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1 for electric generation has not fully developed in the CG&E territory, the
2 Commission finds it advisable that CG&E file a rate stabilization plan as part of
3 these proceedings, for the Commission's consideration."⁹⁴ The Commission's
4 interest in departing from the post-MDP pricing rules in favor of a CG&E RSP
5 proposal should also be re-examined in light of the side agreements that were
6 connected with CG&E's RSP proposals. [REDACTED]
7 [REDACTED]
8 [REDACTED]

9
10 On numerous occasions, beginning with the post-MDP pricing for the Dayton
11 Power and Light Company,⁹⁵ the Commission has stated that its test of generation
12 pricing is made in light of the PUCO's view that the competitive market has not
13 developed sufficiently. When the Commission requested CG&E to file an RSP
14 plan, it referred to Commission decisions in DP&L and FirstEnergy cases, and
15 repeated similar language in CG&E's Post-MDP Service Case by stating: "The
16 Commission has established three goals that may be met by an RSP, where CRES
17 [i.e. competitive retail electric service] markets have not fully developed by the
18 end of a utility's MDP: (1) rate certainty for consumers, (2) financial stability for
19 the utility, and (3) the further development of competitive markets."⁹⁶ In this
20 Post-MDP Remand case, the testimony of OCC witness Neil Talbot principally

⁹⁴ Entry at 5 (December 9, 2004).

⁹⁵ DP&L RSP Case No. 02-2779-EL-ATA (September 2, 2003).

⁹⁶ Order at 15 (September 29, 2004).

1 addresses the first two of the listed goals, while in this testimony I will principally
2 address the third goal - market development.

3
4 In CG&E's Post-MDP Service Case, the Commission concluded that, with its
5 modifications to the May 2004 Stipulation, "the stipulation is reasonably likely to
6 enhance the development of the retail market for generation in CG&E's
7 territory."⁹⁷ In its November 2004 Entry on Rehearing the PUCO stated that "the
8 Commission finds that the modifications of the opinion and order suggested by
9 CG&E . . . will further encourage the development of the competitive markets"⁹⁸
10 However, neither decision was based upon knowledge and analysis of the side
11 agreements and their likely impact upon development of the competitive market
12 in CG&E's service territory.

13
14 ***Q60. WHAT ARE YOUR CONCERNS REGARDING THE IMPACT THE SIDE***
15 ***AGREEMENTS WOULD HAVE AND/OR HAVE HAD ON THE***
16 ***DEVELOPMENT OF THE COMPETITIVE MARKET?***

17 ***A60.*** [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

⁹⁷ Order at 19 (September 29, 2004).

⁹⁸ Entry on Rehearing at 14 (November 23, 2004).

1 [REDACTED]
2 The Commission has previously recognized [REDACTED]
3 [REDACTED]
4 [REDACTED]. The Post-MDP Order features such a statement regarding the desirability
5 of greater bypassability in Duke Energy's charges.⁹⁹ [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14

15 The potential that the side agreements would cause many Customer Parties to be
16 non-shoppers has seemed to have materialized. Switching rates have plummeted
17 in areas served by Duke Energy Ohio since approval of post-MDP generation
18 pricing in the Post-MDP Service Case. At the time the Post-MDP Service Case
19 came to hearing in May 2004, the switching rates for commercial, industrial, and
20 residential customers were 22.04, 19.70, and 4.91 percent.¹⁰⁰ As of December 31,

⁹⁹ Order at 19 (September 29, 2004). The Concurring Opinion of Chairman Alan R. Schriber emphasizes that changes to Duke Energy's proposed Stipulation were made to help commercial and small industrial customers shop.

¹⁰⁰ Tr. Vol. II at 133 (CG&E Witness Stevie) (May 20, 2004).

1 2006 the Electric Choice Sales switching rates listed on the PUCO's web site had
2 fallen to 8.40, 0.36, and 2.32 percent, respectively. The Commission's hope at the
3 end of the Post-MDP Service Case proceedings for the development of
4 competitive options for customers has not materialized,¹⁰¹ [REDACTED]

5 [REDACTED]

6 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13
14 While DE-Ohio may argue that the companies involved are separate DE-Ohio
15 affiliates, it does appear that CG&E and its parent company at that time,
16 Cinergy Corp., viewed CG&E's RSP and the CRS and side agreements as
17 interrelated. Attached to my testimony is a January 28, 2005 e-mail from [REDACTED]

18 [REDACTED]

19 [REDACTED]¹⁰³. At his deposition, [REDACTED] had been

¹⁰¹ E.g., Order at 19.

¹⁰² [REDACTED]

¹⁰³ Attachment 23.

1 Chief Financial Officer of the Regulated Business Unit and this e-mail [REDACTED]

2 [REDACTED]
3 [REDACTED] As an example of how the CG&E RSP and the side
4 agreements were considered to be related, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]
19
20 Thus, the Commission should also consider the DE-Ohio affiliated companies'
21 interrelationships, as illustrated by activities related in the side agreements, in
22 light of the Commission's rules that are designed to foster competitive equality.
23 These rules also provide the Commission the ability to investigate and address

1 anticompetitive concerns raised due to the interrelationship among affiliated
2 companies. There are numerous examples of this in the Commission's rules:

- 3 • In OAC 4901:1-20-16(A), the Commission adopted a rule "so a
4 competitive advantage is not gained solely because of corporate
5 affiliation. This rule should create competitive equality, preventing unfair
6 competitive advantage and prohibiting the abuse of market power."
- 7 • In OAC 4901:1-20-16(D), the Commission's rule prohibits "cross-
8 subsidies between an electric utility and its affiliates...."
- 9 • In OAC 4901:1-20-16(G)(1)(c), the Commission's rule requires that
10 "Electric utilities and their affiliates that provide services to customers
11 within the electric utility's service territory shall function independently
12 of each other...."
- 13 • In OAC 4901:1-20-16(G)(4)(e), the Commission's rule requires "The
14 electric utility shall not tie (nor allow an affiliate to tie) or otherwise
15 condition the provision of the electric utility's regulated services,
16 discounts, rebates, fee waivers, or any other waivers of the electric
17 utility's ordinary terms and conditions of service, including but not
18 limited to tariff provisions, to the taking of any goods and/or services
19 from the electric utility's affiliates."
- 20 • In OAC 4901:1-20-16(G)(4)(f), the Commission's rule requires that "The
21 electric utility shall ensure effective competition in the provision of retail
22 electric service by avoiding anticompetitive subsidies flowing from a
23 noncompetitive retail electric service to a competitive retail electric

1 service or to a product or service other than retail electric service, and
2 vice versa.”

- 3 • In OAC 4901:1-20-16(G)(4)(h), the Commission requires that
4 “Employees of the electric utility or persons representing the electric
5 utility shall not indicate a preference for an affiliated supplier.”
- 6 • In OAC 4901:1-20-16(G)(4)(j) , the Commission’s rule requires that
7 “Shared representatives or shared employees of the electric utility and
8 affiliated competitive supplier shall clearly disclose upon whose behalf
9 their representations to the public are being made.”

10
11 In addition to these requirements, the PUCO Staff has the authority to examine
12 the records of the utility and its affiliates and they “may investigate such electric
13 utility and/or affiliate operations and the interrelationship of those operations.”
14 (OAC 4901:1-20-16(I)(1) and (2)). At the conclusion of my testimony I make a
15 recommendation with regard to these Commission rules and the side agreements
16 related to this case.

17
18 ***Q61. DO YOU HAVE OTHER OBSERVATIONS REGARDING THE EFFECT***
19 ***THAT THE DEALINGS BETWEEN PARTIES HAVE HAD ON THE***
20 ***COMPETITIVE MARKET?***

21 ***A61.*** Yes. While investigating the side agreements, the OCC obtained copies of two
22 letter notifications attached to my testimony¹⁰⁴ from ██████████ CG&E regarding

¹⁰⁴ Attachment 24.

1 [REDACTED]
2 [REDACTED] (According
3 to [REDACTED] he submitted the second letter at the request of CG&E to clarify
4 the first notice) Pursuant to the terms of the Stipulation, terms that were not
5 modified by either the September 2004 Order or any subsequent entry on
6 rehearing, a non-residential customer could avoid paying the RSC if the customer
7 "enter[ed] [into] a contract with a credit worthy [sic] CRES provider to provide
8 firm generation service through December 31, 2008" and providing CG&E with
9 notification by a certain date that an alternative competitive retail electric supplier
10 would provide the service [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14
15 CG&E was in a dispute with a CRES provider in early 2005 regarding claims that
16 CG&E demanded customers to submit a long and intimidating agreement before
17 they were permitted to bypass the provider of last resort charges. A Commission
18 Entry, dated February 9, 2005, agreed that CG&E should be able to ask shopping
19 customers to sign an agreement, but rejected the needlessly long form that CG&E
20 required.¹⁰⁵ The situation with [REDACTED] notifications follows the overall
21 approach taken by CG&E in the Post-MDP Service Case [REDACTED]
22 [REDACTED]

¹⁰⁵ Entry at 2 (February 9, 2005).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5

6 C. REGULATORY PROBLEMS

7

8 ***Q62. IN EVALUATING DUKE ENERGY OHIO'S PROPOSED POST-MDP***
9 ***GENERATION PRICING, WHAT REGULATORY CONCERNS SHOULD***
10 ***THE COMMISSION CONSIDER THAT ARE RAISED BY THE SIDE***
11 ***AGREEMENTS?***

12 ***A62.*** The overall Post-MDP generation pricing plans proposed by Duke Energy in the
13 Post-MDP Service Case -- when the effect of the side agreements is properly
14 considered -- are discriminatory in favor of a relatively small number of large
15 users of electricity. Anti-discrimination and rate setting in a public process is a
16 major theme in the regulation of utilities. Upon the advice of counsel, an anti-
17 discrimination statute (R.C. 4905.35 and 4928.14(A)) reflects this theme in
18 Ohio's regulation of generation pricing for electricity.¹⁰⁶

19

20 [REDACTED]
21 [REDACTED]

105 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11

12 **D. EXCLUSION OF PARTIES AND CUSTOMER CLASSES**
13 **FROM NEGOTIATIONS**
14

15 ***Q63. WHAT CONCERNS ABOUT THE SIDE AGREEMENTS' RELATIONSHIP***
16 ***TO THE PROCESS THAT LED TO THE STIPULATION SHOULD THE***
17 ***COMMISSION CONSIDER IN EVALUATING DE- OHIO'S POST-MDP***
18 ***GENERATION PRICING?***

19 ***A63.*** The negotiating process which led to the May 2004 Stipulation in the Post-MDP
20 Service Case was deficient, which resulted in a distorted presentation to the
21 Commission regarding the support for Duke Energy's proposals. [REDACTED]

22 [REDACTED]

¹⁰⁷ R.C. 4928.37

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The statement on the record regarding separate negotiations at the time of the hearing in the Post-MDP Service Case was made by Staff Witness Cahaan that the "Staff encouraged the company to meet individually with each of the parties in the case to work out their individual problems."¹⁰⁸ However, that statement was accompanied by an assurance from Staff Witness Cahaan that "[a]ll parties to the case were notified and were invited to participate in the settlement discussions."¹⁰⁹ The Commission apparently relied upon this representation, stating in its September 29, 2004 Order that "[t]here is no evidence that all parties were not invited to participate in settlement discussion. As a matter of fact, testimony at the hearing indicates that all parties participated in negotiating

¹⁰⁸ Staff Exhibit 2 [REDACTED] Supplemental Testimony filed May 24, 2004) at 1-2.

¹⁰⁹ *Id.* at 1.

1 sessions¹¹⁰

11 The PUCO's November 23, 2004 Entry on Rehearing also noted the support Duke
12 Energy Ohio's Alternative Proposal from

¹¹⁰ Order at 13 (September 29, 2004).

¹¹¹ Entry on Rehearing at 59 (November 23, 2004).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] "Whistle blower"

22 statements by John Deeds -- formerly an employee of a DE-Ohio affiliated
23 company who performed functions for CRS and who has characterized the CRS

1 option agreements as "sham transactions" in a wrongful termination action in
2 federal court -- alerted the OCC to the existence of additional side agreements that
3 maintained support [REDACTED]

4 [REDACTED] The OCC and other parties were
5 excluded from discussions that resulted from CG&E's [REDACTED]

6 [REDACTED] CG&E never faced the public test of its
7 proposals that should exist in proceedings before the Commission.

8
9 **VI. CONCLUSION**

10
11 ***Q64. WHAT DO YOU RECOMMEND AS THE RESULT OF YOUR***
12 ***EXAMINATION AND ANALYSIS REGARDING THIS CASE?***

13 ***A64.*** I recommend the prohibition of the discriminatory treatment and anticompetitive
14 activities that accompanied Duke Energy Ohio's RSP proposals, as adopted and
15 modified by the Commission. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21
22 I also recommend the Commission require its Staff (or an auditor hired by the Staff
23 at DE-Ohio's expense) to promptly investigate the interrelationships between DE-

1 Ohio and its affiliates, including activities related to the side agreements in this
2 case, as provided for in OAC 4901:1-20-16(I)(1) and (2). Earlier in my testimony I
3 listed some of the requirements of the PUCO's corporate separation rules (among
4 other requirements) that should be at least part of the subject of the investigation.
5 Part of Staff's investigation should be a review and audit of the transactions among
6 DE-Ohio affiliates related to the side agreements in this case, [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] The results of this investigation should be presented to
11 the Commission in a hearing. Any needed modifications to the rate stabilization
12 plan, and to the operations of DE-Ohio and its affiliates, should be implemented by
13 the Commission.

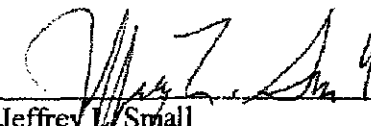
14
15 Finally, the Commission should adopt a post-MDP generation pricing plan for
16 DE-Ohio based upon the recommendations of OCC witness consultant Neil
17 Talbot.

18
19 **Q65. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

20 **A65.** Yes. However, I reserve the right to incorporate new information that may
21 subsequently become available.
22

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Testimony of Beth Hixon was served electronically on the persons listed on the electronic service list shown below (as supplemented for this pleading), provided by the Attorney Examiner, this 9th day of march 2007.



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CONFIDENTIAL

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc., Rate)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider	)	03-2079-EL-AAM
Adjustment Cases.	)	03-2081-EL-AAM
	)	03-2080-EL-ATA
	)	05-724-EL-UNC
	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC
In the Matter of the Application of)	
Duke Energy Ohio To Modify Its	)	Case No. 06-986-EL-UNC
Market-Based Standard Service Offer.)	

**CONFIDENTIAL PORTION OF DEPOSITION TRANSCRIPT AND
CONFIDENTIAL EXHIBITS OF
DENIS GEORGE TAKEN FEBRUARY 21, 2007**

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- - -

1 that I believe is on the very top of Exhibit A.

2 Do you see that?

3 A. I see it says seller and it says
4 Cinergy Services, Inc. as agent for and on
5 behalf of the Cincinnati Gas & Electric Company
6 and PSI Energy, collectively Cinergy Operating
7 Companies.

8 Q. That was my reference. Cinergy
9 Operating Companies.

10 A. Yes. That is the seller's name.

11 Q. This is kind of background. I have
12 a question to go behind the scenes here. I have
13 a second agreement which is dated [REDACTED] again.
14 It's in this packet, Exhibit A, it's called
15 Performance Assurance Agreement. Do you have it
16 in front of you?

17 A. Yes.

18 Q. And then I have a third agreement,
19 these are in time order, which is the very last
20 agreement in Exhibit A. And that is an
21 agreement between [REDACTED] and [REDACTED]. All
22 right?

23 A. Yes.

24 Q. Okay. Sorry about this. We haven't

1 exactly gotten to my question. There is another
2 set of agreements in another point in time in
3 [REDACTED]. It will be apparent, it will soon
4 be apparent why we have just gone through those
5 first three agreements.

6 In Exhibit A there is also a [REDACTED]
7 [REDACTED] agreement. Do you have that? At the top
8 it says, there are no page numbers, but it says
9 2 of 11.

10 A. Yes. I have that.

11 Q. All right. And that is again with
12 the Cinergy Operating Companies. It's very
13 similar to agreement 1 only it has a different
14 date on it. I am sure it has different
15 provisions, but similar in formate and
16 appearance.

17 A. Yes.

18 Q. Okay. Now, there is another
19 agreement, it's in Exhibit A again, and it is a
20 first amendment to the Performance Assurance
21 Agreement. That is the third agreement in
22 Exhibit A. And that says 2 of 9 at the top.

23 A. Yes. I see it.

24 Q. So, that is similar to Exhibit 2

1 being the Performance Assurance Agreement.

2 A. It's actually an amendment to the
3 other Performance Assurance Agreement.

4 Q. Here is the question. Is there a
5 third agreement similar to the Exhibit 3, but
6 different in the time frame between [REDACTED]
7 and [REDACTED]? In the [REDACTED] period?

8 A. There is probably not another
9 agreement, but what there may be, we would have
10 to check, there is an additional schedule or an
11 addendum to this base agreement to add
12 additional accounts to the basic contract.

13 Q. You are referring to the --

14 A. The Energy Service Agreement between
15 [REDACTED] and [REDACTED]

16 Q. The one that is dated [REDACTED]?

17 A. I am looking at the Energy Service
18 Agreement dated [REDACTED], unless there
19 is a date in the back.

20 Q. Yes, there is. It was signed [REDACTED]
21 [REDACTED] That is where my date comes from.

22 A. Okay.

23 Q. But, that is the agreement in
24 Exhibit A and you are saying that the list of

1 accounts, there may be an amendment?

2 A. There have been several amendments
3 over the years on this as we add and delete
4 accounts to the base agreement. So, I think we
5 are up to about 9 or 10 through this week
6 because [REDACTED]

7 Q. Amendments to the schedule?

8 A. Yes. There is a schedule A to this
9 agreement that lists accounts that are covered.
10 And it's only that schedule that usually gets
11 amended when we are adding and deleting
12 accounts.

