stamp 338, at A.

⁵⁹ Attachment 11 at 2, Provision 1.

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9 ***Q44. WAS THERE A PRE-REHEARING AGREEMENT BETWEEN CRS AND***
10 ***[REDACTED] THAT SUPERSEDED THE PRE-PUCO ORDER AGREEMENT***
11 ***OF THE SAME PARTIES?***

12 ***A44.*** Yes. A Pre-Rehearing Agreement between CRS and [REDACTED] that was entered
13 into on [REDACTED] superseded those parties' [REDACTED] Agreement, but
14 its terms and conditions replicated in many ways the earlier agreement. The
15 Pre-Rehearing has provisions [REDACTED]

16

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20

21

[REDACTED] As in the earlier
agreement, [REDACTED]
[REDACTED]
[REDACTED] However, a new
provision in this agreement [REDACTED]

⁶⁰ Attachment 11 at 2, Provision 5.

⁶¹ Attachment 11 at 3, at B.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

⁶² Attachment 12 at Bate stamp 1184, Provision 2.

⁶³ Attachment 12 at Bate stamp 1182, Provision 1.

⁶⁴ Attachment 12 at Bate stamp 1182-1183, Provision 1.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14
15 **Q45. UNDER THIS PRE-REHEARING AGREEMENT, WAS** [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 **A45.** [REDACTED]
19 [REDACTED]

20

⁶⁵ Attachment 12 at Bate stamp 1184, Provision 4.

⁶⁶ Attachment 12 at Bate stamp 1184, Provision 10.

1 **Q46. DID THE [REDACTED] PRE-REHEARING AGREEMENT CONTAIN**

2 [REDACTED]

3 [REDACTED]

4 **A46. [REDACTED]**

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13

14 **Q47. IN DISCUSSING THE PRE-PUCO ORDER AGREEMENTS YOU NOTED**

15 **SEVERAL THAT COULD HAVE IMPACTED CG&E. WERE SIMILAR**

16 **PROVISIONS ALSO IN THE PRE-REHEARING AGREEMENTS?**

17 **47. Yes. Earlier in my testimony I listed five provisions in the Pre-PUCO Order**

18 **Agreements with [REDACTED] that appeared to have**

19 **committed CG&E to an action or lack of action. Those five provisions are also**

20 **contained in [REDACTED] Pre-Rehearing**

⁶⁷ Attachment 12 at Bate stamp 1185, at B.

⁶⁸ Attachment 12 at Bate stamp 1185, Provision 13.

1 Agreements.⁶⁹ For the provision in the Pre-Rehearing Agreement with [REDACTED]

2 [REDACTED] the following language about CG&E [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10
11 As with the Pre-PUCO Order agreements, it also appears that CG&E did have

12 awareness and involvement with the Pre-Rehearing Agreements. In the [REDACTED]

13 response to OCC discovery,⁷¹ in an e-mail dated [REDACTED] from [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] and notes that [REDACTED]

17 [REDACTED] In a subsequent [REDACTED] 4 e-mail [REDACTED]

18 sent an amended agreement to [REDACTED] and copied it [REDACTED]

19
⁶⁹ Attachment 8 at Bate stamp 355, [REDACTED] Attachment 9 at Bate stamp 322-323,
[REDACTED] and Attachment 12 at Bate stamp 1184, [REDACTED]

⁷⁰ Attachment 9 at Bate stamp 322, [REDACTED]

⁷¹ Attachment 13 - [REDACTED] e-mail included [REDACTED]

1 Q48. WERE THE CRS [REDACTED]
2 [REDACTED]
3 [REDACTED] ALSO IN THE PRE-REHEARING
4 AGREEMENTS?

5 A48. Yes, [REDACTED]
6 [REDACTED]

7
8 Q49. [REDACTED]
9 [REDACTED]

10 A49. At his [REDACTED] y 12, 2007 deposition, [REDACTED] said that he had [REDACTED]
11 [REDACTED] and [REDACTED] but he was not
12 sure if [REDACTED] While the [REDACTED]
13 [REDACTED] also stated
14 that the [REDACTED] were impacted
15 by the PUCO's Order in the Post-MDP Service Case, [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] for Cinergy Services from [REDACTED] In
19 that role, he tracked the documents that made up the Pre-PUCO Order
20 Agreements, the Pre-Rehearing Agreements and the Option Agreements. He also
21 prepared calculations from these agreements to determine [REDACTED]
22 [REDACTED] 3.

