

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the Electric)
Fuel Component Contained Within the Rate)
Schedules of the Cincinnati Gas & Electric)
Company and Related Matters.)

Case No. 95-103-EL-EFC

SUPPLEMENTAL OPINION AND ORDER

The Commission, considering the Opinion and Order issued June 27, 1996, having reviewed the testimony and exhibits presented at the public hearing, relevant portions of the Ohio Revised Code, Ohio Administrative Code (O.A.C.), and Commission orders, and otherwise being fully advised, hereby issues its Supplemental Opinion and Order.

APPEARANCES:

James L. Turner, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Cincinnati Gas & Electric Company.

Betty D. Montgomery, Attorney General of the State of Ohio, by Johnlander Jackson-Forbes and Paul A. Colbert, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Robert S. Tongren, Consumers' Counsel, by Evelyn R. Robinson-McGriff, Colleen L. Mooney, and Ann M. Hotz, Assistant Consumers' Counsel, 77 South High Street, 15th Floor, Columbus, Ohio 43266-0550, on behalf of the residential consumers of Cincinnati Gas & Electric Company.

INTRODUCTION AND SUMMARY OF THE LAW:

By its Opinion and Order issued June 27, 1996, the Commission adopted the Stipulation and Recommendation (Stipulation) filed by the parties and determined among other things that Cincinnati Gas & Electric Company's (CG&E, company) acquisition, delivery practices, and costs of fuel were fair, just and reasonable and correctly applied to customer bills. The Opinion and Order also directed CG&E to revise its tariff to reflect an electric fuel component (EFC) rate of 1.2140 ¢/kWh effective July 1, 1996. As part of the Stipulation the Office of the Consumers' Counsel (OCC) reserved for litigation the appropriateness of the company's emission allowance transactions for the year 1995.

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SUMMARY OF THE PROCEEDINGS:

Emission Allowance Transactions

At the hearing held on April 22, 1996, the attorney examiner admitted into evidence various previously filed company and Commission-ordered exhibits, including the annual report (Company Ex. 1), the financial audit (Commission Ordered Ex. 1), the management/performance (M/P) audit (Commission Ordered Ex. 2), the prehearing data (Company Ex. 2), the direct testimony of the company's witnesses Douglas E. Hils (Company Ex. 3), John R. Kreinest (Company Ex. 4), and Paul F. Ochsner (Company Ex. 5) and the Stipulation (joint Ex. 1). At the request of OCC, on April 30, 1996, the company docketed a late-filed exhibit demonstrating the details of how emission allowance purchases by Cinergy Corporation (Cinergy) support off-system sales (Company Ex. 7).

OCC reserved for litigation in this proceeding the appropriateness of the company's emission allowance transactions for the twelve-month period ended December 31, 1995. OCC argues that CG&E did not meet its burden of proving that a separate emission allowance inventory to support off-system sales is fair, just, and reasonable. OCC also claims that the company did not establish that the emission allowance trading policies and transactions of Cinergy, are fair, just, and reasonable. OCC also asserts that the Staff as M/P auditor failed to properly investigate the emission allowance trading policies and transactions of Cinergy, and thus CG&E, pursuant to the Commission's guidelines issued in Case No. 91-2155-EL-COI, *In the Matter of the Commission's Investigation into the Trading and Usage of, and the Accounting Treatment for, Emission Allowances by Electric Utilities in Ohio* (91-2155). Therefore, OCC reasons that the Commission has insufficient evidence of record to find the emission allowance transactions at issue are fair, just, and reasonable. Further, OCC requests that the Commission order the next M/P auditor to investigate whether CG&E's proposal for a two inventory system for allowances minimizes costs to EPC ratepayers. More specifically, OCC requests that the next M/P auditor investigate all Cinergy allowance transactions, including intra-Cinergy transfers and those with third parties for the year ended 1995 and whether the policy of purchasing allowances with shareholder funds only in support of off-system sales minimizes the costs to EFC ratepayers.

First, the Commission will address OCC's assertion that CG&E has not met its burden of proving that the emission allowance transactions attributable to CG&E and/or Cinergy are fair, just, and reasonable. CG&E relied on the M/P audit report as evidence of record to meet its burden of proof. The Staff as management/performance auditor concluded that CG&E's fuel procurement and utilization activities, which included a review of emission allowance transactions, policies and procedures, were conducted in a cost effective and efficient manner consistent with long-term least cost principles unless otherwise stated in the report. Notably, no such contrary statement as to CG&E's emission allowance transactions for the year ended 1995 was mentioned. More specifically, the M/P report explains the company's purchase of allowances for

emissions associated with off-system sales. The M/P audit report notes that CG&E will treat allowances purchased for off-system sales as an inventory specifically reserved for off-system power sales, and completely independent of the inventory for native load customers. With the two inventory system the costs of the allowances purchased for off-system sales are borne completely by the company (Com. Ord. Ex 2, V-9). Further the M/P auditor explained that if a single inventory system were used for emission allowance transactions, for off-system and native load, it would result in an increased weighted average inventory and thus an increase in cost incurred by EFC jurisdictional customers (*Id.*). Finally, Staff concluded that the Company's proposal to maintain two allowance inventories to be reasonable (*Id.*).

