

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The
Cincinnati Gas & Electric Company to Modify
Its Nonresidential Generation Rates to
Provide for Market-Based Standard Service
Offer Pricing and to Establish an Alternative
Competitive-Bid Service Rate Option Sub-
Sequent to the Market Development Period.

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
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In the Matter of the Commission's
Promulgation of Rules for the Conduct of a
Competitive Bidding Process for Electric
Distribution Utilities Pursuant to Section
4928.14, Revised Code.) Case No. 01-2164-EL-ORD

ENTRY

The Commission finds:

- (1) The applicant, The Cincinnati Gas & Electric Company (CG&E), is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On January 10, 2003, CG&E filed an application (pricing application), in Case No. 03-93-EL-ATA (pricing case), to modify its non-residential generation rates to provide for market-based standard service offer (MBSSO) pricing and to establish an alternative competitive-bid process (CBP) subsequent to the end of the market development period (MDP). Through its pricing application, CG&E intends to offer a retail market-based generation rate to non-residential end-use customers that do not switch to a competitive retail electric service (CRES) provider or the CBP for their generation service. CG&E's proposed CBP will provide non-residential

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end-use customers with another option in addition to the MBSSO through a competitive offering by a CRES provider.

- (3) A technical conference was held on February 12, 2003, to allow interested persons the opportunity to better understand CG&E's pricing application. Interested persons and the Commission's staff (staff) also were provided the opportunity to file comments and reply comments and to propose alternative methodologies to CG&E's application.
- (4) Motions to intervene in the pricing case were filed by The Kroger Co.; Industrial Energy Users-Ohio (IEU-Ohio); AK Steel Corporation (AK Steel); General Electric Company; Constellation NewEnergy, Inc.; MidAmerican Energy Company; Ohio Consumers' Counsel (OCC); Strategic Energy, LLC; Dominion Retail, Inc.; Energy America, LLC; Duke Realty (Duke); Ohio Partners for Affordable Energy (OPAE); and National Energy Marketers Association (NEMA) (collectively, intervenors). As the Commission finds that CG&E's pricing application may have a direct effect on the MBSSO and CBP for all CG&E customers and that the intervenors have set forth valid reasons for intervention, all of the motions to intervene filed by the intervenors will be granted. Motions for admission *pro hac vice* were filed to admit Craig G. Goodman and David C. Rinebolt to practice before the Commission in the pricing case. These motions will also be granted.
- (5) Comments and/or reply comments regarding the pricing application, and/or proposed alternative methodologies, were filed by all of the intervenors other than Duke, as well as by staff, CG&E, The Dayton Power & Light Company, and Eagle Energy, LLC (collectively, commenters).
- (6) OCC, IEU-Ohio, AK Steel, and OPAE, have filed motions to dismiss CG&E's pricing application or, alternatively, to set the matter for hearing pursuant to Section 4909.18, Revised Code, or to stay the matter until the Commission completes its rulemaking in In the Matter of the commission's Promulgation of Rules for the conduct of a Competitive Bidding Process for Electric Distribution Utilities Pursuant to Section 4928.14, Revised Code, Case No. 01-2164-EL-ORD (rulemaking proceeding). OCC also requests that the Commission consolidate CG&E's pricing application with the rulemaking proceeding. These parties and several other parties filing comments argue that CG&E's pricing application should be dismissed or stayed until the Commission has considered the comments filed in the rulemaking proceeding and has established proper procedures for the development of MBSSOs and CBPs. They argue that it would be premature to go forward with CG&E's application before rules are approved. In addition, all commenters, including staff, believe that CG&E's pricing application is contrary to electric restructuring public policy objectives set forth in Section

4928.02, Revised Code, and that the pricing application produces results that are unreasonable and unlawful. It is also asserted that certain proposed riders affect customers who would not take service through MBSSO or CBP and, therefore, constitute an increase in rates. Further, certain commenters argue that the application would eliminate the ability of residential customers to be bid as a part of a pool that includes non-residential customers, eliminating the potential for maximum savings under the CBP. The commenters that oppose the pricing application request that the Commission find that the pricing application may be unjust and unreasonable and set the matter for hearing if the Commission does not dismiss the pricing application.