⁷³ Attachment 8 at Bate stamp 355, Provision 4 (Hospitals) and Attachment 10 at Bate stamp 337, Provision 4 (IEU-Ohio).

C. THE OPTION AGREEMENTS

Q50. WHAT ARE THE OPTION AGREEMENTS?

A50. These are agreements by CRS with individual customers who were the

Customers Parties in the Pre-Rehearing Agreements with [REDACTED]

[REDACTED] The Option Agreements were entered into after the

PUCO's November 23, 2004 Entry on Rehearing, during the period [REDACTED]

[REDACTED]. There are no Option Agreement with [REDACTED]

It does appear that, pursuant to the [REDACTED] Pre-Rehearing Agreement

between Cinergy Corp and [REDACTED]

[REDACTED] An illustration of the request for [REDACTED]

For the [REDACTED] Pre-Rehearing Agreement between CRS and [REDACTED]

it also appears that [REDACTED] However, this

agreement resulted in [REDACTED] For example, in 2005 under this

agreement [REDACTED]

⁷³ Attachment 14.

1 [REDACTED] As can be seen in the
2 invoice to [REDACTED] and calculations for the [REDACTED] attached to my
3 testimony, [REDACTED] as billed for the [REDACTED] However, it
4 does not appear that [REDACTED], as the agreement stated, since

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9
10 ***Q51. WHAT CUSTOMERS ARE PARTIES TO THE OPTION AGREEMENTS?***

11 ***A51.*** OCC was provided copies of twenty-two Option Agreements between CRS and
12 CG&E customers who [REDACTED]
13 [REDACTED] These customers
14 were part of one of the three "customer groups" with which there were Pre-
15 Rehearing Agreements - [REDACTED] As shown
16 in the table below, of the twenty-two Option Agreements, fourteen are with
17 [REDACTED] which I have not listed here by name. There are six Option
18 Agreements with [REDACTED] and two Option Agreements with [REDACTED]
19 [REDACTED]. While each Option Agreement may have specific terms and conditions
20 for each customer, for purposes of discussing these agreements I will use as

⁷⁴ Attachment 12 at Bate stamp 1182, Provision 1.

⁷⁵ Attachment 15 at Bate Stamp 1159 through 1163.

⁷⁶ Attachment 16.

examples one Option Agreement from each of the three "customer groups" that are attached to my testimony.

Date	Agreement between:	And:	Member	Attachment
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17
[REDACTED]	Cinergy Retail Sales, LLC	[REDACTED]	[REDACTED]	17

In addition to this table above showing the Option Agreements, attached to my testimony is a table showing all the agreements provided to OCC in which CRS was a party, by "customer group", and for [REDACTED] (i.e. Pre-PUCO Order Agreements, Pre-Rehearing Agreements and Option Agreements).⁷⁷

Q52. WHAT ARE THE GENERAL PROVISIONS THAT ARE COMMON TO EACH OF THE OPTION AGREEMENTS?

A52. In general, under each Option Agreement with CRS, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁷ Attachment 18.

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[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

A [REDACTED]

[REDACTED] is attached to my testimony⁸⁰

As another example, for the [REDACTED]
[REDACTED] using the following formula:
▪ [REDACTED]

⁷⁸ Attachment 17 at Bate stamp 80-81 and 87 [REDACTED] at Bate stamp 3 and 9 [REDACTED]
[REDACTED] and at Bate stamp 34 and 41 [REDACTED]

⁷⁹ Attachment 17 at Bate stamp 89, at Exhibit A.

⁸⁰ Attachment 19 at Bate stamp 432-433.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] is attached to
5 my testimony.⁸²
6

7 The third example is a [REDACTED] which is for
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 A [REDACTED]
15 [REDACTED] is attached to my testimony.⁸⁴
16

17 **Q53. WHAT ARE THE COMPONENTS OF CG&E'S PUCO-APPROVED MBSSO**
18 **AND [REDACTED]**

⁸¹ Attachment 17 at Bate stamp 11, at Exhibit A.

⁸² Attachment 19 at Bate stamp 887-888.

