BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan.	)	**Case No. 14-1297-EL-SSO**

JOINT MOTION FOR A STAY OF DISCOVERY AND JOINT MOTION FOR AN EXPEDITED RULING FILED BY THE PJM POWER PROVIDERS GROUP AND THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 4901-1-12, Ohio Administrative Code, the PJM Power Providers Group ("P3") and the Electric Power Supply Association ("EPSA") respectfully request that the Public Utilities Commission of Ohio ("Commission") stay discovery in this proceeding. Not only has the Commission not issued substantive rulings on any of the applications for rehearing that are pending, the Commission has also not yet addressed P3/EPSA's jurisdictional argument that the Commission does not have jurisdiction over Ohio Edison Company's, The Cleveland Electric Illuminating Company's and The Toledo Edison Company's (collectively, "FirstEnergy") new proposal because FirstEnergy's failed to include the proposal in its application for rehearing.

Moreover, a stay on **all** discovery will allow all parties including P3/EPSA to avoid the needless cost, expense and time of conducting and responding to discovery until such time that the Commission resolves FirstEnergy's failure to reference its new Rider RRS proposal in its

application for rehearing and determines exactly what are the issues, if any, for rehearing. It is in the public interest to not only avoid needless litigation, but to follow the Commission's governing statutes on perfecting assignments of error on appeal.

Accordingly, as more fully presented in the attached memorandum in support, the Commission should stay all discovery in this proceeding on all issues raised in the applications for rehearing pending a Commission determination of what issues (if any) will be further considered on rehearing, or in the alternative, stay discovery related to the new Rider RRS proposal until the Commission resolves the jurisdictional defect in FirstEnergy's application for rehearing. Additionally, in light of the Commission's ruling which allows discovery to begin immediately, P3/EPSA request an expedited ruling on their Joint Motion for a Stay of Discovery, pursuant to Rule 4901-1-12(C), Ohio Administrative Code.

Respectfully submitted,

Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5462
614-719-5146 (fax)
mjsettineri@vorys.com
glpetrucci@vorys.com

Counsel for the PJM Power Providers Group and the Electric Power Supply Association

MEMORANDUM IN SUPPORT
OF THE JOINT MOTION FOR A STAY OF DISCOVERY
AND
THE JOINT MOTION FOR AN EXPEDITED RULING
BY THE PJM POWER PROVIDERS GROUP
AND
THE ELECTRIC POWER SUPPLY ASSOCIATION

I. INTRODUCTION

Through this motion, the PJM Power Providers Group ("P3")[1] and the Electric Power Supply Association ("EPSA")[2] seek a stay of the Public Utilities Commission of Ohio's ("Commission") order reopening discovery in this proceeding. The Commission **reopened discovery without first making any substantive ruling on the pending applications for rehearing** and did so **without addressing P3/EPSA's argument that the Commission does not have jurisdiction** to hear Ohio Edison Company's, The Cleveland Electric Illuminating Company's and The Toledo Edison Company's (collectively, "FirstEnergy") new Rider RRS proposal because FirstEnergy did not mention or reference it in FirstEnergy's application for rehearing.

After 21 months of litigation and thousands of pages of transcripts and briefs, P3/EPSA and other parties should not be required to endure more expense and cost in this proceeding until the Commission rules on the substantive issues on rehearing and determines that it has jurisdiction over FirstEnergy's new Rider RRS proposal. The public interest lies in granting this stay to allow the Commission to carefully consider all of the arguments on rehearing, as well as the recent decisions

[1] P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC ("PJM") region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts ("MWs") of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. These joint motions do not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively present P3's positions.

[2] EPSA is a national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. These joint motions do not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively present EPSA's positions.

by the Federal Energy Regulatory Commission ("FERC") and the Supreme Court of Ohio that may guide the Commission.[3]

The Commission should stay all discovery immediately to protect all parties and continue the stay until the Commission determines the exact issues for rehearing (if any). Alternatively, the Commission should stay discovery on FirstEnergy's new Rider RRS proposal until the Commission resolves the jurisdictional issues surrounding FirstEnergy's failure to perfect its argument for a new Rider RRS proposal. Additionally, in light of the Commission's ruling which allows discovery to begin immediately, an expedited ruling on this Joint Motion for a Stay of Discovery should be issued pursuant to Rule 4901-1-12(C), Ohio Administrative Code.

