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Tuesday Afternoon Session,
February 20, 2007.

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(EXHIBIT MARKED FOR IDENTIFICATION.)

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EXAMINATION (continued)

By Mr. Small:

Q. Mr. Ficke, I've had marked [REDACTED]
which is in front of you, it's [REDACTED]
[REDACTED] and is titled an Option Agreement Between
Cinergy Retail Sales, LLC and [REDACTED]
[REDACTED] Have you seen Exhibit 12 before, the
document that's Exhibit 12 before?

A. I don't believe I have.

Q. Would you turn back to Exhibit 3?

A. Okay.

Q. In answer to one of my previous questions
you referred to option agreements. Are you --
whether you've seen Exhibit 12 or not, are you
generally aware of the existence of option agreements
entered into during the time frame of December 2004
and January 2005?

A. Yes, I remember that -- I understood that
Cinergy Retail Sales and the groups [REDACTED]

1 [REDACTED] were negotiating and, in fact, entered into
2 what I called option agreements.

3 Q. Right. And when you refer to [REDACTED]
4 you're referring to the parties in the column labeled
5 Party 2 and the agreements that are listed as option
6 agreements.

7 A. Correct.

8 Q. When did you become aware of the --
9 generally aware of the agreements that you referred
10 to on [REDACTED], the option agreements?

11 A. Around the time frame that they were
12 signed.

13 Q. [REDACTED]

14 A. Yes.

15 Q. And how did you become aware of those
16 agreements?

17 A. It would have either been through e-mail
18 or hallway conversation, a letter. I don't recall
19 how, but it could have been any one of those.

20 Q. And are you familiar with the individuals
21 who worked on drafting the option agreements?

22 A. Not firsthand, although I would have
23 assumed that [REDACTED] would have
24 been involved in that drafting.

1 Q. Would it have included the other
2 individuals that you mentioned earlier as having been
3 involved in the [REDACTED]

4 A. Yeah. You asked about the drafting
5 specifically here, but with regard to the entire
6 agreement, the individuals that I mentioned that were
7 representing Cinergy Retail Sales of course would
8 have guided the drafting of these option agreements.

9 Q. Okay. How about [REDACTED] who you
10 mentioned earlier?

11 A. You know, I would ask -- I would ask [REDACTED]
12 that question. I am not aware of his level of
13 involvement with the option agreements, because I
14 wasn't involved. I knew he was involved in the
15 others because I was involved in those, but I don't
16 know to what extent he was involved in the option
17 agreements.

18 Q. So you're more involved in the
19 negotiations over the [REDACTED] and
20 not involved in negotiating or -- when you say
21 "negotiating," I'm talking about the broader context
22 that you were talking about, preparing and background
23 and so forth, you were more involved in [REDACTED]

24 [REDACTED]

1 A. [REDACTED] I occasionally got
2 e-mails from the Cinergy Retail Sales representatives
3 or from the lawyers as things were going on. I don't
4 recall ever getting a copy of the option agreements
5 either drafts or finals. And I think that just
6 speaks to my level of involvement during that
7 particular time frame.

8 Q. The time frame you're talking about is
9 the end of [REDACTED]

10 A. Correct.

11 Q. And do you know why a third round of
12 negotiations were undertaken with customers such as
13 [REDACTED] which is shown on [REDACTED]

14 A. I believe that the previous agreements,
15 the [REDACTED] agreements, would have been voided by
16 the Commission's action.

17 Q. And how is that connected with the option
18 agreements that were dated around [REDACTED]

19 A. I don't know that it is connected.

20 Q. Well, my question was why were the
21 agreements -- third round of negotiations undertaken,
22 and your response was that others' second round was
23 voided. I don't think that's responsive to my
24 question which is: Why was a third round of

1 negotiations and agreements undertaken?

2 MR. DORTCH: Objection; question was
3 asked and answered.

4 MR. SMALL: Well, the question wasn't
5 answered, so . . .

6 A. The only thing that I can speculate is
7 that the Cinergy Retail Sales was interested in the
8 option and the customers were interested in, you
9 know, selling that option.

10 Q. Previously, and I'll refer to Exhibit 6,
11 we had a discussion about the [REDACTED] agreements and
12 this particular agreement has to do with members of
13 the [REDACTED] Is it your understanding that
14 the agreements about this time, those agreements that
15 we showed in Exhibit 3, were all pretty much the same
16 agreement, general terms and conditions?

17 MR. DORTCH: Objection; documents speak
18 for themselves, and there's a whole lot of agreements
19 there and not all of them have been shown to the
20 witness, but --

21 MR. SMALL: I'm asking for his general
22 understanding since he doesn't know the particulars
23 of any agreements.

24 Q. Do you have a general understanding

1 whether those were patterned after a --

2 A. My understanding is that they were all
3 different.

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

6 (Discussion held off the record.)

7 MR. SMALL: Back on the record.

8 Q. I have here in front of me, I'm not going
9 to make this an exhibit, but I have here in front of
10 me a [REDACTED] agreement between Cinergy Corp. and
11 [REDACTED] I'm going
12 to ask you to read the -- or familiarize yourself
13 with the bottom of 338 and the top of 339 where it
14 states [REDACTED]
15 [REDACTED]
16 [REDACTED] so forth and
17 so on.

18 MR. SMALL: Counselor, if you would like
19 to look at that, I think you have copies of it.

20 Q. Let's mark this as an exhibit. And I'm
21 going to do this out of order because it's one of my
22 upcoming exhibits. Exhibit 14.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. So we're on Exhibit 14 --

1 MR. DORTCH: It's the same document we
2 were just looking at.

3 MR. SMALL: Yes, it's the same document I
4 just handed you.

5 Q. And at the bottom of page Bates stamped
6 338 and the top of 339.

7 MR. DORTCH: Go ahead and take your time,
8 Greg, to read that.

9 A. I don't know if you want to go off the
10 record or not, but I did have one question maybe so I
11 can help everyone.

12 MR. SMALL: I don't know where he's
13 going.

14 MR. DORTCH: I don't either.

15 Q. Is it concerning the documents or my
16 question?

17 A. Yes.

18 Q. Okay.

19 A. Is this one of the agreements that's on
20 your Exhibit No. 3?

21 Q. Yes, I believe it is.

22 A. Okay. That was my question.

23 Q. I saw you looking at Exhibit 3. Yes, I
24 believe you can find it under [REDACTED]

1 A. And the only reason I was confused is
2 because [REDACTED], under the other one it
3 says [REDACTED]. So is this --

4 Q. The agreement I put before you is not an
5 agreement with [REDACTED] or with [REDACTED] it's with [REDACTED].

6 A. So is it on this list? That was my
7 question.

8 Q. Oh, I'm sorry.

9 A. Is there one with [REDACTED] one with [REDACTED]
10 and a separate one with [REDACTED]

11 Q. I believe on Exhibit 3 it would be shown
12 [REDACTED] it's the second line, [REDACTED] as an
13 agreement.

14 A. It's shown twice on there, then, one's
15 for [REDACTED] and one's for [REDACTED], but one
16 and the same document.

17 Q. Yes.

18 A. That's my question.

19 Q. And that's the reason why the same date,
20 yes.

21 A. Gotcha, okay. Now I understand what I'm
22 looking at.

23 Q. So Exhibit 3 was put together by company
24 and it doesn't mean that there are that many

1 agreements.

2 A. I understand.

3 MR. DORTCH: And by "company" you mean --

4 MR. SMALL: By Party 2.

5 MR. DORTCH: You're referring to the --

6 MR. SMALL: By Party 2.

7 MR. DORTCH: -- "Party 2" and not by "the
8 companies" meaning the Cinergy companies.

9 MR. SMALL: I'm not going to further
10 confuse it because I don't understand that, but I
11 think the witness is clear, so . . .

12 A. You would think.

13 Okay.

14 Q. The question is, did the option
15 agreements result from following through with
16 revisions that are shown at the bottom of 338 and the
17 top of 339, [REDACTED]

18 [REDACTED] Is that the
19 reason why the option agreements were entered into?

20 A. You know, not being involved in the
21 option agreements I guess I can't really say from my
22 personal participation; however -- however, when the
23 [REDACTED] agreements were, for lack of a better term,
24 voided by the Commission's actions, you know, the

1 option agreements then came into being, so -- but I
2 wasn't at the table negotiating those.

3 Q. Okay. Earlier you stated that the,
4 although you weren't specifically negotiating the
5 [REDACTED] agreements when the [REDACTED] ones were, I think
6 the word you used was probably "voided" in that
7 instance too, that your high level of understanding
8 was that the [REDACTED] ones were entered into as a
9 result of the [REDACTED] ones being voided, is that also the
10 case here, that despite the fact you weren't involved
11 in the negotiation of the option agreement, that your
12 high-level understanding is they replaced the
13 [REDACTED] agreements?

14 MR. DORTCH: Objection; form of the
15 question. Go ahead and answer that if you can.

16 A. This is a little bit different because a
17 new provision was inserted, you know, the existence
18 of an option under these contracts, and whether it
19 was exactly the same or not, I mean I guess I would
20 have had to have been party to those discussions to
21 really answer your question from firsthand knowledge.

22 Q. All right, I'll mark the next exhibit.

23 A. Excuse me, are we done with 12?

24 Q. We're done with 12 but we will return to

1 14, so why don't you just keep the 14 out. Yes. I
2 think you've done that right.

3 A. Twelve was the option agreement.

4 Q. Right. I'm marking Exhibit 13.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Now, we just looked -- Exhibit 14 we just
7 looked at, a [REDACTED] Exhibit 13
8 Bates stamped [REDACTED] is the [REDACTED]
9 agreement with [REDACTED] as shown in the first paragraph.
10 Now if you could turn to section 3 of that, of
11 Exhibit 13.

12 A. Section?

13 Q. 343, Bates stamped 343 and section 3,
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 A. Yes.

18 Q. Do you know what --

19 A. That's the second No. 3, actually.

20 Q. Yes. Which is probably the reason why it
21 got confused there for a second. Yes, it's the
22 second No. 3.

23 [REDACTED]

24 MR. DORTCH: Objection.

1 A. [REDACTED]

2 Q. What [REDACTED] were those?

3 A. I don't know what particular documents,
4 what particular work. I don't know.

5 Q. Do you know whether these payments were
6 made to [REDACTED]

7 A. I don't know. I mean, firsthand
8 knowledge, no, I don't know.

9 Q. Do you know as a result of seeing
10 reports, spreadsheets, financial statements
11 indirectly?

12 A. No. I would have not seen a line item
13 for this kind of a small payment.

14 Q. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A. I couldn't say for sure. Not that I
19 recall.

20 Q. Okay. Let's turn to Exhibit 14 which I
21 believe you already have. Exhibit 13 was a [REDACTED]
22 agreement. Exhibit 14 is the [REDACTED]
23 agreement. [REDACTED] again,
24 there appears -- this time there's only one paragraph

1 [REDACTED]
2 [REDACTED] If
3 I asked you the same questions I asked you regarding
4 Exhibit 13, would your responses be the same?

5 A. Yes.

6 Q. I'm going to refer to Exhibit 5. It's
7 quite a ways back in your packet so I have, for your
8 convenience, I have that agreement again but I'm not
9 going to relabel it, but this is Exhibit 5. And
10 that's Bates stamped 347 through 352.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] If I
16 asked -- this is a [REDACTED] agreement. If I asked
17 the same questions that I had regarding the [REDACTED]
18 agreement with [REDACTED], would your responses be the same?
19 Maybe we should go through it.

20 Are you familiar with the --

21 A. Yes.

22 Q. [REDACTED]

23 [REDACTED]

24 A. Right. Now that I've looked at this, I

1 [REDACTED] S
2 [REDACTED]
3 Q. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 A. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 Q. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 A. Not firsthand knowledge, no.
15 Q. And not indirectly through statements or
16 otherwise as I previously asked?
17 A. No. I'm just not aware if it was ever
18 made.
19 Q. Okay.
20 A. I should -- because these agreements, you
21 know, by my terminology, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED] I just don't know.

2 Q. Okay. I'm going to turn to, just to
3 complete the circle I'm going to turn to Exhibit 7
4 which, again, was back a little ways -- I think
5 that's a duplicate. Again, this is back a little
6 ways, so that was Exhibit 7. And that's Bates
7 stamped 353 through 357, Section 4 of that agreement.

8 Now this, again, [REDACTED] or if you
9 read the last page of this it says [REDACTED]
10 and Section 4 refers to [REDACTED]

11 [REDACTED] If I asked you the questions
12 regarding the [REDACTED]
13 [REDACTED] would your answers
14 be the same?

15 A. Yes.

16 MR. DORTCH: Objection.

17 Q. Thank you.

18 I think we're up to Exhibit 15.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Exhibit 15 is a four-page document, the
21 last page it's dated -- on the front and the last
22 page, [REDACTED] and it's between Cinergy
23 Corp. and [REDACTED]

24 I'm going to have another exhibit marked,

1 Exhibit 16. This also is with [REDACTED]

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. I believe if you turn to paragraph 2 --
4 pardon me, I got a little bit confused by two
5 paragraph 2s in Exhibit 15 again. I'm looking at the
6 first paragraph 2 on Exhibit 15 which is also page 2
7 of the exhibit, and paragraph 2 of Exhibit 16. Do
8 you see the reference to [REDACTED]

9 A. Yes.

10 Q. Have you seen these two [REDACTED]
11 agreements, Exhibit 15 and Exhibit 16?

12 A. I believe that I have, yes.

13 Q. And is that your -- you saw them in the
14 time frame which they were executed?

15 A. That's correct.

16 Q. Now, these documents, why were these
17 documents entered into, 15 and 16?

18 A. Well, I think from our standpoint the
19 company [REDACTED] agreed to [REDACTED] on

20 [REDACTED]

21 Q. Okay. And when you mentioned [REDACTED]
22 [REDACTED] you're referring to the
23 agreement that's shown on Exhibit 15? [REDACTED] --

24 A. Both, actually, 15 and 16.

1 Q. Okay. The reason why I ask about 15 is
2 that on paragraph 5, page 2, it refers [REDACTED]
3 [REDACTED]

4 A. Right.

5 Q. [REDACTED]
6 [REDACTED]

7 A. Correct.

8 Q. All right. [REDACTED]
9 [REDACTED]

10 So wasn't Exhibit 16 executed in connection with
11 [REDACTED]

12 A. I think that's what I said, but if that's
13 not what I said, that's what I meant to say.

14 Q. Is there any other purpose for these
15 agreements, Exhibits 15 and 16?

16 MR. DORTCH: Objection. Go ahead and
17 answer if you can.

18 A. Other than not addressed on the face of
19 the agreement, I do recall that during this time
20 [REDACTED] was

21 undergoing a bargaining unit activity which was
22 impacting their operations. [REDACTED]
23 [REDACTED] which was placing a number of

24 constraints upon their continued operation, and as a

1 corporation I don't think we wanted to see such a
2 prominent employer impacted negatively, and I do
3 recall -- the only reason I bring it up is I do
4 recall those circumstances being brought to my
5 attention by [REDACTED] and their rather precarious
6 situation in terms of being able to continue to
7 operate.