13 Q. But there aren't any other
14 provisions in that, just a change in the
15 exhibit?

16 A. To my knowledge there are no other
17 provisions except that. But I would have to
18 check on that for you.

19 Q. Okay. All right. I just wanted to
20 be clear about what agreements [REDACTED] has. All
21 right. I would like to direct your attention to
22 Exhibit B. And that is an agreement dated in
23 the back, the last page, there are Bates stamps
24 on this document 1173 through 1179. And if you

1 could turn to Bates stamp 1179 you will see a
2 date of [REDACTED] and earlier in the document on
3 1174 it says [REDACTED]. So, [REDACTED]

4 A. Yes.

5 Q. Bates stamp 1179 that shows [REDACTED]
6 [REDACTED] signature. Was this agreement ever
7 executed by [REDACTED]?

8 A. I believe it was, yes.

9 Q. Okay. Remaining within that
10 document, turning to page Bates stamp 1174, and
11 the first paragraph after the whereas. It's
12 about midway through the page. That paragraph
13 basically identifies the parties and has the
14 date of [REDACTED] Who is Cinergy Retail
15 Sales LLC that is mentioned in the first
16 sentence of that paragraph?

17 A. Who are they?

18 Q. Yes.

19 A. To my knowledge it is an operating
20 subsidiary of the large electric holding company
21 that I know as Cinergy that is responsible for
22 transactions such as this. I don't know much
23 more about them than that.

24 Q. Do you know what the status is of

1 Cinergy Retail Sales or its successor? What
2 the status of Cinergy Resale Sales at the time
3 of this agreement was with respect to its
4 ability to transact business in electricity in
5 the State of Ohio?

6 A. I am sorry. Can you say the
7 question again?

8 MR. SMALL: Can we have it read?

9 (QUESTION READ)

10 A. If I knew what the status was at the
11 time I can't recall it now.

12 Q. Do you know whether they were a
13 certified retail electric service provider?

14 A. I can't recall.

15 Q. You are familiar with the term
16 certified retail electric supplier?

17 A. Yes.

18 Q. Okay. One other thing that I should
19 have put in the instructions. In this
20 particular case we are having a little bit of
21 trouble especially with the record in
22 distinguishing CRES from CRS because they are so
23 close when we say them. So I have been spelling
24 them out like that so we can distinguish. And

1 if you would do the same that would help
2 tremendously in clarifying things.

3 A. Okay.

4 Q. Sorry. I lost my chain of thought.
5 You don't know whether they were certified?

6 A. If I knew then I don't recall.

7 Q. Okay. Do you know anything about
8 their current status as being certified before
9 the Public Utilities Commission?

10 A. No.

11 Q. And would your response be the same
12 regarding their status as registered with Duke
13 Energy Ohio, formerly known as Cincinnati Gas &
14 Electric?

15 A. Yes. My answer would be the same.

16 Q. All right. Turning to these
17 previous agreements for a second. I am on
18 Exhibit A. And we had a little bit of an
19 exchange concerning who the parties were to the
20 first agreement executed [REDACTED] very
21 first one, agreement on Exhibit A. And you
22 noted Cinergy Operating Companies. Do you see
23 that?

24 A. Yes.

1 Q. And you understand that to be
2 Cincinnati Gas & Electric and PSI; correct?

3 A. That is what it says there, yes.

4 Q. Okay. And agreement 2, I call it
5 agreement 2, it's the second one in this packet,
6 again [REDACTED] and again it says Cinergy
7 Operating Company and refers to CG&E and PSI
8 again. Do you agree?

9 A. Yes. I see that.

10 Q. Okay. And an agreement in the
11 packet a little bit, we looked at this earlier,
12 it's [REDACTED] again it's that confirmation
13 letter that says 2 of 11 at the top.

14 A. Yes.

15 Q. And that also says the seller is
16 Cinergy Operating Companies which is a reference
17 to CG&E and PSI again?

18 A. Yes.

19 Q. And finally the document just before
20 that which we identified as the Performance
21 Assurance, or Amendment to the Performance
22 Assurance Agreement, it has 2 of 9 at the very
23 top. Do you see that?

24 A. I see that.

1 Q. Again you have Cinergy Operating
2 Companies which is a reference again to CG&E and
3 PSI; is that correct?

4 A. Yes. That is in the first
5 paragraph.

6 Q. Okay. With all these agreements
7 that were entered into earlier than the
8 agreement that is shown in Exhibit B with the
9 Cinergy Operating Companies, being CG&E and PSI,
10 why did [REDACTED] enter into discussions and
11 finally as you see execute an agreement with
12 Cinergy Retail Sales?

13 I will clarify the question. Whose
14 suggestion was it that you engage in a business
15 transaction with Cinergy Retail Sales as opposed
16 to the Cinergy Operating Companies which seems
17 to be the subject of your previous agreements?

18 A. That would have been resolved
19 between the lawyers as regards to what would
20 have been the appropriate entities with whom to
21 contract to serve the purposes of these
22 agreements.

23 Q. So you weren't part of that process?

24 A. I was part of the process, but I

1 accepted the advice and recommendation of
2 counsel as to the parties involved.

3 Q. When you are mentioning counsel are
4 you referring to [REDACTED]

5 A. [REDACTED] would have been our
6 counsel, yes.

7 Q. And do you know who the counsel
8 would have been for the other side of
9 the transaction? Would it be [REDACTED] who
10 executed the agreement?

11 A. I don't believe [REDACTED] executed
12 the Performance Assurance Agreement.

13 Q. I hope we are clear. I am on
14 Exhibit B.

15 A. No wonder. I am in the wrong one.

16 Q. I was directing your attention to
17 the earlier agreements just because they said
18 Cinergy Operating Companies. But now I am on
19 Exhibit B. This is [REDACTED]. And as you
20 stated it was executed by [REDACTED]. It was
21 executed by [REDACTED] at some point?

22 A. Yes.

23 Q. And by [REDACTED]

24 A. Yes.

1 Q. And so I suggested was [REDACTED]
2 involved in this?

3 A. Yes, he was.

4 Q. Okay. Anyone else on the other side
5 of the transaction that you can recall being
6 involved?

7 A. I believe [REDACTED] was involved.
8 [REDACTED]

9 Q. Anyone else?

10 [REDACTED] Excuse me. Just for
11 the record I believe that is E-R, not O-R.

12 [REDACTED] Off the record.

13 (DISCUSSION OFF THE RECORD)

14 A. It seems like there were other
15 representatives involved for the Cinergy
16 companies, but I cannot recall specifically who
17 they were.

18 Q. Was [REDACTED] involved? President
19 of Cincinnati Gas & Electric?

20 A. [REDACTED]

21 Q. Yes.

22 A. I remember [REDACTED] being involved
23 somewhere along this process, but I can't recall
24 at which time, and which of these agreements he

1 was involved in. But I remember him being at
2 meetings.

3 Q. When you are speaking about these
4 agreements are you mentioning the agreements
5 with the Cinergy Operating Companies or the
6 agreements with Cinergy Retail Sales?

7 A. I am referring to the agreements
8 that we have marked as Exhibit B, C and D.

9 Q. Do you remember a [REDACTED] who
10 worked for [REDACTED]?

11 A. Yes. I remember [REDACTED] and I
12 remember him being involved.

13 Q. In the --

14 A. Now that you refreshed my
15 recollection.

16 Q. In the Exhibits B, C and D?

17 A. Yes.

18 Q. Do you recall a [REDACTED]?

19 A. I do not recall [REDACTED].

20 Q. And do you recall a [REDACTED]

21 [REDACTED]

22 A. I do not recall [REDACTED]

23 Q. Now, you have been mentioning who
24 you remember being involved in the process.

1 Were you involved in negotiating these
2 agreements B, C and D?

3 A. Yes.

4 Q. When did the, we have looked at
5 this being dated the [REDACTED] when did
6 the -- do you first recall discussions regarding
7 this agreement? That would be [REDACTED].

8 A. Yes. It would have been sometime
9 before that. It would have been a point in time
10 after the initial rate stabilization filing was
11 made. At some point subsequent to that. But, I
12 can't recall when.

13 Q. There were two major filings in the
14 rate stabilization case which is the 03-93 case
15 that I announced at the beginning of this
16 deposition. The first was a -- what the company
17 refers to as competitive market option in
18 January 2003. And then it came forth with a
19 second plan on January 2004 which is generally
20 thought of as being the rate stabilization
21 proposal. When you say after the proposal,
22 after which one of those proposals?

23 A. I am referring to the later. The
24 one in January 2004 which is known as rate

1 stabilization proposal.

2 Q. And you don't recall what part of
3 the year?

4 A. No.

5 Q. Between January and July?

6 A. Yes.

7 Q. Now, this agreement, for present
8 purposes I am remaining on Exhibit B, Bates
9 stamp 1177, refers to, in paragraph 8, refers
10 to -- states "[REDACTED] shall support the [REDACTED]
11 [REDACTED] stipulation and recommendation" and so
12 forth. Do you see that?

13 A. Yes.

14 Q. Did [REDACTED] sign that stipulation?

15 A. I believe we did. I have to,
16 subject to check, but I believe we did.

17 Q. Now, you are familiar with the
18 contents of this agreement; is that correct?

19 A. Yes.

20 Q. Okay. Do you consider this an
21 agreement for service by Cinergy Retail Services
22 to the [REDACTED]?

23 A. I have to say, yes, because it
24 addresses terms and conditions that are relevant

1 to the sale and provision of electricity that [REDACTED]

2 [REDACTED] So, I have to say yes.

3 Q. Is the provision of that energy
4 though from Cinergy Resale Services?

5 A. Cinergy Resale Services in this case
6 is the wholesale supplier of the electricity
7 that is purchased by [REDACTED] and in turn [REDACTED]
8 [REDACTED] is the retail supplier of the electricity
9 to [REDACTED].

10 Q. All right. I would like to go
11 through the major provisions of this. And I am
12 at page Bates stamp 1175. You are already
13 there. Paragraph 1. Paragraph 1, am I correct
14 that this is basically organized as paragraph 1
15 is for [REDACTED] paragraph 2 is for [REDACTED], so
16 forth and so on? The paragraphs have to do with
17 different time periods?

18 A. At least the first three paragraphs
19 have to do with different time periods.

20 Q. Okay. Let's start with paragraph 1,
21 and that is for the period [REDACTED]; correct?

22 A. Yes.

23 Q. All right. Now, it provides for --
24 well, there is a statement here that "[REDACTED]"

1 [REDACTED]
2 [REDACTED] Do you
3 see that? About midway in the paragraph?

4 A. I see that.

5 Q. [REDACTED]

6 A. [REDACTED]
7 [REDACTED]

8 Q. What I have been calling Duke Energy
9 Ohio, formerly Cincinnati Gas & Electric
10 Company?

11 A. Yes.

12 Q. Okay.

13 A. Formerly known as the Cincinnati Gas
14 and Electric Company then. The names have
15 changed so many times, but they are certainly
16 currently known as Duke Energy Ohio.

17 Q. All right. [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] that is something that was part of the
21 Duke Energy? It's awkward because of the names
22 as you mentioned. I am going to refer to the
23 company, the company that provides distribution
24 service and so forth as Duke Energy Ohio, but

1 you should understand that I mean and its
2 predecessor company which in this time period
3 was not called Duke Energy Ohio. Do you
4 understand that?

5 A. I understand.

6 Q. Okay. I believe it was Cincinnati
7 Gas & Electric, but I will just call it Duke
8 Energy Ohio.

9 A. Okay.

10 Q. That was part of the Duke Energy
11 Ohio proposal, or that [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A. Yes.

15 Q. Okay.

16 A. May I condition that?

17 Q. All right.

18 A. And I don't know at which time it
19 happened, but I know a lot of those -- [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q. Right. And with that response, I
5 hope it was clear in my earlier question, the
6 statement here is not the [REDACTED]

7 [REDACTED]
8 [REDACTED]

9 A. I understand, yes.

10 Q. Okay. Now, right below that it
11 states that, middle of the paragraph again,
12 "Cinergy [REDACTED]

13 [REDACTED]
14 [REDACTED] Do you see that?

15 A. Yes.

16 Q. And you understand that to be, [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 A. Yes.

21 Q. Why under this agreement was [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]?

1 A. At the time [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 And based on the fact we were in a

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Given the contractual situation
19 between the parties, all the parties involved,
20 and given the fact that we had a strained
21 relationship with [REDACTED]

22 [REDACTED]
23 [REDACTED] So, this is the way that
24 the parties worked out the arrangement to

1 satisfy our concerns, [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q. I want to make sure that I
5 understood the word that you used. Did you use
6 the word strained?

7 A. Yes.

8 Q. I wanted to distinguish it from
9 strange. It was strained?

10 A. Strained. S-T-R-A-I-N-E-D.

11 Q. Okay.

12 A. We already established my ability to
13 spell.

14 Q. I wanted to find out a little bit
15 more about that. Since [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]?

19 A. They are currently known as

20 [REDACTED] And for the State of
21 Ohio and this system the answer is yes.

22 Q. So they started [REDACTED]

23 [REDACTED]

24 [REDACTED]?

1 A. To this day, yes.

2 Q. This agreement, paragraph 1, again
3 refers to [REDACTED] is the word
4 used in the agreement, by Cinergy, which I
5 believe is a reference to Cinergy Retail Sales,
6 or any affiliate thereof. Do you see that?

7 A. Yes.

8 Q. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 A. Well, I couldn't [REDACTED]
13 [REDACTED]

14 Q. Well, [REDACTED]
15 [REDACTED]

16 A. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. Let's go down to paragraph 2 which
22 relates to, I am still on Bates stamp 1175 in
23 the agreement, paragraph 2 refers to matters in
24 [REDACTED] is that correct?

1 A. Yes.

2 Q. Now, about midway in paragraph 2 it
3 refers to a situation where [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] Do you see that?

11 A. Yes.

12 Q. Is that what you were referring to
13 earlier as [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 A. Can I have that read back, please?

17 (QUESTION READ)

18 A. Yes.

19 Q. Now, the [REDACTED]

20 that are found in that paragraph, is that a

21 reference -- I am going to take you back to

22 Exhibit A, very first page of it, and [REDACTED]

23 [REDACTED]

24 [REDACTED]

1

2

[REDACTED] Do you see that in Exhibit A?

3

A. Yes.

4

5

Q. Is that the reference that is being made on Exhibit B, Bates stamp 1175?

6

A. Yes.

7

Q. So this is saying that [REDACTED]

8

9

10

11

12

13

14

A. I don't know about the term [REDACTED]

15

16

17

18

Q. And back on Exhibit A, this

19

20

21

22

23

A. Yes.

24

Q. Under that reference in Exhibit A,

1 that is [REDACTED]
2 [REDACTED]
3 [REDACTED] is
4 that correct?

5 A. That is correct.

6 Q. In paragraph 2, Bates stamp 1175 of
7 Exhibit B, under this provision [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 A. I am sorry. You will have to read
13 that question again.

14 (QUESTION READ)

15 A. Yes. This arrangement, and you have
16 to read paragraph 2 in conjunction with
17 paragraph 4, [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. So we have gone from a situation
22 under the confirmation letter agreement in
23 [REDACTED] where the Cinergy Operating
24 Companies [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 A. I don't know if entitled is the
4 proper word. But, as a result of this agreement
5 that is marked as Exhibit B [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q. And that is where I get a little bit
9 confused. Because the Cinergy Operating
10 Companies, and you referenced paragraph 4, Bates
11 stamp 1176, the Cinergy Operating Companies are
12 defined in Exhibit A as Cincinnati Gas &
13 Electric Company and PSI Energy, Inc. But this
14 agreement, Exhibit B, is not with either of
15 those entities.

16 Why is paragraph 4 which refers to
17 Cinergy Operating Companies, exercising, that
18 being CG&E and PSI, why is that an agreement
19 between [REDACTED] and CRS?

20 A. I think one must evaluate that in
21 terms of the Performance Assurance Agreement as
22 well as additional information that I have to
23 get some help on, but the Exhibit A was the
24 arrangements that existed in [REDACTED]

1 when this happened. It seems to me [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. Referring to Exhibit A?

6 A. Referring to Exhibit A, this was I
7 think [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] I think we are
12 missing some information, Mr. Small, that may
13 help piece that together.

14 Q. Then --

15 A. But that is my answer.

16 Q. From that response and from an
17 earlier one about [REDACTED] do you
18 believe that the contracting parties here, which
19 is Cinergy Retail Sales, [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 A. That would have been our
23 understanding at the time we entered into the
24 agreement.

1 Q. And from that also that CRS was
2 actually the [REDACTED]

3 [REDACTED]

4 A. I guess I don't know the answer to
5 that. I would have to get some verification. I
6 can't answer that question right now.

7 Q. I guess what I am questioning is [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A. It seems like a logical conclusion.

15 Q. Now, there is also, I am going back
16 to Bates stamp 1175, Exhibit B, there is another
17 provision in paragraph 2 that refers to, I will
18 quote [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] Do you see that?

23 A. Yes.

24 Q. That would be even a better deal for

1

2

3

4

A. Yes.

5

6

7

Q. All right. At the bottom of that page, remaining in paragraph 2, there is another reference to

8

9

10

11

Do you see that?

12

A. Yes.

13

14

Q. That is the same provision we saw up in paragraph 1; correct?

15

A. I believe it is.

16

17

Q. This provision then, going over on page 4 which is Bates stamp 1176, refers to

18

19

Does that again reflect

20

21

22

23

24

15 A. Yes.

2 Q. If you could go to page Bates stamp
3 1176. And paragraph 3 of this relates to the
4 time period [REDACTED] is that correct?

5 A. I believe [REDACTED] and thereafter, yes.

6 Q. I am looking at the 5th line of that
7 paragraph. And it's the first appearance that I
8 can find of a [REDACTED]

9 Do you see that?

10 A. Yes.

11 Q. Do you know why that was part of
12 this agreement?

13 A. I believe during those discussions
14 that [REDACTED]

15 [REDACTED]
16 [REDACTED]

17 MR. SMALL: Could I have that
18 re-read?

19 (ANSWER READ)

20 Q. So you believe that they were a

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. That is my recollection.