- (7) Staff recommends, in its comments, that the Commission hold a hearing on the pricing application inasmuch as it appears to staff that the pricing application appears to be unjust and unreasonable. Staff believes that CG&E's pricing application should not be accepted because its MBSSO is intrinsically anti-competitive. Staff believes that approval of the pricing application would essentially allow CG&E to provide service in the same manner as a CRES provider and that CG&E should not actively compete as a CRES provider within the operational and legal structure of a public utility. Staff also notes that the prerequisite market institutions for the MBSSO are not yet in place. Staff argues that CG&E is seeking approval of a market tracking mechanism which is specific to the wholesale market as it exists today; however, this market is not sufficiently developed to provide confidence in any tracking methodology. Staff also agrees with the various commenters who believe that the pricing application is premature inasmuch as the Commission is still considering MBSSO and CBP rules. Staff also asserts that certain of the costs to be recovered through the proposed tariffs have not been justified.
- (8) After considering all the motions and comments filed, the Commission believes that the motions to dismiss CG&E's pricing application should be denied. However, staff and the commenters have raised many issues that merit holding a hearing on CG&E's pricing application. It appears that the pricing application may be unjust and unreasonable and that, pursuant to Section 4909.18, Revised Code, a hearing should be held. The Commission also believes that, in light of the current status of the rulemaking proceeding, it would not be premature and counterproductive to hold a hearing prior to the completion of that proceeding. The Commission further finds that OCC's request to consolidate the pricing case with the rulemaking procedure should also be denied as it would only unnecessarily complicate the rulemaking proceeding.

- (9) On October 8, 2003, CG&E filed an application (MISO costs application), in Case No. 03-2079-EL-AAM (MISO costs case), to permit it to defer Schedule 10 Federal Energy Regulatory Commission (FERC) costs and costs assessed by the Midwest Independent System Operator (MISO) pursuant to schedules 16 and 17 of its Open Access Transmission Tariff, also approved by FERC. Through its MISO costs application, CG&E states that it hopes to be able to recover certain costs in order to provide it with the incentive to maintain a sufficient level of capital investment necessary to maintain reliable transmission and distribution.
- (10) On October 8, 2003, CG&E also filed an application (capital investment application), in Case No. 03-2081-EL-AAM, to permit it to defer capital investments made during the market development period in its transmission and distribution system and, in Case No. 03-2080-EL-ATA, to establish a rider to recover such capital investments made after the market development period (collectively, capital investment cases). CG&E states that it intends, through the capital investment cases, to facilitate the operation of a reliable transmission and distribution system by removing the disincentives to capital investment which were created by frozen rates.
- (11) On October 23, 2003, and November 4, 2003, The Ohio Energy Group (OEG) and OCC, respectively, filed motions to intervene in both the MISO costs case and the capital investment cases. As these cases could have an impact on customers' rates, and OEG and OCC have set forth valid reasons for intervention, these motions will be granted.
- (12) OEG and OCC also filed motions to dismiss the MISO costs application and the capital investment application. OCC argues that the Commission has no authority to grant CG&E's requests and that the MISO costs application and the capital investment application are inconsistent with the statewide electric transition framework, with the stipulation CG&E signed to settle its electric transition plan case,¹ and with the distribution and transmission rate cap established for the MDP. Similarly, OEG contends that these applications violate statutory provisions establishing a transmission and distribution rate cap during the MDP, that the applications are attempts to engage in single-issue ratemaking and, with regard to the capital investment application, that the proposed rider is counter to the statutory framework for ratemaking.
- (13) The Commission, after due consideration of OEG's and OCC's motions to dismiss the MISO costs application and the capital investment application, finds that the motions should be denied.

