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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION)	CASE NOS.	99-1658-EL-ETP
OF THE CINCINNATI GAS & ELECTRIC)		99-1659-EL-ATA
COMPANY FOR APPROVAL OF ITS)		99-1660-EL-ATA
TRANSITION PLAN AND FOR)		99-1661-EL-AAM
AUTHORIZATION TO COLLECT)		99-1662-EL-AAM
TRANSITION REVENUES, <i>ET AL.</i>)		99-1663-EL-UNC

POST-HEARING BRIEF OF BUCKEYE POWER, INC. AND
OHIO RURAL ELECTRIC COOPERATIVES, INC.

I. Introduction

Buckeye Power, Inc. and Ohio Rural Electric Cooperatives, Inc. represent the interests of Ohio's 25 electric distribution cooperatives which collectively provide retail electric service to their consumer-owners in 77 of Ohio's 88 counties. All of Ohio's electric cooperatives are transmission-dependent utilities. Their interest in this proceeding is limited to the issue of transmission rate pancaking. The Ohio Revised Code and the Ohio Administrative Code require that Ohio's investor-owned utilities take substantive action to minimize transmission rate pancaking within Ohio by January 1, 2001, and provide three options for doing so. The Cincinnati Gas & Electric Company ("CG&E") transition plan satisfies none of these three options. Instead, CG&E's plan is to keep talking about how to solve the pancaking problem. Because CG&E has not met its burden of proof to show that it has minimized transmission rate pancaking within Ohio by January 1, 2001, its transition plan should be rejected.

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II. Background Regarding Buckeye Power, Inc., Ohio Rural Electric Cooperatives, Inc., and Their Position in this Case

Buckeye Power, Inc. ("Buckeye") is a non-profit electric generation and transmission cooperative supplying electric power and energy to its 25 member electric distribution cooperatives in Ohio, who together own Buckeye. (Direct Testimony of J. Bertram Solomon at 9, lines 6-17 (May 24, 2000).) These 25 member distribution cooperatives are, in turn, owned by their member-customers, who are the ultimate consumers of the power and energy supplied by Buckeye. (*Id.*) The member cooperatives serve homes, farms, businesses and industries in 77 of Ohio's 88 counties. (*Id.*) Ohio Rural Electric Cooperatives, Inc. ("OREC") is the statewide association that represents the interests of Buckeye and its distribution cooperative members. (*Id.*)

Buckeye owns two coal-fired electric generating units with a capacity rating of 1,230 megawatts at the Cardinal Station located on the Ohio River near Brilliant, Ohio. (*Id.* at 9, line 18 - 10, line 4.) Buckeye's member cooperatives own local distribution systems which provide delivery service to their ultimate consumer-owners. (*Id.*) However, neither Buckeye nor its members own the integrated transmission facilities that are required to transmit Buckeye's generation resources to the local distribution systems of its member cooperatives. (*Id.*) Thus, Buckeye and its members must rely on the transmission systems of several other utilities in Ohio to provide this transmission service. (*Id.*)

The interest of Buckeye and OREC in this case is limited to the issue of transmission rate pancaking (which is defined below). The Ohio Revised Code and the Ohio Administrative Code

require the minimization of transmission rate pancaking within Ohio beginning on January 1, 2001. Because CG&E's transition plan fails to satisfy these requirements, it should be rejected.

III. The Requirement to Minimize Transmission Rate Pancaking

Ohio Revised Code § 4928.12(B) mandates, among other things, that by January 1, 2001, each electric utility within the State of Ohio be a member of a qualifying transmission entity that "implements, to the extent reasonably possible, policies and procedures designed to minimize pancaked transmission rates within this state." Ohio Rev. Code § 4928.12(B)(3). Ohio Administrative Code § 4901:1-20-17(B)(3) (hereinafter the "Anti-Pancaking Rule") expands upon that requirement:

Effective with the start of competition, January 1, 2001, electric utilities under the commission's jurisdiction should either:

- (a) all be in one transmission entity that minimizes pancaked rates to all retail customers within Ohio; or
- (b) provide appropriate reciprocity requirements between Ohio jurisdictional companies that minimize pancaking of rates within the state to the satisfaction of the commission; or
- (c) propose another means to effectuate the policy objectives set forth in section 4928.12 of the Revised Code as those objectives relate to the movement of power within Ohio to retail customers with a minimum of pancaking of rates.