8 Cinergy Corp. had an interest, may even
9 have a continuing interest, in providing energy to
10 companies in the general vicinity of [REDACTED] in terms
11 of constructing and operating cogeneration plants
12 and, in a sense, had a continuing interest in the
13 vibrancy of that area, and I guess finally just, you
14 know, as a corporate citizen had an interest in our
15 customers continuing profitable operations.

16 Q. You just mentioned Cinergy Corporation
17 which is the entity that entered into this agreement
18 with [REDACTED] What are the operations of Cinergy
19 Corp. -- let's go back a second.

20 Cinergy Corporation is a corporation
21 without any employees; is that correct?

22 A. I don't know that.

23 Q. Okay. What was its business operations
24 at the time of the [REDACTED] agreement with

1 [REDACTED] that's Exhibit 16?

2 A. As far as I know it was a holding
3 company.

4 Q. Did I misunderstand? I thought you said
5 something about a cogeneration plant. Development of
6 cogeneration plants.

7 A. Yeah, I was -- [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] I did mention that.

11 Q. Okay. And what is that corporation that
12 you're referring to?

13 A. I don't know what it's called now. It
14 had many different names over the years such as
15 [REDACTED] are two that I can
16 remember.

17 Q. [REDACTED] as one of those corporations
18 that you mentioned you were -- had a title connected
19 with?

20 A. No. No, that was [REDACTED]
21 Company.

22 Q. Sorry. This agreement is a little bit
23 different than the others entered into that we've
24 looked at earlier today in the [REDACTED]

1 [REDACTED] period. Do you know why the agreement
2 involved Cinergy Corp. without any reference to
3 Cinergy Retail Sales?

4 A. Well, there's not a option payment or an
5 agreement to serve them, which was Cinergy Retail
6 Sales' interest in those other agreements.

7 Q. And what made [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 A. I don't know. I don't know.

11 Q. Do you know of any other agreements such
12 as the [REDACTED] agreement that didn't involve any
13 mention of a CRES, competitive retail electric
14 service, supply?

15 A. No. Now, as far as I know there are
16 none.

17 Q. What was your involvement, either
18 directly or in the background, with the [REDACTED]
19 agreements, [REDACTED]

20 A. I reviewed drafts of the documents,
21 probably provided comments, explained at a high level
22 what the contents of the agreements were. So
23 generally involved in the negotiations with the
24 support of a number of the people we've talked

1 about --

2 Q. And those --

3 A. -- in the past.

4 Q. And those negotiations, then, directly
5 were between some of the people that you mentioned
6 previously in this deposition and [REDACTED]

7 A. Sure.

8 Q. Okay. Do you know who was on the other
9 end as far as the negotiation for [REDACTED]

10 A. I know one individual was [REDACTED]
11 There was another individual that was involved that I
12 have been trying to remember his name and I can't.

13 Q. And what position does [REDACTED]

14 A. I don't know by title, [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. And are you familiar with [REDACTED]
18 [REDACTED]

19 A. Yes.

20 Q. And he is [REDACTED]

21 A. Yes.

22 Q. And was he involved in these
23 negotiations?

24 A. Sure.

1 Q. Anybody else that you can think of on
2 behalf of [REDACTED]

3 A. No.

4 Q. Do you know whether -- well, referring to
5 Exhibit 16 and, again, paragraph 2 on page 2, [REDACTED]
6 [REDACTED]. Do you know
7 whether there were payments made to [REDACTED] under this
8 agreement?

9 A. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. Okay. On page 3 and it's paragraph B --

15 A. Sixteen?

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

21 paragraph?

22 A. Yes.

23 Q. Now this is the paragraph that we saw
24 earlier in another agreement in this time frame, and

1 if I understood your question -- your response to
2 that question, it was that the [REDACTED]
3 [REDACTED] I don't
4 want to mischaracterize you, but really the question
5 is if paragraph B on page 3, [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 A. Well, not remembering the conversations
9 explicitly, but just based on the end result I think
10 we looked at the agreement that Cinergy Corp. had
11 with [REDACTED] and, [REDACTED]
12 [REDACTED], elected to
13 honor the terms of this agreement. Because I don't
14 believe that there was a subsequent agreement. I
15 don't believe that there was a subsequent agreement,
16 and I --

17 Q. [REDACTED]
18 [REDACTED]

19 A. I don't recall there being a subsequent
20 agreement. You'd have to ask the attorneys what the
21 legal standing of this agreement is based on the
22 Commission's order and how it was we could have
23 continued to honor this agreement [REDACTED]

24 [REDACTED] But based on what we did, we did

1 honor the terms of this agreement, I believe, [REDACTED]

2 [REDACTED]

3 Q. Okay. You can set that aside. We're on
4 Exhibit 17.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Exhibit 17, Bates stamped 1173 through
7 1179. This agreement has a lot of whereases, but
8 it's dated the [REDACTED] I believe that's [REDACTED]
9 Yes, it's on 1174, [REDACTED] between [REDACTED]
10 and Cinergy Retail Sales. Have you seen this
11 agreement before?

12 A. I probably have seen it.

13 Q. All right. [REDACTED]
14 [REDACTED]. Do you see
15 that?

16 A. Yes.

17 Q. Was this entered into as a settlement
18 agreement in 03-93?

19 A. I'm not sure I understand your question.
20 I believe [REDACTED] did support the stipulation in that
21 case.

22 Q. Okay. Were you part of the -- what was
23 your part in connection with Exhibit 17? Did you
24 negotiate it? Did you --

1 A. No; probably less involved with this one
2 than the other ones because of [REDACTED] situation
3 with other providers and really Cinergy Retail Sales
4 was in this business and really understood the
5 details of the more complicated [REDACTED] situation than
6 I would have been able to.

7 So less familiar with the content and the
8 ongoing very detailed issues that surrounded [REDACTED]
9 That was mainly between Cinergy Retail Sales and
10 [REDACTED]

11 Q. You mentioned CRS personnel. Do you know
12 who those -- who are the personnel that you're
13 referring to? Is that the same --

14 A. The same people that we talked about
15 before.

16 Q. [REDACTED]

17 A. Sure. [REDACTED] that group.

18 Q. That group that you mentioned earlier.

19 And do you know who would have -- who
20 negotiated or who dealt with this matter for [REDACTED]
21 Are you familiar with [REDACTED]

22 A. Sure, [REDACTED] and he was represented by
23 either [REDACTED]

24 Q. With regard to these agreements?

1 A. I get them confused. One of them usually
2 represents [REDACTED] and the other one usually
3 represents the rest, and they're interchangeable in
4 my mind.

5 Q. Just for your information, 1179 does
6 mention [REDACTED] so that's probably -- did you see
7 any communications with [REDACTED] regarding [REDACTED]
8 or [REDACTED]

9 A. I probably saw some correspondence, sure.

10 Q. Okay. I'm going to mark Exhibit 18.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Now, Exhibit 18 Bates stamped 1180 to
13 1187 has on its last p [REDACTED] and on
14 page Bates stamped 1181 that's a reference to
15 [REDACTED] between the Cinergy operating
16 companies -- I'm sorry, between Cinergy Retail Sales
17 and [REDACTED], it's on page 1181. Have you seen
18 this document before?

19 A. I'm sure I saw it.

20 Q. Now, referring back to -- do you know why
21 a second agreement with [REDACTED] was entered into, that
22 is Exhibit 18, a second agreement to the Exhibit 17
23 which I'm referring to as the first agreement?

24 A. I believe it was the same reason that

1 there were May and November agreements between
2 Cinergy Retail Sales and the other companies that
3 we've previously discussed.

4 Q. And your reason for that was, I believe,
5 in your words, a high level of -- [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 A. Correct.

9 Q. -- without alteration by the Commission?

10 A. Correct.

11 Q. And, again, did you become familiar with
12 this document around the time it was executed in
13 late-2004?

14 A. Yes.

15 Q. [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A. Not personally familiar.

19 Q. Have you seen [REDACTED]
20 [REDACTED]

21 A. I don't believe I -- I don't believe I
22 have.

23 Q. Okay. Have you seen spreadsheets which
24 payments under the option agreements were shown?

1 That's the option agreements, I'm referring to the
2 agreements with largely the [REDACTED]
3 [REDACTED] and so forth. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 A. I don't quarrel with the fact that I
7 reviewed spreadsheets that had dollars associated
8 with it. I'm just not sure that those were in the
9 time frame of the option agreements or not. I'd have
10 to go back and look at when those spreadsheets were
11 being prepared.

12 Q. What spreadsheets are you referring to?
13 What spreadsheets were prepared that you have seen?

14 A. I recall there being spreadsheets, you
15 know, [REDACTED]
16 [REDACTED]

17 Q. By "moving pieces" do you mean the
18 components such [REDACTED]
19 [REDACTED]

20 A. Sure.

21 Q. Okay. What I was referring to would be
22 spreadsheets that would show not matters on an
23 aggregate basis for the 03-93 components of rates,
24 but for individual companies such as [REDACTED]

1 and so forth. Have you seen spreadsheets of that
2 nature?

3 A. I have seen spreadsheets that have those
4 companies listed on it, yes.

5 Q. And have you ever seen [REDACTED] listed on
6 those spreadsheets?

7 A. I believe that [REDACTED] would have been
8 listed. I don't see why they would not have been
9 listed.

10 Q. Okay. I'm going to mark Exhibit 19.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Excuse me, I'm going to go back to
13 Exhibit 18 for a second here. Do you have that in
14 front of you?

15 A. Uh-huh.

16 Q. I think we're over here, 18.

17 A. Right.

18 Q. Okay. There are a number of whereas
19 clauses in this agreement, for instance a

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 A. No.

24 Q. [REDACTED]

1 [REDACTED]
2 [REDACTED] have you seen that agreement?

3 A. No.

4 Q. [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 A. No.

8 Q. Are you familiar at all with any of those
9 agreements even if you haven't seen them?

10 A. No.

11 Q. In your work for the Cinergy-affiliated
12 companies have you ever heard of those three -- any
13 of those three agreements mentioned?

14 A. I might have heard the terms mentioned.
15 I don't really ever remember hearing or seeing those
16 terms before, but I wouldn't say that I had never
17 heard them.

18 Q. Okay.

19 A. I certainly don't know what they are.

20 Q. What is your understanding of [REDACTED]
21 [REDACTED]
22 [REDACTED] do you know who they were taking
23 service from, generation service from?

24 A. You know, I was not involved in that, I

1 can't say that I haven't heard names like [REDACTED]
2 and -- if I were still an employee and someone asked
3 me to go find out what those arrangements were, I
4 could, but, you know, just sitting here I can't tell
5 you that I recall the contractual arrangement under
6 which [REDACTED] was being served.

7 I do remember that it was different. It
8 was different than some of the other [REDACTED]
9 [REDACTED]. They had gone a different route once they
10 were presented with the SB3 structure. And I recall
11 discussions about it having to do with the fact that
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 So in general, I mean, I was aware of
17 discussions, but if you asked me to tell you what
18 their contractual relationship was, I couldn't do it.

19 Q. Okay. When you said different than the
20 normal, the normal you're referring to was service by
21 Cincinnati Gas & Electric Company?

22 A. Service by Cincinnati Gas & Electric
23 Company or a certified supplier.

24 Q. Okay. I guess I'm a little bit confused.

1 A. Let me just try to correct -- it was very
2 complicated. That's what I'm remembering is that it
3 was different because it was very complicated. I
4 just remember feeling that the way that [REDACTED] had
5 gone about getting its electric supply once SB3 was
6 put in place was, number one, different, and it was
7 different because it was complex. It wasn't like
8 they went out and took a certified supplier as many
9 of our customers had and entered into a contract. It
10 just seemed -- seemed like it was more complicated is
11 what I'm referring to.

12 Q. Okay. And you don't know how it was more
13 complicated?

14 A. No, because I never really -- I never
15 really had the need to get involved with it. And let
16 me say my recollection might be -- my understanding
17 might not be correct, but that was, in fact, my
18 understanding.

19 MR. SMALL: Okay. Did we mark Exhibit
20 19?

21 THE REPORTER: Yes.

22 Q. Exhibit 19 Bates stamped 1188 to 1195
23 [REDACTED] have you seen this
24 agreement before?

1 A. I don't recall having seen this
2 agreement.

3 Q. Have you heard about this agreement or
4 otherwise dealt with it?

5 A. I don't recall having heard about it or
6 otherwise dealt with it. This was -- this was in

7 [REDACTED]
8 Q. That's correct. And you're still the
9 president of CG&E at this point.

10 A. That's right. And this is between
11 Cinergy Retail Sales and [REDACTED]

12 Q. And just to wrap things up, you were also
13 not familiar with the Cinergy Retail Sales
14 representatives negotiating or otherwise dealing with
15 this document?

16 A. No, I don't recall -- I don't recall what
17 was going on during this time frame that would have
18 caused a document like this to be executed. And
19 that's maybe because I didn't need to be involved. I
20 mean, it was -- Cinergy Retail Sales was doing an
21 agreement.

22 Q. We're going to mark Exhibit 20.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Exhibit 20 actually has several

1 agreements as its parts. I'll do my best to guide
2 you through this. It doesn't have very good
3 references as far as page numbers are concerned.

4 Are you familiar with the agreement that
5 is at the very beginning of Exhibit 20, that is --
6 shows it as an amendment to a city of Cincinnati
7 Water Works with the -- agreement with the Cincinnati
8 Gas & Electric Company? Are you familiar with that
9 document?