1 Q. I also see the [REDACTED]
2 [REDACTED] in paragraph 3 that we previously
3 mentioned. My question is [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 in paragraph 1, 2 and 3. [REDACTED]

7 [REDACTED]
8 [REDACTED]

9 A. I don't believe this agreement ever
10 went into effect. So I have to say the answer
11 is no.

12 Q. Paragraph 8 of this agreement,
13 Bates stamp 1177, refers to [REDACTED]
14 [REDACTED]. Do you see
15 that?

16 A. Yes.

17 Q. How did [REDACTED]
18 [REDACTED]

19 A. Subject to verification, but I
20 believe this is the case, [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED]
2 Q. Was the genesis of this agreement,
3 which we have been referring to as Exhibit B,
4 the genesis of the discussion and the eventual
5 execution of the agreement [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 A. I have difficulty with the term
9 genesis. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. Do you recall this agreement,
16 Exhibit B, ever being discussed with the Staff
17 of the Public Utilities Commission or anyone
18 else at the Public Utilities Commission of Ohio?

19 A. I have no knowledge of it being
20 discussed with the Staff at the Commission.

21 Q. Or anyone else at the Commission?

22 A. I am not aware of any such
23 conversations.

24 Q. Or discussions with any of the other

1 parties to the 03-93 case?

2 A. I am not aware of any, and I would
3 be surprised if there were any.

4 Q. Turn to Bates stamp 1174. The last
5 paragraph of this agreement states that it is to
6 remain confidential among the parties. Do you
7 see that?

8 A. Yes.

9 Q. Is that the reason why you would be
10 surprised if it was discussed with the other
11 parties?

12 A. Yes. That would be part of it.

13 Q. And why was this document to remain
14 confidential?

15 A. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q. Turn to the page Bates stamp 1177
21 and paragraph 11 which goes over into page Bates
22 stamp 1178. [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 A. The initial order?

2 Q. Any order.

3 A. After the initial order in [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. Okay. I will ask that question.

7 The September 2004 Public Utilities Commission
8 order in the 03-93 consolidated cases, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. On page Bates stamp 1178 there is a
16 paragraph E which refers [REDACTED]

17 [REDACTED]

18 [REDACTED] Do

19 you see that?

20 A. Paragraph B as in boy?

21 Q. B as in boy, yes.

22 A. Yes. I see that.

23 Q. [REDACTED]

24 [REDACTED]

1 [REDACTED]

2 A. I don't remember that express
3 statement being made. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. And is that a fulfillment of the
9 provisions below paragraph C on 1178, [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. I believe that is correct.

14 MR. SMALL: Okay. Let's go off
15 the record for a second.

16 (DISCUSSION OFF THE RECORD)

17 (RECESS TAKEN)

18 Q. All right. If you could turn to
19 what I have labeled as Exhibit C. That
20 agreement.

21 [REDACTED] Did you want to clarify
22 your last answer?

23 THE WITNESS: If I might.

24 Q. All right.

1 A. One thing I wanted to clarify in our
2 conversation, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. Okay.

6 A. And I don't believe that -- [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 But, [REDACTED]

16 [REDACTED] I didn't want to convey the wrong
17 image of that. The wrong information there.

18 Q. All right. Exhibit C which is Bates
19 stamp 1180, 1187. It bears a date of [REDACTED]
20 [REDACTED] on the final page executed by [REDACTED]
21 and [REDACTED]

22 Going to Bates stamp 1181, again
23 this agreement is an agreement between [REDACTED]
24 and Cinergy Retail Sales; is that correct?

1 A. That is correct.

2 Q. And the reason for the contracting
3 party being Cinergy Retail Sales, or your
4 discussion being from Cinergy Retail Sales, was
5 a, as you say, a continuation of the discussion
6 promised in the agreement that is shown on
7 Exhibit B?

8 A. Correct.

9 Q. Earlier I asked who was involved in
10 the [REDACTED] -- in the discussions having to do
11 with Exhibit B. Are your responses as far as
12 who was involved in the discussions that led to
13 Exhibit C, different, any different in this time
14 frame?

15 A. I don't believe they would be any
16 different.

17 Q. And that is --

18 A. I recall [REDACTED] and [REDACTED].
19 I would have a strong suspicion that [REDACTED]
20 was involved. [REDACTED] may or may not have
21 been involved in this specific document. I
22 cannot recall all those.

23 Q. He was involved in either B, C, D,
24 or all of them?

1 A. Or all of them in some capacity.

2 Q. All right.

3 A. There may have been others. I just
4 don't have recollection of specific people.
5 The names you had mentioned I did not have --
6 did not generate any recollection on my part.

7 Q. [REDACTED] Does that name
8 connect?

9 A. I know [REDACTED] but I can't
10 recall if [REDACTED] was part of this or not.
11 I don't think so because [REDACTED] does the
12 rate work for Duke Energy of Ohio. And I don't
13 believe he would have been involved.

14 Q. [REDACTED] was the President of
15 Cincinnati Gas & Electric Company, now what we
16 have been referring to as Duke Energy Ohio.
17 What connection did you place with him with
18 regard to Cinergy Retail Sales?

19 A. I don't know if I would have placed
20 a relationship with Cinergy Retail Sales or not.

21 Q. Well, the gist of my question is
22 really related to your previous response that
23 [REDACTED] wouldn't be involved because this
24 was a -- this was not a negotiation with Duke

1 Energy Ohio. But, my question is wouldn't that
2 also be the same with [REDACTED] as well?

3 A. Perhaps I should clarify. I
4 consider [REDACTED] somebody with whom one
5 would engage in technical rate work, the
6 numbers, the rate designs, the things that were
7 in the proposal. We weren't, to my
8 recollection, negotiating those, discussing
9 those matters in the context of this agreement.
10 That would have been part of the rate
11 stabilization proceedings in general if [REDACTED]
12 [REDACTED] were involved.

13 I don't know in addition to being
14 President of what we are calling Duke Energy
15 Ohio, which he was an officer in any other
16 companies. I don't know that, if there was that
17 relationship or not. I don't recall us
18 particularly clarifying why [REDACTED] might have
19 been in the room other than we do business with
20 the Cinergy organization in several states and
21 pay them a lot of money each year. I think [REDACTED]
22 [REDACTED] was partly there as in a customer service
23 representative capacity.

24 Q. Do you recall when the mentioned

1 discussions that took place that resulted in the
2 execution of Exhibit B, do you know when those
3 discussions took place?

4 A. I do not have specific dates in
5 mind. It would have been a combination of
6 telephone conversations, e-mails, and probably
7 face-to-face meetings. But, I don't have
8 specific dates in my mind.

9 Q. Would it have occurred immediately
10 after the -- [REDACTED]
11 [REDACTED]

12 A. Immediately suggests to me within a
13 matter of days. I don't know it was a matter of
14 days, but it was in time sequence sometime
15 thereafter which would have put it in [REDACTED]
16 [REDACTED]

17 [REDACTED] Excuse me. Two
18 questions ago you asked about Exhibit B and
19 maybe I am confused --

20 MR. SMALL: Yes. I think I did err
21 in that regard.

22 Q. My question had to do with Exhibit C
23 which is a document executed on or dated

24 [REDACTED] So if I asked you that question,

1 to clarify this, I was asking about Exhibit C.

2 A. And my answers were made with
3 Exhibit C in mind.

4 Q. So in the [REDACTED] time frame?

5 A. Yes.

6 Q. All right.

7 [REDACTED] Thank you.

8 Q. Again, any discussions with Staff or
9 anyone else at the PUCO concerning the document
10 that is labeled Exhibit C?

11 A. I had no such discussions, no.

12 Q. Do you know of any discussions that
13 took place regarding these arrangements shown in
14 Exhibit C with any party to the 03-93 rate
15 stabilization case?

16 A. I don't believe there would have
17 been any discussions with other parties, no.

18 Q. Again this would be a confidential
19 document known only to the [REDACTED] and for lack
20 of a better term Cinergy companies. Is that
21 your understanding?

22 A. That is correct. It would have been
23 Cinergy Retail Sales.

24 Q. Go to page Bates stamped 1182. And

1 in a similar fashion I am going to work through
2 the paragraphs here. Paragraph 1 deals with the
3 period [REDACTED] correct?

4 A. That is correct.

5 Q. All right. Now midway in this
6 paragraph it states that [REDACTED]

7 [REDACTED]
8 [REDACTED]. And then it states and

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] Do you see that?

13 A. Yes.

14 Q. [REDACTED]
15 [REDACTED]

16 A. It was in keeping with the parties'

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. Well, is it your understanding that

1 [REDACTED]

2 [REDACTED]

3 A. I am aware that there is [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] There is a --

7 Q. [REDACTED]

8 [REDACTED]

9 A. I believe that's right. Whatever
10 the name is. It has to do with [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. I don't know if it's in the -- [REDACTED]

18 [REDACTED]. But, that is
19 subject to check. I know that it is in publicly
20 available form that one can view and access.

21 Q. By publicly available you mean at
22 the Public Utilities Commission?

23 A. Yes.

24 Q. And that would be the source that

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 A. That is correct.

5 Q. I guess the part of it that I am
6 trying to understand is that [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 A. Based on my recollection it wasn't
15 so much about the technical aspects of [REDACTED]

16 [REDACTED]
17 It had to do with the [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. So it's not so much [REDACTED]

1 [REDACTED]
2 [REDACTED] Is that
3 the concept?

4 A. I am speaking from [REDACTED]
5 perspective. That is correct.

6 Q. And from [REDACTED] perspective it was
7 important to have something that was verifiable
8 that you are relying upon for this agreement?

9 A. Sure. That is correct, yes.

10 Q. Now, [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 correct?

16 A. I believe that is correct.

17 Q. And was it your understanding that

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 A. Yes. And to which we have to

24 [REDACTED]

1 [REDACTED] yes.

2 Q. Now, following through on that,
3 looking lower down in that paragraph is a
4 statement that "Cinergy or any affiliate thereof

5 [REDACTED]
6 [REDACTED] Do you
7 see that?

8 A. Yes.

9 Q. And then there is some new
10 terminology we haven't seen before, RSC and IMF.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]?

14 A. Yes. We talked about when we were
15 talking about document B, the first agreement,
16 our concern about [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Q. So as I understand your response it
4 wasn't so much -- [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 A. Yes, which is what the entire
10 document is. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. Now I am going to turn to page Bates
16 stamp 1184, and paragraph 5. This is perhaps
17 refreshing your memory. It says [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 And also paragraph 10 says [REDACTED]

23 [REDACTED]

24 [REDACTED] With that to refresh your

1 memory is it reasonable, or is it your
2 understanding that the charges that we have been
3 referring to are [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 A. I believe they were part of the --
7 well, give me a moment to think. I have,
8 subject to check, I believe that [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] But they -- I know they arose at
15 the time. They were the terms that were being
16 used and discussed.

17 Q. Now, [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 A. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q. How, how does that arrangement work?

5 [REDACTED]

6 A. [REDACTED]

7 [REDACTED]

8 [REDACTED] I would have to check.

9 Q. Some Cinergy affiliate?

10 A. Cinergy affiliate, [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. And who submitted those [REDACTED]

18 [REDACTED] Do you know the person that you were
19 transacting business with?

20 A. I don't know who [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. Did [REDACTED] ever have any disputes or
24 problems regarding those [REDACTED]

1 [REDACTED]

2 A. No. Once we got the supporting
3 documentation and [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. In that process of verification [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 A. I have to check, Mr. Small. I would
10 presume, but I have to check.

11 Q. I am a little bit unclear as to [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 A. I don't recall.

19 Q. And the reason I am asking is [REDACTED]

20 [REDACTED] I am

21 looking in paragraph 1, Bates stamp 1128, of

22 [REDACTED] And I would like

23 to know [REDACTED]

24 [REDACTED]

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2

A. Well,

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Q. Your response though seems to omit

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A. Yes.

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Q.

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A. Yes.

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Q. And your response didn't mention

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A. I am sorry. That is what I was talking about.

Q.

So there is a quarterly system that developed here?

A. Yes.

Q. Okay.

A.

Q. If you would turn in Exhibit C, paragraph 10, there is reference to

It states

Do you see that?

A. Yes.

Q.

A. Oh,

1 [REDACTED] I would have to verify. Or if
2 there was [REDACTED]

3 [REDACTED]
4 [REDACTED]

5 Q. Some action at the Public Utilities
6 Commission?

7 A. Some appropriate action at the
8 Public Utilities Commission.

9 Q. Is it fair to say that the agreement
10 that we have labeled as Exhibit C is [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 A. I am not sure what all that meant.
14 But what I would tell you is that [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 A. Yes. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. If you would turn to page Bates
6 stamp 1185. Actually it's paragraph 11 which is
7 1184 and carries over to page 1185. It states

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 "... I don't want to continue to read that
13 paragraph. But, what does that mean? [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 A. It may have that sound to you. [REDACTED]

20 [REDACTED]

21 Q. [REDACTED]

22 [REDACTED]

23 A. That is correct.

24 Q. What does paragraph 11 mean?

1 A. [REDACTED] was very concerned based on
2 what was going on [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. Weren't you already -- didn't [REDACTED]
15 already have a contract with [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A. We did.

19 Q. [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 A. It is our actual arrangement, but we
23 were erring on the side of being conservative
24 and putting provisions in whenever we could,

1 whenever possible, just to add to our
2 documentation to that effect.

3 Q. Was there notification to Duke
4 Energy Ohio regarding [REDACTED] contract with
5 [REDACTED] as well?

6 A. Can I have that read back, please?
7 (QUESTION READ)

8 A. Duke Energy Ohio was aware of that
9 agreement already because we were a market
10 participant. I can't recall any sort of
11 reaffirming of the arrangement because it was
12 ongoing.

13 MR. SMALL: Could you re-read that
14 answer?

15 (ANSWER READ)

16 Q. You mentioned in your response Duke
17 Energy Ohio. Is your response that Duke Energy
18 Ohio knows which customers are already switched?
19 Is that the concept?

20 A. It's my understanding they keep
21 those records because they need to know what
22 charges to assess to market customers.

23 Q. And in addition to that [REDACTED]
24 [REDACTED]

1 [REDACTED]
2 [REDACTED] They knew that as
3 well; is that correct?

4 A. They being --

5 Q. A Cinergy affiliate. I didn't
6 specify which one.

7 A. Well, the Cinergy affiliate

8 [REDACTED]
9 [REDACTED] If that is what your question
10 is.

11 Q. [REDACTED]
12 [REDACTED]

13 A. To the best of my knowledge, yes.

14 Q. Take you back to the document Bates
15 stamped 1182. It's within this package, Exhibit
16 C. Here there is reference to [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED] Do you see that?

20 A. Yes.

21 Q. And in the paragraph that we just
22 visited, paragraph 11, it refers to [REDACTED]

23 [REDACTED]
24 [REDACTED]

1 Do you see that?

2 A. Yes.

3 Q. There is a difference of one year.

4 [REDACTED]

5 [REDACTED]

6 A. I don't believe so, no.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. No.

14 Q. Is there an agreement to that effect
15 today?

16 A. No.

17 Q. Your agreement with [REDACTED]

18 [REDACTED] is that
19 correct?

20 A. That is correct.

21 Q. Turning in Exhibit C to paragraph
22 13, which also has sub-paragraphs A, B and C. B
23 in particular, subpart B of paragraph 13 refers
24 to --

1 A. B as in boy?

2 Q. B as in boy, 03-93, and the

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] Do you see that?

6 A. Yes.

7 Q. Did that happen? Did Cinergy Retail
8 Sales provide any indication or notice to [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A. I don't recall one. I don't believe
12 so.

13 Q. [REDACTED]

14 [REDACTED]

15 A. I don't believe it was [REDACTED]

16 [REDACTED]

17 Q. [REDACTED]

18 [REDACTED]

19 A. No. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. [REDACTED]

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A. Yes.

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Q. And we are going to get to the superseding of this agreement in just a little bit.

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A. To my knowledge they were.

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Q. Let's move to Exhibit D, which is an agreement dated on the last page, the agreement is Bates stamp 1188 to 1195. And on the last page 1195 it's dated

17

A. Yes.

18

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21

Q. And is the execution of this agreement, Exhibit D to this deposition, the document that you referred to previously as a superseding agreement?

22

A. I believe it is. Yes.

23

24

Q. So the provisions in Exhibit C were followed by the parties until execution of what

1 we have marked as Exhibit D in [REDACTED] 70 is
2 that correct?

3 A. To the best of knowledge, yes.

4 Q. What caused the parties to re-exam
5 their agreement and enter into the agreement
6 listed as Exhibit D?

7 A. Knowing that intervening one-year
8 period, my recollection there were probably a
9 number of different things going on. [REDACTED]
10 [REDACTED]
11 [REDACTED] I don't
12 know what else may have been going on at that
13 time. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Q. If you could direct your attention
20 to paragraph 8, Bates stamp 1192. I think this
21 is more confirmation than anything. There are
22 two proceedings at the Public Utilities
23 Commission that are mentioned there or --
24 actually there are three case numbers, but one

1 of the -- there is an [REDACTED]

2 [REDACTED]

3 A. Paragraph 11?

4 Q. I am in paragraph 8.

5 A. Okay.

6 Q. But I believe it's also mentioned in
7 paragraph 11.

8 A. Okay

9 Q. Are these the major events that
10 transpired that caused the new negotiation to
11 take place?

12 A. For me it was. For [REDACTED]

13 [REDACTED]

14 Q. And going back one more time to
15 Exhibit C, 1185, the bottom of the page there is
16 a reference to [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 A. [REDACTED]

24 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 MR. SMALL: Let's go off the record
10 for just a moment.

11 (DISCUSSION OFF THE RECORD)

12 (RECESS TAKEN)

13 (EXHIBIT MARKED FOR PURPOSES OF
14 IDENTIFICATION)

15 Q. Let's go back on the record.
16 During the break, [REDACTED] I have had marked
17 Exhibit E which is two letters, one dated
18 [REDACTED] and another one dated
19 [REDACTED] And they have the designation
20 that you are the responsible party for the
21 document. Do you recall these documents?

22 A. Yes, I do.

23 Q. What are these documents?

24 A. Pursuant to I believe terms of

1 the -- what we are calling Duke Energy Ohio
2 tariff had to issue a notice to the utility and

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. Right. And this refreshes my
11 recollection from before that pursuant to the
12 applicable terms of the utility tariff we had to
13 issue that notice. And I believe it applied to
14 [REDACTED] We had to issue this
15 letter to the utility to [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q. What is the purpose of the [REDACTED]
19 [REDACTED] letter? It seems to provide additional
20 information to the [REDACTED] letter.

