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July 31, 2000

Via Express Mail

Ms. Daisy Crockron
Chief of Docketing
Public Utilities Commission of Ohio
180 East Broad Street
10th Floor
Columbus, OH 43215-3793

RECEIVED
JUL 31 2000
DOCKETING DIVISION
- PUCO -

Re: *In the Matter of the Application of The Cincinnati Gas & Electric Company for
Approval of its Transition Plan and for Authorization to Collect Transition
Revenues, Case No. 99-1658-EL-ETP, et al.*

Dear Ms. Crockron:

Shell Energy Services Co., L.L.C. ("Shell Energy") today filed by facsimile a Motion of Shell Energy Services Company, L.L.C. for Leave to File Response to CG&E's Request to Strike Portions of Shell Energy's Initial Brief. To complete that filing, Shell Energy has sent to you the enclosed original and twelve (12) copies of its Motion. Please date-stamp and return the two extra copies in the enclosed self-addressed postage pre-paid envelope.

Please contact me if you have any questions about this filing.

Very truly yours,

Paul F. Forshay / g's

Paul F. Forshay

Counsel for
Shell Energy Services Co., L.L.C.

Enclosure

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Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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JUL 31 2000
DOCKETING DIVISION
PUCO

In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	
Approval of its Electric Transition Plan)	Docket No. 99-1658-EL-ETP
and for Authorization to Collect Transition)	
Revenues)	
)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	Docket No. 99-1659-EL-ATA
Approval of Tariff Changes Required)	
to Implement Retail Electric Competition)	
)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	Docket No. 99-1660-EL-ATA
Approval of its New Tariffs)	
)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting)	Docket No. 99-1661-EL-AAM
Procedures to Defer Costs Incurred Arising)	
from the Implementation of its Electric)	
Transition Plan)	
)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting)	Docket No. 99-1662-EL-AAM
Procedures to Continue to Defer the)	
Unrecovered Balance of Regulatory Assets)	
)	
In the Matter of the Application of The)	
Cincinnati Gas & Electric Company for)	Docket No. 99-1663-EL-UNC
Approval to Transfer its Generating Assets)	
to an Exempt Wholesale Generator)	

**MOTION OF SHELL ENERGY SERVICES COMPANY, L.L.C.
FOR LEAVE TO FILE RESPONSE TO
CG&E'S REQUEST TO STRIKE PORTIONS OF
SHELL ENERGY'S INITIAL BRIEF**

Pursuant to Ohio Admin. Code § 4901-1-12, Shell Energy Services Co., L.L.C. ("Shell Energy") hereby moves for leave to file a response to Cincinnati Gas & Electric Co.'s ("CG&E") July 19, 2000 Reply Brief. Specifically, Shell Energy seeks leave to respond to CG&E's request

that the Commission disregard portions of Shell Energy's Initial Brief, submitted in this proceeding on July 5, 2000. The attached Memorandum in Support contains Shell Energy's response.

MEMORANDUM IN SUPPORT

On July 5, 2000, Shell Energy filed an Initial Brief in this proceeding. On July 19, 2000, CG&E filed a Reply Brief to Shell Energy's Initial Brief, in which it stated, "Shell's reliance on facts beyond the record should be stricken."¹ Because CG&E's request amounts to a *de facto* motion to strike portions of Shell Energy's Initial Brief, and implies that Shell Energy has played "fast and loose" with the Commission's procedures, we submit this brief response to set the record straight.

Rather than attempting to make its case on extra-record information, Shell Energy has based its brief on evidence contained in the record, including CG&E's own Transition Plan filing and testimony. In addition, Shell Energy has referred the Commission to other material in its Initial Brief as a tool for weighing and interpreting the evidence and, as a courtesy, has attached several of the referenced items to its brief. The Commission recently has recognized that the use of such material in this fashion on brief is perfectly acceptable. In *Re Bell Atlantic Corporation*, a party contended that portions of another party's initial brief should be stricken because the second party, "relied on or attached non-record documents to their initial brief."² The Commission rejected that contention, stating,

¹CG&E Reply Brief at 35.

²Case No. 98-1398-TP-AMT (February 10, 2000), 2000 Ohio PUC LEXIS 138, at *154, *reprinted in* 199 P.U.R. 4th 530 ("*Bell Atlantic*").

[T]he Commission expressly notes that a brief is not considered as part of the record for evidentiary purposes, but rather is used as a tool for weighing and interpreting the evidence presented at hearing. To this end, the Commission is certainly capable of considering the arguments made on brief in the context of the actual record before the Commission.³

Similarly, in *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of the Cincinnati Gas & Electric Co. and Related Matters*,⁴ the Commission considered and rejected a request to strike extra-record materials from a party's brief. The Commission aptly recognized that such materials were "merely documents . . . use[d] in [a] brief to persuade the Commission to [a] point of view."⁵

The Commission's holdings and rationales in *Bell Atlantic* and *CG&E* apply with equal force here. Shell Energy has not sought to insert additional evidence into the record at the eleventh hour through its Initial Brief. The materials of which CG&E complains constitute part of Shell Energy's arguments on brief, and are entitled to the same consideration as other aspects of its Initial Brief, no more and certainly no less. Unlike CG&E, Shell Energy is confident that the Commission is capable of considering these arguments in the context of the actual record before it.

WHEREFORE, for the foregoing reasons, Shell Energy Services Co., L.L.C. respectfully requests that the Commission deny CG&E's request to disregard certain material in Shell

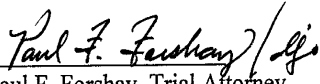
³*Id.* at *154-55.

⁴Case No. 95-103-EL-EFC (June 27, 1996), 1996 Ohio PUC LEXIS 359, at *8 ("*CG&E*").

⁵*Id.*

Energy's Initial Brief.

Respectfully submitted,


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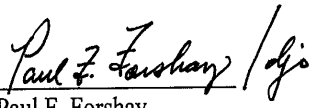
Attorney for
SHELL ENERGY SERVICES Co., L.L.C.

July 31, 2000

CERTIFICATE OF SERVICE

In accordance with Ohio Rev. Code § 4901-1-05, I hereby certify that I have this day served a copy of the foregoing document, via electronic mail or U.S. mail, upon each person to this proceeding as reflected on the attached service list.

Dated at Washington, D.C. this 31st day of July, 2000.


Paul F. Forshay

SERVICE NOTICE FOR : 99-1658-EL-ETP

PAGE 3

received

ELIZABETH H. WATTS

SERVICE NOTICE

PAGE 1

CASE NUMBER 99-1658-EL-ETP
CASE DESCRIPTION CINCINNATI GAS & ELECTRIC CO.
DOCUMENT SIGNED ON June 29, 2000
DATE OF SERVICE

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