10 A. Yes. Generally.

11 Q. All right. What was your involvement in
12 the background or preparation of the document that's
13 variously signed -- it's signed by you at the bottom
14 of the first page here, June 14th, 2004. First of
15 all, you executed this agreement; is that correct?

16 A. Yes.

17 Q. Okay. So my question is other than
18 executing it, what was your involvement in preparing
19 or negotiating this agreement?

20 A. I had negotiated with the city of
21 Cincinnati for a naming rights agreement for the,
22 what used to be called the Greater Cincinnati
23 Convention Center, and we paid -- "we," Cinergy
24 Corp -- paid money to have the rights to name that

1 facility. In return for that -- and the negotiations
2 were with the city manager's office. And in return
3 for that we received certain assurances in terms of
4 the city's source for gas and electric service as I
5 recall.

6 Q. And is that what this agreement is that's
7 shown at the very beginning of Exhibit 20?

8 A. This is an amendment, I believe, to that
9 agreement.

10 Q. Okay. So you're referring to -- I guess
11 let's just refer to it to be at the bottom of the
12 first paragraph as the "amend the agreement," that's
13 the agreement that you're talking about which
14 provided assurances that the city would take CG&E gas
15 and electricity supply. Do you see where I am? I'm
16 at the very bottom of the first paragraph on Exhibit
17 20.

18 A. Yes.

19 Q. And it says ". . . do hereby amend the
20 Agreement," capital A, that's the agreement you're
21 referring to, assurances regarding CG&E --

22 A. Right, the naming rights agreement. We
23 got naming rights, we gave money, they purchased
24 stuff from us.

1 Q. All right. If you could go a few pages
2 into it, it's the third page, the bottom left-hand
3 side, and this is the best I can do, it's the first
4 page that says "v1" on it.

5 MR. DORTCH: Said what? I'm sorry.

6 MR. SMALL: Third page of the document,
7 otherwise described as the first page, that has a
8 "v1" at the bottom.

9 THE WITNESS: Got it.

10 MR. DORTCH: Thank you, I got it as well.

11 Q. What is that agreement?

12 A. It's a similar amendment. If you look at
13 the first amendment, it was between CG&E and the
14 Water Works, and this is an amendment to an agreement
15 between CG&E and the city of Cincinnati for city
16 facilities. So the distinction would be this
17 addresses city facilities, the last one addresses
18 water works.

19 Q. Okay. And they were executed on the same
20 date.

21 A. Yes.

22 Q. All right. Moving on to the next
23 agreement in the package, several pages in, and for
24 lack of a better description somebody's handwritten a

1 number 9 on the left-hand corner. Yes, you have it.

2 A. Uh-huh.

3 Q. And could you describe what that
4 agreement is? First of all, have you seen this
5 agreement?

6 A. I'm sure I've seen all these.

7 Q. Okay. Page 7 of this agreement, you
8 executed it; is that correct?

9 A. Yes.

10 Q. And it's the same date as the other two
11 agreements, February 5th, 2004, correct?

12 A. Correct.

13 Q. And could you describe this agreement,
14 its purpose?

15 A. This specifically addresses electric
16 service to the Greater Cincinnati Water Works and the
17 terms under which we would provide that.

18 Q. Why is this -- why are there two
19 agreements with the water works? You mentioned a
20 February 5th, 2004, the first page was also a water
21 works agreement.

22 A. I don't recall the reason. The fact is
23 there are two agreements.

24 Q. Okay. Now --

1 A. If you want to know why, I can't recall.

2 Q. Okay.

3 A. The second agreement addresses a lot more
4 things than the first.

5 Q. It is much more lengthy, I will agree
6 with you.

7 A. We probably had good legal advice as to
8 why there would be two different agreements.

9 Q. On section 1.1, I'm on the first page,
10 that's the page where it has the handwritten 9 on the
11 bottom, there's a rate and it says a rate for GCWW,
12 which is the water works portion of the city; is that
13 correct?

14 A. Uh-huh.

15 Q. And it has a number of \$42.31 per
16 megawatt-hour. Do you see that?

17 A. Uh-huh.

18 Q. Do you know how that number was
19 determined?

20 A. I knew at the time.

21 Q. Who would have determined that number?

22 A. Folks from the Rate department.

23 Q. Would that be Mr. Steffen?

24 A. Or somebody -- and/or someone who works

1 for him.

2 Q. What was your involvement in negotiating
3 this agreement other than executing it?

4 A. I negotiated the agreement.

5 Q. Do you recall putting the number or
6 discussing the number 42.31 or some number, do you
7 remember discussing that with the Rate department?

8 A. Sure. Yeah. And the city did not
9 want -- as I remember this provision, the city did
10 not want to be precluded from switching suppliers.
11 We, of course, wanted them as a customer, and the
12 compromise that was reached was if the aggregate rate
13 exceeded a certain amount, they were perfectly able
14 to go out and find somebody else to supply their
15 needs.

16 You know, it was a good thing for the
17 city. The city got, you know, \$10 million or so from
18 us to develop a much needed expansion to the
19 convention center, we got naming rights to a facility
20 that's very prominent in the city, and under some
21 terms that are described here we also had some
22 assurances that they were going to be our customer.
23 So it was -- within the city of Cincinnati it was a
24 very good thing.

1 Q. All right. I would like to turn to the
2 second page of this document and paragraph 2, and it
3 refers to GCWW Water Works, again, determines that it
4 requires high voltage infrastructure maintenance
5 services. Do you see that?

6 A. Uh-huh.

7 Q. Do you know what that refers to?

8 A. Its services, maintenance services for
9 high voltage equipment.

10 Q. Do you recall a concern of the city of
11 Cincinnati regarding attaining such maintenance?

12 A. They knew that we were very good at it,
13 and as I recall they wanted some assurance that we
14 were going to be there when they needed us. And,
15 once again, in an economic development standpoint, I
16 mean, it allowed the city to save money which is in
17 our interest, our customers' best interest, and the
18 city of Cincinnati's best interest.

19 Q. When you say "save money," do you mean
20 that before this agreement the city of Cincinnati was
21 using some other service or using their own services
22 to provide this high voltage --

23 A. Those would be reasons why they would be
24 interested in this paragraph, yeah.

1 Q. Do you know whether CG&E or an affiliate
2 of CG&E provided high voltage infrastructure
3 maintenance services under this agreement?

4 A. I don't know from firsthand knowledge. I
5 would presume that we have, but I would not have been
6 involved in either the city's request for or our
7 provision of those services.

8 Q. In your discussions with the city of
9 Cincinnati were there discussions of the 03-93 case,
10 the case that you've referred to as the RSP case?

11 A. Sure, we -- and it may be in here
12 somewhere, I mean, we agreed to basically keep them
13 educated on things that were going on that might
14 impact them, kind of a information sharing agreement
15 so that people wouldn't be surprised if there were
16 changes in their rates.

17 Q. And you're referring to changes in the
18 rates in connection with the 03-93 case.

19 A. Any. I mean the agreement was general,
20 they wanted to have a ongoing relationship with their
21 energy provider which kind of projected and made them
22 aware of what changes were coming. If you're
23 familiar with city government at all, one of the big
24 things that they spend a lot of time on is meeting

1 their budgets and at times in the past rates were --
2 went up, they didn't know about it, and so they ended
3 up not making their budgets which politically caused
4 them a lot of problems.

5 Q. Are you familiar with the city's
6 involvement in the 03-93 case?

7 A. Yes.

8 Q. And what is your understanding of the
9 city's involvement in 03-93?

10 A. They weren't much of a participant. I
11 mean, they didn't show up at many or any of the
12 meetings or hearings, but I believe that they were an
13 intervenor.

14 Q. Did you hold settlement discussions with
15 the city of Cincinnati in connection with 03-93?

16 A. We talked to them about it, yes.

17 Q. And were those discussions outside the
18 context of these group meetings on the 03-93
19 stipulation?

20 A. Sure.

21 Q. You can set that aside.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Now a little bit of a convenience,
24 because these are going to be the documents that we

1 were provided with this morning. I'm going to mark
2 this as Exhibit 21, and I say "convenience"
3 because --

4 MR. COLBERT: Are all of the documents in
5 one exhibit, Jeff?

6 MR. SMALL: Yes, that's the convenience.
7 We just thought it would take more time to pick
8 through them so we just photocopied the whole thing.

9 MR. COLBERT: Fair enough.

10 MR. SMALL: Does anybody else need
11 copies? You have one.

12 MR. DORTCH: I have those, and for the
13 record I'll point out they're Bates stamped GCF-1,
14 Exhibit 21 is Bates stamped GCF-1 through GCF-41.

15 MR. SMALL: Correct. And those are all
16 the pages we were given this morning.

17 Q. (By Mr. Small) And I won't characterize
18 them because there are a range of documents here, but
19 are you familiar with the documents that were
20 provided this morning?

21 A. Yes.

22 Q. All right. Turning to the first page,
23 and whenever I talk about pages I will be referring
24 to the GCF designation, first page.

1 A. Okay.

2 Q. There are a series of e-mails here, and
3 the first one in time order is [REDACTED]
4 [REDACTED] it's from you and it was sent to Uma
5 [REDACTED] Do you see that
6 in the middle of the page?

7 A. Yes.

8 Q. Why were you making this request? And
9 there's a request concerning "Are these current?"
10 And then a reference to [REDACTED]
11 [REDACTED] What are "these"? What is the reference
12 to "Are these current?" What is your inquiry?

13 A. They provided the cost to serve, and the
14 "these" would refer to the cost to serve.

15 Q. Okay. And so you received the second
16 e-mail which refers to cost to serve [REDACTED]

17 [REDACTED] -- I'm sorry, [REDACTED]

18 A. Uh-huh.

19 Q. How was the data used? What was the
20 purpose for obtaining the data?

21 A. All during this time Cinergy Retail Sales
22 was, you know, contemplating entering into the very
23 agreements that we've been talking about here today,

24 [REDACTED]

1 [REDACTED]
2 So I believe that these would be -- this information
3 would be generated to help them decide what they
4 wanted to do with any agreements.

5 Q. Because of the date are you referring to
6 formulating the agreements that appeared in the
7 [REDACTED]

8 MR. DORTCH: I'm sorry, could you read
9 the question back to me?

10 (Question read.)

11 A. That would be my assumption.

12 Q. Is the e-mail and information that
13 appears on GCF-2 the response to the [REDACTED]
14 [REDACTED]

15 A. Well, I think it's -- I think this is the
16 same e-mail that appears at the bottom of the first
17 page.

18 Q. I think -- you're saying that GCF-2 is an
19 attachment to the October 20th --

20 A. I'm just -- let me see. [REDACTED]
21 [REDACTED] to me, copy [REDACTED] the subject -- yeah. No,
22 this is the same e-mail that's on the previous page.

23 Q. Okay.

24 A. It just has the OLE Object Microsoft

1 Excel worksheet spelled out on this one whereas it
2 was embedded on the first one.

3 Q. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 A. Well, you understand it was relevant to
7 Cinergy Retail Sales so -- and not necessarily to
8 Cincinnati Gas & Electric, [REDACTED]
9 [REDACTED]
10 [REDACTED] and, for example, [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. Then is it your understanding that what
16 this [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 A. I don't know that.

20 Q. Did Cinergy Retail Sales at the time of
21 this e-mail own any generating assets?

22 A. I don't know. I don't believe so.

23 Q. Has it ever owned any generating assets?

24 A. I don't know. I don't believe so. I

1 don't know that.

2 Q. There's a reference here, I'm on GCF-2,
3 note 7, "[REDACTED]
4 [REDACTED]" Do you see that?

5 A. Uh-huh.

6 Q. Can you tell me what [REDACTED]
7 [REDACTED] is?

8 A. My understanding, we had, of course, a
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. All right. Whose [REDACTED]
15 [REDACTED] is this?

16 A. [REDACTED]

17 Q. And who is that?

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

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

11 Q. The e-mails that we see here, as I say,
12 in a time order was initiated by you. What
13 connection did you have [REDACTED]

14 [REDACTED]
15 [REDACTED]

16 A. I didn't have a part in it.

17 Q. You must have had some role, you wrote an
18 e-mail.

19 A. Right. I did not -- I was not involved
20 in determining [REDACTED]

21 Q. I understand that. But why did you
22 initiate this [REDACTED]

23 A. Well, not knowing where this started, I
24 mean, I received an e-mail that had a few customers,

1 I knew that there were other customers involved, and
2 I was really out of clarification -- why would I get
3 an e-mail talking about [REDACTED]

4 [REDACTED] Do you understand?

5 The very documents that we were talking about
6 addressed more customers than these [REDACTED] and I
7 believe that I was asking what about the others? Why
8 are they not here?

9 Q. I'm not entirely following you. The
10 reason for that is the first e-mail in time order on
11 the first page, GCF-1, is your e-mail, [REDACTED]

12 [REDACTED] What was -- what had initiated
13 or what was the purpose for your initial contact with
14 this subject matter?

15 A. Well, the initial -- just allow me to
16 disagree with you. The initial e-mail is from Uma
17 dated [REDACTED]

18 Q. Oh, I see. The day before.

19 A. Yeah. It was just -- it was a very, very
20 shallow question. You've mentioned three, but
21 there's others you haven't mentioned. There's not a
22 lot of thought that went behind this e-mail. It's
23 like your wife mentioning one of your kids but not
24 the other.

1 Q. All right. It appears as though
2 Ms. Nanjundan is responding to an earlier request
3 that you made of [REDACTED] if I understand that
4 e-mail at the bottom. [REDACTED]

5 [REDACTED] Do you see that?

6 A. Yes.

7 Q. What request did you make to [REDACTED]

8 A. I don't know, but I may very well have
9 asked for something with regard to all the companies
10 which caused me to send the second e-mail.