All utilities electing paragraph (B)(3)(c) of this rule shall provide documentation in their transition filings so as to enable the commission to determine whether they have met their burden of proof to satisfy the statutory policy objectives as they relate to transmission.

All such mechanisms to minimize pancaking of rates within Ohio shall be in place by January 1, 2001, unless otherwise determined by the commission.

The staff of this Commission concluded that CG&E failed to satisfy this rule with its original transition plan filing. (See Staff Report of Exceptions and Recommendations at 34 (Mar. 27, 2000) ("Cincinnati Gas and Electric did not address Rule 4901:1-20-17, paragraph (B)(3) in the transition plan.")) The staff concluded that "The Commission cannot approve Cincinnati Gas and Electric's transition plan until the company complies with this section in a manner satisfactory to this Commission." (*Id.*) CG&E has done nothing of substance since that report was filed to comply with Rule 4901:1-20-17(B)(3), and its transition plan should therefore be rejected.

IV. Transmission Rate Pancaking is a Barrier to Effective Retail Electric Competition in the State of Ohio.

Transmission rate pancaking occurs when each owner of a transmission system that is used to deliver energy from a generator to a load is allowed to stack its transmission price onto the cost of the transaction. (Solomon Direct Testimony at 12, line 3 - 14, line 18.) Transmission rate pancaking is a major obstacle to the development of workably competitive markets for electric generation service, which is of course the objective of Ohio Senate Bill 3 and this transition plan proceeding:

A major step toward the development of competitive generation markets in the State has to be the elimination of the transmission market power of vertically integrated electric utilities in the State and the elimination of multiple or pancaked transmission charges. The development of workably competitive markets requires a large number of buyers and sellers of a relatively homogeneous product where the market participants compete on a level playing field. Competitive generation markets result in relatively thin margins to producers. Therefore, when a generation supplier can get its product to market with a single transmission charge while other competitors must incur two or more transmission charges to reach the

same market, a distinct competitive advantage exists. Under such circumstances, economic alternative supplies are restricted, the resulting generation markets are narrowed and competition is diminished.

(Solomon Direct Testimony at 16, line 14 - 17, line 3; *see also id.* at 21, lines 21-27.)

V. CG&E's Transition Plan Fails to Comply with Ohio Administrative Code § 4901:1-20-17(B)(3).

CG&E is a member of the Midwest Independent System Operator (the "Midwest ISO").

(Hearing Testimony of John Procario, Transcript of Proceedings of May 30, 2000, at 22, lines 1-4.) Three of the other four investor-owned utilities in Ohio—American Electric Power Company ("AEP"), FirstEnergy Corporation ("FirstEnergy"), and Dayton Power and Light Company ("DP&L")—plan to be members of the Alliance Regional Transmission Organization (the "Alliance RTO"). (Solomon Direct Testimony at 4, line 21 - 5, line 1; *see also id.* at 8, lines 4-5.) So long as CG&E remains in the Midwest ISO and AEP, FirstEnergy, and DP&L are in the Alliance RTO, there will be a transmission "seam" in Ohio, and if there is a seam in Ohio, the perpetuation of transmission rate pancaking in Ohio is guaranteed. (Procario Hearing Testimony at 26, line 15 - 27, line 2.)

CG&E's transmission witness, John Procario, believes that the Midwest ISO and the Alliance RTO should be merged into one larger regional transmission organization. (*Id.* at 27, lines 15-17.) A merger of these two entities would maximize the reliability benefits that flow from independent, regional operation of transmission facilities, and would enhance competition. (*Id.* at 27, lines 18-20.) Mr. Procario has participated in discussions about merging the Midwest ISO and the Alliance RTO. (*Id.* at 27, lines 21-24.) Those discussions have been unsuccessful. (*Id.* at 27, line 25 - 28, line 1.) According to Mr. Procario, a merger of these two transmission

entities won't happen without a strong push from regulatory authorities. (*Id.* at 28, lines 2-5.)

CG&E has ruled out the possibility of departing the Midwest ISO to join the Alliance RTO. (*Id.* at 22, line 25 - 23, line 2.)

CG&E's first option under the Anti-Pancaking Rule would be to join the same transmission organization of which the other Ohio utilities are members. CG&E has not satisfied that option, and apparently will take no steps to do so unless this Commission forces its hand.