21 A. Yes. If I recall correctly when I
22 believe [REDACTED] or someone in his office
23 called me about this and there was something
24 about the letter that I wrote that wasn't clear.

1 Q. You are referring to the [REDACTED]
2 [REDACTED] letter?

3 A. Yes. I am sorry. The [REDACTED]
4 letter. I believe there might have been an
5 attachment that went with it. And I didn't
6 adequately put all of the accounts on there.
7 And so I had to issue the [REDACTED] letter just
8 [REDACTED]
9 [REDACTED] I would have to check my
10 records on that, but I believe that is what was
11 going on at the time.

12 Q. And who is [REDACTED]

13 A. I believe [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. Did you have any other dealings with
17 [REDACTED]

18 A. No, other than this exchange over
19 these few days. I don't believe I had before or
20 since. [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q. All right. You can set that
24 aside. I wanted to go back for a moment to

1 Exhibit C. It's the agreement dated [REDACTED]

2 [REDACTED]
3 A. Yes.

4 Q. Bates stamp 1184, and paragraph 4 at
5 the top. [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 A. I don't have knowledge of the
9 specific provisions. [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q. Okay. And this is a term that is
13 new to -- at least it wasn't in the earlier
14 agreement from approximately [REDACTED] Did you
15 have discussions with the company or with the
16 counter party [REDACTED]

17 A. I believe we did as part of this
18 overall document, and separately as we are
19 looking at the various PUCO documents being
20 filed and discussions taking place in that case.
21 I think we were aware of it in that case
22 independently.

23 Q. [REDACTED]
24 [REDACTED]

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A.

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But, that is how I consider it.
What I consider it to be.

7

8

Q. Okay. And this states that

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Do you see that?

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A. Yes.

13

Q.

14

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A. I have to check, Mr. Small, but

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Q. Would those have been on the overall
spreadsheets that were being exchanged, or
the documentation. I think you referred to it
as backup material for the

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A.

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Q. [REDACTED]

[REDACTED] -- you mentioned earlier
that the paragraphs 1, 2 and 3 pertain to
particular periods. Paragraph 4, is it your
understanding that [REDACTED]

A. It would have been applicable to all
periods of time.

(End of the confidential portion of
the deposition)

- - -

1 State of Ohio

:

2 SS:

3 County of _____

:

I, [REDACTED] do hereby certify that

4 I have read the foregoing transcript of my
5 deposition given on February 21, 2007; that
6 together with the correction page attached
7 hereto noting changes in form or substance, if
8 any, it is true and correct.

9
10 [REDACTED]
11 I do hereby certify that the foregoing
12 transcript of the deposition of [REDACTED] was
13 submitted to the witness for reading and
14 signing; that after he had stated to the
15 undersigned Notary Public that he had read and
16 examined his deposition, he signed the same in
17 my presence on the _____ day of _____,
18 2007.

19 _____
20 Notary Public

21 My commission expires

22 _____, 20____.

23 - - -
24

CERTIFICATE

State of Ohio

:

SS:

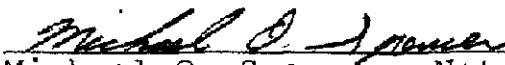
County of Franklin

:

I, Michael O. Spencer, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named [REDACTED] was by me duly sworn or affirmed to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 23rd day of February, 2007.


Michael O. Spencer, Notary Public
in and for the State of Ohio and
Registered Professional Reporter.

My commission expires
July 28, 2008

No. of Pages 4	Date: [REDACTED]	Audit #:
Name: [REDACTED]	Name: [REDACTED]	
Customer: [REDACTED]	Company: [REDACTED]	
Fax: [REDACTED]	Fax: [REDACTED]	
Phone: [REDACTED]	Phone: [REDACTED]	

**CONFIRMATION LETTER AGREEMENT FOR A TRANSACTION
UNDER THE CINERGY OPERATING COMPANIES
MARKET-BASED POWER SALES TARIFF - MB**

SERVICE SCHEDULE A: MARKET-BASED POWER

This Confirmation Letter Agreement and the Service Agreement for Power Between [REDACTED] and Cinergy Operating Companies dated as of [REDACTED] (together, the "Agreement") contains the mutual and respective understandings between [REDACTED] and the Cinergy Operating Companies ("Cinergy" or "Seller") regarding the specific terms and conditions of service and the characteristics for the sale of Market-Based Power, pursuant to Service Schedule A of the Cinergy Operating Companies FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7 ("Cinergy MB tariff").

The following are the Pricing Terms and Conditions of Service for the Transaction:

Seller:	Cinergy Services, Inc., as agent for and on behalf of The Cincinnati Gas & Electric Company ("CG&E") and PSJ Energy, Inc. (collectively, "Cinergy Operating Companies").																
Buyer:	[REDACTED]																
Product:	Firm Energy with Liquidated Damages for each of the 24 hours for each day provided during the term of this agreement. The Product is further defined by hourly load shape limitations described below in the Load Shape Provision.																
Quantity:	<p>The Maximum Hourly Quantity in any hour during each year of the term will be as follows:</p> <table> <tr> <th>Year</th><th>Maximum Hourly Quantity</th></tr> <tr> <td>2001</td><td>27 MW</td></tr> <tr> <td>2002</td><td>28 MW</td></tr> <tr> <td>2003</td><td>29 MW</td></tr> <tr> <td>2004</td><td>30 MW</td></tr> <tr> <td>2005</td><td>31 MW</td></tr> <tr> <td>2006</td><td>32 MW [REDACTED]</td></tr> <tr> <td>2007</td><td>33 MW [REDACTED]</td></tr> </table> <p>***Buyer is currently confirming its forecasted retail load obligation. As such, [REDACTED]</p>	Year	Maximum Hourly Quantity	2001	27 MW	2002	28 MW	2003	29 MW	2004	30 MW	2005	31 MW	2006	32 MW [REDACTED]	2007	33 MW [REDACTED]
Year	Maximum Hourly Quantity																
2001	27 MW																
2002	28 MW																
2003	29 MW																
2004	30 MW																
2005	31 MW																
2006	32 MW [REDACTED]																
2007	33 MW [REDACTED]																

DEPOSITION
EXHIBIT

Delivery Point:	Into Cinergy, Seller's Daily Choice. (See Attachment A for further definition).
Term:	
Price:	
Scheduling:	

	[REDACTED]
Transmission:	[REDACTED]
Load Shape Provision:	<p>[REDACTED]</p> <p>[REDACTED] As such, [REDACTED] agrees to receive the wholesale power delivered by Cinergy pursuant to this Agreement in a manner consistent with the mutual understanding expressed above.</p> <p>[REDACTED]</p> <p>[REDACTED] (shall) permit Cinergy to audit the meter data for [REDACTED] and other applicable records as necessary to ensure compliance with this provision. Such meter data and applicable records shall be preserved and retained by [REDACTED] for the duration of the contract term.</p>
Conditions Precedent	<p>This agreement shall be [REDACTED]</p> <p>[REDACTED]</p>

Any conflicts between this Confirmation Letter Agreement, the Service Agreement, and the Cinergy MB tariff shall be resolved in favor of the Confirmation Letter Agreement.

Please confirm your agreement with the transaction terms and conditions set forth in this Confirmation Letter by executing five (5) copies of this letter and returning them by the end of this business day to the undersigned Cinergy representative at Cinergy Services, Inc., 7200 Industrial Road, Florence, Kentucky 41042.

[REDACTED]

By [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Company: Cinergy Services, Inc.

As Agent for and on Behalf of:
The Cincinnati Gas & Electric
Company & PSI Energy, Inc.

By: Joseph W. Toussaint
Name: Joseph W. Toussaint
Title: Vice President

[REDACTED]
[REDACTED]

ATTACHMENT A

"Into Cinergy" Product and Delivery Mechanism

"Into Cinergy" is a bilateral transaction for the sale or purchase of electrical energy. Energy is traded in the form of physical Megawatt-hours scheduled between counterparties according to specific demand periods¹. Performance in Into Cinergy transactions is secured by liquidated damages.

I. Delivery

- a. Delivery is made into the receiving control area's transmission system. Seller's daily option of interface; or by procuring energy generated from a source within the receiving control area.
- b. The receiving control area in Into Cinergy deliveries is defined as the high voltage transmission system operated by Cinergy Corp., which otherwise can be referred the Cinergy Transmission System.
- c. The Cinergy Transmission System contains eleven (11) border interfaces. These interfaces include: CIN/AEP, CIN/NIPS, CIN/OVEC, CIN/EKPC, CIN/KU, CIN/SIG, CIN/CIPS, CIN/PP&L, CIN/LG&E, CIN/DPL, CIN/HE.
- d. In the case of interfaces internal to the Cinergy Transmission System, there are several entities that own or control generation inside the receiving control area, which can be used in fulfillment of Seller's "Into Cinergy" delivery obligations. A partial list of these entities includes Cinergy, Indiana Municipal Power Agency (IMPA), Wabash Valley Power Association (WVPA), City of Hamilton (OH), City of Logansport (IN) and Purdue University.

II. Seller's Obligations:

- a. The Seller is required to deliver financially firm energy into the receiving control area's transmission system at any interface designated by the Seller. Seller's designation of interface can change daily.
- b. The availability to the Buyer of transmission service on the receiving control area's transmission system at a particular interface shall serve as a precondition of Seller's designation of delivery point. The Seller places no restrictions on the Buyer regarding the quality of transmission service to be used in the transaction².
- c. The determination of transmission service availability for the Buyer is made through Buyer's confirmed transmission request recorded on the receiving control area's Open Access Same Time Information System (OASIS), or by the regional transmission group/Independent System Operator (hereafter referred to as an ISO). Buyer's transmission request for day ahead scheduling of energy must be submitted to the responsible transmission agency at the earliest time for the receipt of such schedules after the 12:00 P.M. Eastern Prevailing Time declaration of schedules.
- d. The Seller is not released from his delivery obligation to the Buyer, if the Buyer is unable to obtain transmission service on the receiving control area's transmission system. Should transmission service

¹ The product description for energy in Into Cinergy transactions is "Firm, with Liquidated Damages".

² There are circumstances where Buyer's use of non-firm transmission service adheres the standard of transmission availability, but can result in risk to the Buyer that is beyond the scope of Seller's responsibilities in "Into" transactions (see III c).

not be available to the Buyer at the Seller's designated interface, the Seller shall be required to make one of the following designations to the Buyer: (1), an alternate interface for which transmission service is available to the Buyer, or (2), a generation source inside the receiving control area for which transmission service is available to the Buyer (see Id).

e. The Seller is responsible for securing any transmission service or interface capacity required to deliver financially firm energy from the generating source into the receiving control area's transmission system.

f. Seller's obligation to deliver energy to the Buyer is not relieved because of: (1), insufficient Available Transfer Capacity (ATC) between the receiving control area and adjacent control areas, (2), transmission service curtailments at Seller's designated interface, (3), Seller's loss of transmission service, or (4), Seller's loss of generation source. In the event Seller is unable to deliver energy to the Buyer, Seller shall designate an alternate interface or source of generation inside the receiving control area by which Seller's delivery obligation can be satisfied. This provision is applicable to day ahead and same day transactions.

g. Seller is responsible for any additional transmission purchases incurred by the Buyer in connection with Seller's failure to deliver energy at Seller's previous interface designation(s). Should this circumstance occur, Seller is obligated to compensate for Buyer's incremental transmission costs, and/or associated congestion charges as a result of Seller's change in Buyer's point of receipt¹. In the case of same-day curtailments, Seller is responsible for the lesser of, (1), Buyer's hourly non-firm transmission system purchases over the duration of the curtailment, or (2), Seller's hourly transmission costs incurred from the delivery of energy to Buyer's point of delivery, which by mutual agreement can include any transmission purchases outside of the receiving control area. For day-ahead transactions, Seller is responsible for all additional receiving control area transmission purchases, attributed to Seller's change in Buyer's interface designation(s).

h. Except for the conditions referenced in IIg, the Seller is not responsible for transmission service inside the receiving control area's transmission system. The Seller's delivery obligation to the Buyer is limited to the transfer of energy to the Buyer at the Seller's designated interface. Seller's responsibility does not extend beyond the Buyer's point of receipt.

III. Buyer's Obligations:

a. The Buyer has the obligation to receive financially firm energy at the interface designated by the Seller.

b. Should no transmission service be available to the Buyer at a particular interface designated by the Seller, the Buyer can require the Seller to make delivery to another interface. Seller's option of Buyer's receipt point. (Refer to Seller's obligations, sections IIb and IIc).

c. The standard of availability of transmission service to the Buyer at Seller's designated interface is applicable to both firm and non-firm transmission service. No requirement is made on the Buyer to select firm transmission service over non-firm service. However, following designation of interface by the Seller,

¹ In the case of Cinergy, congestion charges refer to same day generation re-dispatch costs caused by the unintended scheduling of Buyer's energy on Cinergy's 500 MW Inter-Company (ITC) transmission line. This condition would be due to Seller's same day change in Buyer's point of receipt from one side of the Cinergy Transmission System to the other. The Cinergy Transmission System is interconnected to control areas on the East side in Ohio, and control areas on the West side in Indiana.

Buyer's decision to purchase and utilize non-firm transmission service can carry singular consequential risk for the Buyer.

d. Under mutual agreement, the Seller can mitigate the effect of Buyer's consequential risk by moving the interface designation for the Buyer. Should such an accommodation be made by the Seller, the Buyer is responsible for all costs associated with re-routing Seller's energy to the Buyer's point of receipt, including Seller's incremental transmission costs.

IV. Performance

Counterparty performance in "Into Cinergy transactions for energy is excused only by event of force majeure.

V. Seller's Non-Performance

a. If the Seller fails to deliver energy, the Seller shall be liable to the Buyer for Buyer's reasonably-incurred financial cost of replacing the energy the Seller failed to deliver.

VI. Buyer's Non-Performance

a. If the Buyer fails to take delivery of the energy, the Buyer shall be liable to the Seller for Seller's reasonably-incurred financial loss in connection with Seller's efforts to resell the energy that the Buyer failed to take.

VII. Scheduling of Energy

Daily prescheduled by 12:00 PM Eastern Prevailing Time, one business day ahead excluding NERC holidays.

* Consequential risk caused by the Buyer's decision to obtain non-firm transmission service can be illustrated by two examples:

(1) Despite the availability of firm transmission service at the time of Seller's interface designation, the Buyer decides to purchase non-firm transmission service through Cinergy for a delivery obligation downstream. A line-loading problem develops outside of Cinergy, and the Buyer's use of non-firm transmission service through Cinergy causes the transmission provider in a control area adjacent to Cinergy to curtail the Buyer's transmission service at a Cinergy System border interface. Even though the Buyer had arranged for firm transmission from the Cinergy Border to the point of delivery downstream, the reason for the Buyer's curtailment is attributed to the quality of transmission service used in Cinergy. In this example the Seller's delivery obligation is met. The Buyer has available transmission and is able to bring the Seller's energy into Cinergy. Seller's choice of interface has no effect on Buyer's consequential loss.

(2) The Buyer has obtained non-firm transmission service for a next day energy transaction, but declines to upgrade to firm transmission service when notified by the Cinergy Transmission System of curtailments to holders of non-firm transmission, due to increased sales of firm transmission products. Although the Buyer is granted the right of first refusal to upgrade to firm transmission before a third party is allowed to purchase firm, the Buyer chooses not to change the quality of his transmission, on the assumption that the Seller is required to change interface designation under such circumstances. In this instance the Seller's delivery obligation is met. The Seller is under no obligation to designate another interface or to re-supply the Buyer.

PERFORMANCE ASSURANCE AGREEMENT

This Performance Assurance Agreement dated as of [REDACTED] (the "Agreement") is made by and between [REDACTED] and Cinergy Services, Inc., a Delaware corporation, acting on behalf of and as agent for The Cincinnati Gas & Electric Company ("CG&E"), an Ohio corporation and PSI Energy, Inc., an Indiana corporation, (each a "Cinergy Operating Company") and collectively, ("Cinergy").

WHEREAS, [REDACTED] is a Certified Supplier eligible to supply electricity pursuant to various Ohio utility Customer Choice Programs, including that of CG&E; and

WHEREAS, [REDACTED] has approached Cinergy regarding [REDACTED] desire to procure wholesale energy from Cinergy in order to meet [REDACTED] retail load obligations to [REDACTED] pursuant to CG&E's Customer Choice Program; and

WHEREAS, [REDACTED] and Cinergy desire to enter into a certain Confirmation Letter Agreement of even date herewith whereby the Cinergy Operating Companies [REDACTED]

[REDACTED], as more fully described in the Confirmation Letter Agreement, pursuant to the "Cinergy Operating Companies Market Based Power Sales Tariff FERC Electric Tariff Original Volume 7" (the "Confirmation Letter Agreement"), under the terms and conditions of the Confirmation Letter Agreement; and

WHEREAS, Cinergy's willingness to enter into the Confirmation Letter Agreement with [REDACTED] and assume the associated commodity risk is predicated upon the fact that [REDACTED]

[REDACTED] and

WHEREAS, Cinergy's willingness to offer [REDACTED] the price specified in the Confirmation Letter Agreement is predicated, in part [REDACTED]

WHEREAS, Cinergy is unwilling to enter into the Confirmation Letter Agreement unless [REDACTED]

NOW THEREFORE, in consideration of, and as an inducement for, the Cinergy entering into the Confirmation Letter Agreement, [REDACTED] hereby covenant and agree as follows:

1. Performance Assurances.

- (a) [REDACTED] agree with Cinergy (i) to fully and timely perform and comply with all of the provisions of the retail supply agreement between [REDACTED] with respect to energy purchased by [REDACTED] under the Confirmation Letter Agreement (and for which performance is not excused in accordance with the terms thereof), (ii) not to amend or modify the [REDACTED] retail agreement in a manner that will modify in any way either the amount of energy that [REDACTED] is required to purchase from [REDACTED] with respect to the Confirmation Letter Agreement or the terms and conditions thereof, and (iii) not to terminate or repudiate the [REDACTED] Retail Agreement in breach or default thereof (including without limitation, through any rejection or similar termination of that agreement in a bankruptcy proceeding involving [REDACTED]).
- (b) To the extent that [REDACTED] relinquishes or otherwise forfeits its right to supply retail electric service generally, as referenced above, and specifically to [REDACTED] becomes bankrupt or insolvent, or otherwise terminates its business operations such that it is unable to continue performance under the Confirmation Letter Agreement, or otherwise fails to perform any of its obligations under the Confirmation Letter Agreement so as to trigger an Event of Default, [REDACTED] agrees to guarantee payment of all monies owed by [REDACTED] to Cinergy under the Confirmation Letter Agreement as evidenced by that certain Guaranty of even date herewith made by [REDACTED] for the benefit of Cinergy Services, Inc., as agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc.; provided, however, that [REDACTED] will not owe such monies to the extent a Replacement Retail Provider assumes [REDACTED] rights and obligations under the Confirmation Letter Agreement. The Guaranty shall survive any succession of retail provider.
- (c) [REDACTED] agree to provide Cinergy with access to all [REDACTED] energy meter data during the term of the Confirmation Letter Agreement.
- (d) Notwithstanding any of the provisions contained in this Agreement, none of the parties hereto shall be liable to the other for any indirect, special, incidental or consequential damages with respect to any claim arising hereunder or under the obligations pursuant to the Confirmation Letter Agreement.