In regards to Cinergy's emission allowance transactions, it was the duty of the M/P auditor to ascertain sufficient information to determine whether the allowance transactions of Cinergy for CG&E are fair, just, and reasonable. In response, Staff asserts that its audit was thorough and based on a great deal of consideration and analysis by way of interviews with company personnel, Staff propounded interrogatories, and review of various company records, accounts, and documents, from both CG&E and Cinergy, as it relates to fuel procurement or utilization activities (Comm. Ord Ex. 2 at 2-3). Therefore, on brief Staff asserts that its investigation of CG&E, which necessarily incorporated Cinergy as the parent company and central operating entity, was sufficient to conclude that CG&E's decision not to purchase emission allowances for native load customers but to purchase or exchange emission allowances for off-system sales was reasonable. Staff does not, however, assert that CG&E complied with the advance notice and approval provisions of 91-2155.

CG&E may rely on the evidence of record prepared by the Staff as M/P auditor to meet its burden of proof. In this instance CG&E relied on the M/P report to establish that CG&E's allowance transactions were fair, just, and reasonable. However, CG&E must also comply with the guidelines in 91-2155. As OCC notes, the guidelines require advanced notice of a company's plan for use of shareholder resources which will then, for purposes of reviewing potential cross-subsidization, become part of the next EFC proceeding.

OCC rests its assertion that the M/P audit was inadequate as to the emission allowance transactions on its cross examination of staff witness Stuart Siegried as to corporate structure (Tr. 15 - 22), and a misplaced focus on the brevity of one portion of the M/P audit report which discussed emission allowance transactions (Comm. Ord Ex. 2 at V-9), and its attempt on brief to persuade the Commission that there could be additional allowance transactions during the period which the company did not make known to the M/P auditor. OCC also cross examined company witnesses Paul F. Oschner and John Kreinest on off-systems sales issues. OCC, however, did not sponsor any witnesses or file any testimony in this proceeding. On brief, OCC avers that the M/P audit was inadequate to determine whether the emission allowance transactions are fair, just, and reasonable. Consumers' Counsel focuses on one small portion of the M/P report, the Staff witness' lack of understanding as to Cinergy's internal corporate

structure, and inability of the Staff witness to recall indirect details about his review of the company's emission allowance transactions. To OCC's argument Staff answers that during this audit period CG&E's two inventory system of accounting for emission allowances and allocation of all EPA granted allowances with a zero basis to native load customers results in no costs related to the purchase of emission allowances being allocated to native load customers in the EFC.

As part of its argument that the M/P audit was inadequate, OCC asserts that an electric utility may fail to report emission allowance transactions to the Commission. To substantiate this argument, OCC attached a document purported to be from the Environmental Protection Agency's Allowance Tracking System database associated with the Cinergy accounts. While the company did not deny the existence of an unreported transaction during the audit period, OCC's assertion is based upon evidence not properly a part of the hearing record and, thus, unsupported. However, OCC's assertion that allowance transactions could go unreported to the Commission is well taken. Therefore, the Commission will direct the next M/P auditor to verify, by an independent and reliable source, the emission allowance transactions attributable to CG&E for the next audit period, the year ended 1996, and address in its report the source's method of obtaining and compiling such information and the validity of the source utilized. However, the implication that transactions may have been unreported to the Commission or the M/P auditor is insufficient, without further evidence of record, to find that such was the case in this proceeding.

The basis of OCC's arguments is that the record does not support the adoption of CG&E's dual inventory system and that use of the dual inventory system may not be to the best interest of EFC customers. OCC further contends that such an approach does not comport with the emission allowance guidelines adopted by the Commission in 91-2155, whereby allowances are to be treated the same as coal. OCC argues that there are not separate inventories for coal purchases for system and off-system sales. Although OCC's argument is not substantially supported on record, nevertheless the Consumers' Counsel is correct as to the company's duty to comply with the 91-2155 guidelines. Although the Staff as M/P auditor found that the allowances purchased during the audit period need not have been purchased for the native load inventory, and that no cross-subsidization had occurred, such does not relieve the company of its obligation to comply with 91-2155.