II. ARGUMENT

A. The Commission Reopening of Discovery in this Proceeding is Unprecedented.

FirstEnergy filed an application for rehearing on May 2, 2016, alleging eight assignments of error arising from the March 31, 2016 decision in this proceeding. Eleven other applications for rehearing were filed in this matter as well. On May 11, 2016, and before any memoranda contra were filed in this proceeding, the Commission granted all twelve applications for rehearing at is weekly public meeting.

Significantly, and the reason for this motion for stay, the Commission opened discovery in anticipation of *potential* further hearings. The Commission stated that:[4]

> The Commission notes that memoranda contra the applications for rehearing are due to be filed in this proceeding on May 12, 2016. However, because of the number and complexity of the assignments of error raised in the applications for rehearing, as well as the potential for further evidentiary hearings in this matter, we find that it is appropriate to

[3] *See, e.g., Electric Power Supply Association et al. v. FirstEnergy Solutions Corporation et al.*, Docket No. EL16-34-000, 155 FERC ¶ 61,101 (April 27, 2016); *Electric Power Supply Association et al. v. AEP Generation Resources, Inc. et al.*, Docket No. EL16-33-000, 155 FERC ¶ 61,102 (April 27, 2016); *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 (April 21, 2016) and *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio1607 (April 21, 2016).

[4] Entry on Rehearing at ¶ 9 (May 11, 2016) (emphasis added).

grant rehearing at this time. **This will allow parties to begin discovery in anticipation of potential further hearings.**

Not only is it unusual for the Commission to grant rehearing before the deadline for filing memorandum contra, it is unprecedented for the Commission to reopen discovery without ruling that rehearing is to take place and specifying the purpose and scope of rehearing as required by Ohio Revised Code Section ("R.C.") 4903.10.

B. The Commission Can Correct its Order by Staying Discovery.

The Commission has adopted a four-factor test that has been deemed appropriate by courts when determining whether to stay an administrative order pending judicial review.[5] Those factors are:[6]

- Whether there has been a strong showing that the parties seeking the stay is likely to prevail on the merits;
- Whether the parties seeking the stay has shown that it would suffer irreparable harm absent the stay;
- Whether the stay would cause substantial harm to other parties; and
- Where lies the public interest.

Applying the above-noted factors, a stay of discovery is warranted because the Commission has reopened discovery without even considering the merits of the applications for rehearing or the jurisdictional issue surrounding FirstEnergy's new Rider RRS Proposal.

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[5] *In re Northeast Ohio Public Energy, Council, v. Ohio Edison Company and The Cleveland Electric Illuminating Company*, Case No. 09-423-EL-CSS, Entry at ¶6 (July 8, 2009) (the Commission has adopted a four-factor test to determine whether a stay should be granted in a Commission proceeding"); *In re Investigation into Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing at ¶9 (February 20, 2003).

[6] *Intrastate Access, supra.*

C. A Stay of Discovery Should be Issued in this Proceeding.

1. P3/EPSA are likely to prevail on their arguments pending before the Commission.

The Commission's reopening of discovery was taken prior to the filing of memoranda contra and without any substantive ruling on the pending applications for rehearing. The applications for rehearing raise many grounds for rehearing in this matter, based on a variety of legal, evidentiary and policy arguments. Several of P3/EPSA's arguments were effectively confirmed by the FERC when it rescinded its waiver as to the affiliated power purchase agreement ("PPA") underlying Rider RRS, and ruled that no affiliate sales of electric energy or capacity can occur under the PPA underlying Rider RRS, until a specific FERC ruling approves that agreement. Among other things, FERC concluded that the Rider RRS charges present the potential for an "inappropriate transfer" of benefits from captive customers to the shareholder of the franchised public utility, found that its affiliate sales restrictions apply to the affiliated PPA whose generation-related charges are proposed to be recovered through the non-bypassable Rider RRS, and found that the affiliated PPA may impact other regulations related to separation of functions and information sharing.[7]