11 Q. And when you are referring to all the
12 companies, what companies are you talking about?

13 A. In addition to [REDACTED]
14 the ones that I was thinking about when I wrote this
15 e-mail were [REDACTED]

16 Q. Okay. And is there something special
17 about that set of customers? It certainly excludes
18 an awful lot of other customers. Is there something
19 special about that set of --

20 A. Not that I can recall, but I understand
21 your question. Not that I can recall.

22 Q. Did you have regular correspondence, and
23 by that I mean contact, here we see e-mail with
24 Ms. Nanjundan.

1 A. Uh-huh.

2 Q. You have correspondence with her
3 regularly?

4 A. Occasionally. As I said, I knew that
5 they were evaluating, that Cinergy Retail Sales was
6 evaluating a lot of these customer contracts and I
7 would not say that I was on every e-mail because I
8 didn't need to be, but there were times when I got
9 e-mails from them.

10 Q. Okay. And those contacts from her would
11 have been regarding Cinergy Retail Sales business.

12 A. Yes.

13 Q. All right, if you would move on to GCF-4,
14 and you're mentioned in the second of the e-mails.
15 Can you tell me who [REDACTED] Z-h-a-n-g.

16 A. As I recall, [REDACTED] - [REDACTED] ran a lot of
17 financial analysis and I believe he used the

18 [REDACTED]

19 Q. In that e-mail there's a reference to
20 CRES numbers; do you see that?

21 A. Yes.

22 Q. Do you know what the CRES numbers were?

23 A. I think those are --

24 MR. DORTCH: Objection. Yeah, go ahead

1 and answer.

2 A. I think they're the numbers that are
3 on -- that are below where it says [REDACTED]

4 [REDACTED]

5 Q. All right. So you're referring to the
6 bottom e-mail from [REDACTED]

7 A. Yes.

8 Q. And what do those numbers represent that
9 are at the bottom of GCF-4?

10 A. I don't know specifically what they
11 represent. [REDACTED]

12 [REDACTED] t

13 [REDACTED] g

14 [REDACTED] e

15 [REDACTED]

16 Q. So these are similar to the previous
17 numbers that we looked at which were on GCF-2, the
18 cost to serve customers, but in aggregate form?

19 A. Yeah. I mean, there are probably
20 different assumptions that were used, the market
21 might have changed, I mean but, you know, in general
22 I think they're -- I think they're the same type of
23 evaluation, yes.

24 Q. And would this have been -- "this"

1 meaning the numbers on the bottom of GCF-4 -- have
2 been generated by the [REDACTED]

3 [REDACTED]

4 A. Certainly by the Commercial Business
5 unit. Once again, I'm not 100 percent sure that
6 that's what they used. They have many different ways
7 to calculate it, the simplest being just getting it
8 off an index, the more complicated being the business
9 model, and probably five or six other ways in
10 between.

11 Q. What was your involvement in the
12 Commercial Business unit in this time frame, November
13 2004?

14 A. My involvement -- the only reason for the
15 involvement, the reason for any involvement between
16 myself and the Commercial Business unit was because
17 of the state that we found ourselves in with
18 deregulation in Ohio. We had generation that was
19 separated, we had not yet transferred it, so we
20 were -- and, you know, it was -- call it the market
21 development period, call it whatever you want, but it
22 was a very gray area in the evolution of deregulation
23 in Ohio.

24 So we found ourselves with one foot kind

1 of in each bucket and while abiding by all the Code
2 of Conduct and corporate separation requirements that
3 we found ourselves -- that we found imposed upon us,
4 there were interactions because of the situation that
5 we found ourselves in.

6 Q. I'm going to move to the next page,
7 GCF-5. Here's an e-mail from [REDACTED] u
8 [REDACTED] And the subject matter
9 is CRES Revenue Analysis. Is the material that's
10 found behind GCF-5, that is 6, well, to 17, is that
11 the analysis that is promised?

12 A. I believe so.

13 Q. How about 18 and 19, GCF-18 and 19, is
14 that also part of the analysis?

15 A. I'm sorry, what pages did you refer to in
16 your last question?

17 Q. I referred to 6 through 17. I'm not
18 certain where this analysis -- these attachments end.

19 A. Okay.

20 Q. There is an e-mail on GCF-20, so I'm
21 pretty sure that that's separate, but I'm not sure
22 whether all this is an analysis. It's 6 through,
23 looks like it's the promised analysis on page 5?

24 A. Looks like it.

1 Q. Okay.

2 MR. DORTCH: I'm sorry, was the response
3 yes, the affirmative?

4 THE REPORTER: Yes.

5 MR. COLBERT: Could we go off the record
6 for a second?

7 MR. SMALL: Sure.

8 (Recess taken.)

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

10 Q. We just had a short off-the-record
11 discussion that confirmed that the attachment ends on
12 GCF-19. Now, this analysis that has pages GCF-6
13 through 19, why was that analysis prepared?

14 A. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q. Okay. When you say [REDACTED]
19 what are you referring to?

20 A. Boy, I don't know. I believe it would
21 have been the filing that we did on rehearing
22 perhaps. Because we really didn't have a stipulation
23 in that second go-round.

24 Q. So you think the analysis formed on

1 around [REDACTED] was about the ap. for
2 rehearing submitted by the company?

3 A. Could have been.

4 Q. Does it make -- for your evaluation of
5 that timing situation does it make any difference
6 that the request for the analysis came on [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 A. Well, that's --

10 MR. DORTCH: Objection.

11 A. -- not really true.

12 Q. I'm sorry. All right.

13 A. I'm trying, as you probably are, trying
14 to figure out what was going on S [REDACTED]
15 [REDACTED]

16 Q. Okay. All right. The attachment here --
17 I'm getting a little bit confused here. All right.
18 It looks like -- do you read this that the
19 attachments were prepared, the attachments starting
20 on page 6, were prepared on or around [REDACTED]
21 [REDACTED]

22 A. Correct.

23 Q. Okay. Sorry I got 2004 and 2005 confused
24 a little bit there.

1 Do you recall receiving this analysis in
2 2005?

3 A. I can see that I did receive it. I'm
4 trying to recall what was going on in September of
5 2005 that would have made these of interest, and I
6 can't recall that.

7 Q. Okay. You do know [REDACTED]

8 A. Sure.

9 Q. And [REDACTED] was a witness in the
10 03-93 case; is that correct?

11 A. I believe that he was.

12 Q. How else do you know of [REDACTED]
13 work?

14 A. I worked on a number of issues with [REDACTED].

15 Q. Could you be more specific than that?

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

21 Q. All right. Let's turn to the attachment.
22 There are a great number of pages which have
23 different companies or organizations as their subject
24 matter so I will just -- for now I'll just ask about

1 the form which appears to be standardized across
2 them. So turning to GCF-6, this title, the title to
3 this page promises a [REDACTED]

4 [REDACTED] Do you see that?

5 A. Yes.

6 Q. Do you know, does this refresh your
7 memory about what the [REDACTED] is that's referred
8 to and what the [REDACTED]

9 A. No, actually I wouldn't have -- I
10 wouldn't have used those terms.

11 Q. All right. And I see here in the columns
12 something that looks like [REDACTED]
13 [REDACTED] Do you see that?

14 A. Uh-huh.

15 Q. [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A. Sure.

19 Q. What's the connection?

20 A. Well, they're comparing the two --

21 Q. Okay.

22 A. [REDACTED]

23 Q. All right. What's your understanding of
24 [REDACTED] What are the values that are in

1 those columns?

2 A. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. What agreements would those be?

12 A. The ones we've been talking about.

13 Q. Well, we've been talking about [REDACTED]

14 [REDACTED]

15 A. Well, this is in the [REDACTED] time frame.

16 Q. Okay. So --

17 A. Of the three agreements that we've been
18 talking about, [REDACTED] and the option
19 agreements, I would presume that these would be
20 talking about the [REDACTED] agreements, although I
21 don't see that referenced here.

22 Q. Okay. So your interpretation of CRES,
23 the columns that say "[REDACTED]"

24 [REDACTED]

1 [REDACTED]
2 A. Between Cinergy Retail Sales and these
3 individual companies, yes.

4 Q. Okay. All right. Let's move on to
5 GCF-18 and 19, and in this part of the analysis the
6 format of the analysis changes. Referring to page
7 GCF-19, looking up in the title of this document, it
8 says "Summary of All CRES Customers." Do you know
9 which customers that's a reference to? Is that the
10 [REDACTED] and
11 I'm reading here from the first column of the table?

12 A. Could you repeat that, please?

13 Q. Well --

14 A. I was reading as you were talking, so I
15 just didn't hear it.

16 Q. I just wanted to know your interpretation
17 of CRES, C-R-E-S, customers, and I'm suggesting that
18 it has to do with the organizations or customers that
19 are in the left-hand column.

20 A. That's correct.

21 Q. That's -- okay.

22 A. And if you recall, the [REDACTED]
23 agreements that we were discussing previously, not
24 the [REDACTED] agreements, not the option contracts, did

1 envision Cinergy Retail Sales serving these companies
2 as CRES customers. That's probably why that
3 terminology was used.

4 Q. I believe going through the agreements it
5 did not -- I don't think I saw any agreements
6 involving [REDACTED] Cinergy Retail Sales.
7 Would you agree with that?

8 A. We discussed the [REDACTED] agreement as
9 being entered into between Cinergy Corp. and [REDACTED]
10 I believe, and we can always go back and look at it.
11 I thought that the [REDACTED] contract was similarly
12 entered into between Cinergy Retail Sales and [REDACTED]
13 I may be wrong about that.

14 Q. But your understanding of CRES in this
15 document is it's a reference to the customers that
16 are either mentioned or part of organizations that
17 are in the left-hand column here.

18 A. Yes. And I understand your confusion
19 about [REDACTED]

20 Q. All right.

21 A. Can't explain it.

22 Q. The title of this document promises a
23 comparison of three things, s [REDACTED]

24 [REDACTED] Do you see that?

1 A. Yes.

2 Q. I see St [REDACTED] as a column. I'm a
3 little bit confused. Can you point out where the
4 [REDACTED] and the [REDACTED] are?

5 A. I don't see [REDACTED] And in my mind the
6 [REDACTED] would be under the [REDACTED] column in
7 [REDACTED]
8 [REDACTED]

9 Q. Similar to the previous tables where
10 you've identified [REDACTED] being
11 the same.

12 A. Yeah, but I don't see [REDACTED] on here.

13 Q. All right.

14 A. Market was an illusive concept and it
15 depended on the author as to what [REDACTED] was.

16 Q. It was a pretty simple inquiry, I just
17 saw -- I was promised three things and it looks like
18 I was given two.

19 A. You're correct. I do not see it on here.

20 Q. All right. Now, I'm at the bottom here,
21 there's a bottom of column that's labeled [REDACTED]
22 [REDACTED] and there's a column
23 labeled CRES, you just mentioned it, which has a
24 total at the bottom of a little over [REDACTED].

1 Do you see that?

2 A. Yes.

3 Q. What does the difference between those
4 two columns or those two totals represent?

5 A. I think that the Cinergy Retail Sales was
6 trying to determine [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. Do you see the title towards the top, it
14 says [REDACTED]

15 A. Right.

16 Q. How does one use that to interpret the
17 chart?

18 A. Can you say it a different way? I'm not
19 sure I understand your question.

20 Q. What does that mean in terms of this
21 chart? How do you read that?

22 A. The way I read it, and once again, I
23 didn't put this together, but the [REDACTED] customers,

24 [REDACTED]

1 Q. Per year?

2 A. [REDACTED]

3 Q. How do you read the other numbers? For
4 instance, [REDACTED] are those for those same
5 years?

6 A. Sure.

7 Q. [REDACTED]
8 [REDACTED]

9 A. My belief would be yes.

10 MR. DORTCH: Objection. [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 MR. SMALL: That's the source of my
14 confusion.

15 A. Well, just to be clear, that column is
16 not underneath that --

17 Q. Right.

18 A. -- heading.

19 Q. I understand. So the total [REDACTED]
20 applies to those things where there's a bar over top
21 of it, over top of the --

22 A. I didn't prepare this.

23 Q. That's your understanding. I think
24 that's --

1 Q. Cinergy Corp. meaning the financial
2 impact involving both CG&E and Cinergy Retail Sales?

3 A. He would have been interested in the
4 overall impact to the corporation.

5 Q. Did you have dealings with [REDACTED]
6 regarding the negotiation or the process involved in

7 [REDACTED]

8 [REDACTED]

9 A. Yes.

10 Q. What was [REDACTED] involvement in
11 that?

12 A. He evaluated the agreements from a
13 financial standpoint. He and his staff.

14 Q. Each round?

15 A. You know I was just thinking about that,
16 I don't believe that there was much involvement in
17 [REDACTED] I believe that there was more involvement in
18 the [REDACTED] and the [REDACTED]

19 Q. And did he work with subordinates on this
20 task that you recall their names?

21 A. I recall one. [REDACTED] is a staff
22 person that works for [REDACTED] -- that used to work for
23 [REDACTED] I don't know whether he's still with the
24 company.

1 Q. And what is the unit of the company, what
2 department or division of the company did

3 [REDACTED]

4 A. I'm sure they were Cinergy Services.

5 Q. But more specifically, financial
6 forecasting or some designation within that
7 organization?

8 A. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. Referring back to GCF-20, who is [REDACTED]

16 A. That would be [REDACTED]

17 Q. What did [REDACTED] do with regard to RSP
18 impacts in this time frame?

19 A. He didn't do anything. [REDACTED] had
20 requested to have an update on what was going on.

21 Q. What was his position in the company at
22 this time?

23 A. [REDACTED]

24 Q. [REDACTED]

1 A. Cinergy Corp.

2 Q. Does he continue to have a position or
3 connection with the Duke Energy-affiliated companies?

4 A. I believe he does, but there have been a
5 lot of changes.

6 Q. All right. It appears as though -- and
7 again, this e-mail includes you on the To line. Is
8 the document that's labeled GCF-21 the promised
9 attachment from the [REDACTED]

10 A. I believe it is.

11 Q. Now this document that appears on GCF-21
12 refers to [REDACTED]

13 A. [REDACTED]

14 Q. And what unit or organization are these
15 impacts meant to show? Upon what unit, business
16 unit, are these meant to show an impact?

17 A. This is a Cinergy Corp. level here.

18 Q. Overall effect.

19 A. Uh-huh.

20 Q. Do you have any idea when this document
21 was prepared? I'm referring to the attachment, not
22 the e-mail.

23 A. Sometime before [REDACTED] that's
24 all I was looking at. It doesn't look like it has a

1 date.