Given CG&E's failure to comply with 91-2155 and the lack of an adequate record to determine the appropriateness of CG&E's accounting treatment for emission allowances, the Commission will defer ruling on this issue until the company's next EFC proceeding. The Commission finds that CG&E, and all other electric utilities must formally notify the Commission for approval of the utility's emission allowance plan pursuant to 91-2155. CG&E developed an alternative emission allowance treatment but failed to provide the Commission with adequate advance formal notice. Accordingly, the company did not obtain Commission approval of its alternative emission allowance plan prior to implementation. To adequately address the reasonableness and prudence

of CG&E's emission allowance transactions for 1995, the Commission directs CG&E to file with its mid-year adjustments, the company's plan for the treatment of emission allowances. The plan will be reviewed in the company's next EFC proceeding and should fully describe the way in which emission allowances will be obtained, held, and utilized on behalf of all of the company's retail and wholesale customers. The company should address in detail all of the concerns which have been raised in this case, specifically purchasing the least expensive emission allowances for off-system sales and the more expensive allowances for native load customers ("streaming") and unreported transactions. In addition, the company's filing should also address the following items:

- (1) Describe in detail the manner in which CG&E intends to evaluate potential allowance transactions for native load customers. Specifically, include discussion of at least the following details:
 - (a) the calculations completed to determine the economic benefit or detriment to native load customers of participating in each potential allowance transaction, both short and long-term; and
 - (b) the planning horizon over which allowance transactions will be considered for the native load allowance inventory;
- (2) Describe in detail how Cinergy will decide which allowances will be purchased and sold for below the line treatment versus which will be purchased and sold for above the line treatment. Provide details on how such determination will be made and how the Commission can prevent "streaming" of low-cost allowances to below the line treatment and higher cost allowances for above the line treatment;
- (3) Describe in detail how Cinergy will determine whether PSI Energy Inc. (PSI) or CG&E allowances will be bought and sold and the factors which will go into the determination of same;
- (4) Under both inventory scenarios (single inventory and two separate allowance inventories), provide details of the effects that operating in a multi-jurisdictional environment will have on allowance decisions;
- (5) Describe the manner in which allowance activities will be coordinated between CG&E and PSI. Specifically include details on the following topics:

- (a) the assignment of costs between CG&E and PSI;
- (b) the allocation of allowances between CG&E and PSI; and
- (c) the allocation of gains/losses between CG&E and PSI.

The Commission emphasizes that all electric utilities that elect to implement a single-inventory approach or any alternative to the single-inventory system of trading, utilizing or accounting for emission allowances must present the Commission with a proposal, as part of the company's next annual audit review, explaining the basis for the emission allowance inventory system selected and obtain approval of such proposal, before the utility's emission allowance transactions can be found fair, just, and reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) CG&E is an electric light company within the meaning of Section 4905.03 (A)(4), Revised Code, and as such, is a public utility subject to the ongoing jurisdiction and supervision of this Commission. CG&E is also an electric utility within the meaning of Rule 4901:1-11-01(L), O.A.C.
- (2) Section 4905.301, Revised Code, requires the Commission to review each electric utility's EFC and related matters. By entry dated February 23, 1995, the Commission initiated this proceeding to review CG&E's EFC and related matters.
- (3) By Finding and Order issued June 27, 1996, CG&E's EFC rate of 1.2140¢/kWh became effective on July 1, 1996.
- (4) A hearing was held on April 22, 1996, to address CG&E's emission allowance transactions for the audit period and the company caused notice of the hearing to be published in accordance with the requirements of Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C.
- (5) The parties entered into a stipulation which addressed all issues in this case, except as to the company's emission allowance transactions for the year 1995. The Commission, by Finding and Order issued June 27, 1996, adopted the stipulation submitted by the parties.

- (6) There is insufficient evidence of record to determine the reasonableness of CG&E's emission allowance transactions for the audit period.


It is, therefore,

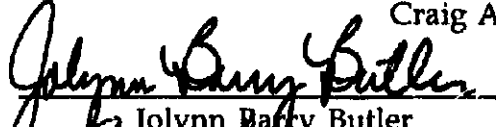
ORDERED, That CG&E file with its next mid-year adjustments the information requested for review and approval of its emission allowance plan proposal. It is, further,

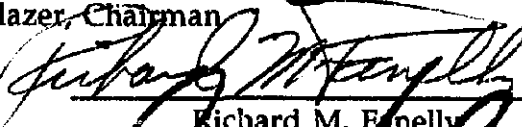
ORDERED, That the next M/P auditor verify by independent source the emission allowance transactions of Cinergy for CG&E. It is, further,

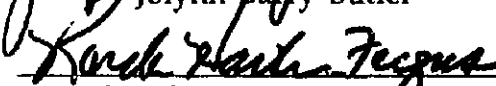
ORDERED, That a copy of this Supplemental Opinion and Order be served upon CG&E and its counsel, OCC and all other interested persons of record.

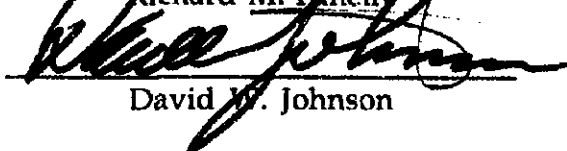
THE PUBLIC UTILITIES COMMISSION OF OHIO


Craig A. Glazer, Chairman


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GNS/pdc

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Gary E. Vigorito
Secretary