Moreover, FirstEnergy's submittal of a new Rider RRS proposal could have a significant effect on the cornerstone of FirstEnergy's ESP IV (Rider RRS), on the entirety of the stipulation package, and on whether FirstEnergy exercises its right to withdraw and terminate its ESP IV. As a result, it is reasonable and warranted to stay all discovery until the Commission issues a substantive ruling on rehearing that requires further proceedings. Until then, **there is no reason for the parties to participate in open-ended discovery that may never be used.**

In addition, the jurisdictional argument that P3/EPSA has raised is a significant argument in this proceeding that prevents the Commission from granting rehearing on FirstEnergy's new Rider RRS proposal (and negates the need for any discovery thereof). As argued in P3/EPSA's

[7] *FirstEnergy Solutions, supra,* at ¶¶55, 63, 64, 65, 66.

memorandum contra filed on May 12, 2016, FirstEnergy has made a fatal mistake in this proceeding. It did not include its proposal in its application for rehearing even though R.C. 4903.10 requires all assignments of error to be listed in the application for rehearing. **That is a fatal error that robs this Commission of jurisdiction to hear the proposal in this proceeding.**

The law supports P3/EPSA's argument. The Ohio Supreme Court has stated "[i]t is well-established that '[t]he filing of an application for rehearing before the Public Utilities Commission is a jurisdictional prerequisite to an error proceeding from the order of the Commission to this Court, and only such matters as are set forth in such application can be **urged** or **relied upon** in an error proceeding in this Court.'" *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.* (1984), 12 Ohio St.3d 280, 290 quoting *Travis v. Pub. Util. Comm.* (1931), 123 Ohio St. 355. "[S]etting forth specific grounds for rehearing is a jurisdictional prerequisite for review." *Office of Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St. 3d 244, 247, 1994-Ohio-469 and *Disc. Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 374-375, 2007-Ohio-53 ("[w]e have held that when an appellant's grounds for rehearing fail to specifically allege in what respect the PUCO's order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met.").[8]

The Supreme Court of Ohio has recognized the importance of including a new or alternative proposal in the actual application for rehearing as an assignment of error.[9] In 2006, the Court upheld the Commission's granting of rehearing on an alternative proposal by The Cincinnati Gas & Electric Company ("CG&E") which was **included** in the utility's application for rehearing. As

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[8] *See, also, In Re Settlement Agreement in Case No. 07-564-WW-AIR and the Standards for Waterworks Companies and Sewage Disposal System Companies*, Case No. 08-1125-WW-UNC, 2009 Ohio PUC LEXIS 854, *8-9 (October 14, 2009) **(finding that an application that requests a rehearing but then merely refers to the memorandum in support for specific grounds does not substantially comply with statutory requirements)**; *In Re Columbus Southern Power Company and Ohio Power Company*, Case No. 04-169-EL-UNC, 2005 Ohio PUC LEXIS 704, *30-31 (March 23, 2005) **(noting that R.C. 4903.10 requires arguments to be identified as assignments of error or specific grounds for rehearing in application for rehearing)**; *and Cameron Creek Apts. v. Columbia Gas of Ohio, Inc.*, 136 Ohio St. 3d 333, 338, 2013-Ohio-3705 **("failure to set forth specifically those arguments on rehearing as required by R.C. 4903.10 deprives this court of jurisdiction over Columbia's first proposition of law")**.

[9] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300, 302, 2006-Ohio-5789.

noted by the Court, "[t]he commission treated CG & E's alternative proposal as an assignment of error on rehearing and not as a new or separate proposal."[10]

CG&E's Application for Rehearing that gave rise to *Ohio Consumers' Counsel*, 111 Ohio St. 3d 300, included an alternative proposal that had not been previously presented in the proceeding.[11] After presenting its request for the alternative proposal in its application for rehearing, CG&E then presented a number of separate assignments of error. The relevant portion of CG&E's application for rehearing is attached to this motion.

The Commission, when considering CG&E's application for rehearing, **treated the alternative proposal as an assignment of error** prior to granting rehearing and approving the proposal.[12] In a second entry on rehearing, the Commission made this clear, stating:[13]

> "[w]hile CG&E may have styled certain of its arguments in its first application for rehearing as an 'alternative proposal,' the Commission did not consider them as a separate proposal. Rather, the Commission treated them as CG&E's first assignment of error. The Commission determined that, subject to certain clarifications and modifications, CG&E's first assignment of error should be granted.