2 Q. Now I'm on page GCF-21 and this, taken
3 from the higher up view of Cinergy Corporation, is
4 the concept in the top half of this chart that there

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 A. Yeah. Once again, we don't know what the
9 time frame is, but in both the [REDACTED] reements
10 and the [REDACTED] agreements and the option
11 agreements there were [REDACTED]

12 [REDACTED]. And I'm
13 assuming -- depending on what time frame this was,
14 that's what [REDACTED] would have been -- that's what
15 [REDACTED] would have been using. [REDACTED]

16 Q. [REDACTED]
17 [REDACTED]

18 A. Uh-huh.

19 Q. Can you tell me what that is?

20 A. Yeah. When somebody like [REDACTED] would
21 look at it, I mean all this other stuff is
22 interesting, [REDACTED]

23 [REDACTED]
24 [REDACTED]

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Q. I notice at the bottom right of this page it says [REDACTED] Who prepares the RBU financial forecasts?

A. Would be the [REDACTED]

Q. [REDACTED]

A. [REDACTED] I'm not even sure they have an [REDACTED] anymore, but that's what it was back then.

Q. And what's the connection between [REDACTED]

A. He's the [REDACTED] was at this time.

Q. Is he the CFO of other -- was he the CFO of other business units?

A. No.

Q. [REDACTED]

A. Yes.

Q. All right. Now I'm looking at the top of the chart versus the bottom of the chart. The bottom of the chart being a separation of a large gray line

1 between them; GCF-21. At the bottom of the page I
2 don't see anything for [REDACTED]

3 [REDACTED]

4 A. Well, we are trying to determine -- [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] costs are going to be there whether
11 we enter into the [REDACTED] not because [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 With regard to [REDACTED], there is only a

17 [REDACTED]

18 [REDACTED]

19 Q. I'm not sure I understand that. What do
20 you mean, [REDACTED]

21 A. We're going to build a scrubber at some

22 plant. We're going to build that scrubber whether we
23 get [REDACTED]

24 So the only relevant aspect of the [REDACTED] to a [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Q. All right. The next one is GCF-22 and I
5 believe here's [REDACTED] that you referred to. Is
6 that the same [REDACTED]

7 A. Uh-huh.

8 Q. He worked for [REDACTED] is that
9 correct?

10 A. Uh-huh.

11 Q. This e-mail dated [REDACTED]
12 is from [REDACTED], among other people, you.

13 A. Right.

14 Q. What was the purpose of this exchange of
15 information?

16 A. Looks like they were making some
17 corrections.

18 Q. Okay. And there's a reference here to a
19 conversation with [REDACTED] That would be a
20 reference to -- [REDACTED]

21 A. Yes.

22 Q. And [REDACTED] right?

23 A. Yes.

24 Q. And do you recall a conversation that

1 prompted the change?

2 A. The specific conversation? No.

3 Q. Do you remember dealing with the subject
4 matter?

5 A. On many, many different occasions. I
6 just can't -- I can't tell you what the specific --
7 an issue came up, we talked about it, agreed how it
8 was to be reflected, and it was evidently not
9 accurately reflected in something that [REDACTED] had done
10 previously.

11 Q. [REDACTED]
12 [REDACTED] That's on the second line of the
13 second paragraph.

14 A. I don't recall.

15 Q. Go down to the bottom, there are
16 references to [REDACTED]

17 A. Right.

18 Q. [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 A. I believe I do.

22 Q. What do those [REDACTED]

23 A. [REDACTED]
24 [REDACTED]

1 [REDACTED] We had entered into a stipulation that
2 had certain value to the company and that was
3 rejected, changed, whatever term you want to use, by
4 the Commission's September order.

5 So we were always thinking about what we
6 were going to agree to as it related to the
7 stipulation that we and a number of the other parties
8 had signed onto. [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 MR. SMALL: Could I have that read back
14 to me?

15 (Answer read.)

16 A. I know why you're confused.

17 Q. Not exactly clear.

18 A. Yeah. [REDACTED]

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

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

8 Q. Okay. I think I had the -- I may have --
9 I think I'm close to understanding the mathematics
10 here. [REDACTED]

11 [REDACTED]
12 A. Right.

13 Q. [REDACTED]
14 [REDACTED]

15 A. It would be the [REDACTED]

16 Q. [REDACTED]

17 A. Right. [REDACTED]

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

22 Q. And when you refer to the stipulation,
23 you're referring to the stipulation unaltered by the
24 Commission.

1 A. Yes. Absolutely.

2 Q. [REDACTED]

3 [REDACTED]

4 A. [REDACTED]

5 [REDACTED]

6 Q. All right. If you go to GCF-32, and
7 again, there's a series of e-mails here, the first
8 one has [REDACTED] on it with yours as
9 recipient. The second one is -- the second one on
10 page, but earlier in time, was from [REDACTED]
11 [REDACTED] Do you see that?

12 A. Uh-huh.

13 Q. Do you know how this -- well, there's a
14 reference to a version in your e-mail. There's a
15 reference to the [REDACTED] Do you know how this
16 e-mail relates to the earlier one that we saw on
17 GCF-22?

18 A. Well, this clearly is the e-mail that was
19 on GCF-22. The one from Walt.

20 Q. The one at the bottom is.

21 A. Right.

22 Q. So the one that [REDACTED] wrote that
23 appears on GCF-22 as well was a response to your
24 e-mail. Is that the way you read that?

1 A. I don't know.

2 Q. [REDACTED]
3 your e-mail? Do you know what that -- [REDACTED]
4 [REDACTED]

5 A. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q. And what are the versions that
10 [REDACTED] looking at?

11 A. Different changes, we're making different
12 assumptions, you know, there's all -- you know,
13 things are found to be wrong and, you know, you've
14 got to change them. People review it and they say
15 "No, this isn't the correct way to model it. [REDACTED]
16 will you" -- I mean, there were iterations I would
17 call them, as opposed to versions. In the end the
18 plan is what the plan is regardless of what version
19 you call it.

20 Q. Did you have a number for [REDACTED]
21 in the final version of the proposal by the company?

22 A. There was a number; I don't recall what
23 it was.

24 Q. Was there analysis done of the final

1 results from the Commission's entry on rehearing?
2 Just for clarification, I'm drawing a distinction
3 between the proposal made in the ap. for rehearing
4 and the entry on rehearing. Was there a number
5 prepared for the entry on rehearing consequences for
6 the company?

7 A. That may have been done on the [REDACTED]
8 [REDACTED]
9 [REDACTED] everything was already
10 decided and in place. That would be the closest you
11 would have to an entry on rehearing analysis.

12 Q. Okay. Have you seen such an analysis?

13 A. It was attached to here.

14 Q. I'm sorry, the numbers we've been looking
15 at?

16 A. Yeah.

17 Q. Was there a final version, a last
18 version? As you say, we --

19 A. I'll look at how he refers to it.

20 Q. Are you on GCF-22, I think?

21 A. GCF-20.

22 Q. Twenty?

23 A. The reason I answered it that way is this
24 [REDACTED] would have been

1 postentry, it would have been post our agreement, and
2 would have presumably included all the things that
3 the Commission did.

4 Q. So this is the analysis, but we don't
5 have that percentage that was being discussed in the
6 e-mails.

7 A. No. That's not -- that wouldn't be a
8 part of that.

9 Q. Okay.

10 MR. SMALL: Let's go off the record for a
11 second. We'll collect our thoughts and we will --
12 we're very close to the end of the deposition.

13 (Recess taken.)

14 (OPEN RECORD.)

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1 State of Ohio :
2 County of _____ : SS:

3 I, Gregory C. Ficke, do hereby certify that I
4 have read the foregoing transcript of my deposition
5 given on Tuesday, February 20, 2007; that together
6 with the correction page attached hereto noting
7 changes in form or substance, if any, it is true and
8 correct.

9 _____
10 Gregory C. Ficke

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

18 _____
19 Notary Public

20 My commission expires _____, _____.
21 _____
22 _____
23 _____
24 _____

1 CERTIFICATE

2 State of Ohio :
3 County of Franklin : SS:

4 I, Maria DiPaolo Jones, Notary Public in and
5 for the State of Ohio, duly commissioned and
6 qualified, certify that the within named Gregory C.
7 Ficke was by me duly sworn to testify to the whole
8 truth in the cause aforesaid; that the testimony was
9 taken down by me in stenotypy in the presence of said
10 witness, afterwards transcribed upon a computer; that
11 the foregoing is a true and correct transcript of the
12 testimony given by said witness taken at the time and
13 place in the foregoing caption specified and
14 completed without adjournment.

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

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my seal of office at Columbus, Ohio,
21 on this 22nd day of February, 2007.

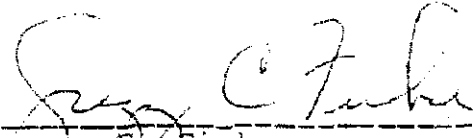
22 Maria Di Paolo Jones
23 Maria DiPaolo Jones, Registered
24 Diplomat Reporter, CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.


(MDJ-2071)

1 State of Ohio :
2 County of WARREN : SS:

3 I, Gregory C. Ficke, do hereby certify that I
4 have read the foregoing transcript of my deposition
5 given on Tuesday, February 20, 2007; that together
6 with the correction page attached hereto noting
7 changes in form or substance, if any, it is true and
8 correct.

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Gregory C. Ficke

I do hereby certify that the foregoing
transcript of the deposition of Gregory C. Ficke was
submitted to the witness for reading and signing;
that after he had stated to the undersigned Notary
Public that he had read and examined his deposition,
he signed the same in my presence on the 28th day
of FEB, 2007.


Notary Public

My commission expires FEB - 16, 2009.

JULIA SCARBOROUGH
Notary Public, State of Ohio
My Commission Expires February 16, 2009

Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and

[REDACTED]
[REDACTED]
(Customers), effective this [REDACTED] It is the intent of the Parties to this Agreement to bind the Customers to the terms and conditions set forth herein.

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. The Customers may, individually and on an individual account basis, [REDACTED]
[REDACTED]
[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

- a. Beginning [REDACTED] and ending [REDACTED] each Customer [REDACTED] may purchase competitive retail electric generation service from Cinergy at their current tariffed unbundled generation rate approved by the Commission in case no. 99-1658-EL-ETP and also known as Big G, [REDACTED]

[REDACTED] paid to The Cincinnati Gas & Electric Company. The effect of such [REDACTED] shall be that Customers will [REDACTED] in Case No. 99-1658-EL-ETP plus quarterly fuel increases. Cinergy may [REDACTED]

[REDACTED] or,

- b. Each Customer may accept The Cincinnati Gas & Electric Company's market-based standard service offer price, [REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED] retain the right [REDACTED] to switch to a competitive retail electric service provider under the terms and conditions of the Commission's order. Upon switching to a competitive retail electric service provider, Cinergy [REDACTED]

[REDACTED] hereafter paid to The Cincinnati Gas & Electric Company [REDACTED] If a Customer is taking service from a non-Cinergy affiliated competitive retail electric service provider on [REDACTED] Cinergy shall [REDACTED]

[REDACTED] the period [REDACTED]

[REDACTED] and b) this notice constitutes [REDACTED]

2. If, prior to [REDACTED], any of the Customers [REDACTED] The Cincinnati Gas & Electric Company's certified territory which exceeds a Customer's combined (all accounts) maximum demand as of January 1, 2005, [REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]
any accounts representing new load beyond the foregoing limit
are not included under this Agreement.

3. Customers shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.

4. [REDACTED]

5. In the Cincinnati Gas & Electric Company's next distribution base rate case that results in a change in the Customers' rates, CG&E will file a cost of service study reflecting actual cost of service for all rate classes. [REDACTED]

6. The Customers shall cause the Ohio Energy Group to support a Stipulation filed by The Cincinnati Gas & Electric Company and the Ohio Energy Group in case no. 03-93-EL-ATA.

7. If a Customer had shopped for competitive generation and is subject to a minimum stay with CG&E [REDACTED]

[REDACTED] then the [REDACTED]

effective [REDACTED]

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

9. The Parties agree to work in good faith to [REDACTED]

[REDACTED]
Cinergy will [REDACTED]

10. If an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E but which renders invalid or ineffective any provision of this Agreement to the [REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED]

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

A. [REDACTED]

B. [REDACTED]

C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

To 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 the Customers 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 the Customers

[REDACTED]
[REDACTED]
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

CINERGY.
SERVICES

139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960

April 4, 2005

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]

As you are aware, in the course of negotiating [REDACTED] with [REDACTED] members [REDACTED] it was agreed that the terms and conditions of their existing [REDACTED] More specifically with respect to [REDACTED] it was [REDACTED]

[REDACTED] While both parties have and continue to agree to this handling of the RTP accounts, I am writing on behalf of Cinergy Retail Sales with the purpose of clarifying and gaining written confirmation of the agreement that was reached with respect to the [REDACTED]

The [REDACTED] on behalf of its members, and Cinergy Retail Sales, LLC (the Parties), hereby agree that under the [REDACTED] between [REDACTED]

Please confirm your agreement to the above by signing and returning the duplicate copy of this letter.