The Anti-Pancaking Rule also gives CG&E the option of entering into reciprocity arrangements with the other Ohio investor-owned utilities that minimize the pancaking of transmission rates within Ohio. CG&E dismisses this option out of hand, claiming that there is "a zero percent chance" that CG&E will be able to pursue this option so long as it remains a member of the Midwest ISO. (Procario Hearing Testimony at 23, line 10.) Presumably because of these insurmountable odds, CG&E has never even put a reciprocity proposal on the table for the other Ohio utilities to consider. (*Id.* at 23, lines 12-15.) Thus, CG&E has not complied with option (b) under the Anti-Pancaking Rule.

CG&E says that it is proceeding pursuant to the third option available under the Anti-Pancaking Rule. (*Id.* at 23, lines 16-22.) On May 8, 2000, CG&E entered into a settlement stipulation on the transmission issues in this case with a number of the intervenors; that stipulation provides as follows:

CG&E will comply with Administrative Rule 4901:1-20-17(B)(3) by:

- (a) agreeing to participate in the collaborative process under FERC Order 2000, 89 FERC ¶ 61,285, to discuss integrating the facilities of the transmission-owning utilities in Ohio so as to achieve the objectives listed in Administrative Rule 4901:1-20-17(B)(3) and Revised Code § 4928.12; and

(b) to the extent not resolved in The Public Utilities Commission of Ohio action styled: *In the Matter of the Commission's Investigation Into the Adequacy and Availability of Electric Power for the Summer Months of 2000 from Ohio's Investor-Owned Electric Utility Companies*, Case No. 00-617-EL-COI, agreeing:

(1) to enter into a joint stipulation with all of the other transmission-owning utilities in Ohio to submit the subject of how to achieve the objectives listed in Administrative Rule 4901:1-20-17(B)(3) and related issues to a separate joint Public Utilities Commission hearing dealing solely with that subject as part of their respective transition plan application proceedings; or

(2) if such other transmission-owning utilities will not so agree, to jointly request, together with all of the other intervenors in this case, that the Public Utilities Commission order the other transmission-owning utilities to participate in such a hearing; and

(3) to participate in a statewide collaborative process to resolve the transmission seams issues in Ohio to effectuate the policy objectives of Revised Code § 4928.12.

Nothing in this Paragraph . . . shall require CG&E to take any further action without its express consent or be construed as a waiver of any right under state or federal law.

(Stipulation at 7-8 (May 8, 2000).)

According to CG&E, this expression of its willingness to participate in the ongoing Federal Energy Regulatory Commission collaborative process to address transmission issues in the Midwest, and in the joint hearing and collaborative process described in the transmission settlement stipulation, is all that the company has done to comply with option (c) under the Anti-Pancaking Rule. (See Procario Hearing Testimony at 23, line 23 - 25, line 4 (also adding that CG&E has tried but failed for several years to get all of the Ohio transmission-owning utilities to join one regional transmission organization).) As of Mr. Procario's May 30, 2000 live testimony in this case, CG&E had not even taken any of the three steps listed in paragraph (b) of its

transmission settlement stipulation, and Mr. Procario had no idea when, if ever, those steps would be taken. (*Id.* at 25, lines 5-13.)

CG&E's transmission settlement stipulation is nothing more than a promise to keep talking about pancaking. The whole notion that CG&E will continue to talk with the other Ohio transmission owners about how to minimize transmission rate pancaking in the state, and perhaps one day may ask this Commission to hold a hearing on the issue, is an undisguised admission that CG&E's transition plan is substantively vacant on the pancaking issue, and remains so to this day. CG&E's promise to keep talking about this problem—which the company admits that it has been doing for many years without success—should be unacceptable to this Commission.

CG&E's plan to continue talking about pancaking is a procedural gesture, not a substantive solution. The Anti-Pancaking Rule does not include an option for a utility seeking the many benefits of Senate Bill No. 3 to keep thinking and talking about how it may one day deal with the barrier to competition presented by transmission rate pancaking.