The Commission cannot make that ruling in this proceeding because **FirstEnergy's new Rider RRS proposal is not mentioned at all in the application for rehearing.** For that reason alone, the Commission cannot hear FirstEnergy's new Rider RRS proposal in this proceeding. Also for that reason, P3/EPSA have made a strong showing of success on the merits on this jurisdictional issue.

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[10] *Id.* at 304.

[11] *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 Nos. 03-93-EL-ATA et al., Application for Rehearing (filed October 29, 2004).

[12] *CG&E, supra*, Entry on Rehearing (November 23, 2004) at ¶ 6(a) (denoting the alternative proposal as the first assignment of error).

[13] *CG&E, supra*, Second Entry on Rehearing (January 19, 2005) at ¶ 27.

2. P3/EPSA will suffer irreparable harm absent a stay on discovery.

P3/EPSA have participated in this proceeding for almost two years, which has included numerous rounds of discovery, numerous days of hearing, and extensive briefing. P3/EPSA's participation included forty-one days of hearing, the presentation of an expert witness on multiple occasions, and hundreds of pages of briefs. To re-open discovery on one or more undeclared issues that might be part of an undetermined future hearing during a possible rehearing phase of this proceeding only subjects P3/EPSA to further time, expense, and resources that may be warrantless given, at a minimum, the jurisdictional argument put forth above. If a stay on discovery is not granted, P3/EPSA would be required to incur significant expenses and to commit extensive time and resources needlessly to participate in discovery. *See, e.g., In the Matter of the Complaint of Mark A. Whitt, Complainant, v. Nationwide Energy Partners, LLC, Respondent*, Case No. 15-697-EL-CSS, 2015 Ohio PUC LEXIS 988, *16 (November 18, 2015) (granting stay and noting it would be unduly burdensome or expensive for respondent to respond to discovery requests while a separate Commission investigation was ongoing).

3. A stay on discovery will not substantially harm any other party.

FirstEnergy and perhaps other stipulation signatories may not like a stay on all discovery, but a stay on all discovery will not result in *substantial* harm to them, given the clear legal requirements for rehearings in Ohio. Indeed, R.C. 4903.10 states that, if the Commission grants rehearing, it **shall specify the purpose** and **shall also specify the scope of the additional evidence** that will be taken. The Commission, however, did neither in its May 11, 2016 Entry on Rehearing leaving parties to believe that all is open to discovery, but wonder what, if anything, will be open for further hearings. Rather than being harmed by a stay on discovery, the parties would all benefit from a stay until the Commission actually determines what will be further considered on rehearing,

if anything. Until then, there is no need for the parties to once again engage in a flurry of discovery requests and responses and depositions.

4. A stay on discovery is in the public interest.

Lastly, granting a stay on all discovery is in the public interest. First, the public interest is served so that all of the parties in this proceeding are not subject to needless time, expense and resources for, at a minimum, an issue that is not within the Commission's jurisdiction. Second, a stay allows the Commission to adhere to its governing statutes and rules regarding perfecting assignments of error and ensures the public is not confused or misled by a vague reopening of discovery in this proceeding. The Commission speaks through its orders, and reopening discovery prior to any substantive ruling on rehearing is confusing not only to the parties but also to the public. Third and most importantly, the legal landscape has changed with a recent FERC order that stopped FirstEnergy's Rider RRS proposal as well as two recent significant Supreme Court of Ohio decisions (noted earlier). It is in the public interest to allow the Commission sufficient time to consider the applications for rehearing and the jurisdictional issues before rushing to reopen discovery related to a host of unkown issues. A stay on discovery is in the public interest and should be granted immediately.

D. An Expedited Ruling on this Motion for a Stay of Discovery is Just and Reasonable.

An expedited ruling on this motion is necessary to save parties the time and expense of preparing and responding to discovery requests and depositions. Without an expedited ruling on this motion for a stay of discovery, numerous parties will be compelled to undertake discovery, or face the risk of being precluded from discovery if a future procedural entry is issued and discovery was not otherwise conducted. This places P3/EPSA and the other parties in an unjust and unreasonable procedural position that can be easily be remedied by granting the motion to stay.

P3 and EPSA cannot certify that all parties do not object to the issuance of an immediate ruling.

