

LARGE FILING SEPERATOR SHEET

CASE NUMBER: 03-93-EL-ATA
03-2079-EL-AAM
03-2080-EL-ATA
03-2081-EL-AAM
05-724-EL-UNC
05-725-EL-UNC

FILE DATE: 11-10-08

SECTION: 50817

NUMBER OF PAGES: 200

DESCRIPTION OF DOCUMENT: Conf. Release

00796

Schedule A to
Energy Service Agreement
Expiration Date:

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

Maximum MW Demand The initial MW Demand for this agreement shall be [REDACTED] escalated [REDACTED]

Price Capacity and Energy is to be billed [REDACTED] for the term of the agreement.

Term The term of this Agreement is [REDACTED] Consistent with [REDACTED] supply agreement [REDACTED] may extend this agreement at the above stated price for either [REDACTED] additional billing cycles.

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

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

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

- This Schedule A is subject to and conditioned upon the terms of the [REDACTED] Energy Service Agreement ("Agreement") containing the [REDACTED] Reference Number listed below and is not valid beyond 2:00 p.m. EPT on the Expiration Date.
- Any alteration, addition, or modification of the preprinted terms upon this Schedule A shall be void and without any effect.
- [REDACTED] will provide [REDACTED] Contract Number upon receipt of the following by 2:00 p.m. EPT on the Expiration Date via facsimile to [REDACTED] Attention: Product Management): (1) the completed Agreement containing the [REDACTED] Reference Number and executed by [REDACTED] signature on this Schedule A.

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

By: [REDACTED]

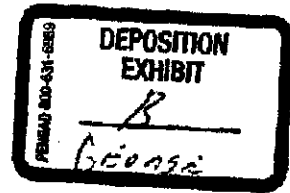
By: [REDACTED]

Date: [REDACTED]

[REDACTED] Reference Number:

[REDACTED] Contract Number:

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Agreement

WHEREAS, on December 14, 2000 a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between New Energy, Inc. and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of certain of the grocery stores, offices and related facilities of The Kroger Co. located in the service territory of The Cincinnati Gas & Electric Company (Grocery Store Sale);

WHEREAS, on December 14, 2000, a Performance Assurance Agreement was entered into between The Kroger Co., New Energy Inc. and Cinergy Services, Inc. whereby certain performance assurances were provided by The Kroger Co. and New Energy to Cinergy Services, Inc.;

WHEREAS, on July 31, 2001, a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between AES New Energy and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of the Kroger Co. State Street Plant (State Street Sale);

WHEREAS, the Performance Assurance Agreement was amended effective July 31, 2001;

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 The Kroger Co. provided for firm power, and to permit Kroger to be fairly charged for reserve margin and other costs associated with the provision of competitive retail electric service as contained in the proposed Electric Reliability and Rate Stabilization Plan, and for other consideration, this new Agreement has been entered into.

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and The Kroger, Co. ("Kroger"), effective this 21st day of July, 2004. It is the intent of the Parties to this Agreement to bind Cinergy and Kroger 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 January 1, 2005, and ending December 31, 2005, Kroger shall continue to purchase competitive retail electric service from New Energy, its non-Cinergy affiliated competitive retail electric service provider, under both the Grocery Store Sale and the State Street Sale. During 2005, Kroger shall pay monthly the annually adjusted portion of the provider of last resort charge approved by the Public Utilities Commission of Ohio's in Case No. 03-93-EL-ATA and Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the amount actually paid. Kroger shall comply with all other requirements of the Public Utilities Commission of Ohio's order in Case No. 03-93-EL-ATA. Cinergy or any affiliate thereof may set off revenues collected for the annually adjusted component of the Provider of Last Resort Charges paid, against any outstanding balance owed to any Cinergy company POLR
2. Beginning January 1, 2006, through December 31, 2007, Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to Kroger's retail electric service provider by exercising Extension 1 and Extension 2 under the Grocery Store Sale. It is anticipated that New Energy will continue to be Kroger's retail electric service provider during 2006-2007; however, if New Energy elects not to provide such service then Kroger may choose a different retail electric service 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 Extension 1 and Extension 2. If a Cinergy affiliate is chosen as Kroger's CRES, then the Cinergy CRES will provide generation at retail at the prices set forth in Extension 1 and Extension 2, plus transmission costs. Kroger shall pay to The Cincinnati Gas & Electric Company the annually adjusted component of Provider of Last Resort Charge, (but not the Rate Stabilization Charge component of the POLR), and the Regulatory Transition Charge 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 reimburse Kroger quarterly for half of the annually adjusted component of the Provider of Last Resort Charge actually paid to The Cincinnati Gas & Electric Company. Cinergy or any affiliate thereof may set off revenues collected for the annually adjusted component of the Provider of Last Resort Charges paid, against any outstanding balance owed to any Cinergy company. With respect to the State Street Plant, the following is agreed upon for the period January 1, 2006 through December 31, 2007: No later than 60 days after an order is issued in Case No. 03-93-EL-ATA or December 31, 2004 (whichever comes first) the State Street Plant must elect: a) to take service under the same terms and conditions as the grocery stores described above; or b) to take service under the terms of the Rate Stabilization Plan approved by the Commission in Case No. 03-93-EL-ATA, except that one half of the annually adjusted component of the Provider of Last Resort Charge will be reimbursed monthly.