[REDACTED]

[REDACTED]
Attorney for the [REDACTED]

Deposition Questions - Greg Ficke

Duke Energy Ohio Case No. 03-93-EL-ATA (Remand)										
AGREEMENTS										
From	Type	Date	Document	Super Party 1	Party 2	Multiple?	Group	Ref No	Begin	End
DERS	Super Agr		Agreement	CRS		Y			341	348
DERS	Super Agr		Agreement	5/28/04 CRS		Y			334	340
DERS	Option Agr		Option Agreement	CRS				508387	50	64
DERS	Super Agr		Agreement	CRS		Y			341	348
DERS	Super Agr		Agreement	5/28/04 CRS		Y			334	340
DERS	Option Agr		Option Agreement	CRS				508388	32	49
DERS	Super Agr		Agreement	CRS		Y			327	332
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508388	178	190
DERS	Super Agr		Agreement	CRS		Y			327	332
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508388	1	14
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508384	65	78
DERS	Super Agr		Agreement	CRS		Y			327	332
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508390	133	145
DERS	Super Agr		Agreement	CRS		Y			327	332
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508387	15	31
DERS	Super Agr		Letter re: 1/20/05 Agr.	1/20/05 CRS		Y			333	333
DERS	Super Agr		Copy of Page 333	1/20/05 CRS		Y			388	389
DERS	Super Agr		Agreement	CRS		Y			327	332
DERS	Super Agr		Agreement	5/19/04 CRS		Y			320	328
DERS	Option Agr		Option Agreement	CRS				508388	159	175
DERS	Super Agr		Letter re: 1/20/05 Agr.	1/20/05 CRS		Y			333	333
DERS	Super Agr		Copy of Page 334	1/20/05 CRS		Y			388	388
DERS	Super Agr		Agreement	CRS		Y (a)			347	352
DERS	Super Agr		Agreement (signature 1/18/04)	5/19/04 CRS		Y (a)			353	357
DERS	Option Agr		Option Agreement	CRS				508381	220	230
DERS	Option Agr		Option Agreement	CRS				508372	191	203
DERS	Option Agr		Option Agreement	CRS				508373	308	318
DERS	Option Agr		Option Agreement	CRS				508389	237	250
DERS	Option Agr		Option Agreement	CRS				508371	204	220
DERS	Option Agr		Option Agreement	CRS				508379	292	305
DERS	Option Agr		Option Agreement	CRS				508378	279	291
DERS	Option Agr		Option Agreement	CRS				508374	79	91
DERS	Option Agr		Option Agreement	CRS				508377	265	278
DERS	Option Agr		Option Agreement	CRS				508378	251	264
DERS	Option Agr		Option Agreement	CRS				508375	105	118
DERS	Option Agr		Option Agreement	CRS				508382	119	133
DERS	Option Agr		Option Agreement	CRS				508380	146	158
DERS	Option Agr		Option Agreement	CRS				508383	92	104
DERS	Super Agr		Superseded Agreement	12/14/00 CRS					1173	1179
DERS	Super Agr		Superseded Agreement	7/7/04 CRS					1180	1187
DERS	Agreement		Agreement	11/22/04 CRS					1188	1195

DEPOSITION
EXHIBIT
3
FICKE

[REDACTED]

From:
Sent:
To:
Cc:
Subject:

Importance: High

[REDACTED] I think that the settlement looks fine. I cannot, however, provide final confirmation until I better understand the impact of your new item 5. I do not anticipate that that will be a problem. I will get back to you by the end of the day. [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: CG&E Settlement Terms -- Confidential
Importance: High

[REDACTED] and I would like to thank you for cooperating in our settlement discussions and together developing a proposal that the [REDACTED] were able to provide their consent. Attached is our proposed consolidation of settlement terms which we believe are agreeable to both [REDACTED] and CG&E. Note that number 5 was added this afternoon at the behest of one of our members but it will not be a deal breaker. [REDACTED] It will not be available until tomorrow afternoon, but please call or email me tomorrow morning with your confirmation that these terms will be acceptable. Thanks again.

> [REDACTED]
>
> [REDACTED]
> [REDACTED]
> [REDACTED]

This e-mail, including attachments, is intended only for the person(s) to whom the sender intended to address this message. It may contain information which is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying distribution of, or use or action in reliance on, this communication is strictly prohibited and may be unlawful. If you are not the intended recipient of this message and have received this e-mail in error, please notify the sender immediately or return the e-mail and fully delete from your system the message, along with any attachments.

1

DEPOSITION EXHIBIT #4

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the [REDACTED] shown on the attached agreement exhibit 1 incorporated by reference into this agreement [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 is the entire agreement between Cinergy and the [REDACTED] it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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:

DEPOSITION
EXHIBIT
#5
FICKE

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1. Beginning [REDACTED] and through [REDACTED] Cinergy will offer to sell retail electric generation service to the Hospitals for all their CG&E accounts at a [REDACTED] applicable tariff rate of The Cincinnati Gas & Electric Company's [REDACTED] approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP [REDACTED] approved in the same case [REDACTED] and [REDACTED] shall purchase competitive retail electric generation service from Cinergy at a [REDACTED] they are receiving from The Cincinnati Gas & Electric Company on [REDACTED] The [REDACTED] offer indicated above will be an [REDACTED]
2. Cinergy shall [REDACTED] the [REDACTED] to The Cincinnati Gas & Electric Company by [REDACTED] purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall [REDACTED]
3. If, [REDACTED] in The Cincinnati Gas & Electric Company's certified territory, [REDACTED] except that new load relative to dual feeds shall be subject to the terms and conditions set forth in paragraph six (6) of this agreement.
4. Cinergy shall pay the [REDACTED]
5. The [REDACTED] shall comply with the terms and conditions of the order of the Public Utilities Commission of Ohio in case no. 03-93-EL-ATA including the payment of regulatory transition charges and provider of last resort charges [REDACTED]

6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to [REDACTED]. The Cincinnati Gas & Electric Company may amend its tariffs for dual feed where there is a significant increase in load or for new dual feed consumers pursuant to an application approved by the Public Utilities Commission of Ohio.
7. Hospitals purchasing generation service pursuant to existing tariff load management riders [REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED].
8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio.
9. The [REDACTED] shall cause the [REDACTED] to [REDACTED] filed by The Cincinnati Gas & Electric Company and [REDACTED] in case no. 03-93-EL-ATA, and any related litigation.

This agreement terminates after [REDACTED]
[REDACTED]

- A. [REDACTED]
[REDACTED] The Cincinnati Gas & Electric Company may recover fuel costs [REDACTED]
[REDACTED]

- B. [REDACTED]
[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:

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

To Cinergy:

Cinergy
[REDACTED]
[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 including
the government regarding the enforcement or breach of this agreement,
including but not limited to, property damages, environmental damages,
contract damages, fines, or penalties arising from or in connection with
the provision or acceptance of competitive retail electric service 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 Letter Agreement shall be governed by and construed in
accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

On behalf of Cinergy

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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

The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and

[REDACTED]

[REDACTED]

[REDACTED] (Customers), [REDACTED]

[REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between Customers and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind the Customers and Cinergy to the terms and conditions set forth herein.

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:

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TRADE SECRET

1. The Parties expect that the Provider of Last Resort (POLR) charge of the Cincinnati Gas & Electric Co. (CG&E) will consist of these components: [REDACTED]

2. The Customers may, individually and on an individual account basis, select one of the following options for competitive retail electric service no later than [REDACTED]

Option A

- A. Beginning no earlier than [REDACTED] and ending [REDACTED] each Customer [REDACTED]

For any Customer who elects this Option A and has a CRES contract extending [REDACTED] but ending no later than [REDACTED] Cinergy shall [REDACTED] Customer, during 2005 until the Customer begins service [REDACTED]

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TRADE SECRET

Beginning no earlier than [REDACTED] and ending

facilities may purchase competitive retail electric service from a Cinergy affiliated CRES

Cinergy shall

Under this Option A, Cinergy may s

Option B

B. Each Customer may accept CG&E's market based standard service offer price, including the price to compare and POLR charges approved by the Commission in Case No. 03-93-EL-ATA and retain the right through [REDACTED] to switch to a CRES under the terms and conditions of the Commission's Order. During any time between [REDACTED] and [REDACTED]

December 31, 2008,

Customers choosing Option B

3. Under both Option A and Option B, this Agreement constitutes Customers' contract with a credit worthy CRES to provide firm generation service for their full capacity, energy and transmission requirements from [REDACTED] through [REDACTED] and satisfies to the maximum extent

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TRADE SECRET

possible the requirements of Case No. 03-93-EL-ATA that the

4. If, prior to [REDACTED] any of the Customers add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds a Customer's combined (all accounts) maximum demand as of [REDACTED]

5. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. Customers shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]

6. Cinergy will comply with all regulatory requirements necessary to be certified as a competitive retail electric service provider to offer competitive retail electric service to Customers as required by paragraph one (1) of this Agreement.

7. In the Cincinnati Gas & Electric Company's next distribution base rate case that results in a change in the Customers' rates, CG&E will file a cost of service study reflecting actual cost of service for all rate classes. [REDACTED]

an legal rights in The Cincinnati Gas & Electric Company's next distribution base rate case, including but not limited to, rights to litigate and settle the case. The filing of the cost of service does not in any way constitute a guarantee regarding the outcome of the case. The Cincinnati Gas & Electric Company [REDACTED]

8. [REDACTED]

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TRADE SECRET

- [REDACTED]
9. If a Customer had shopped for competitive generation and is subject to a minimum stay with CG&E that extends beyond January 1, 2005, [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. [REDACTED]

12. If an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E [REDACTED]

This Agreement terminates after [REDACTED] or as follows:

A. [REDACTED]

B. [REDACTED]

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TRADE SECRET

[REDACTED]

C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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:

[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.

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TRADE SECRET

Cinergy and the Customers 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 the Customers

[REDACTED]
[REDACTED]
[REDACTED]
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and [REDACTED] shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED]

[REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. 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 is the entire agreement between Cinergy and [REDACTED] (parties); it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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:

- they are receiving from The Cincinnati Gas & Electric Company on [REDACTED]
The [REDACTED] offer indicated above will be an

2. Cinergy shall

- 354

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED] such [REDACTED]
[REDACTED]
[REDACTED]

4. Cinergy [REDACTED]
upon the issuance of a final appealable order of the Public
Utilities Commission of Ohio satisfactory to Cinergy.

5. The [REDACTED]
[REDACTED]
[REDACTED]

6. [REDACTED]

The Cincinnati Gas & Electric Company may amend its tariffs for dual feed where there is a significant increase in load or for new dual feed consumers pursuant to an application approved by the Public Utilities Commission of Ohio.

7. [REDACTED]

[REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED]

8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED] shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]
[REDACTED]
[REDACTED]

9. [REDACTED]

The Cincinnati Gas & Electric Company [REDACTED]
[REDACTED]
[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

[REDACTED] made by The Cincinnati Gas & Electric Company in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

A. [REDACTED]

B. [REDACTED]

C. [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:

[REDACTED]
[REDACTED]
[REDACTED]
To Cinergy:
[REDACTED]
[REDACTED]

CONFIDENTIAL PROPRIETARY
TRADE SECRET

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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service 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 Letter Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 8th day of November:

On behalf of Cinergy

On Behalf [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

[REDACTED]
From:

Sent:

To:

Cc:

Subject:

Attached is the amended agreement with [REDACTED]. Please execute a copy and send it to us. We will execute the copy and send a signed copy back to you. Please file [REDACTED]. Contact us with any questions. Thank you.

1/11/2007

DEPOSITION
EXHIBIT
8
FEB 13

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and [REDACTED] shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED] this Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. It is the intent of the parties to this agreement to bind Cinergy [REDACTED] to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the [REDACTED], it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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. Beginning [REDACTED], and through [REDACTED] Cinergy will offer to sell retail electric generation service to the [REDACTED] for all their CG&E accounts at a [REDACTED] Gas & Electric Company's [REDACTED] approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP [REDACTED] competitive retail electric generation service from Cinergy at a [REDACTED] they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The [REDACTED] offer indicated above will be an [REDACTED] to [REDACTED]

2. Cinergy shall [REDACTED]

3. If, prior to [REDACTED] add [REDACTED] in The Cincinnati Gas & Electric Company's [REDACTED]

- [REDACTED]
4. Cinergy [REDACTED] upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy!

5. The [REDACTED]

6. [REDACTED] The Cincinnati Gas & Electric Company may amend its tariffs for dual feed where there is a significant increase in load or for new dual feed consumers pursuant to an application approved by the Public Utilities Commission of Ohio.

7. [REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED]

8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED] shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission, or if applicable, [REDACTED]

9. The [REDACTED] The Cincinnati Gas & Electric Company [REDACTED] made by The Cincinnati Gas & Electric Company in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

A.

[REDACTED]

B.

[REDACTED]

C.

[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:

[REDACTED]

To 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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service 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 Letter Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 19th day of May:

On behalf of Cinergy

On Behalf [REDACTED]

[REDACTED]

[REDACTED]
From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: [REDACTED]

[REDACTED], we are ready to execute this version of the amended agreement. It is changed based upon your e-mail this morning and our prior discussions. If you agree we will send two signed copies and you can execute them and return one to us. Please let us know. Thank you.

1/11/2007

DEPOSITION
EXHIBIT
#9
FILE

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the hospitals shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED]. This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. It is the intent of the parties to this agreement to bind Cinergy and the [REDACTED] to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the [REDACTED] (parties); it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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.

Deleted: [REDACTED]

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

1. Beginning [REDACTED]
Cinergy will offer to sell retail electric generation service to the

[REDACTED]

Deleted: [REDACTED]

2. Cinergy [REDACTED]

[REDACTED]

Deleted: all other Provider of Last Resort charges including, but not limited to,

Deleted: any

3. If, prior to [REDACTED] add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory, [REDACTED]

4.

5. The [REDACTED] shall comply with the terms and conditions of the order of the Public Utilities Commission of Ohio in case no. 03-93-EL-ATA including the payment of regulatory transition charges and provider of last resort charges [REDACTED]

6.

7. [REDACTED] purchasing generation service pursuant to existing tariff load management riders as of [REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED]

8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED]

9.

The [REDACTED]

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

- A. [REDACTED]
- B. [REDACTED]
- C. [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 the [REDACTED]

[REDACTED]

To 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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service 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 Letter 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 the [REDACTED]

[REDACTED]
From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Subject: [REDACTED]

Attached is a redline version of the [REDACTED] Agreement we can sign on Monday. A clean version to follow. Thank you.

1/11/2007

DEPOSITION
EXHIBIT
#10

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the hospitals shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this [REDACTED]. This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. 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 is the entire agreement between Cinergy and the [REDACTED] (parties); it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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. Beginning

[REDACTED]

Deleted: [REDACTED]
Deleted: [REDACTED]
Deleted: [REDACTED]

2. Cinergy

[REDACTED]

3. If, prior to [REDACTED] add additional load or accounts in The Cincinnati Gas & Electric Company's

certified territory, [REDACTED]

4. [REDACTED]

5. The [REDACTED] shall comply with the terms and conditions of the order of the Public Utilities Commission of Ohio in case no. 03-93-EL-ATA including the payment of regulatory transition charges and provider of last resort charges [REDACTED]

6. [REDACTED]

7. [REDACTED] purchasing generation service pursuant to existing tariff load management riders as of [REDACTED], may continue to purchase generation service pursuant to such load management riders through [REDACTED]

Deleted: [REDACTED]

8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED]

Deleted: [REDACTED]

Deleted: [REDACTED]

Deleted: [REDACTED]

Deleted: [REDACTED]

9. The [REDACTED]

[REDACTED]

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

A. [REDACTED]

B. [REDACTED]

C. [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 the [REDACTED]

To Cinergy:

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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service 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 Letter Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this [REDACTED]

Deleted
Deleted

On behalf of Cinergy

On Behalf [REDACTED]

[REDACTED]

From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Subject: [REDACTED]

This is the clean version of the agreement. Thank you.