III. CONCLUSION

For all of the foregoing reasons, P3/EPSA request that the Commission issue an expedited ruling and impose a stay on all discovery in this proceeding until the Commission determines what issues, if any, will be reviewed on rehearing, or in the alternative stay discovery related to the new Rider RRS proposal, until the Commission resolves the jurisdictional issues surrounding FirstEnergy's new Rider RRS proposal.

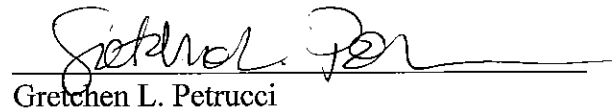
Respectfully submitted,

Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5462
614-719-5146 (fax)
mjsettineri@vorys.com
glpetrucci@vorys.com

Counsel for PJM Power Providers Group and the Electric Power Supply Association

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 19th day of May 2016 upon all persons/entities listed below.



Gretchen L. Petrucci

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
jlang@calfee.com
talexander@calfee.com
dakutik@jonesday.com
cmooney@ohiopartners.org
drinebolt@ohiopartners.org
tdoughtery@theoec.org
ghull@eckertseamans.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
larry.sauer@occ.ohio.gov
Maureen.willis@occ.ohio.gov
joliker@igsenergy.com
schmidt@sppgrp.com
ricks@ohanet.org
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
jfinnigan@edf.org
wttpmlc@aol.com
mkl@smxblaw.com
gas@smxblaw.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
meissnerjoseph@yahoo.com
trhayslaw@gmail.com
lesliekovacik@toledo.oh.gov
cynthia.brady@exeloncorp.com
david.fein@exeloncorp.com
lael.campbell@exeloncorp.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
jeremy.grayem@icemiller.com
BarthRoyer@aol.com
athompson@taftlaw.com
Marilyn@wflawfirm.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
bojko@carpenterlipps.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mkimbrough@keglerbrown.com
mfleisher@elpc.org
matt@matthewcoxlaw.com
todonnell@dickinsonwright.com
jeffrey.mayes@monitoringanalytics.com
twilliams@snhslaw.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
mjsettineri@vorys.com
glpetrucci@vorys.com
thomas.mcnamee@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov
sfisk@earthjustice.org
msoules@earthjustice.org
tony.mendoza@sierraclub.org
laurac@chappelleconsulting.net
gthomas@gtpowergroup.com
stheodore@epsa.org
mdortch@kravitzllc.com
rparsons@kravitzllc.com
dparram@taftlaw.com
charris@spilmanlaw.com
dwolff@crowell.com
rlehfeldt@crowell.com
dfolk@akronohio.gov
Kevin.moore@occ.ohio.gov
William.michael@oc.ohio.gov
rsahli@columbus.rr.com
ajay.kumar@occ.ohio.gov
callwein@keglerbrown.com
mkimbrough@keglerbrown.com
ghiloni@carpenterlipps.com
kristin.henry@sierraclub.org
rkelter@elpc.org
mwarnock@bricker.com

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

THE CINCINNATI GAS & ELECTRIC COMPANY'S APPLICATION FOR REHEARING

Pursuant to R. C. 4903.10 and O.A.C. 4901-1-35, The Cincinnati Gas & Electric Company applies for rehearing of the Opinion and Order of the Public Utilities Commission of Ohio issued on September 29, 2004. The Commission's Order in these cases substantially modified a

Stipulation and Recommendation signed by most of the interveners including Staff, the Ohio Hospital Association (OHA), the Ohio Energy Group (OEG), Cognis, Industrial Energy Users-Ohio (IEU), First Energy Solutions (FES), Dominion Retail, Green Mountain Energy, People Working Cooperatively (PWC), Citizens United for Action (CUFA), and Kroger.[1]

CG&E respectfully requests that the Commission grant this application for rehearing, to either (I) reinstate the Stipulation; (II) adopt the alternative proposal more fully described in the attached memorandum in support and attachments 1, 2, and 3, or, (III) acknowledge and approve CG&E's statutory right to implement its previously-filed market-based standard service offer (MBSSO). CG&E hereby notifies the Commission and the parties that in the event the Commission fails to grant the relief requested herein by December 31, 2004, CG&E will proceed to implement market-based rates for its commercial, industrial, and other public authority customer classes effective January 1, 2005.