[REDACTED]

(e) For purposes of this Agreement and the Confirmation Letter Agreement, [REDACTED]

2. Term. This Agreement shall terminate on the last day of the term specified in the Confirmation Letter Agreement.

3. Notices. (a) All notices and other communications about this Agreement must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows:

If to Cinergy, to:

Cinergy Services, Inc.
The Cincinnati Gas & Electric Company
PSI Energy Inc.
c/o Cinergy Corp.
139 East Fourth Street
Cincinnati, Ohio 45202

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

4. Representations and Warranties. The parties represent and warrant as of the date hereof that:

(a) They are duly organized, validly existing and in good standing under the laws of the jurisdiction of their incorporation and have full power and legal right to execute and deliver this Agreement and to perform the provisions of this Agreement on their part to be performed;

(b) the execution, delivery and performance of this Agreement have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on them or their assets;


(c) subject to all necessary regulatory approval, all consents, authorizations, approvals, registrations and declarations required of the due execution, delivery and performance of this Agreement have been obtained from or, as they case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required of such execution, delivery or performance;

(d) this Agreement constitutes the legal, valid and binding obligation of the parties hereto enforceable against them in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally or by general equity principles;

(e) that, to the best of their knowledge, at the time of the execution and delivery of this Agreement, nothing (whether financial condition or other condition) exists that would impair the obligations and liabilities of the parties hereunder;

5. Choice of Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio.

6. Assignment. This Agreement shall be binding upon the parties, their respective successors and assigns, and shall inure to the benefit of the parties, and their respective successors and assigns. The parties may not assign this Agreement or delegate its duties hereunder without the express prior written consent of the other parties.


7. Amendments. No term or provision of this Agreement shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto.

8. Miscellaneous. (a) This Agreement is the entire and only agreement between the parties with respect to the subject matter hereof arising out of the Confirmation Letter Agreement. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby. (b) The section headings contained in this Agreement are used for convenience of reference only and not to limit or modify the substance of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Performance Assurance Agreement to be executed in their respective corporate names and by their duly authorized representative as of the date first above written.

By: [REDACTED]
Name: [REDACTED]
Title: [REDACTED]

By: [REDACTED]
Name: [REDACTED]
Title: [REDACTED]

CINERGY SERVICES, INC.
As Agent for and on Behalf of:
The Cincinnati Gas & Electric Company
PSI Energy, Inc.

By: Joseph W. Toussaint
Name: Joseph W. Toussaint
Title: Vice President

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**FIRST AMENDMENT TO
PERFORMANCE ASSURANCE AGREEMENT**

This First Amendment to the Performance Assurance Agreement, dated as of [REDACTED] (the "Amendment") is made by and between [REDACTED]

[REDACTED] and Cinergy Services, Inc., a Delaware corporation, acting on behalf of and as agent for The Cincinnati Gas & Electric Company ("CG&E"), an Ohio corporation and PSI Energy, Inc., an Indiana corporation, (each a "Cinergy Operating Company") and collectively, ("Cinergy").

WHEREAS, Cinergy, [REDACTED] are parties to the Performance Assurance Agreement, dated as of [REDACTED] (the "Agreement") wherein [REDACTED] agreed to assume certain obligations (as described more fully in the Agreement) in consideration for Cinergy's willingness to provide wholesale energy to [REDACTED] Inc., pursuant to the Confirmation Letter Agreement dated as of [REDACTED] and [REDACTED]

WHEREAS, [REDACTED] and Cinergy desire to enter into that certain Confirmation Letter Agreement, dated as of [REDACTED] pursuant to which Cinergy [REDACTED]

WHEREAS, as a material portion of the consideration to Cinergy in exchange for Cinergy's willingness to enter into the [REDACTED] Confirmation Letter and offer the price specified therein, [REDACTED]

NOW THEREFORE, in consideration of, and as an inducement for, the Cinergy entering into the [REDACTED] Confirmation Letter, Cinergy, [REDACTED] hereby covenant and agree as follows:

1. Each of the provisions set forth in the Agreement shall apply with respect to the [REDACTED] Confirmation Letter, except as set forth below.
2. For purposes of the [REDACTED] Confirmation Letter, [REDACTED]
3. This Amendment shall be effective as of [REDACTED]

(The remainder of this page is intentionally blank)

Executed as of the day and year first set forth above.

By: [REDACTED]
Name: [REDACTED]
Title: [REDACTED]

By: [REDACTED]
Name: [REDACTED]
Title: [REDACTED]

CINERGY SERVICES, INC.
As Agent for and on Behalf of
The Cincinnati Gas & Electric Company
PSI Energy, Inc.

By: [Signature] KEM
Name: Tim McCabe
Title: Executive Vice President

	[REDACTED]
Delivery Point:	Into Cinergy, Seller's Daily Choice. (See Attachment A for further definition).
Term:	[REDACTED]
Price:	[REDACTED]
Scheduling:	[REDACTED]
Transmission:	[REDACTED]
Load Shape Provision:	[REDACTED]

	<p>[REDACTED]</p> <p>[REDACTED] as such [REDACTED] agrees to receive wholesale power delivered by Cinergy pursuant to this Agreement in a manner consistent with the mutual understanding expressed above.</p> <p>[REDACTED]</p> <p>[REDACTED] shall permit Cinergy to audit the meter data for [REDACTED] and other applicable records as necessary to ensure compliance with this provision. Such meter data and applicable records shall be preserved and retained by [REDACTED] for the duration of the contract term plus an additional two months after the termination of the Term.</p>
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Any conflicts between this Confirmation Letter Agreement, the Service Agreement, and the Cinergy MB tariff shall be resolved in favor of the Confirmation Letter Agreement. Please confirm your agreement with the transaction terms and conditions set forth in this Confirmation Letter by executing five (5) copies of this letter and returning them by the end of this business day to the undersigned Cinergy representative at Cinergy Services, Inc., 7200 Industrial Road, Florence, Kentucky 41042.

Customer: [REDACTED]

Company: Cinergy Services, Inc.
As Agent for and on Behalf of:
The Cincinnati Gas & Electric
Company & PSI Energy, Inc.

By: [REDACTED]
Name: [REDACTED]
Title: [REDACTED]

By: [Signature]
Name: Tim McCabe
Title: Executive Vice President

Date Signed: [REDACTED]

Date Signed: [REDACTED]

ENERGY SERVICE AGREEMENT

THIS [REDACTED] ENERGY SERVICE AGREEMENT ("Agreement"), effective as of [REDACTED] between [REDACTED], requests [REDACTED] Electric Distribution Company ("EDC") to continue providing electricity distribution services under the same standards and with the same reliability otherwise required by law and regulation, and authorizes the EDC to proceed with enrollment of, and supply of electricity to, the Account(s) (as defined in Section 6 of this Agreement), and for which the Parties have agreed to as follows:

1. [REDACTED] authorizes [REDACTED] to serve as Certified Retail Electric Supplier ("CRES") on its behalf and to act as [REDACTED] exclusive manager for electricity procurement services for the Account(s) set forth on Schedule A and pursuant to the terms of this Agreement. [REDACTED] will arrange and be responsible for the following services for the Account(s): the procurement of electricity; scheduling coordination; transmission and ancillary services; and imbalance services. [REDACTED] authorizes [REDACTED] to act, as it deems necessary, from time to time to provide such services for the Account(s). [REDACTED] designates [REDACTED] to its EDC and other energy supplier(s) as an authorized recipient of [REDACTED] current and historical energy billing and usage data. [REDACTED] shall have full responsibility for payment of any existing amounts owed to EDC. The limited agency described above shall be irrevocable and exclusive for the term of the Agreement. Further, such limited agency shall not create or result in the imposition of any other duties of [REDACTED] to [REDACTED] including any duties, which may otherwise arise by operation of law.
2. **ENERGY PRICE SCHEDULE.** [REDACTED] will pay [REDACTED] for the capacity, energy, forecasting, scheduling, billing, transmission and ancillary services (excluding energy imbalance service) provided under the Agreement terms in accordance with the attached Schedule A. The resulting [REDACTED] price of all services shall, except as otherwise expressly stated in this Agreement, include all costs associated with the provision of services by [REDACTED] pursuant to this Agreement, including but not limited to assessments, and/or charges relating to the services provided to [REDACTED] under this Agreement.
3. **TERM.** The term will commence on the first day of the EDC billing cycle, beginning on or about the Switch Date(s) for the Account(s) listed on Schedule A; provided, however, that commencement of service is dependent upon timely enrollment and acceptance of the Account(s) by the EDC and will end upon [REDACTED] meter reading of the EDC billing cycle concluding on or after the date specified in Schedule A as to each such Account(s).
4. **INVOICING AND PAYMENT.** Invoices will be issued to [REDACTED] according to [REDACTED] normal monthly billing cycle. Subject to applicable law and regulation, and unless otherwise agreed in writing, [REDACTED] will provide a single bill for each of the Account(s) for amounts due [REDACTED] from [REDACTED] under this Agreement. [REDACTED] shall direct all payments related to electricity services without offset or reduction of any kind as to each of the Account(s) served under this Agreement to [REDACTED], and shall immediately notify [REDACTED] of any dispute with the amounts billed. [REDACTED] shall pay any undisputed portion of the invoices. Any sums billed and not received by [REDACTED] within twenty (20) calendar days of invoice may be assessed a late payment charge of one and one-half percent (1.5%) per month.
5. **DEFINITIONS, TERMS AND NOTICE.** Capitalized terms shall have the meanings provided in this Agreement and as stated in the accompanying General Terms and Conditions incorporated herein by reference. All notices, requests or approvals required hereunder shall be in writing and shall be deemed given when received. All such notices shall be delivered personally or by facsimile to the addresses provided below.
6. **ENROLLMENT OF ACCOUNT(S).** [REDACTED] requests [REDACTED] to provide service under the terms of this Agreement to the Account(s) identified on Schedule A and accepted by the EDC for enrollment ("Account(s)") on the respective Switch Date(s) identified on Schedule A.

7. **CUSTOMER SERVICE.** [REDACTED] may request information regarding its invoice or services by calling [REDACTED] toll-free at [REDACTED]. [REDACTED] agrees to contact its EDC in the event of an emergency, power outage or other service disruption at the following telephone number: [REDACTED].

8. **ALTERATIONS.** The terms and conditions preprinted on this Agreement, including the General Terms and Conditions and Schedule A, may not be altered or modified and any addition, modification or alteration thereto shall be void and without effect. This Agreement shall be void and without effect unless an Energy Price Schedule has been executed by [REDACTED] and provided a [REDACTED] corresponding to this Agreement and the [REDACTED] Reference Number stated below.

9. **MISCELLANEOUS.** [REDACTED] affirms that it has read this Agreement in its entirety and that it agrees to purchase services from [REDACTED] subject to the terms and conditions contained herein. This Agreement has been drafted by both parties and accordingly shall not be construed against either party as drafter.

By: [REDACTED]
[REDACTED]
[REDACTED]By: [REDACTED]
[REDACTED]
[REDACTED]

Address: [REDACTED]

Address: [REDACTED]

Attention: [REDACTED]

Attention: [REDACTED]

Telephone: [REDACTED]

Facsimile: [REDACTED]

Facsimile: [REDACTED]

Daytime Telephone: [REDACTED]

Evening Telephone: [REDACTED]

Number: [REDACTED]
[REDACTED]

Account Manager: [REDACTED]

Agreement is Not Valid
Unless Executed by
[REDACTED]

DEFINITIONS AND GENERAL TERMS AND CONDITIONS

_____ means the Party to this Agreement that controls the electricity purchases for the Account(s) identified on Schedule A.

"EDC" means _____ electric distribution company, the public utility controlling the distribution system required for reliable delivery of electricity to the Account(s).

"Energy Charge" means the cents per kilowatt-hour Energy Price identified on Schedule A as to each of the Account(s) which amount includes assessments relating to the services provided to Kroger under this Agreement.

"Energy Price Schedule" means the Schedule A incorporated as part of this Agreement and providing an Expiration Date, Account(s), Switch Date(s), applicable Energy Price, applicable Transmission and Ancillary Services cost, NewEnergy Reference Number identified on this Agreement, a NewEnergy Contract Number corresponding to this Agreement, and such other information as may be required by NewEnergy thereon.

"Force Majeure" means an event that is not within the reasonable control of the Party claiming suspension ("Claiming Party"), and that by the exercise of due diligence, the Claiming Party is unable to overcome or obtain or cause to be obtained a substitute performance therefor and shall not be deemed a breach or default under this Agreement. Force Majeure includes but is not limited to acts of God, accident, strike, storm, fire, war, flood, earthquake, civil disturbance, sabotage, facility failure, breakage of equipment or machinery, curtailment of supply by or as a result of the EDC, declaration of emergency by the ISO, regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; provided, however, Force Majeure is not intended to apply to a change in market prices or the supply of electric power and energy not arising from an event identified herein.

"ISO" means Independent System Operator or other entity approved by the Federal Energy Regulatory Commission as administering transmission reliability and control, providing a recognized power exchange or operating an open market wholesale energy exchange.

"Party(ies)" means _____ individually or collectively.

"Switch Date" shall be the date of first delivery of electricity to the Account(s) listed on Schedule A. Switch Dates are requested by _____ at the time an account is enrolled on EDC's delivery service tariff, are assigned by EDC, and are subject to EDC's acceptance and enrollment of Account(s).

T1.1 **Payment and Billing Cycle.** Each invoice for amounts due under this Agreement shall be due and payable by _____ on the date of such without offset or reduction of any kind. _____ shall pay any undisputed portion at that time, and give prompt written notice of its dispute regarding any unpaid portion. Any sums billed and not received by _____ within twenty (20) calendar days of invoice shall be automatically assessed a late payment charge of one and one-half percent (1.5%) per month. In the event that the EDC is unable to procure timely meter reads, _____ is entitled to bill _____ based on estimated billing parameters until such time as accurate meter reads can be obtained. If during the course of this agreement it is determined that any meters, or method of obtaining or processing meter data has or have been incorrect, _____ is entitled to adjust bills back to the latter of, the point in time in which the error(s) first occurred or the period allowed for in the EDC's Distribution Tariff.

T1.2 **Electricity Procurement.** This Agreement including Schedule A shall remain in full force and effect throughout the term of this Agreement. Title to electricity provided under this Agreement shall pass from _____ to _____ at the intersection of the EDC's transmission and distribution system provided however that _____ shall provide all necessary distribution losses; provided, however, that _____ shall not be deemed to be in control or possession of such electricity prior to delivery to or by the EDC.

T1.3 **Energy Profile and Minimum/Maximum Use Limitations.** The Parties agree that _____

[REDACTED]

T2.1 Adjustments to Schedule A Costs. Any changes to [REDACTED] cost resulting from interpretation or implementation of current or future statutory, regulatory, or environmental action, being beyond the control of [REDACTED] shall be directly passed on to [REDACTED]

T2.2 Usage and Account Information. [REDACTED] acknowledges that the [REDACTED] Cost of Electricity Services is based upon [REDACTED] historic monthly usage and metered rate of consumption for all Account(s) identified on Schedule A. [REDACTED] shall notify [REDACTED] of any material variance in usage and [REDACTED] agrees to bear any actual, incremental, and reasonable charges resulting from any variance in [REDACTED] monthly usage of electricity or metered rate of consumption of more than ten percent (10%) as compared to historical usage (weather adjusted) or as a result of inaccurate information regarding the Account(s) as reflected on Schedule A.

T2.3 Limitation of Liability. The liability of [REDACTED] and its affiliates for any and all claims arising from or relating to this Agreement, including any causes of action in agency, contract, tort or strict liability, shall not exceed the amount of [REDACTED] energy charge under its largest monthly invoice during the Term. Notwithstanding any other provision of this Agreement, in no event shall [REDACTED] or its affiliates be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits; provided, however, that for purposes of this Agreement and not by way of limitation, [REDACTED] costs and expenses related to arranging and providing electric power and energy for the Account(s) shall be deemed direct damages. It is the intent of the parties that the limitation herein imposed on remedies and the measure of remedies be without regard to the cause, or causes related thereto, including the negligence of any party, whether such negligence be sole, joint, or concurrent, or active or passive. To the extent that any damages required to be paid hereunder are liquidated, the parties acknowledge that damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient, and liquidated damages constitute a reasonable approximation of the harm or loss.

T3.1 Independent Contractor and CRES Certification. [REDACTED] is and will perform as an independent contractor under this Agreement. Except as otherwise provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other and nothing herein shall be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking. [REDACTED] is certified as a CRES by the Public Utilities Commission of Ohio as may be required to perform the services identified in this Agreement and will maintain such certification in good standing, and will provide and maintain, consistent with applicable law and regulation, any bonds or other security required thereby.

T3.2 Information and Confidentiality. [REDACTED] may immediately terminate this Agreement or suspend service for [REDACTED] noncompliance with this Section. All terms of this Agreement are confidential and shall not be disclosed by [REDACTED] without [REDACTED] prior written consent, except as required by law. [REDACTED] shall keep [REDACTED] information confidential in accordance with applicable law and regulation and not disclose such information without [REDACTED] consent, except as required by law.