1/11/2007

DEPOSITION
EXHIBIT

#11

Agreement

This agreement is between The Cinergy Retail Sales, LLC (Cinergy), and the hospitals shown on the attached agreement exhibit 1 incorporated by reference into this agreement [REDACTED] effective this

[REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. 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 is the entire agreement between Cinergy and the [REDACTED] it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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. Beginning [REDACTED]

The retail electric generation offer indicated above will be an [REDACTED]

2. Cinergy [REDACTED]

3. If, prior to [REDACTED], [REDACTED] add additional load or accounts in The Cincinnati Gas & Electric Company's

[REDACTED]

4. [REDACTED]

5. The [REDACTED] shall comply with the terms and conditions of the order of the Public Utilities Commission of Ohio in case no. 03-93-EL-ATA including the payment of regulatory transition charges and provider of last resort charges [REDACTED]

6. [REDACTED]

7. [REDACTED] purchasing generation service pursuant to existing tariff load management riders as [REDACTED] may continue to purchase generation service pursuant to such load management riders through [REDACTED]

8. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. [REDACTED]
- [REDACTED]

9. [REDACTED]

[REDACTED]

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

A. [REDACTED]

B. [REDACTED]

C. [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 the [REDACTED]
[REDACTED]

To 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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service 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 Letter 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 [REDACTED]

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OPTION AGREEMENT

CONFIDENTIAL PROPRIETARY
TRADE SECRET

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[REDACTED]
This Option Agreement (the "Agreement") is entered into as of this [REDACTED]
[REDACTED] the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a
Delaware limited liability company, [REDACTED]
[REDACTED]

RECITALS

WHEREAS, [REDACTED] for the purposes of this agreement only refers to
[REDACTED] located within the retail delivery service
territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a
Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of
electrical power at retail;

WHEREAS, [REDACTED] an option to CRS to provide electric service and CRS
desires to provide electric service pursuant to the terms outlined herein;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,
the Parties agree as follows:

ARTICLE I
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply
hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that,
directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
common control with, such person. For this purpose, "control" means the direct or indirect
ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for
business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing
time, unless otherwise agreed to by the Parties in writing.

(C17158.)

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EXHIBIT
#12
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Cinergy Corporate Records
04016260



Document Code

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to [REDACTED] for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy [REDACTED]

"Full Requirements Energy" means, except as provided herein, [REDACTED]

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

[REDACTED]

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS [REDACTED]

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TRADE SECRETARTICLE II
OPTION

- 2.1 [REDACTED] receives its electric service from The Cincinnati Gas & Electric Company ("CG&E"). [REDACTED] take electric service from CG&E in accordance with applicable CG&E tariff requirements. [REDACTED]
- 2.2 [REDACTED]
- 2.3 [REDACTED]
- 2.4 [REDACTED]
- 2.5 [REDACTED]

ARTICLE III
CRES POWER CONTRACT TERMS

- 3.1 In the event [REDACTED] shall include, among others, the following terms:
- a. Energy Quantity and Type. [REDACTED]
 - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

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- [REDACTED]
- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. [REDACTED]
- e. Term. The term of the power sale agreement shall be through [REDACTED]

ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall [REDACTED] unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V BILLING

- 5.1 Payment. [REDACTED]

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TRADE SECRETARTICLE VI
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
 - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
 - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
 - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
 - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [REDACTED]
- 6.3 Other Termination Events. [REDACTED]

prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

**ARTICLE VII
LIMITATIONS; DUTY TO MITIGATE**

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND [REDACTED], DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

[REDACTED] INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN [REDACTED] AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

7.2 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES,

BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the

arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms,

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conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without [REDACTED] such assignment is to any other direct or indirect subsidiary of Cimergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable [REDACTED] CRS' consent provided such assignment is to any other direct or indirect subsidiary [REDACTED] and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than [REDACTED]. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, leaders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supercedes and replaces in its entirety the agreement between CRS and [REDACTED]. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy [REDACTED] pursuant to the agreement dated [REDACTED] to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

By: [REDACTED]

By: [REDACTED]

(C17158-1)

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Title: _____

Date: _____

Date: _____

As to clause 9.7:

CINERGY CORP

By: _____

Title: _____

Date: _____

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Exhibit A:

Customer Group:

[REDACTED]

01/24/2005

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EXHIBIT B:

Customer Group: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Exhibit C:

Customer Group: [REDACTED]
[REDACTED]
[REDACTED]

This agreement pertains to the [REDACTED]
[REDACTED]

Agreement

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the [REDACTED]

[REDACTED] for the benefit of [REDACTED], and [REDACTED]

[REDACTED] (Customers), effective this [REDACTED] As to

[REDACTED] this agreement is effective only to [REDACTED]

[REDACTED] It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and [REDACTED] (Parties); it 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. For purposes of this paragraph, the term Parties includes the Customers.

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

- i. Beginning [REDACTED] or at such later time as may be specified herein for any accounts of each Customer that may be presently receiving competitive retail generation service from a supplier not affiliated with Cinergy, [REDACTED]

[REDACTED] Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall [REDACTED]

[REDACTED] Compliant contracts to implement the above described service relationship between Customers and CRS shall be executed as soon as reasonably possible and shall terminate no later than [REDACTED] Cinergy [REDACTED]

[REDACTED] Commission in case no. 99-1658-EL-ETP and Cinergy shall [REDACTED]

[REDACTED] The Cincinnati Gas & Electric Company; [REDACTED]

¹ The currently effective Little G rate shall mean the Little G rate in effect as of the date this agreement is signed.

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approved by the Commission. Customers, or their appointed representative, retain all rights to participate in Commission and Federal Energy Regulatory Commission proceedings that may affect the rates, terms, or conditions of distribution and transmission service.

5. Nothing in this agreement shall affect the terms and conditions agreed to [REDACTED] and Cinergy, pursuant to the agreement of [REDACTED]

6. Cinergy will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service provider to supply competitive retail electric service to Customers as required by paragraph one (1) of this agreement.

7. The [REDACTED] filed by The Cincinnati Gas & Electric Company [REDACTED] No. 03-93-EL-ATA subject to such reservation as [REDACTED]

This agreement terminates after [REDACTED] or as follows:

- A. [REDACTED]
- B. [REDACTED]
- C. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [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:

[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 the Customers shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of the affected Customers as well as

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Cinergy provided, as to the Customers, they continue to display substantially similar load and usage characteristics as those that presently exist. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent shall not be unreasonably withheld.

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 the Customers

[REDACTED]

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Agreement

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the [REDACTED]

[REDACTED] (Customers), effective [REDACTED] This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] between [REDACTED] and Cinergy. As to [REDACTED]

[REDACTED] It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and [REDACTED] (Parties); it 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

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the purpose of effectuating the agreement. For purposes of this paragraph, the term Parties includes the Customers.

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

1. Beginning of

Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy affiliated competitive retail electric service

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[REDACTED]

through
the

(C169103)

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2. If, [REDACTED] the Customers add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds the Customer's combined (all accounts) maximum demand as of [REDACTED]

3. Customers purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall be deemed to have provided, through this agreement, such written notice as may be required prior to the end of such purchase contract [REDACTED]

4. [REDACTED]

5. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio. Customers shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, [REDACTED]

Customers, or their appointed representative, retain all rights to participate in Commission and Federal Energy Regulatory Commission proceedings that may affect the rates, terms, or conditions of distribution and transmission service.

6. [REDACTED]

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7. Cinergy

[REDACTED]

8.

[REDACTED]

This agreement terminates after [REDACTED] or as follows:

A.

[REDACTED]

B.

[REDACTED]

C.

[REDACTED]

[REDACTED]

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[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 by ACH or wire transfer to the account designated by the payee from time to time.

Cinergy and the Customers shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

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This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of the affected Customers as well as Cinergy provided, as long as the Customers, they continue to display substantially similar form and message characteristics as those that presently exist. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent shall not be unreasonably withheld.

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

Entered into on the 14th day of November:

On behalf of Cinergy

On Behalf of the Customers

Agreement

This agreement is between Cinergy Corp. (Cinergy), and the [REDACTED]

[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 is the entire agreement between Cinergy [REDACTED] it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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. [REDACTED]

[REDACTED] its current tariff and pursuant to the Electric Reliability and Rate Stabilization

DEPOSITION
EXHIBIT
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FILE

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Plan approved by the Public Utilities Commission of Ohio
(Commission).

2. Cinergy [REDACTED]
[REDACTED]

2. If [REDACTED] adds additional
The Cincinnati Gas & Electric Company's [REDACTED]
[REDACTED]
[REDACTED]

4. This agreement has no application to The Cincinnati Gas &
Electric Company's transmission and distribution rates as
approved by the Commission.

5. [REDACTED]
[REDACTED]

This agreement terminates after [REDACTED] or upon the
occurrence of any of the following:

A. [REDACTED]
[REDACTED]
[REDACTED]

B. [REDACTED]
[REDACTED]

C. [REDACTED]
[REDACTED]
[REDACTED]

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D. [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 [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 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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with

the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

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

On behalf of Cinergy

[REDACTED]

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Agreement

This agreement is between Cinergy Corp. (Cinergy), and the [REDACTED] [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. This Agreement replaces and supersedes the terms and conditions of the Agreement [REDACTED] between [REDACTED] and Cinergy. The following is the entire agreement between Cinergy and [REDACTED] it 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 both the terms and existence of the agreement are 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 any issue related to the confidentiality of this agreement comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall use best efforts to immediately notify the other party. The parties shall defend the confidentiality of this agreement. The parties shall not circulate the agreement, or disclose 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:

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EXHIBIT
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1. [REDACTED] through [REDACTED] requirements generation service pursuant to its current tariff and pursuant to the Electric Reliability and Rate Stabilization Plan approved by the Public Utilities Commission of Ohio [Commission].
2. Cinergy shall [REDACTED]
3. If, prior to [REDACTED] adds [REDACTED] in The Cincinnati Gas & Electric Company's certified territory [REDACTED]
4. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.
5. [REDACTED]

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6. [REDACTED] The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.

This agreement terminates after [REDACTED] or upon the occurrence of any of the following:

- A. [REDACTED]
- B. [REDACTED]
- C. [REDACTED]
- D. [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:

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To [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

To Cinergy:

Cinergy

[REDACTED]
[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 including the government regarding the enforcement or breach of this agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this agreement.

This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of [REDACTED] as well as Cinergy provided, as to [REDACTED] that it continues to display substantially similar load and usage characteristics as those that presently exist. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent

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Agreement

WHEREAS, on [REDACTED] [REDACTED]
Agreement 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] in the service territory of The
Cincinnati Gas & Electric Company [REDACTED]

WHEREAS, [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] for
a transaction under the Cinergy Operating Companies market-based
power sales tariff was entered into [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] 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] 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] non-Cinergy affiliated competitive retail electric service provider, under both the [REDACTED] and [REDACTED]. During [REDACTED] [REDACTED] shall pay [REDACTED]

[REDACTED] approved by the Public Utilities Commission of Ohio's in Case No. 03-93-EL-ATA and Cinergy or [REDACTED]

[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]

[REDACTED] It is anticipated that [REDACTED] continue to be [REDACTED]

[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]

[REDACTED] shall pay to The Cincinnati Gas & Electric Company the [REDACTED]

[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] 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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5. If, prior to [REDACTED] adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which [REDACTED]
[REDACTED]
6. [REDACTED] pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Public Utilities Commission of Ohio.
7. Cinergy or any affiliate thereof will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service provider to offer competitive retail electric service [REDACTED] contemplated by this Agreement.
8. [REDACTED] Stipulation and Recommendation by The Cincinnati Gas & Electric Company and [REDACTED] in case no. 03-93-EL-ATA.
9. For the [REDACTED] this Agreement constitutes [REDACTED] contract with a creditworthy CRES to provide firm generation service for its full capacity, energy and transmission requirements through [REDACTED] and satisfies the requirements of the Stipulation and Recommendation in Case No. 03-93-EL-ATA that the [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 an order in Case No. 03-93-EL-ATA is issued which is acceptable to CG&E but which renders invalid or ineffective any provision of this Agreement [REDACTED]

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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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To Cinergy:

Cinergy

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 [REDACTED] On Behalf of [REDACTED]

On Behalf of [REDACTED]

[REDACTED]

Agreement

WHEREAS, on [REDACTED]
Agreement 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 [REDACTED]
[REDACTED] located in the service territory of The
Cincinnati Gas & Electric Company [REDACTED]

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

WHEREAS, [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]
[REDACTED]
[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] Cinergy (Parties). It is the intent of the Parties to this Agreement to bind Cinergy and [REDACTED] 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] [REDACTED] shall continue to purchase competitive retail electric service from [REDACTED]

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

[REDACTED] It is anticipated that [REDACTED] will [REDACTED]

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

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 [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. *the applicable transmission and distribution rates of CG&E as approved by the Commission, and/or if applicable,* [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]

This Agreement terminates after [REDACTED] or as follows:

A. [REDACTED]

B. [REDACTED]

C. [REDACTED]

[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]
[REDACTED]

To Cinergy:

Cinergy

[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] 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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with the laws of the State of Ohio.

Entered into on this [REDACTED]

On behalf of Cinergy

On Behalf of [REDACTED]

[REDACTED]

Agreement

WHEREAS, [REDACTED]

Agreement 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 [REDACTED]

[REDACTED] located in the service territory of The Cincinnati Gas & Electric Company [REDACTED]

WHEREAS, [REDACTED] Performance Assurance

Agreement was entered into between [REDACTED] and Cinergy Services, Inc. whereby certain performance assurances were provided [REDACTED]

WHEREAS, [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 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]

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

This Agreement replaces and supersedes the terms and conditions of the Agreement dated [REDACTED] (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]
[REDACTED] shall continue to purchase competitive retail electric service from [REDACTED]

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

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[REDACTED]

3. Effective

[REDACTED]

4.