I. Reinstatement of the Stipulation

This proceeding began in January 2003, when CG&E filed for Commission approval of the Company's proposed methodology for establishing market-based rates for its commercial, industrial, and other public authority customer classes. In so doing, CG&E was carrying out

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[1] *In re CG&E's MBSSO,* Case No. 03-93-EL-ATA, *et al.* (Joint Exhibit 1, Stipulation and Recommendation) (May 19, 2004).

both the letter and the spirit of Senate Bill 3 and CG&E's original Electric Transition Plan, which gave CG&E the right to begin charging market-based rates immediately when 20% of the load in the commercial, industrial, and other public authority customer classes switched to an alternative electric supplier.[2]

Throughout 2003, the Commission communicated in numerous ways and in multiple venues its strong concern about the lack of development of the wholesale electric market and the "rate shock" it believed electric consumers of CG&E would experience if they were fully exposed to the effects of market-based rates on the schedule outlined in Senate Bill 3 and CG&E's Electric Transition Plan.

At the Commission's direction, CG&E submitted a plan to address the Commission's concern. Specifically, the plan CG&E filed met the Commission's recently expressed three-pronged objective of providing (1) rate certainty for consumers, (2) revenue certainty for the utility, and (3) the continued development of the competitive market.

There is strong evidence that CG&E's plan fulfilled the Commission's three objectives: it was supported by stipulation by the vast majority of parties to the proceeding, including a broad and diverse array of CG&E customers and customer groups, retail marketers who have been participating in CG&E's customer choice program, the Company itself, and the Staff of the Commission.

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[2] CG&E reached 20% switching by load in each of these classes prior to its January 2003 filing.

CG&E believes that the Stipulation, submitted to the Commission in this case by the vast majority of the parties, presented a balanced solution in the best interests of the Company, and its consumers, and the developing competitive retail electric market. The original Stipulation (1) included deferral mechanisms that mitigated the effect of rate increases for customers; (2) provided a measure of revenue certainty to CG&E to be able to continue to provide reliable service and commit valuable generating capacity during the continued transition to a fully competitive retail electric market; and, (3) increased incentives for the development of such market.

Because CG&E filed its rate stabilization plan at the Commission's specific direction to address the Commission's concerns; because the plan CG&E filed met all of the objectives the Commission has articulated for such plans; and because CG&E was able to garner broad and diverse support for its plan among the vast majority of the parties to this proceeding, the best solution would be for the Commission to honor the original stipulated settlement agreement and the careful balancing of interests it represents and approve the settlement agreement on rehearing.

II. The Alternative Proposal

In the event that the Commission believes that a different balancing of interests than represented by the Stipulation is necessary, CG&E has, after consulting with all of the parties to this case, presented

an alternative proposal. The alternative proposal returns a measure of revenue certainty for CG&E, although much less than the original Stipulation, provides additional rate certainty to consumers, and provides additional encouragement for the development of the competitive retail electric market. In short, the Alternative Proposal seeks to restore the careful balancing of interests inherent in the original Stipulation. The market price that CG&E offers as its Alternative Proposal expressly adopts the Commission's stated goal of rate certainty for consumers, encouragement of the competitive retail electric market, and revenue certainty for CG&E. It also adopts the Commission's policy objectives set forth in its Order of permitting consumers to avoid additional price components if they switch and limiting CG&E's risk by setting various market price components at cost in exchange for more certain recovery.

CG&E also requests that the Commission open a proceeding to determine the conditions under which an electric distribution utility may purchase or build a generating facility and recover the costs of the purchase or build over the remaining life of the facility. Resolution of this issue is important to ensuring the provision of reliable electric service throughout Ohio.

III. CG&E Assignments of Error

If the Commission declines to reinstate the Stipulation or adopt the Alternative Proposal, CG&E objects to the Commission's Order because

the modifications to the Stipulation proposed by the Commission in its Order effectively reject the Stipulation and any market price acceptable to CG&E for the rate stabilization service requested by the Commission. Further, the Commission's Order deprives CG&E of any revenue certainty, while requiring CG&E to subsidize the competitive retail electric market. More specifically, the Commission's Order is unreasonable and unlawful for the following reasons:

1. The Commission's Order is unjust and unlawful because it purports to establish the amount of the market price that CG&E charges for its market-based standard service offer (MBSSO), including the price to compare and provider of last resort components (POLR) of the MBSSO and by unlawfully retaining continuing authority to approve increases or decreases in the MBSSO through annual rate reviews, even though pursuant to R. C. 4928.05, the Commission lacks jurisdiction to establish the amount of the MBSSO.