⁸³ Attachment 17 at Bate stamp 44, at Exhibit A.

⁸⁴ Attachment 19 at Bate stamp 654-655.

1 **A53.** The following table shows CG&E's MBSSO components:

Market Based Standard Service Offer (MBSSO) Components PUCO-Approved		
11/23/04 Entry on Rehearing, 1/19/05 Second Entry on Rehearing and (a) (b)		
	RES (effective 1/1/06)	Non-RES (effective 1/1/05)
Tariff Generation rate	Bypassable	Bypassable
Rate Stabilization Charge (RSC)	Bypassable for first 25% of load switching	Bypassable for first 50% of load switching (a)
Annually Adjusted Component (AAC)	Bypassable for first 25% of load switching	Bypassable for first 50% of load switching (a)
Fuel & Purchased Power (FPP), including Emission Allowances	Bypassable	Bypassable
Infrastructure Maintenance Fund (IMF)	Non-bypassable	Non-bypassable
System Reliability Tracker (SRT)	Non-bypassable (b)	Bypassable (a) (b)
<p>(a) Non-RES bypass of RSC, AAC & SRT subject to notice by customers of a CRES contract through 12/31/08 & agreement to other provisions per CG&E tariffs (CG&E Tariff Sheet Nos. 55.1 (RSC), 51.1 (AAC) and 56.1 (SRT))</p> <p>(b) In the PUCO's 11/23/04 entry on rehearing it determined the SRT would be unavoidable in 2005 (except for shopping credit customers), but that avoidance in subsequent years would be determine in a case later in 2005. On 11/22/05 the PUCO adopted a Stipulation in Case No. 05-724-EL-UNC that provided for the SRT to be unavoidable and that all residential customers may return to CG&E's MBSSO at the RSP price. (Order at 3 - 5)</p>		

2

3 **Q54. WHY WERE THERE CRS OPTION AGREEMENTS THAT SUPERSEDED**
4 **THE PRE-REHEARING AGREEMENTS?**

5 **A54.** According to DE-Ohio's response to OCC Interrogatory No. RI 103, rather than
6 continuing the Pre-Rehearing Agreements, the Option Agreements were entered
7 into because:

8 the Commission made material amendments to the alternate
9 proposal effectively rejecting it and terminating the November
10 contracts referred to above. Upon termination DERS had an
11 obligation to enter into discussions to see if the parties could
12 negotiate contracts permitting the parties [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 I am aware that this general concept and belief that the Pre-Rehearing
6 Agreements were terminated by the outcome in the Post-MDP Service case at the
7 PUCO is also shared by other employees of DE-Ohio affiliated companies. Mr.
8 Ficke stated that he believed the "previous agreements, the [REDACTED]
9 agreements, would have been voided by the Commission's Actions." As another
10 example, [REDACTED] said that he believed the [REDACTED] Agreement with the [REDACTED]
11 members was not effective because the Commission did not put back in place the
12 original stipulation or adopt the alternative proposal with the modifications.
13 In addition, a "history" related to the Option Agreements that was provided by
14 Mr. Jim Ziolkowski, a witness for DE-Ohio in the Post-MDP Service case,⁸⁶
15 when he was asked to provide "the concept behind the CRES payments" also
16 provides insight as to reasons for the Option Agreements. As explained in this
17 history, in December 2004 it was decided that to have the "Cinergy CRES"
18 provide generation "was too risky, and Cinergy essentially decided to not follow
19 through with the contract." According to Mr. Ziolkowski, negotiations were
20 entered into by Cinergy "with each of the parties and it was agreed to make

⁸⁵ Attachment 20.

⁸⁶ Mr. Ziolkowski was an employee of in the Rate Department of Cinergy Services who in 2006 took over from Mr. Duff the the duties of calculating option payments under the Option Agreements.

1 monthly or quarterly payments in lieu of offering generation service from the
2 CRES.⁸⁷
3

4 ***Q55. IF THE OPTION AGREEMENTS WERE ENTERED INTO AFTER THE***
5 ***PUCO'S DECISION IN THE POST-MDP SERVICE CASE, HOW ARE***
6 ***THEY RELATED TO THE CASE?***

7 ***A55.*** All three sets of side agreements relate to CG&E's efforts to obtain support for
8 PUCO approval of a rate stabilization plan acceptable to CG&E. In the first two
9 sets of agreements, DE-Ohio affiliated companies [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] Once it was determined that the PUCO's
16 decision could invalidate the agreements and that provision of generation under
17 those agreements by a DE-Ohio affiliated CRES was too risky, [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21

⁸⁷ Attachment 21.

