

## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Procedure     )  
 for the Recovery of Emission Fees Levied     )  
 Upon an Electric Light Company, Pursuant     ) Case No. 93-1000-EL-EFR  
 to Substitute Senate Bill 359.                     )

ENTRY

The Commission finds:

(1) Background:

On December 22, 1992, Substitute Senate Bill No. 359 of the 119th General Assembly enacted into law Section 3745.111, Revised Code. For the purpose of defraying the costs to administer and enforce the laws of the State of Ohio relating to prevention, control and abatement of air pollution, Section 3745.111, Revised Code, temporarily levied in fiscal years 1993 and 1994 a fee of eight dollars per ton for the first four thousand tons of the following air contaminants from stationary sources: particulates, sulfur dioxide, nitrogen oxides and organic compounds.

On October 29, 1993, Senate Bill No. 153 revised paragraphs (C) and (D) of Section 3745.11, Revised Code. For the purpose of providing funding for the Title V permit program, Section 3745.11(C), Revised Code, levies in fiscal years 1995 and thereafter fees per ton for the first four thousand tons of the following regulated air contaminants: particulate matter, sulfur dioxide, nitrogen oxides, organic compounds and lead. Section 3745.11(C), Revised Code, applies to owners or operators of a contaminant source required to obtain a Title V permit under Section 3704.036, Revised Code. Exempted, until calendar year 2001, from being assessed Section 3745.11(C), Revised Code, fees are electric generating units designated as a phase I unit under Title IV of the Federal Clean Air Act.

Section 3745.11(D), Revised Code, applies to owners or operators of an air contaminant source that is not required to obtain a Title V permit under Section 3704.036, Revised Code. Those subject to 3745.11(D), Revised Code, pay a single fee per year based upon the total tons of regulated pollutants.

Both Substitute Senate Bill 359 and Senate Bill 153 revised Section 4905.31, Revised Code, to specifically mention the fees levied in each bill as being recoverable through a variable rate schedule. A variable rate schedule provides for the recovery of the emissions fees by applying a uniform percentage increase to

the base rate charged each customer during the period that the variable rate is in effect.

- (2) By Entries issued June 24, 1993 and November 24, 1998, in this case docket, the Commission established a process by which electric utilities could request recovery of Sections 3745.111, 3745.11(C) and 3745.11(D), Revised Code, emission fees through a base rate rider. Pursuant to those entries, if a utility wishes to recover the emission fees levied, it should submit for review by the Commission's staff (Staff) an application in this docket to place into effect a temporary rider. Unless the Commission takes specific action to suspend the proposed rider prior to 45 days following the application, the rider is to take effect on the 46th day.
- (3) On July 22, 1997, Cincinnati Gas and Electric Company (CG&E) filed an application for approval of a rider for the recovery of Section 3745.111 and 3745.11(C), Revised Code, emission fees. The Office of Consumers' Counsel (OCC) filed objections to the application on August 19, 1997. By Entry issued August 28, 1997, the automatic effective date of the rider was suspended to provide the Staff additional time to review the appropriateness of the application and OCC's objections. CG&E filed a memorandum contra OCC's objections on August 28, 1997, and OCC filed a reply memorandum on September 5, 1997.
- (4) On January 21, 1999, CG&E filed another application requesting approval of a rider for the recovery of Section 3745.111 and 3745.11(C), Revised Code, emission fees. Within the second application is a statement that any pending emission fee rider application is hereby withdrawn. The Staff believes that the application filed January 21, 1999 should be treated as an amendment to the application filed July 27, 1997. The Staff further believes that suspension of the automatic effective date continues to apply and that the second application should not take effect until and unless specifically approved by the Commission.
- (5) Specifically within their application, CG&E requests authority to recover \$2,548,386.38 of emission fees incurred through 1998 over a one year period through an emission fee rider of .2612% being applied to base rates. CG&E states that a subsequent application will be filed if there is an over-recovery of the fees and that any over-recovered amount will accrue interest at 10% per annum. CG&E also states that they will file a subsequent application if there is an under-recovery of the fees.

- (6) Within their objections, OCC claimed that CG&E's July 22, 1997 application must be rejected due to the provisions of a March 4, 1994 Stipulation and Recommendation in Case No. 91-410-EL-AIR (Stipulation) which prohibits CG&E from seeking a base rate increase to be effective prior to January 1, 1999, except for changes in environmental requirements imposed by federal or state law. OCC noted that Section 3745.111, Revised Code, was effective December 22, 1992, and thus the application was a base rate increase related to environmental requirements which have not changed since the signing of the Stipulation.
- (7) The Staff notes that the time period for the stayout provision noted by OCC has lapsed and therefore, the OCC's objection is moot. The Staff has reviewed the supporting detail provided with CG&E's January 21, 1999 application and recommends that the application, as amended, be approved.
- (8) The Commission finds CG&E's January 21, 1999 application to be reasonable and should be approved.

It is, therefore,

ORDERED, That the application of Cincinnati Gas and Electric Company, as amended January 21, 1999, to recover emission fees through a base rate rider, is approved. It is, further,

ORDERED, That nothing in this Entry shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus



Judith A. Jones



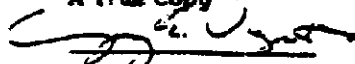
Donald L. Mason

LET:dj

Entered in the Journal

MAR 11 1999

A True Copy



Gary E. Vigorito  
Secretary

SERVICE NOTICE

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CASE NUMBER 93-1000-EL-EFR  
CASE DESCRIPTION RECOVERY OF EMISSION FEES  
DOCUMENT SIGNED ON March 11, 1999  
DATE OF SERVICE 3.12.99

PERSONS SERVED

PARTIES OF RECORD

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APPLICANT

RECOVERY OF EMISSION FEES

NONE

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