3. Effective January 1, 2008, Kroger may purchase for both its grocery stores and State Street Plant competitive retail electric service from any competitive retail electric service provider, including Cinergy, at the market rate quoted by such providers. Kroger shall provide Cinergy a right of first refusal to provide competitive retail electric service at the market rate offered by the competitive retail electric service provider selected by Kroger who has provided Kroger with a bona fide and verifiable service offer. Kroger shall pay to The Cincinnati Gas & Electric Company the annually adjusted component of the Provider of Last Resort Charge (but not the Rate Stabilization Charge component of the POLR), and the Regulatory Transition Charge approved by the Public Utilities Commission of Ohio in Case No. 99-1658-EL-ETP. For calendar year 2008, Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the annually adjusted component of the Provider of Last Resort Charge actually paid to The Cincinnati Gas & Electric Company. Cinergy or any affiliate thereof may set off revenues collected for the annually adjusted component of the Provider of Last Resort Charges paid, against any outstanding balance owed to any Cinergy company.
4. The Cinergy Operating Companies shall exercise their Extension 1 and Extension 2 options under the December 14, 2000 Confirmation Letter Agreement to sell generation supply to New Energy Inc. in 2006 and 2007 for resale to Kroger.

5. If, prior to December 31, 2008, Kroger adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds Kroger's combined (all accounts) maximum demand as of January 1, 2005, such new load or accounts may receive the options and benefits accruing from participation in this Agreement to the extent that such new load or accounts cumulatively represents new peak load of ~~three (3)~~ MW or less; any accounts representing new load beyond the foregoing limit are not included under this Agreement.
6. Kroger shall 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 to Kroger as contemplated by this Agreement.
8. Kroger shall support the May 19, 2004 Stipulation and Recommendation by The Cincinnati Gas & Electric Company and Kroger in case no. 03-93-EL-ATA.
9. For the grocery stores and related facilities, this Agreement constitutes Kroger's contract with a creditworthy CRES to provide firm generation service for its full capacity, energy and transmission requirements through December 31, 2008 and satisfies the requirements of the Stipulation and Recommendation in Case No. 03-93-EL-ATA that the first 25% of eligible load by consumer rate class to switch to a CRES shall not pay the Rate Stabilization Charge. For the State Street Plant, this Agreement also constitutes Kroger's contract with a creditworthy CRES to provide firm generation service for its full capacity, energy and transmission requirements through December 31, 2008 thus making the Rate Stabilization charge by-passable; provided that the State Street Plant elects to take service under the same terms and conditions as the grocery stores as set forth in Paragraph 2.
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 to the economic detriment of

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Kroger, then Cinergy will provide the same economic value to Kroger through some other mutually acceptable process.

This Agreement terminates after December 31, 2008, or as follows:

- A. The Public Utilities Commission of Ohio, in Case No. 03-93-EL-ATA, and ongoing fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in The Cincinnati Gas & Electric Company service territory served by any Cinergy company.
- B. The Public Utilities Commission of Ohio, in Case No. 03-93-EL-ATA or a related case necessary to carry out the terms and conditions of this Agreement, issues an order unacceptable to Cinergy.
- C. A court or administrative agency of competent jurisdiction issues and order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement.