¹ *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan and for Authorization to Collect Transition Revenues*, Case No. 99-1658-EL-ETP (ETP case).

However, as OEG and OCC have raised a number of issues that make it appear that the MISO costs application and the capital costs application may be unjust and unreasonable, a hearing should be held. The Commission further finds that, as there may be issues which overlap among the pricing case, the MISO costs case and the capital investment case, these cases should be consolidated. In addition, the consolidation of these cases will help the Commission consider CG&E's electric operations on a more unified basis.

- (14) The Commission is concerned that the competitive retail market for electric generation has not developed as rapidly as was anticipated when it issued its opinion and order the ETP case. We have previously stated that we encourage electric utilities to consider the establishment of plans which will stabilize prices following the termination of their MDPs, and will allow additional time for competitive electric markets to grow.² As the competitive retail market for electric generation has not fully developed in the CG&E territory, the Commission finds it advisable that CG&E file a rate stabilization plan as part of these proceedings, for the Commission's consideration.
- (15) The Commission will establish the following procedural schedule for these proceedings:
 - (a) Monday, January 26, 2004 – CG&E is requested to file a proposed rate stabilization plan.
 - (b) Tuesday, February 24, 2004 – A technical and procedural conference will be held at 10:00 a.m., in hearing room 11-D, at the offices of the Commission.
 - (c) Tuesday, March 2, 2004 – This is the deadline for filing motions to intervene in these proceedings and for filing objections to CG&E's proposed rate stabilization plan.
 - (d) Thursday, March 25, 2004 – CG&E's testimony is due.
 - (e) Thursday, April 1, 2004 – Staff's testimony is due.
 - (f) Thursday, April 8, 2004 – This is the testimony due date for all other parties wishing to present testimony.
 - (g) Monday, April 19, 2004 – An evidentiary hearing will be held at 10:00 a.m., in hearing room 11-D, at the offices of the Commission.

² *In the matter of the Continuation of the Rate Freeze and extension of the Market Development Period for The Dayton power and Light Company, Case No. 02-2779-EL-ATA, et al. (Opinion and Order, 9/2/2003, at 29).*

- (16) A local public hearing will be held at a time and place to be determined by future entry.

It is, therefore,

ORDERED, That motions to intervene and motions for admission *pro hac vice*, as set forth in findings (4) and (11), be granted. It is, further,

ORDERED, That the motions to dismiss CG&E's pricing application and OCC's motion to consolidate the pricing case with Case No. 01-2164-EL-ORD be denied. It is, further,

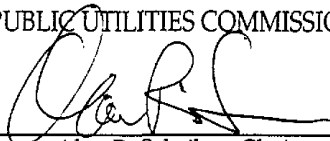
ORDERED, That OEG's and OCC's motions to dismiss the MISO costs application and the capital costs application be denied. It is, further,

ORDERED, That Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2080-EL-ATA, and 03-2081-EL-AAM be consolidated. It is, further,

ORDERED, That the procedural schedule set forth in finding (15) be followed. It is, further,

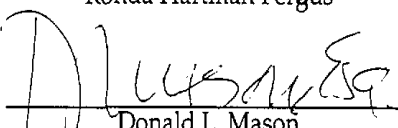
ORDERED, That a copy of this entry be served upon all parties of record.

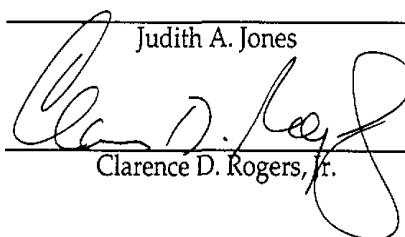
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


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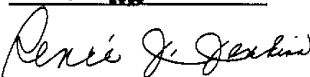

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Entered in the Journal

DEC 9 2003


Renee J. Jenkins

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Secretary

CASE NUMBER: 03-93-EL-ATA
CASE DESCRIPTION: CINCINNATI GAS & ELECTRIC
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CASE DESCRIPTION: CINERGY CORPORATION
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