T3.3 Force Majeure. Notwithstanding any other provision of this Agreement, if either Party is unable to carry out any obligation under this Agreement (other than an obligation to pay money) due to Force Majeure, this Agreement shall remain in effect but such obligation shall be suspended for the period necessary as a result of the Force Majeure, provided that: (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature, date, and expected duration of the; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

T3.4 Entire Agreement. This Agreement, including its General Terms and Conditions and the corresponding Schedule A, embodies the entire agreement and understanding of the Parties, supersedes all prior agreements and understandings of the Parties related to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous [REDACTED]

oral or written agreement. Receipt of a facsimile copy of [REDACTED] signature shall be considered an original for all purposes under this Agreement and [REDACTED] agrees to provide its handwritten signature upon request. No amendment to this Agreement shall be valid or given effect unless executed by both Parties.

T3.5 Governing Law and Arbitration. The validity, performance, and construction of this Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio. Any controversy or claim arising from or relating to this Agreement shall be settled in accordance with the express terms of this Agreement by arbitration in Cincinnati, Ohio, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. No arbitrator shall have the authority to limit, expand, or otherwise modify the terms of this Agreement and each party irrevocably waives any claim thereto.

T3.6 Third Parties. The services provided by [REDACTED] pursuant to this Agreement are for the exclusive benefit of the Parties hereto. If [REDACTED] is represented by an agent or broker in connection with the procurement or performance of this Agreement, [REDACTED] shall be fully responsible for any fee, commission or other compensation owing any such agent or broker, and shall indemnify, defend and hold [REDACTED] harmless from any and all claims for compensation of any such agent or broker arising from or relating to this Agreement.

T3.7 Waiver, Assignment, and Severability. No waiver in the requirements of this Agreement shall occur based on a failure of either Party to provide notice of any default or other requirement under this Agreement and failure to object to any default shall not operate or be construed as a waiver of any future default, whether like or different in character. Neither Party shall assign this Agreement without the prior written consent of the other Party; provided, however, [REDACTED] hereby consents to the assignment of this Agreement, consistent with applicable law and regulation, to any commonly controlled subsidiary or affiliate of [REDACTED]. Provided further, in the event of [REDACTED] default and/or withdrawal from providing service pursuant to the terms of this Agreement, [REDACTED] shall assign the underlying wholesale supply contract to [REDACTED]. This Agreement shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. If any portion of this Agreement, or application thereof to any person or circumstance, shall be held legally invalid, the remaining portion(s) of this Agreement shall not be affected and shall be valid and enforced to the fullest extent permitted by law or equity.

T3.8 Termination or Cancellation. Notwithstanding any other provision of this Agreement, if [REDACTED] fails to make any non-contested payment within thirty (30) days of the date specified for such payment, [REDACTED] may, after providing [REDACTED] not less than five (5) days prior written notice of such default, cancel this Agreement as to the Account(s), and, upon taking such action and notice to [REDACTED] move service for any of the Account(s) to the EDC's then applicable Standard Offer Tariff Service. Should this Agreement be terminated or cancelled, [REDACTED] agrees that it shall remit full payment, without offset or reduction of any kind, within fourteen (14) days of a final invoice date, plus all applicable charges and [REDACTED] collection expenses. Notwithstanding any other term of this Agreement, [REDACTED] remedies at law and in equity shall survive the Term of this Agreement.

T3.9 DISCLAIMER. [REDACTED] ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE AS TO [REDACTED] AND ITS AFFILIATES UNDER THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND [REDACTED] SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

T4.0 Contingency This Agreement is contingent on the execution of a similar supply agreement, which [REDACTED] expects to close on or about the same time as this Agreement.

Schedule A to
Energy Service Agreement
Expiration Date:

	Account No.	Meter No.	Switch Date	Account Type
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41				
42		None		
43				

	Account No.	Meter No.	Switch Date	Account Type
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*Account has been resubmitted. Switch Date is Approximate.

Maximum MW Demand

The initial MW Demand for this agreement shall be

Price Capacity and Energy is to be billed at for the term of the agreement.

Term The term of this Agreement is Consistent with supply agreement.

Transmission Charges will add to the above stated Capacity and Energy prices an amount for Firm Network Transmission consistent with the then applicable EDC Cinery Network Transmission charge as stated in the EDC's FERC approved OATT.

Ancillary Services Charges will add to the above stated Capacity and Energy prices an amount for Ancillary Services (excluding Energy Imbalance Service), consistent with the then current applicable EDC Ancillary Services charges as stated in EDC's FERC approved OATT.

Losses will inflate the above stated Capacity and Energy prices by a percentage consistent with the then applicable EDC Loss factor as stated in EDC's FERC approved OATT.

- This Schedule A is subject to and conditioned upon the terms of the Energy Service Agreement ("Agreement") containing the Reference Number listed below and is not valid beyond 2:00 p.m. EPT on the Expiration Date.

- Any alteration, addition, or modification of the preprinted terms upon this Schedule A shall be void and without any effect.

- will provide a Contract Number upon receipt of the following by 2:00 p.m. EPT on the Expiration Date via facsimile to (1) the completed Agreement containing the Reference Number and executed by and (2) signature on this Schedule A.

I request to provide service for the Account(s) stated on this Schedule A under the Terms and Conditions specified in the Agreement corresponding to the Reference Number identified below:

By:

By:

Date:

Reference Number:

Contract Number:

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Agreement

WHEREAS, on [REDACTED] a [REDACTED]
[REDACTED] for a transaction under the Cinergy Operating Companies
market-based power sales tariff was entered into between [REDACTED]
[REDACTED] and the Cinergy Operating Companies to supply firm energy to fulfill
the retail power requirements of certain of the [REDACTED]
[REDACTED] located in the service territory of The
Cincinnati Gas & Electric Company [REDACTED];

WHEREAS, on [REDACTED], a Performance Assurance
Agreement was entered into between [REDACTED]
and Cinergy Services, Inc. whereby certain performance assurances were
provided by [REDACTED] to Cinergy Services, Inc.;

WHEREAS, on [REDACTED], a [REDACTED] for
a transaction under the Cinergy Operating Companies market-based
power sales tariff was entered into between [REDACTED] and the
Cinergy Operating Companies to supply firm energy to fulfill the retail
power requirements of the [REDACTED]
[REDACTED]

WHEREAS, the Performance Assurance Agreement was amended
effective [REDACTED];

WHEREAS, the competitive retail electric market in Ohio has not
developed as envisioned when the Electric Transition Plan of The

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Cincinnati Gas & Electric Company ("CG&E") in Case No. 99-1658-EL-ETP was approved by the PUCO;

WHEREAS, on January 26, 2004, CG&E filed an Electric Reliability and Rate Stabilization Plan at the request of the Commission in order to further the transition to a competitive market;

WHEREAS, the power sales agreements by the Cinergy Operating Companies for ultimate sale to [REDACTED] provided for firm power, and to permit [REDACTED] to be fairly charged for reserve margin and other costs associated with the provision of competitive retail electric service as contained in the proposed Electric Reliability and Rate Stabilization Plan, and for other consideration, this new Agreement has been entered into.

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and [REDACTED] effective this [REDACTED]. It is the intent of the Parties to this Agreement to bind Cinergy and [REDACTED] to the terms and conditions set forth herein. The following Agreement may not be amended except by the written Agreement of the Parties.

This Agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-Parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this Agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the Party before such court or administrative agency shall immediately notify the other Party. The Parties shall defend

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the confidentiality of this Agreement. The Parties shall not circulate the Agreement, or its existence, to any employee, agent, or assignee of the Party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the Agreement.

The Parties, for good consideration, agree to the following terms and conditions:

1. Effective [REDACTED], and ending [REDACTED] [REDACTED] shall continue to purchase competitive retail electric service from [REDACTED] its non-Cinergy affiliated competitive retail electric service provider, under both the [REDACTED] [REDACTED] During [REDACTED] shall pay [REDACTED] approved by the Public Utilities Commission of Ohio's in Case No. 03-93-EL-ATA and Cinergy or [REDACTED] of the Public Utilities Commission of Ohio's order in Case No. 03-93-EL-ATA. Cinergy or any [REDACTED]
2. Beginning [REDACTED] Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to [REDACTED] It is anticipated that [REDACTED] continue to be [REDACTED] provider, including a Cinergy affiliate, and wholesale firm power will be provided by Cinergy at the same price, terms and conditions as set forth in [REDACTED] If a Cinergy affiliate is chosen as [REDACTED] then the Cinergy CRES will provide generation at retail at the prices set forth in [REDACTED] plus transmission costs. [REDACTED] shall pay to The Cincinnati Gas & Electric Company the [REDACTED] approved by the Public

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Utilities Commission of Ohio in Case No. 99-1658-EL-ETP.
Cinergy or any affiliate thereof shall [REDACTED]

[REDACTED] paid to The Cincinnati Gas &
Electric Company. Cinergy or any affiliate thereof [REDACTED]

[REDACTED] No later than 60
days after an order is issued in Case No. 03-93-EL-ATA or
December 31, 2004 (whichever comes first) [REDACTED]

3. Effective [REDACTED] may purchase for both its
[REDACTED] competitive retail electric
service from any competitive retail electric service provider,
including Cinergy, at the market rate quoted by such providers.

[REDACTED]
[REDACTED] Cinergy or any
[REDACTED]
[REDACTED] The Cincinnati Gas & Electric
Company. Cinergy or any [REDACTED]

4. The Cinergy Operating Companies shall [REDACTED]
[REDACTED]
Confirmation Letter Agreement to sell generation supply to [REDACTED]
[REDACTED]

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- [illegible]

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[REDACTED]

This Agreement terminates after [REDACTED] or as follows:

A. [REDACTED]

B. [REDACTED]

C. [REDACTED]

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

[REDACTED]

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[REDACTED]

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

[REDACTED]

To Cinergy:

Cinergy

[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made in a commercially practicable manner such as by check, ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and [REDACTED] shall defend, indemnify, and hold harmless the non-breaching Party from any and all claims by third Parties regarding the enforcement or breach of this Agreement, arising from or in connection with the performance of this Agreement.

This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning Party.

This Agreement shall be governed by and construed in accordance

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To Cinergy:

Cinergy
[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and [REDACTED] shall defend, indemnify, and hold harmless the non-breaching Party from any and all claims by third Parties regarding the enforcement or breach of this Agreement, arising from or in connection with the performance of this Agreement.

This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning Party.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

On behalf of Cinergy

On Behalf of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Agreement

WHEREAS, on [REDACTED] a [REDACTED] Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between [REDACTED] and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of certain of the [REDACTED] located in the service territory of The Cincinnati Gas & Electric Company [REDACTED]

WHEREAS, on [REDACTED] a Performance Assurance Agreement was entered into between [REDACTED] and Cinergy Services, Inc. whereby certain performance assurances were provided by [REDACTED] to Cinergy Services, Inc.;

WHEREAS, on [REDACTED] a [REDACTED] for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between [REDACTED] and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of the [REDACTED]

WHEREAS, the Performance Assurance Agreement was amended effective [REDACTED]

WHEREAS, the competitive retail electric market in Ohio has not developed as envisioned when the Electric Transition Plan of The

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Cincinnati Gas & Electric Company ("CG&E") in Case No. 99-1658-EL-ETP was approved by the PUCO;

WHEREAS, on January 26, 2004, CG&E filed an Electric Reliability and Rate Stabilization Plan at the request of the Commission in order to further the transition to a competitive market;

WHEREAS, the power sales agreements by the Cinergy Operating Companies for ultimate sale to [REDACTED] provided for firm power, and to permit [REDACTED]

[REDACTED]

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and [REDACTED] effective this [REDACTED]

[REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED], between [REDACTED] and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind Cinergy and [REDACTED] to the terms and conditions set forth herein. The following Agreement may not be amended except by the written Agreement of the Parties.

This Agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-Parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this Agreement's

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confidentiality comes before a court or administrative agency of competent jurisdiction the Party before such court or administrative agency shall immediately notify the other Party. The Parties shall defend the confidentiality of this Agreement. The Parties shall not circulate the Agreement, or its existence, to any employee, agent, or assignee of the Party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the Agreement.

The Parties, for good consideration, agree to the following terms and conditions:

1. Effective [REDACTED], and ending [REDACTED] [REDACTED] shall continue to purchase competitive retail electric service from [REDACTED]

2. Beginning [REDACTED] through [REDACTED] Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to [REDACTED]

It is anticipated that [REDACTED]

**CONFIDENTIAL PROPRIETARY
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including a Cinergy affiliate, and wholesale firm power will be provided by Cinergy at the [REDACTED]

3. Effective

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4. [REDACTED]
5. CG&E's POLR charge is expected to consist of these components: 1) RSC; 2) AAC; 3) IMF; and 4) System Reliability Tracker (SRT).
6. The [REDACTED]
7. If, prior to [REDACTED] adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which [REDACTED]
8. This agreement has no application to CG&E's transmission and distribution rates as approved by the PUCO. [REDACTED]
9. Cinergy or any affiliate thereof will comply with all regulatory requirements necessary [REDACTED]
10. [REDACTED]
11. This [REDACTED]

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[REDACTED]

12. Nothing in this Agreement modifies or limits any settlement agreement reached by the Parties or their agents in Case No. 99-1658-EL-ETP.
13. If an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E but which renders [REDACTED]

[REDACTED]

This Agreement terminates after [REDACTED] or as follows:

A. [REDACTED]

B. [REDACTED]

C. [REDACTED]

[REDACTED]

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with the laws of the State of Ohio.

Entered into on this [REDACTED]

On behalf of Cinergy

On Behalf of [REDACTED]

[REDACTED]

Agreement

WHEREAS, on [REDACTED] a [REDACTED] Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between [REDACTED] and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of certain of the [REDACTED] of The Cincinnati Gas & Electric Company [REDACTED]

WHEREAS, on [REDACTED], a Performance Assurance Agreement was entered into between [REDACTED] and Cinergy Services, Inc. whereby certain performance assurances were provided by [REDACTED] to Cinergy Services, Inc.;

WHEREAS, on [REDACTED], a [REDACTED] for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between [REDACTED] and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of the [REDACTED]

WHEREAS, the Performance Assurance Agreement was amended effective [REDACTED]

WHEREAS, the competitive retail electric market in Ohio has not developed as envisioned when the Electric Transition Plan of The



Cincinnati Gas & Electric Company ("CG&E") in Case No. 99-1658-EL-ETP was approved by the Public Utilities Commission of Ohio ("PUCO");

WHEREAS, on January 26, 2004, CG&E filed an Electric Reliability and Rate Stabilization Plan at the request of the Commission in order to further the transition to a competitive market;

WHEREAS, the power sales agreements by the Cinergy Operating Companies for ultimate sale to [REDACTED] provided for firm power, and to permit [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and [REDACTED] effective this [REDACTED]

This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED], between [REDACTED] and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind Cinergy and [REDACTED] to the terms and conditions set forth herein. The following Agreement may not be amended except by the written Agreement of the Parties.

This Agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-Parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this Agreement's

confidentiality comes before a court or administrative agency of competent jurisdiction the Party before such court or administrative agency shall immediately notify the other Party. The Parties shall defend the confidentiality of this Agreement. The Parties shall not circulate the Agreement, or its existence, to any employee, agent, or assignee of the Party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the Agreement.

The Parties, for good consideration, agree to the following terms and conditions:

1. Effective [REDACTED], and ending [REDACTED] [REDACTED] shall continue to purchase competitive retail electric service from [REDACTED]

2. Beginning [REDACTED] through [REDACTED] Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to [REDACTED]

- Effective [REDACTED]

- The [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]

- [REDACTED]
6. This Agreement has no application to CG&E's transmission and distribution rates as approved by the PUCO. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

7. Cinergy or any affiliate thereof will comply with all regulatory requirements necessary [REDACTED]
- [REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. This [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

10. Nothing in this Agreement modifies or limits any settlement agreement reached by the Parties or their agents in Case No. 99-1658-EL-ETP.

11. If orders in CG&E's pending electric distribution rate case PUCO Case No. 05-59-EL-AIR and its two pending cases with the PUCO surrounding the proposed Cinergy/Duke merger, Case No. 05-732-EL-MER and Case No. 05-733-EL-AAM are issued which are acceptable to CG&E but which render [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This Agreement terminates after [REDACTED], or as follows:

A. [REDACTED]

B. [REDACTED]

[REDACTED]

All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customers:

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]
[REDACTED]
[REDACTED]

To Cinergy:

Cinergy

[REDACTED]
[REDACTED]
[REDACTED]

or such other address as is provided in writing by the recipient from time to time. Payments shall be made in a commercially practicable manner such as by check, ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and [REDACTED] shall defend, indemnify, and hold harmless the non-breaching Party from any and all claims by third Parties regarding the enforcement or breach of this Agreement, arising from or in connection with the performance of this Agreement.

This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning Party.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

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Entered into on this [REDACTED]

On behalf of Cinergy [REDACTED]

On Behalf of [REDACTED]

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DEPOSITION
EXHIBIT

The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, Ohio 45202

Re: Notice of [REDACTED] Intent to Stay with or Switch to a CRES Pursuant to Paragraph 25 of the PUCO's Entry on Rehearing in Case No. 03-093-EL-ATA, *et al.*

Dear

Pursuant to instructions provided by CG&E Counsel [REDACTED] and Ordering Paragraph 25 of the PUCO's Entry on Rehearing in the above-captioned proceeding, [REDACTED] hereby notifies CG&E that it intends to a) keep its current "Choice" accounts with a CRES provider and b) enroll additional accounts with a CRES provider [REDACTED]

Attached to this letter is a list of the accounts applicable to groups (a) and (b) above. The Group (b) account numbers are prioritized in the sequence that [REDACTED] would like them placed in the queue.

CG&E may disregard this notice.

Please send all confirmations and correspondence regarding this matter to my attention at the address and number listed above, or via e-mail at [REDACTED]

On behalf of [REDACTED] I thank you for your prompt attention to this correspondence.

Sincerely,

CONFIDENTIAL

Cc:

[REDACTED]

Attachment

[REDACTED]

[REDACTED]

Re: Addenda to Notice of [REDACTED] Intent to Stay with or Switch to a CRES Pursuant to Paragraph 25 of the PUCO's Entry on Rehearing in Case No. 03-093-EL-ATA, et al.