2. The Commission's Order is unjust and unlawful because the Commission abused its discretion and improperly found additional regulatory transition charges assessed against residential consumers during 2009 and 2010 to conflict with the Stipulation and Recommendation it approved in Case No. 99-1658-EL-ETP while requiring CG&E to maintain a stable generation rate for residential consumers after the market development period.

3. The Commission's order is unjust and unlawful because the Commission abused its discretion by denying CG&E accounting deferrals, and recovery of such deferrals through a rider amortized over a five year period, from July 1, 2004, through December 31, 2005 related to its net capital investment to CG&E's distribution plant made on behalf of residential consumers.

4. The Commission's Order is unjust and unlawful pursuant to R. C. 4928.14 and R. C. 4928.05 because it permits all consumers to avoid POLR charges thereby requiring CG&E to further subsidize the competitive retail electric market.

5. The Commission's Order is unjust and unlawful pursuant to R. C. 4928.05 and R. C. 4928.14 and constitutionally infirm as confiscatory because it does not permit CG&E to recover all of its POLR costs.

6. The Commission's Order is unjust and unlawful because it denies CG&E recovery of POLR costs based upon the concept of rate shock without any evidence of record.

7. The Commission's Order is unjust and unlawful pursuant to R. C. 4928.05 and R. C. 4928.14 and constitutionally infirm as confiscatory because it permits up to fifty percent of non-residential consumers to avoid payment of the rate stabilization component of the POLR charge without CG&E's consent.

8. The Commission's Order is unjust and unlawful because it attempts to compel CG&E to either accept the Commission's modifications to the Stipulation or, without jurisdiction or statutory authority, to divest its generation assets, dismiss Ohio Supreme Court cases, provide $7,000,000.00 to residential consumers, withdraw its distribution rate case, continue non-residential shopping credits, allow consumers to avoid the annually adjusted component of the POLR, allow 50%, instead of 25%, of non-residential consumers to avoid paying the rate stabilization charge component of the POLR, permits switched consumers to return to CG&E at prices below cost, permits CRES providers to rely upon CG&E's reserve capacity, extend weatherization and energy assistance contracts, implement a demand side management tracker, and negotiate an arrearage crediting program for percentage of income payment program consumers.

9. The Commission's Order is unjust and unlawful because it attempts, without jurisdiction or statutory authority, to determine CG&E's MBSSO by capping

the price based upon CG&E's cost instead of permitting a market price.

10. The Commission's Order is unjust and unlawful because it failed to timely approve CG&E's applications in these cases even though the market-based standard service offer applied for is consistent with all statutory requirements and because the Commission ruled only upon the rate stabilization service requested by the Commission and offered only as a settlement by CG&E.

11. The Commission's Order is unjust and unlawful because it failed to timely approve an MBSSO pursuant to R. C. 4909.18 despite CG&E's application made on January 10, 2003.

12. The Commission's Order is unjust and unlawful because it failed to acknowledge CG&E's rights to implement market rates and failed to approve the market-based rates for which CG&E applied on January 10, 2003.

CG&E respectfully requests that the Commission reconsider its Order and reinstate and approve the Stipulation and Recommendation filed in this case without modification, or adopt the Alternative Proposal submitted by CG&E, or acknowledge and approve CG&E's statutory right to implement market-based rates for its non-residential customers on January 1, 2005.

Respectfully submitted,

Paul A. Colbert (0058582), Trial Attorney
John J. Finnigan, Jr. (0018689)
Michael J. Pahutski (0108705)
THE CINCINNATI GAS & ELECTRIC COMPANY
2500 Atrium II, 139 East Fourth Street
P. O. Box 960
Cincinnati, Ohio 45201-0960
(513) 287-3015

Summary: Motion Joint Motion for Stay of Discovery and Joint Motion for an Expedited Ruling electronically filed by Mr. Michael J. Settineri on behalf of PJM Power Providers Group and Electric Power Supply Association