[REDACTED]

5.

[REDACTED]

[REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [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. [REDACTED]

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[REDACTED]

A. [REDACTED]

B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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
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To Cinergy:

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 [REDACTED]

500801

AMENDMENT TO
CITY OF CINCINNATI GREATER CINCINNATI WATER WORKS
and
THE CINCINNATI GAS & ELECTRIC COMPANY
ELECTRICITY AGREEMENT

The Parties to that certain Electricity Agreement effective February 5, 2004 (the "Agreement") by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio 45202 ("CG&E"), and the City of Cincinnati, a municipality within the county of Hamilton and the State of Ohio, with offices located at 801 Plum Street, Cincinnati, Ohio 45202 (the "City") on behalf of the Greater Cincinnati Water Works, a department of the City located at 4747 Spring Grove Avenue Cincinnati, Ohio 45232 ("GCWW"), do hereby amend the Agreement by executing this Amendment to the City of Cincinnati Greater Cincinnati Water Works and The Cincinnati Gas & Electric Company Electricity Agreement (this "Amendment") as follows:

Exhibit I to the Agreement is hereby deleted and amended in its entirety to provide as set forth in the amended Exhibit I appended to this Amendment.

All other provisions of the Agreement shall remain in full force and effect, except that the revised Exhibit I attached to this Amendment shall replace the prior Exhibit I in its entirety.

IN WITNESS WHEREOF, the Parties have caused this Amendment to the Agreement to be executed by their authorized officers.

THE CITY OF CINCINNATI
On behalf of
GREATER CINCINNATI WATER WORKS

By: *Valerie A. Legmie*
Name: Valerie A. Legmie
Title: City Manager
Date: July 1, 2004

THE CINCINNATI GAS & ELECTRIC COMPANY

By: *Gregory C. Ficke*
Name: Gregory C. Ficke
Title: President, CG&E
Date: June 14, 2004

500801

Attachment to
Amendment to the Electricity Agreement

EXHIBIT 1

AGGREGATE GENERATION RATE DEFINITION AND FORMULA

Definition: For all purposes of the Agreement the term "aggregate generation rate" shall mean the avoidable generation charge available to shopping customers, as specified in CG&E tariffs, as such tariffs may be amended and approved from time to time by the PUCO.

Formula: The most recent consecutive twelve month period cost of generation from CG&E will be determined as follows:

- (1) The most recent twelve months of billed generation charges (including Rider RGR as applicable) for all accounts associated with the applicable customer (i.e., all City of Cincinnati accounts, MSD accounts, or GCWW accounts) will be summed individually for each customer.
- (2) The most recent twelve months of billed kWh usage for all accounts associated with the applicable customer will be summed individually for each customer.
- (3) The total MWh consumption is calculated as the total kWh usage divided by 1,000.
- (4) The Aggregate Applicable Generation Rate per MWh for each customer will be calculated by dividing the total of all billed generation charges for the applicable customer (determined in (1) above) by the total MWh consumption for the applicable customer (determined in (3) above).

Notes:

- The City of Cincinnati, the Metropolitan Sewer District (MSD), and the Greater Cincinnati Water Works (GCWW) are currently served under the following CG&E electric retail rates: Secondary Distribution Voltage (DS), Residential Service (RS), Optional Rate for Electric Space Heating (EH), Street Lighting (SL), Secondary Distribution Service - Small (DM), Primary Distribution Voltage (DP), and Transmission Voltage (TS).
- The generation charges contained in the tariff sheets listed above may contain stepped rates, demand charges, and summer-winter differentials. Therefore, the average generation "rate" for a given account will likely vary by month, usage profile (i.e., load factor), and rate sheet.
- Billed kWh usage may differ from metered kWh usage because of transformer loss adjustments specified in the applicable tariff sheet. Billed KWh usage will be used in the above calculation.
- Rider RGR (5% discount on generation rates applicable to residential customers served under Rate RS, ORH, and TD) credits will be included in item (1) totals to the extent that they appear on an account's bills.

Please refer to Attachment 1, appended to the original Exhibit 1 effective February 5, 2004, as the example.

500801

AMENDMENT TO
CITY OF CINCINNATI
and
THE CINCINNATI GAS & ELECTRIC COMPANY
ELECTRICITY AGREEMENT
for
CITY FACILITIES

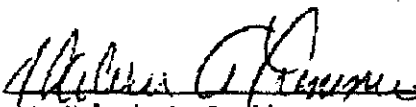
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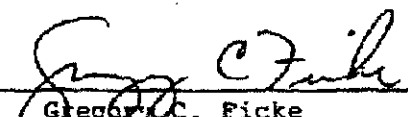
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IN WITNESS WHEREOF, the Parties have caused this Amendment to the Agreement to be executed by their authorized officers.

THE CITY OF CINCINNATI

By: 
Name: Valeria A. Lemmie
Title: City Manager

THE CINCINNATI GAS & ELECTRIC COMPANY

By: 
Name: Gregory C. Ficke
Title: President, CG&E

Attachment to
Amendment to the Electricity Agreement

EXHIBIT 1

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Definition: For all purposes of the Agreement the term "aggregate generation rate" shall mean the avoidable generation charge available to shopping customers, as specified in CG&E tariffs, as such tariffs may be amended and approved from time to time by the PUCO.

Formula: The most recent consecutive twelve month period cost of generation from CG&E will be determined as follows:

- (1) The most recent twelve months of billed generation charges (including Rider RGR as applicable) for all accounts associated with the applicable customer (i.e., all City of Cincinnati accounts, MSD accounts, or GCWW accounts) will be summed individually for each customer.
- (2) The most recent twelve months of billed kWh usage for all accounts associated with the applicable customer will be summed individually for each customer.
- (3) The total MWh consumption is calculated as the total kWh usage divided by 1,000.
- (4) The Aggregate Applicable Generation Rate per MWh for each customer will be calculated by dividing the total of all billed generation charges for the applicable customer (determined in (1) above) by the total MWh consumption for the applicable customer (determined in (3) above).

Notes:

- The City of Cincinnati, the Metropolitan Sewer District (MSD), and the Greater Cincinnati Water Works (GCWW) are currently served under the following CG&E electric retail rates: Secondary Distribution Voltage (DS), Residential Service (RS), Optional Rate for Electric Space Heating (EH), Street Lighting (SL), Secondary Distribution Service - Small (DM), Primary Distribution Voltage (DP), and Transmission Voltage (TS).
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Please refer to Attachment 1, appended to the original Exhibit 1 effective February 5, 2004, as the example.



03005641

**CITY OF CINCINNATI GREATER CINCINNATI WATER WORKS
and
THE CINCINNATI GAS & ELECTRIC COMPANY
ELECTRICITY AGREEMENT**

This Electricity Agreement ("Agreement") is entered into this 5th day of February, 2004 (the "Effective Date"), by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio 45202 ("CG&E"), and the City of Cincinnati, a municipality within the county of Hamilton and the State of Ohio, with offices located at 801 Plum Street, Cincinnati, Ohio 45202 (the "City") on behalf of the Greater Cincinnati Water Works, a department of the City located at 4747 Spring Grove Avenue Cincinnati, Ohio 45232 ("GCWW"). CG&E and the City may each be referred to individually as a "Party" or collectively as "Parties."

WHEREAS, CG&E is a public utility company headquartered in Cincinnati, Ohio; and

WHEREAS, CG&E desires to provide electricity to the GCWW; and

WHEREAS the GCWW desires to continue to purchase electricity from CG&E and to receive favorable prices when it seeks to purchase certain Related Energy Services (referred to in Paragraph 2 herein),

NOW, THEREFORE, in consideration of the premises in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Electricity Service to GCWW. GCWW will continue to purchase CG&E's tariffed generation and electric distribution services for which it qualifies through December 31, 2010, including, after the Market Development Period, any of the generation and electric distribution services for which it qualifies authorized by Ohio Revised Code Section 4928.14 and approved by the Public Utilities Commission of Ohio ("PUCO") or any other statute, rule, regulation or order of the PUCO governing tariffed services.

1.1 The Parties further agree that if during the period ending December 31, 2010, the "aggregate generation rate" based on the applicable CG&E tariff rates for GCWW exceeds \$42.31 per MWH in any consecutive twelve month period, or if pursuant to the other two Electricity Agreements between the Metropolitan Sewer District of Greater Cincinnati and the City (for City facilities) on the one hand, and CG&E, on the other hand, the "aggregate generation rate" set forth in Paragraph 1.1 of either of those two Electricity Agreements is exceeded, the City on behalf of GCWW, has the option to terminate this Agreement, the two Electricity Agreements and the "Convention Center Naming Rights Agreement" and to make payment to Cinergy Corp., CG&E's parent company, according to the schedule listed in Paragraph 21.1 thereof entered into with the City. The formula for the "aggregate generation rate" is attached as Exhibit 1. This Agreement shall also be terminated if any of the Convention Center Naming Rights Agreement or the two Electricity Agreements is terminated in accordance with any of its terms.

1.2 CG&E agrees to keep the City apprised on a semi-annual basis as to the electricity rates, programs, service options and most cost effective tariff rate available to the

GCWW and to identify available cost savings alternatives to the GCWW. CG&E representatives will meet from time to time with the City representatives to discuss and attempt to resolve any GCWW reliability and service issues.

2. Related Energy Services. As further consideration for this Agreement, if at any time through December 31, 2010, GCWW determines that it requires High Voltage Infrastructure Maintenance Services, CG&E or its affiliate may offer GCWW High Voltage Infrastructure Maintenance Service at a price equal to its actual, usual and customary costs (that the City and/or GCWW, at the option of either or both, may audit) plus 10%. CG&E's normal mark-up for High Voltage Infrastructure Maintenance Service ranges between 15% and 20%.

2.1 For the purposes of this Agreement "High Voltage" is defined as primary distribution voltage or above. The following infrastructure maintenance services would be available to be provided to high voltage applications:

- Major troubleshooting and equipment repairs
- Substation power and auxiliary equipment services and repairs:
- Power transformers
- Voltage regulators and load tap changers
- Circuit breakers and reclosers
- Circuit switches, air break switches and disconnect switches
- Instrument and metering transformers
- Failure analysis
- Analytical testing
- 24-hour emergency equipment installation

2.2 In the event that the City and/or GCWW elects to take the High Voltage Infrastructure Maintenance Service, the City and/or GCWW and CG&E will jointly announce cost savings and other benefits associated with the High Voltage Infrastructure Maintenance Service to the media, as appropriate.

2.3 Unless otherwise prohibited by law, in exchange for CG&E's agreement to offer High Voltage Infrastructure Maintenance Service pursuant to Paragraph 2, the City, on behalf of GCWW, agrees that, except as provided in Paragraph 1.1 above, it will not switch generation service to another supplier at any time prior to December 31, 2010.

3. Back-up Power. Currently GCWW owns and maintains backup power sources that are not connected to CG&E's system. If the City or GCWW desires to install, own and maintain existing or additional back-up power sources to serve GCWW, nothing in this Agreement shall preclude GCWW from using its back-up power during power outages or emergencies, or using the back-up power to reduce peak usage or for other appropriate purposes.

4. Term. The term of this Agreement shall begin on the earliest date the Convention Center Naming Rights Agreement with the City and Cinergy Corp. becomes effective and shall end on December 31, 2010 (the "Term").

5. CG&E Statements. CG&E states that (i) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform under this Agreement; (ii) it is duly organized validly existing and in good standing

under the laws of the jurisdiction of its formation; (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation or order; (iv) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (v) there are no bankruptcy, insolvency, receivership or reorganization or other arrangement proceedings pending or being contemplated, or to its knowledge threatened against it (vi) CG&E will not file a petition or otherwise commence or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or permit any such petition filed or commenced against it; (vii) CG&E will not otherwise become bankrupt or insolvent; and (viii) CG&E will not be determined, after final adjudication, by a Federal or state court or regulatory agency to have engaged in criminal activity (including, without limitation, the violation of any securities law, rule or regulation), misconduct and/or fraud in conducting its business. CG&E agrees that each of the foregoing statements shall survive the execution of this Agreement and continue in effect as a material obligation of CG&E during the entire Term of this Agreement.

6. The City Statements. The City states that (i) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform under this Agreement; (ii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary actions; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable or sovereign or other immunity defenses; and (iv) there are no bankruptcy, insolvency, receivership or reorganization or other arrangement proceedings pending or being contemplated, or to its knowledge threatened against it. The City agrees that each of the foregoing statements shall survive the execution of this Agreement and continue in effect as a material obligation of the City during the entire Term of this Agreement.

7. Breach by City. If prior to the end of 2010, the City chooses to become a municipal aggregator or a municipal utility and if CG&E or a CG&E affiliate is not selected as the provider of electric services, then at the option of CG&E or its parent, Cinergy Corp., this Agreement and the two Electricity Agreements between the City on behalf of the Metropolitan Sewer District of Greater Cincinnati and the City (for City facilities) on the one hand, and CG&E, on the other hand, and the "Convention Center Naming Rights Agreement" entered into with the City on the same date as this Agreement, shall terminate. If at any time during the Term, the City breaches any of its material obligations under this Agreement, and such breach is not cured within thirty (30) days after receiving written notice of such breach from CG&E, then CG&E has the right to terminate this Agreement, the two Electricity Agreements and the Convention Center Naming Rights Agreement.

8. Breach by CG&E. If at any time during the Term, CG&E breaches any of its material obligations under this Agreement, and such breach is not cured within thirty (30) days after receiving notice of such breach from the City, then the City has the right to terminate this Agreement, the two Electricity Agreements and the Convention Center Naming Rights Agreement.

9. Assignment. This Agreement shall not be assigned by either Party without the prior written consent in each instance of the other Party, which consent shall not be unreasonably withheld, delayed or withdrawn, except as hereinafter specifically provided. Notwithstanding the foregoing, it is understood and agreed that CG&E may assign this Agreement at any time