In addition to the Notice issued by Letter dated [REDACTED] wishes to notify CG&E that [REDACTED]

[REDACTED]

On behalf of [REDACTED] I thank you for your prompt attention to this correspondence.

[REDACTED]

[REDACTED]

Cc: [REDACTED]

1 State of Ohio

:

2 SS:

3 County of Hamilton :

I, [REDACTED] do hereby certify that

4 I have read the foregoing transcript of my
5 deposition given on February 21, 2007; that
6 together with the correction page attached
7 hereto noting changes in form or substance, if
8 any, it is true and correct.

9 [REDACTED]
10 [REDACTED]

11 I do hereby certify that the foregoing
12 transcript of the deposition of [REDACTED] was
13 submitted to the witness for reading and
14 signing; that after he had stated to the
15 undersigned Notary Public that he had read and
16 examined his deposition, he signed the same in
17 my presence on the _____ day of _____,
18 2007.

19 _____
20 Notary Public

21 My commission expires

_____, 20____.

22 - - -
23
24

CONFIDENTIAL

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc., Rate	)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider	)	03-2079-EL-AAM
Adjustment Cases.	)	03-2081-EL-AAM
	)	03-2080-EL-ATA
	)	05-724-EL-UNC
	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC
In the Matter of the Application of)	
Duke Energy Ohio To Modify Its	)	Case No. 06-986-EL-UNC
Market-Based Standard Service Offer.)	

**CONFIDENTIAL PORTION OF DEPOSITION TRANSCRIPT AND
CONFIDENTIAL EXHIBITS OF
GREGORY C. FICKE TAKEN FEBRUARY 20, 2007**

**JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL**

Jeffrey L. Small, Trial Attorney
Ann M. Hotz
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Assistant Consumers' Counsel

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(614) 466-8574-telephone
(614) 466-9475-fascimile
sinall@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

PUC

2007 MAR 15 PM 3:56

RECEIVED-DOCKETING DIV.

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- - -
CONFIDENTIAL EXCERPT
FROM THE DEPOSITION OF
GREGORY C. FICKE
TUESDAY, FEBRUARY 20, 2007
- - -

1 of the operating company Cincinnati Gas & Electric
2 Company.

3 A. Sure. As a Cinergy Services employee I
4 could not only do work for CG&E, but I could also do
5 work for other parts of the company.

6 Q. All right. I have an exhibit I'd like to
7 mark as Exhibit 2.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. If you would, turn to Exhibit 2 which is
10 an agreement between Cinergy Retail Sales, LLC and a
11 number of industrial customers that are mentioned in
12 the first paragraph. This is, for record purposes,
13 Bates stamped 327 through 333. Have you seen this
14 document before?

15 I may note it states -- also states in
16 the first paragraph [REDACTED] so to
17 give you a time period.

18 MR. DORTCH: Jeff, are we going to place
19 this part of the record under seal, or where do we go
20 with it?

21 MR. SMALL: Yeah, let's go off the
22 record.

23 (Discussion held off the record.)

24 MR. SMALL: Let's go back on the record.

1 MR. DORTCH: Pursuant to agreement of the
2 parties the -- at least most likely the remaining
3 portion of this deposition transcript will be placed
4 under seal with each party reserving rights regarding
5 that designation to a later date.

6 MR. SMALL: And we can mark a future
7 portion of this unsealed, but I also would agree that
8 probably the rest of this transcript will be marked
9 as protected.

10 (CONFIDENTIAL PORTION EXCERPTED.)
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Q. Back to the question. Have you seen this document?

A. I don't believe I have.

Q. Were you aware that -- even having not seen the document, were you aware that an affiliate of Cincinnati Gas & Electric had reached an agreement with the [REDACTED] that are mentioned in the first paragraph of this document in this time frame?

A. Yes.

Q. And how did you become aware of that agreement?

A. There may have been -- there may have been e-mails. There may have been hallway conversations. But I was aware that -- and I

1 referred to them as option agreements, that one of
2 our affiliates had reached agreement with a number of
3 [REDACTED] on option agreements.

4 Q. I have to say that we've been through a
5 number of depositions and this is not what we've been
6 describing as an option agreement. Can you tell me
7 why you would call this an option agreement?

8 MR. DORTCH: Objection. Jeff, he's
9 already testified he's never seen the agreement
10 before.

11 MR. SMALL: He's stated that he's
12 familiar that there was an agreement.

13 Q. And the question is why did you refer to
14 it as an option agreement?

15 A. Probably because that was the way it was
16 described to me.

17 Q. Okay. And we're talking about agreements
18 in the [REDACTED] time frame?

19 A. No, not [REDACTED]. Is this [REDACTED]
20 [REDACTED]

21 Q. This is [REDACTED] that's what it states
22 in the first paragraph of Exhibit 2.

23 A. Okay. Okay.

24 MR. DORTCH: Mr. Ficke, I'm going to

1 ask -- if we're going to pursue questions based on
2 this document, I'm going to ask you to take the time
3 to read the document.

4 THE WITNESS: Sure.

5 MR. SMALL: Let's go off the record for a
6 second.

7 (Discussion held off the record.)

8 MR. SMALL: Let's go back on the record.

9 Q. You've had a chance to look at the
10 document. Is this the agreement that you referred to
11 earlier as setting up an option agreement?

12 A. No. There were agreements earlier, I
13 thought this was a later agreement, but there were
14 agreements earlier which I was familiar with, in
15 2004.

16 Q. Earlier than the Exhibit 2 with these
17 particular customers.

18 A. Let me just be clear. I was familiar
19 with agreements in this time frame with these
20 companies, and I believe this to be the agreement
21 that I'm familiar with.

22 Q. Okay. Do you recognize the companies
23 mentioned in the first paragraph of this Exhibit 2 as
24 the members of the [REDACTED] which was a

1 party to the 03-93 case -- strike that for a second.

2 Mr. Ficke, you're familiar with the 03-93
3 case that is on remand from the Supreme Court; is
4 that correct?

5 A. Is that the rate stabilization plan case?

6 Q. That's the commonly used phrase for it,
7 yes.

8 A. Yes.

9 Q. Are you familiar from that case with the
10 intervention of the [REDACTED]

11 A. Yes.

12 Q. And do you recognize the entities stated
13 in the first paragraph of Exhibit 2 as members of the
14 [REDACTED]

15 A. Yes.

16 Q. You can set that aside. I'm going to
17 mark Exhibit 3.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. If you'd turn to Exhibit 3, this listing
20 shows -- there's a certain pattern to this. This
21 shows a number of -- a list of a number of documents
22 and I'd direct your attention to the column that says
23 "Date." Party 1 there is Cinergy Retail Sales.
24 Similar to the party that we saw on Exhibit 2, Party

1 2 is some other entity such as [REDACTED] which
2 was also listed on Exhibit 3 -- I'm sorry, [REDACTED]
3 it's a little bit further down, was listed as one of
4 the [REDACTED] members, and it has sort of a pattern of an
5 agreement around [REDACTED]
6 and then it goes on to a different second party.

7 Now I'm going to ask you to look at the
8 May agreements so, for instance, the very first line
9 is [REDACTED] between CRS and [REDACTED],
10 and then skipping down a few lines it says [REDACTED]
11 [REDACTED] agreement, CRS and [REDACTED]. Do you see the
12 pattern that I'm --

13 A. Uh-huh.

14 Q. You stated that you hadn't seen but were
15 familiar with an agreement such as or that you were
16 familiar with -- you knew about the agreement on
17 Exhibit 2. Were you also aware of these other
18 agreements with the stated parties in the [REDACTED] time
19 frame that are shown on Exhibit 3?

20 A. Yes.

21 Q. With all of them, that would be [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. Depends what you mean by "familiar with."

1 None of those names surprise me. I don't believe
2 I've read every agreement with every company, but
3 none of the names on there surprise me.

4 Q. You were aware that agreements with these
5 companies had taken place.

6 A. Sure.

7 Q. In this time frame.

8 A. Sure.

9 Q. Okay. You can set that aside. We'll
10 mark Exhibit 4.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Now, Exhibit 4 is an e-mail, actually two
13 e-mails, and it shows on a [REDACTED] at the
14 very top, an e-mail from [REDACTED]
15 [REDACTED] Do you see that?

16 A. Uh-huh.

17 Q. And it shows you as being copied on that
18 e-mail.

19 A. Uh-huh.

20 Q. And this, you're certainly welcome to
21 read it over, but this deals with the [REDACTED] or [REDACTED]
22 [REDACTED] and it says, subject line:
23 [REDACTED] Do you
24 see that?

1 A. Yes.

2 Q. Were you informed about a process of
3 reaching agreement with the [REDACTED]
4 in this time frame?

5 A. Can you say that again? Informed about
6 what?

7 MR. SMALL: Let's have it reread.

8 (Question read.)

9 A. What confused me, about a process of
10 reaching agreement.

11 Q. All right.

12 A. No, I didn't -- I was not informed of
13 what process was going to be used to reach agreement
14 if that's what you're asking.

15 Q. Were you aware that there were settlement
16 talks that were being conducted with the [REDACTED]
17 [REDACTED]?

18 A. Actually, there were settlement talks
19 being conducted with a lot of parties including Ohio
20 Consumers' Counsel, [REDACTED]
21 [REDACTED] and these were public meetings that we called in
22 Columbus. We brought all the parties together and
23 inquired as to whether any parties were interested in
24 settlement, and as a result, you know, that process

1 proceeded and we ultimately did enter into a
2 settlement agreement with a lot of the parties.

3 But it was done in the Commission offices
4 with all parties' awareness and, for the most part,
5 all parties' attendance.

6 Q. Do you know what the reference is in both
7 of these e-mails to the new item 5?

8 A. No.

9 Q. Down in the second e-mail, the one
10 from -- by the way, do you know who [REDACTED]
11 is?

12 A. I know the name.

13 Q. Is he with the [REDACTED]?

14 A. I don't know that he's with the [REDACTED]
15 [REDACTED], but I do recognize the name.

16 Q. Where do you recognize the name from?

17 A. I probably heard it before.

18 Q. Do you know [REDACTED]?

19 A. I recognize the name. Don't think I've
20 met either one of the two, although I may have been
21 in large meetings with them.

22 Q. Do you recognize him as associated with
23 the [REDACTED]

24 A. I wouldn't -- I couldn't -- without this

1 I couldn't have told you that. If you would have
2 mentioned the name and asked me who they worked for,
3 I couldn't have told you, but seeing this in context
4 it doesn't surprise me that they're with the [REDACTED] but
5 I would have had to have something to jog my memory.

6 Q. In your previous response, and I go back
7 to the second portion of this, it's actually a second
8 e-mail, the [REDACTED], it states "Note that
9 number 5 was added this afternoon at the behest of
10 one of our members, but it will not be a deal
11 breaker." Do you see that?

12 A. Yes.

13 Q. Do you believe this was part of the --
14 that appears to be a statement between the [REDACTED] and
15 CG&E. Is this part of the public process of
16 negotiating?

17 A. I have no idea what they're talking about
18 here. I can't characterize it.

19 Q. It is part of the settlement discussions
20 that you mentioned, though. Wouldn't you agree?
21 Even without knowing what No. 5 was.

22 A. I don't recall this whole No. 5 issue
23 coming up. I don't recall what it was. I don't
24 recall how it was resolved. I just don't remember

1 the substance of it. It doesn't look to be very
2 important.

3 Q. All right. I'm going to mark Exhibit 5.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Exhibit 5 is [REDACTED]
6 [REDACTED] it's an agreement between Cinergy Retail Sales,
7 oftentimes abbreviated CRS, and, as it states, [REDACTED]
8 [REDACTED], dated around [REDACTED] Have you
9 seen this document before?

10 A. I'm sure that I've seen it.

11 Q. Now turning to what's marked as Bates
12 stamp 349. Throughout this deposition I will tend to
13 use these numbers rather than the numbers on the
14 documents, 349 is at the bottom right.

15 A. That's fine.

16 Q. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] Do you see that?

20 A. Yes.

21 Q. Were you aware of this agreement of the

22 [REDACTED]
23 [REDACTED]

24 A. Yes.

1 Q. When did you become aware of that?

2 A. Would have been in the time frame of this
3 agreement, so it would be in [REDACTED]

4 Q. And how did that come to your attention?

5 A. By reading the document I suppose.

6 Q. And how did you come by the document?

7 A. I don't recall the delivery method.

8 Q. Were agreements of this type that dealt
9 with support of the stipulation in 03-93 routinely
10 brought to your attention? Would you have seen those
11 types of documents in this time frame?

12 A. In this time frame, sure.

13 Q. So there were other agreements that you
14 saw, not just this [REDACTED]
15 agreement.

16 A. Much like those that you showed me in
17 your Exhibit No. 3.

18 Q. Did you see what's marked as Exhibit 5 or
19 drafts of it before this agreement was executed?

20 A. I may have.

21 Q. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. Yes.

1 Q. And were those negotiations that resulted
2 in the agreements such as that shown on Exhibit 5,
3 were those part of a public process that involved all
4 the parties to the 03-93 case?

5 A. No.

6 Q. I'm going to mark Exhibit 6.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Let's set Exhibit 6 aside for a second.
9 If you could pick up Exhibit 2. Do you have that?

10 A. Uh-huh.

11 Q. Okay. You may want to find a more
12 comfortable position, I'm going to ask a few
13 questions about Exhibit 2 again.

14 I'd like to direct your attention to what
15 is numbered as Bates stamped 330, section 5 which
16 states that [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. Yes.

1 Q. When were you informed of a provision

2 [REDACTED] in

3 [REDACTED]

4 A. I don't recall.

5 Q. You were a witness in the Cincinnati
6 Gas & Electric distribution rate case; is that
7 correct?

8 A. That case was settled.

9 Q. Not really the question. I asked -- oh,
10 I see.

11 A. I'm thinking out loud. I don't recall
12 being on the stand.

13 Q. I see.

14 A. I have to go back and think whether I
15 submitted testimony. I believe -- I think I did.

16 Q. I understand. So you filed -- you had
17 prefiled testimony but did not take the stand.

18 A. I believe that's right.

19 Q. Okay.

20 A. Sometimes I do testify in cases, other
21 times I don't. I believe in that one my plan was to
22 testify.

23 Q. And were you aware that there were
24 commitments made in agreements such as that shown in

1 Exhibit 2 regarding the manner [REDACTED]

2 [REDACTED]

3 A. I think I was generally aware of it, and

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] something to that effect. Is this really
7 any -- does it really cause us any problem? Is it
8 something that we were going to do anyway? And I
9 believe that that was the case. It wasn't something
10 that was binding us in any way because it was what we
11 were going to do in any event.

12 Q. So do you believe that CG&E fulfilled
13 the, for lack of a better word, dictates of that
14 paragraph 5?

15 A. I don't think that this could dictate
16 what we did or didn't do. My belief is that this is
17 how we were approaching the case in any event.

18 Q. All right. Really my question is did the
19 provisions of paragraph 5, did that actually come to
20 pass?

21 A. I don't know.

22 Q. Who in the CG&E and affiliated companies
23 negotiated these agreements?

24 A. There were a number of lawyers involved.

1 There were representatives from Cinergy Retail Sales
2 that were involved.

3 Q. And who would that be?

4 A. [REDACTED]
5 [REDACTED]
6 [REDACTED] n
7 [REDACTED]

8 Q. That would be a person who's listed as
9 the contact person in the Commission's docketing?

10 A. That could be.

11 Q. [REDACTED]

12 A. That's it.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. And that was with the negotiations.

18 A. Either with the -- and it depends how you
19 define "negotiations." I mean, there's a lot of
20 preparation for negotiations which a lot of people
21 are involved in. They aren't all involved in sitting
22 across the table if that's how you're defining
23 "negotiations." I was more defining people that were
24 involved with the process.

1 Q. Okay.

2 MR. SMALL: Let's go off the record for a
3 second.

4 (Discussion held off the record.)

5 MR. SMALL: Back on the record.

6 Q. Back to Exhibit 2, page Bates stamped 330
7 which you have in front of you, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] Do you
12 see that?

13 A. Uh-huh. Yes.

14 Q. What corporate entity [REDACTED]

15 [REDACTED] That would be Cincinnati
16 Gas & Electric Company; is that correct?

17 A. I'm not sure.

18 Q. Are you familiar with the minimum stay
19 requirements?

20 A. Generally. Generally.

21 Q. Okay. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] is that correct?

1 A. Yes.

2 Q. So it would be [REDACTED]
3 [REDACTED] do you agree?

4 A. I assume so. I don't know. And I don't
5 recall this provision to be honest with you.

6 Q. And just to wrap things up, when you say
7 not familiar with this provision, not familiar with
8 that provision in this agreement or in any other
9 agreement? Or are you familiar with that kind of
10 agreement in some other agreement?

11 A. No, I'm not -- I don't recall being
12 familiar with this portion of this document and what
13 the ramifications were of it. I just don't recall
14 it.

15 Q. You don't recall any -- just to make
16 sure, [REDACTED]

17 [REDACTED]

18 A. No. [REDACTED]

19 [REDACTED]

20 Q. At any time.

21 A. I don't recall that, no.

22 Q. Now if you could move down to paragraph
23 10 which goes between page Bates stamped 330 and 331,
24 and it refers to an order being issued in 03-93, and

1 to quote, [REDACTED] Do you see
2 that?

3 A. Yes.

4 Q. Did CG&E -- remember that this is an
5 agreement in a [REDACTED] time frame. [REDACTED]

6 [REDACTED]
7 [REDACTED] the 03-93 case?

8 A. We submitted it for rehearing, so I would
9 say it was found to be not acceptable.

10 Q. Were there communications between -- [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 A. Our filing for rehearing was public.

14 Q. So are you saying that the communications
15 within your own organization would depend on people
16 being aware of filings at the PUCO?

17 A. I don't recall specifically informing
18 Cinergy Retail Sales. I do believe that they knew it
19 since the filing was a public filing.

20 Q. And I believe you also said that the same
21 legal people who represented Cincinnati Gas &
22 Electric also represented CRS; is that correct? You
23 mentioned [REDACTED] just a few moments ago.

24 A. Sure, they work for a number of different

1 affiliates..