VI. CG&E Lacks the Will to Minimize Pancaking, not the Ability.

CG&E's excuse for ignoring the Anti-Pancaking Rule's directive to come up with something substantive to minimize transmission rate pancaking seems to be that it is simply too difficult to do so. Buckeye and OREC's expert witness, J. Bertram Solomon, testified to what this Commission already knew when it propounded the Anti-Pancaking Rule: that having all of the transmission-owning utilities in Ohio in the same regional transmission organization, or entering into appropriate reciprocity arrangements that would minimize pancaking, are workable, achievable solutions to the problem of transmission rate pancaking.

Mr. Solomon identified the philosophical and practical issues that distinguish the Midwest ISO and the Alliance RTO. (See Solomon Direct Testimony at 25, line 4 - 26, line 22.) Those distinctions are neither technically nor legally insurmountable. (See *id.* at 26, lines 3-22.) Indeed, Mr. Procario would not have been trying to achieve a merger of the Midwest ISO and the Alliance RTO for these last several years if he did not understand the distinctions between the two organizations, or if he did not believe that their differences could be overcome. However, as he stated, the principal obstacle to bringing the two organizations together is the parties' will. As he stated, a merger will not take place unless state and federal regulators force the hand of those involved.

Mr. Solomon also detailed exactly how an inter-utility or inter-RTO reciprocity arrangement would work. (See Solomon Direct Testimony at 27, line 1 - 28, line 14; see also *id.* at 32, line 18 - 34, line 5.) CG&E readily admits that it has *never even tried* to pursue a reciprocity arrangement, apparently because there is a "zero percent chance" of being able to enter into one so long as CG&E remains a member of the Midwest ISO.

CG&E has known about the problem of transmission rate pancaking for several years, and has been aware of its responsibility to address the problem in this proceeding for many months. The company could have begun long ago to take whatever steps are necessary to minimize pancaking within Ohio. (See Solomon Direct Testimony at 32, lines 6 - 17.) Despite this, and instead of presenting a substantive proposal to this Commission, CG&E insists that this Commission's objective of minimizing pancaking within the state of Ohio just cannot be done right now, but that the company will keep trying.

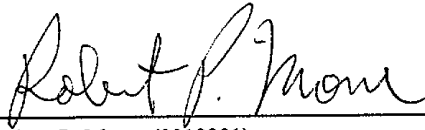
Talking about complying with the law is just that—lip service. Under the Anti-Pancaking Rule, CG&E has the burden of proof to show that it has minimized pancaking within Ohio—not merely that it shares the Commission’s objective of minimizing pancaking, which, ultimately, is all that CG&E’s transition plan shows. Because CG&E has failed to make an adequate substantive proposal to minimize pancaking in Ohio, (*see* Solomon Direct Testimony at 6, line 19 - 9, line 3), its transition plan should be rejected.

VII. Conclusion

As this Commission is well aware, the electric industry restructuring transition planning process holds many benefits for Ohio’s investor-owned utilities, not the least of which is their opportunity to collect many millions of dollars of transition costs from Ohio’s ratepaying electric consumers. CG&E has ignored one of the most important criteria for the functioning of a workably competitive electricity marketplace—the elimination of transmission rate pancaking, which serves as a barrier to effective competition and stacks the competitive deck in favor of the incumbent generation supplier. The result of CG&E’s failure to meet its responsibility under Ohio law is to assure that every electric cooperative consumer located within CG&E’s transmission area will pay higher rates for electric service. Additionally, CG&E will have a competitive advantage because it will force cooperative consumers to pay a much higher rate for transmission service than it charges its own customers for transmission service. This is discriminatory and preferential. It also creates anti-competitive market power in clear violation of Ohio law. This Commission can and should withhold its approval of CG&E’s transition plan

until and unless the company comes forward with a substantive proposal to minimize
transmission rate pancaking throughout the state of Ohio by January 1, 2001.

Respectfully submitted,

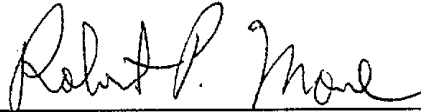
A handwritten signature in cursive script, reading "Robert P. Mone", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Post-Hearing Brief of Buckeye Power, Inc. and Ohio Rural Electric Cooperatives, Inc., has been served by e-mail and hand-delivery upon Michael D. Dortch, Daniel Gunsett, and Brian T. Johnson, and by e-mail and Fedex upon James B. Gainer at the addresses listed below; and by e-mail or regular U.S. mail upon the parties listed on the attached service list, on this 5th day of July, 2000.



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