1 V. THE IMPORTANCE OF THE SIDE AGREEMENTS TO THIS CASE

2

3 Q56. DO THE SIDE AGREEMENTS YOU HAVE DISCUSSED HAVE A
4 BEARING ON WHETHER THE COMMISSION SHOULD APPROVE ONE
5 OF THE COMPANY'S PROPOSALS THAT WAS PROVIDED TO THE
6 COMMISSION IN THE POST-MDP SERVICE CASE?

7 A56. Yes. I have concerns that connect the review of the side agreements that I have
8 discussed in this testimony to the Commission's decision regarding Duke Energy
9 Ohio's proposals. These concerns relate to:

- 10 A. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
- 14 B. [REDACTED]
15 [REDACTED]
16 [REDACTED]
- 17 C. Regulatory problems presented by the side agreements, including
18 discrimination,
- 19 D. Exclusion of the OCC from negotiations, and a course of secret
20 negotiations that resulted in support for the Stipulation and for CG&E's
21 Alternative Proposal by parties who, due to side agreements, would not
22 bear the burden of the rate increases proposed by CG&E.

⁸⁸ Ohio Adm. Code 4901:1-35-02(C).

1 ***Q57. WHAT ARE YOUR OVERALL CONCERNS REGARDING THE SIDE***
2 ***AGREEMENTS AND THE COMMISSION'S RULES REGARDING POST-***
3 ***MDP PRICING?***

4 ***A57.*** In a proceeding in which Duke Energy Ohio's proposed post-MDP pricing
5 proposals are reviewed, it is important to return to the roots for such a proceeding.
6 During 2003, the Commission undertook an extensive effort to develop rules for
7 the post-MDP pricing of generation service (Ohio Adm. Chapter 4901:1-35,
8 4901:1-35-01 through 4901:1-35-06, or "Rule 35"). The Post-MDP Service Case
9 first developed during 2003 and Rule 35 became effective in May 2004 -- in time
10 for the application of Rule 35 to pricing after the MDP for Duke Energy Ohio's
11 customers. My counsel informs me that Rule 35 was promulgated according to a
12 statutory requirement that was part of the electric restructuring legislation in Ohio.
13 Rule 35 has extensive requirements regarding fixed and variable pricing for
14 generation standard service offers as well as requirements for a competitive
15 bidding option that do not bear a close relationship to the Duke Energy Ohio
16 proposals in the Post-MDP Service Case.⁸⁹ [REDACTED]

17 [REDACTED]

18 [REDACTED]

89 [REDACTED]

1 A. SUBSTANTIAL SUPPORT FOR THE RATE PLANS

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*Q58. DO YOU HAVE A SPECIFIC CONCERN REGARDING THE SIDE
AGREEMENTS AS THEY RELATE TO* [REDACTED]

A58. Yes. Upon the advice of counsel and my familiarity with the Commission's rules,

[REDACTED]

⁹⁰ Ohio Adm. Code 4901:1-35-02(C).

⁹¹ Order at 6 (September 29, 2004).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9

10 **B. MARKET DEVELOPMENT**

11

12 ***Q59. WHAT CONCERNS DO YOU HAVE REGARDING THE SIDE***
13 ***AGREEMENTS RELATED TO THE COMMISSION'S POST-MDP PRICING***
14 ***RULES?***

15 ***A59.*** Upon the advice of counsel and my familiarity with the Commission's rules, the
16 other of the two waiver provisions in the post-MDP pricing rules provides that the
17 "Commission may waive any requirement of Chapter 4901:1-35 of the
18 Administrative Code for good cause shown or upon its own motion."⁹² In its
19 December 9, 2003 request for CG&E to file an RSP in the Post-MDP Service
20 Case the Commission stated its reasoning that "[a]s the competitive retail market

⁹² Ohio Adm. Code 4901:1-35-02(C).

⁹³ Ohio Adm. Code 4901:1-35-02(B).