2 Q. So if the same people were informed --
3 were involved, CRS would just know that fact; is that
4 correct?

5 MR. DORTCH: Objection. Go ahead and
6 answer if you can.

7 A. I don't know. I mean, I believe what
8 you're saying, but just because one person knows it
9 I'm not sure that I can say with certainty that
10 somebody else does.

11 Q. Now, that paragraph refers to, and I'm
12 over here on Bates stamp 331. ". . . [REDACTED]

13 [REDACTED]
14 [REDACTED] Do you see that?

15 A. Right.

16 Q. Are you aware of a process of -- and I
17 get the word [REDACTED] in this instance, it says a --
18 [REDACTED] are the last three
19 words of that paragraph. [REDACTED]

20 [REDACTED]
21 [REDACTED]

22 A. No.

23 Q. Is your response meant to state that you
24 were unaware of any negotiations with the members of

1 the [REDACTED] after [REDACTED]?

2 A. No.

3 Q. Okay. All right. If I understand that
4 response, you are aware that there were additional
5 negotiations with the members of the -- [REDACTED]
6 [REDACTED]

7 A. Yeah. Back to your Exhibit 3, those
8 agreements are after this time frame, and I was aware
9 of those agreements.

10 Q. Okay. And are you saying that those
11 were -- the agreements that were after the May time
12 frame and that are shown on Exhibit 3 did not result
13 from the provision on paragraph 10?

14 A. I don't believe that they did.

15 Q. You stated that you were not aware of --

16 MR. SMALL: Let's go off the record.

17 (Discussion held off the record.)

18 MR. SMALL: Let's go back on the record.

19 Q. A little while ago you mentioned who were
20 several individuals that were involved in negotiating
21 agreements between CRS and other parties in the May
22 time frame. Was there a CG&E representative involved
23 in that process considering all the provisions in
24 this, for instance, Exhibit 5 that relate to

1 Cincinnati Gas & Electric Company?

2 A. I was involved in it.

3 Q. Okay. Anybody else besides you? You
4 were involved in the negotiations of these
5 agreements; is that correct?

6 A. I was involved in preparations of
7 information, reviewing information, those sorts of
8 things in my role as a vice president of Cinergy
9 Corp. I guess if you're asking for someone involved
10 in the negotiations who is exclusively a CG&E
11 employee, you know like maybe some of the workers on
12 the coal pile at some of the stations, they're CG&E
13 employees, they only work for a CG&E plant, I don't
14 think there was anybody involved in the negotiations
15 that was like that.

16 Q. So the only people who would be in some
17 way connected with CG&E would be you as President and
18 also legal counsel that represented more than one
19 corporation.

20 A. Yeah, and there were a number of Cinergy
21 Services folks that did work for a number of the
22 affiliates. And Legal is a good example of that,
23 being Cinergy Services and doing work for a number of
24 different affiliates.

1 Q. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 A. I don't know what their classification
5 is, but I would not be surprised if they were Cinergy
6 Services employees.
7 Q. Were you referring to anybody besides
8 that group of Cinergy Services, Inc. employees that
9 would have been involved in the process of
10 negotiating those agreements?

11 A. I'm sorry, was I referring to?

12 MR. SMALL: Let's have it reread.

13 (Record read.)

14 A. No, although I just -- I don't mean for
15 that to be an exhaustive list. I didn't want you to
16 think that I had exhausted the list of people that
17 would have been involved from time to time.

18 Q. Those are the people you could think of.

19 A. Off the top of my head, yeah.

20 Q. Okay. I want to mark 6.

21 MR. DORTCH: You marked Exhibit 6.

22 Q. Okay, then I'll return to Exhibit 6.

23 A. Done with Exhibit 2?

24 Q. Yes.

1 Now, Exhibit 6 I may have mentioned is
2 Bates stamped 320 to 326 and, again, involves Cinergy
3 Retail Sales and a group of corporations that I think
4 we just recently saw, the same corporations as shown
5 on the top of [REDACTED] This agreement is in the
6 [REDACTED] Have you seen this
7 document before?

8 A. I believe that I've probably seen it,
9 yes.

10 Q. And when did you first see this document?

11 A. Around the time frame that is referenced
12 in the first paragraph; [REDACTED]

13 Q. Okay. Would you turn to Exhibit 3 again,
14 that was the list of agreements? And you'll note the
15 pattern that I mentioned earlier, there are
16 agreements in the [REDACTED] and then below them
17 oftentimes there is something listed in the [REDACTED]
18 [REDACTED]. Do you see the [REDACTED] agreements, for
19 instance the second line --

20 A. Yes.

21 Q. -- and the fifth line? Did you see other
22 agreements in the [REDACTED] similar to that
23 which is shown on Exhibit 6?

24 A. Yes.

1 Q. And are the ones that are shown on
2 Exhibit 3 for the [REDACTED] time frame, have you seen
3 those documents?

4 A. I can't say that I've seen every one of
5 them.

6 Q. Are you generally familiar with those
7 documents?

8 A. Generally familiar, yeah.

9 Q. And you're generally familiar in the same
10 way that you're generally familiar with Exhibit 6?

11 A. Yes.

12 Q. I mentioned that Exhibit 2 and Exhibit 6
13 have the same parties. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 MR. DORTCH: Objection. There's about
19 three questions there, Jeff.

20 MR. SMALL: Let's have it read back.

21 MR. DORTCH: Okay.

22 (Question read.)

23 Q. I think that's one question. Forget
24 about the superseded part, but the real question is

1 did the [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 A. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 I didn't connect it to that specific term
12 that you were referring to. I guess I was involved
13 at a higher level. I didn't connect it to that term.

14 Q. So at a high level the, as you mentioned,

15 [REDACTED]

16 [REDACTED] is

17 that --

18 A. Yes.

19 Q. Okay. Who was involved in negotiating
20 those agreements in the [REDACTED]

21 [REDACTED]

22 A. I would say it was primarily -- these
23 organizations were represented by counsel. We had a
24 number of attorneys that were involved in dealing

1 with those. And as I mentioned before, there were a
2 lot of folks internally that had their eyes on the
3 pros, cons, and other impacts associated with
4 entering into these agreements.

5 Q. Would they generally be the same
6 individuals that you identified earlier [REDACTED]
7 [REDACTED]

8 A. Sure.

9 Q. Are you familiar with a [REDACTED]?

10 A. Yeah.

11 Q. Was he involved in this process?

12 A. [REDACTED] helped --

13 Q. That's [REDACTED]

14 A. [REDACTED] To the
15 extent that [REDACTED] was involved, [REDACTED] was on
16 his staff and was involved, sure.

17 Q. And you mentioned that you were, at least
18 in background terms, were involved in the [REDACTED]
19 agreements; was that also your involvement in the
20 [REDACTED] agreements? I think you --

21 A. I would say it was similar, yeah.

22 Q. Okay. I'm going to mark Exhibit 7.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. SMALL: Let's go off the record for a

1 second.

2 (Discussion held off the record.)

3 MR. SMALL: Let's go back on the record.

4 Q. Mr. Ficke, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] Have you
8 seen this document before?

9 A. I'm sure that I have.

10 Q. And did you see it in generally the time
11 frame that's indicated in the first paragraph?

12 A. Yes.

13 Q. I'll point out that this document has two
14 different dates on it, it says [REDACTED] on
15 the last page and [REDACTED] on the front page,
16 but they're close in time. When you answered that
17 you saw it in this general time frame, you saw it
18 generally in the [REDACTED]

19 A. Yes.

20 Q. Now, I direct your attention to page
21 number Bates stamped 355, paragraph 9 on that page.
22 It goes over to 356. That paragraph refers to the

23 [REDACTED]

24 [REDACTED] Do you see that?

1 A. Yes.

2 Q. And are you familiar with the
3 application? And on the next page it refers to
4 application for rehearing in case No. 03-93; do you
5 see that?

6 A. Yes, it's the application for rehearing I
7 referred to before.

8 Q. That would be in the November, roughly
9 the [REDACTED] time frame?

10 A. That's right.

11 Q. Were there discussions with the [REDACTED]
12 [REDACTED] regarding the application for rehearing
13 submitted by the Cincinnati Gas & Electric Company?

14 A. I'm not -- I'm not aware of any. That
15 doesn't mean it didn't happen.

16 Q. [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 A. Sure.

20 Q. And how were those parties approached?
21 Let me go back a step.

22 You do recognize the [REDACTED]
23 [REDACTED] was a party to the 03-93 case.

24 A. Sure.

1 Q. Okay. [REDACTED]

2 [REDACTED] for

3 [REDACTED]

4 A. I don't recall specifically. It could
5 have been, you know, by meeting, could have been by
6 e-mail, could have been by letter. I don't know how.

7 Q. Were there any meetings such as you
8 described earlier of large meetings with a number of
9 parties at the Public Utilities Commission concerning
10 this application for rehearing?

11 A. That's a good question. I recall the
12 series of meetings in the May time frame with our
13 original settlement discussions with --

14 Q. Stipulation.

15 A. -- the parties.

16 Q. Stipulation.

17 A. I just don't recall whether that carried
18 on into the application for rehearing document or
19 whether that was all done in hearings and, you know,
20 formal proceedings. I just don't remember.

21 Q. Were you involved in discussions with the
22 [REDACTED] or any other parties in
23 approximately this time frame, and the time frame I'm
24 referring to is approximately the time of the

1 application for rehearing in the 03-93 case?

2 A. Sure. Generally involved, yeah.

3 Q. Who did you have discussions with?

4 A. Could have -- I mean, I don't recall
5 specifically because things were moving very quickly
6 at that point in time, how many of the discussions
7 that I participated in or not, but could have been
8 any of the parties.

9 Q. And would those have involved individual
10 meetings with the parties, not just group meetings?

11 A. Sure.

12 Q. All right. Let's mark Exhibit 8.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Ficke, I've marked Exhibit 8 which is
15 a e-mail dated [REDACTED], and it promises
16 an attachment which I believe is attached as the
17 remainder of Exhibit 8, and it's from [REDACTED]
18 [REDACTED] and it has you as a
19 person who is CC'd on it. Do you recall seeing this
20 e-mail?

21 A. I don't recall seeing it, but I'm sure I
22 saw it.

23 Q. And did you look over the agreement at
24 that time?

1 A. I would doubt it.

2 Q. Were you familiar with an exchange of
3 drafts between -- generally between individuals in
4 the Cinergy-affiliated companies and the [REDACTED]
5 [REDACTED] during this period?

6 A. I was generally aware that it was going
7 on, yes.

8 Q. Here we have on the CC list -- we
9 mentioned [REDACTED]
10 [REDACTED] You're CC'd on it. [REDACTED]
11 [REDACTED]
12 appears on this; can you tell me what his role was in
13 this process?

14 A. [REDACTED]
15 [REDACTED]

16 Q. And in that capacity he was assigned a
17 task as a witness in the 03-93 case; is that correct?

18 A. I'm sure that he was.

19 Q. Do you know what his role was in
20 negotiations of agreements with parties at this
21 particular point in time?

22 A. I should have mentioned him in that group
23 of names that I mentioned before, so either preparing
24 information, attending meetings, problem solving, any

1 of those functions it would have been typical for
2 [REDACTED] to participate in.

3 Q. What is the Rates department that you
4 said that he was part of? What is their
5 responsibility?

6 A. Generally for Cinergy operating companies
7 including [REDACTED]
8 [REDACTED]
9 participating in the prosecution of rate increases,
10 fuel and purchased power increases, as well as
11 keeping tariffs up to date, responding to customer
12 questions, assisting the Cinergy Corp. financial area
13 with budgets and forecasting, financial projections.

14 Q. The -- I'm sorry, I didn't mean to cut
15 you off.

16 A. That's fine.

17 Q. The tariffs that you just mentioned
18 include the CG&E tariffs?

19 A. CG&E as well as other regulated companies
20 like the ones that I mentioned.

21 Q. Do you know where [REDACTED] is today?
22 Is he with the company?

23 A. He's actually in the building I believe.

24 Q. All right. Do you know what his position

1 is?

2 A. I don't know. It is likely that he is a
3 consultant. I'm relatively certain that he is a
4 consultant as opposed to an employee.

5 Q. That's really what I was getting at. I
6 understood that he left the direct employment of the
7 Duke-affiliated companies. You believe that to be
8 the case?

9 A. And I believe he left at the end of the
10 year. [REDACTED]

11 Q. I'm going to mark Exhibit 9.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. SMALL: Let's go off the record for a
14 second.

15 (Discussion held off the record.)

16 MR. SMALL: Let's go back on the record.

17 Q. Mr. Ficke, you have Exhibit 9 before you?

18 A. Yes.

19 Q. Do you recall seeing this -- this is,
20 again, an e-mail dated [REDACTED], it has
21 you copied on it. Do you recall seeing this e-mail?

22 A. I don't recall seeing it, but I'm sure
23 that I did.

24 Q. And you were generally copied on -- and

1 let's look at the document a little bit. This has
2 bubbles on it, bubble comments on revisions for the
3 agreement between Cinergy Retail Sales and the
4 hospitals. Do you recall seeing versions of changes
5 in the documents such as this?

6 A. I don't recall seeing it, but I'm sure
7 that I did.

8 Q. All right, let's move to -- you can put
9 that aside. I'm going to mark Exhibit 10.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. This e-mail and attached agreement is
12 dated [REDACTED], and also has you and by
13 now a familiar group of people copied on it. Do you
14 recall seeing this communication and version of the
15 agreement?

16 A. I don't recall seeing it, but I'm sure
17 that I did.

18 Q. You generally saw the transactions such
19 as this going back and forth?

20 A. I generally saw e-mails that appeared in
21 my e-mail in box.

22 Q. Okay. You can set that aside.

23 MR. SMALL: Mark this Exhibit 11.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. And, again, another e-mail close in time,
2 [REDACTED] If I asked you the questions
3 regarding Exhibit 11 that I asked about Exhibit 10,
4 would your answers be the same?

5 A. Yes.

6 Q. Were you generally informed, such as
7 we've seen on Exhibits 9, 10, and 11 where you were
8 copied on versions, were you also copied on other
9 exchanges of documents involving the other agreements
10 that we saw in Exhibit 3 in this time frame, the
11 [REDACTED] agreements?

12 A. Sure. As Cinergy Retail Sales was
13 evaluating the terms of those agreements, I would
14 periodically be copied on those e-mails.

15 Q. All right. I'm going to go back to
16 Exhibit 6, that's an agreement between Cinergy Retail
17 Sales and a number of corporations that we've
18 identified as being members of the [REDACTED]
19 and this is the [REDACTED] time frame.

20 If you could turn to what has a [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Do you see that?

24 A. Yes.

1

Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6

Do you see that?

7

A. Yes.

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9

Q. Were you familiar with this term and its negotiation as part of this agreement in the [REDACTED] time frame?

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11

A. I was familiar with this term. I've seen it before.

12

13

Q. Okay. When did you become familiar with that term?

14

15

A. Probably through discussions or e-mails or circulation of documents, I don't recall which.

16

17

Q. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20

A. When this issue came up, and once again I'm not sure exactly how it came up, but I do recall being involved in conversations about [REDACTED]

21

22

23 [REDACTED]

24 [REDACTED], and independent of this agreement

1 it's really -- [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q. [REDACTED]

11 [REDACTED]

12 A. Yes.

13 Q. [REDACTED]

14 [REDACTED]

15 A. I don't recall who.

16 Q. Would [REDACTED] --

17 A. Could be.

18 Q. -- normally be involved in --

19 A. Normally would have been involved, sure.

20 And maybe somebody on his staff, I just don't recall.

21 Q. All right. If you would refer to the

22 page [REDACTED]

23 paragraph has to do with [REDACTED]

24 [REDACTED]

Are

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A. No.

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Q. Do you recall any discussion about the

[REDACTED] in this agreement at the time
when it was entered into?

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Q. Are you familiar with a proceeding before
the Public Utilities Commission [REDACTED]

A. I'm aware of that, [REDACTED]

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Q. Did you have a role in that proceeding?

A. No. I never -- it never became of

importance to me to the extent that I would even have
to become familiar with the issues surrounding

[REDACTED] I generally knew it was an issue and
somebody was concerned about it. But it never became
so important that I spent any time reading anything
about it or asking anybody any questions about it.

1 Q. All right. [REDACTED]
2 [REDACTED]
3 [REDACTED] and that refers to an order in case
4 03-93.

5 MR. SMALL: Let's go off the record.

6 (Discussion held off the record.)

7 MR. SMALL: Let's go back on the record.

8 Q. Before we took a short break I referred
9 to [REDACTED] it
10 refers to an order in 03-93 which is acceptable to
11 CG&E. Do you see that?

12 A. Right. Yes.

13 Q. Now, this is in the November time frame.
14 The order that would have been issued would have been
15 an entry on rehearing; is that your understanding of
16 the situation?

17 A. Yes.

18 Q. [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 A. Sure.

22 Q. [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 A. No, it wasn't acceptable because they --
2 "they" the Commission -- in their order changed some
3 of the terms.

4 Q. If the order in 03-93 was not acceptable
5 to CG&E, why didn't CG&E submit a second application
6 for rehearing?

7 A. Other than we viewed the pros and the
8 cons and the timing that it would take to do it and
9 the likely results. I mean it's all the normal
10 things that you would consider when you decide
11 whether or not to file something. I'm not sure I
12 remember -- I mean, I'm not sure I remember exactly
13 what was on the board in terms of the pros and the
14 cons, but it's a normal process that any company
15 would go through to decide whether or not they'd take
16 a particular action.

17 Q. Okay. So the company decided to go
18 forward with the order in this time frame, the
19 [REDACTED] rather than submit an
20 application for rehearing?

21 A. Specifically I believe we filed tariffs
22 and put rates into effect. New rates into effect. I
23 mean this is [REDACTED] and the new rates went into
24 effect for [REDACTED]

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[REDACTED]

Q. This paragraph, similar to the one we saw earlier in a [REDACTED] do you see that as the last three words of paragraph 12?

A. Right.

Q. Were you aware that [REDACTED] engaged in by the parties to this agreement following the Commission's order in 03-93?

A. No. Personally, my belief was that these -- this agreement was voided as a result of the Commission's order. That was what I felt happened.

Q. Okay. I don't think you've really connected with my question. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. I don't know.

MR. SMALL: Let's go off the record.

(Discussion held off the record.)

(Luncheon recess taken.)

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