Before termination of the Agreement as provided by paragraph A and B above, the Parties agree to use best efforts to fulfill the intent of this Agreement, by negotiating amendments to the Agreement that provide the Parties with substantially the same economic benefit for substantially the same consideration as were contained in the original Agreement.

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:

The Kroger Co.
Denis George
1014 Vine Street
Cincinnati, Ohio 45202-1100

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To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 Kroger 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 7th day of July:

On behalf of Cinergy

On Behalf of The Kroger Co.



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



Michael L. Kurtz, Counsel
Boehm, Kurtz, & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202

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Agreement

WHEREAS, on December 14, 2000, a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between New Energy, Inc. and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of certain of the grocery stores, offices and related facilities of The Kroger Co. located in the service territory of The Cincinnati Gas & Electric Company (Grocery Store Sale);

WHEREAS, on December 14, 2000, a Performance Assurance Agreement was entered into between The Kroger Co., New Energy Inc. and Cinergy Services, Inc. whereby certain performance assurances were provided by The Kroger Co. and New Energy to Cinergy Services, Inc.;

WHEREAS, on July 31, 2001, a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between AES New Energy and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of the Kroger Co. State Street Plant (State Street Sale);

WHEREAS, the Performance Assurance Agreement was amended effective July 31, 2001;

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 The Kroger Co. provided for firm power, and to permit Kroger to be fairly charged for reserve margin and other costs associated with the provision of competitive retail electric service as contained in the proposed Electric Reliability and Rate Stabilization Plan, and for other consideration, this new Agreement has been entered into.

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and The Kroger, Co. ("Kroger"), effective this 22nd day of November, 2004. This Agreement replaces and supersedes the terms and conditions of the Agreement dated July 7, 2004, between Kroger and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind Cinergy and Kroger 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 January 1, 2005, and ending December 31, 2005, Kroger shall continue to purchase competitive retail electric service from New Energy, its non-Cinergy affiliated competitive retail electric service provider, under both the Grocery Store Sale and the State Street Sale. During 2005, Kroger shall pay monthly to CG&E all applicable components of the Provider Of Last Resort (POLR) charge and to Cinergy half of the emission allowance component of the fuel component of the price to compare approved by the PUCO in Case No. 03-93-EL-ATA; and Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the amount actually paid of the POLR charge, except the Rate Stabilization Charge (RSC) and the Infrastructure Maintenance Fund (IMF) charge which shall be paid in full by Kroger (subject to Paragraph 4). Kroger shall comply with all other requirements of the PUCO's order in Case No. 03-93 EL-ATA. Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges or emission allowance component of the price to compare, against any outstanding balance owed to any Cinergy company
2. Beginning January 1, 2006, through December 31, 2007, Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to Kroger's retail electric service provider by exercising Extension 1 and Extension 2 under the Grocery Store Sale, including the wholesale price of generation contained therein. It is anticipated that New Energy will continue to be Kroger's retail electric service provider during 2006-2007; however, if New Energy elects not to provide such

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service then Kroger may choose a different retail electric service 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 Extension 1 and Extension 2. Kroger shall pay to CG&E all applicable components of the POLR charge, the Regulatory Transition Charge (RTC) approved by the PUCO in Case No. 99-1658-EL-ETP, and shall pay to Cinergy or the applicable Cinergy affiliated competitive retail electric service provider half of the emission allowance component of the fuel component of the price to compare. Cinergy or any affiliate shall reimburse Kroger quarterly for half of the amount actually paid of the POLR charge, except the RSC and IMF charge which shall be paid in full by Kroger (subject to Paragraph 4). Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges and emission allowance component of the fuel component of the price to compare, against any outstanding balance owed to any Cinergy company. With respect to the State Street Plant Kroger shall take service under the same terms, conditions and price as the grocery stores described above.

3. Effective January 1, 2008, Kroger may purchase for both its grocery stores and State Street Plant competitive retail electric service from any competitive retail electric service provider, including Cinergy, at the market rate quoted by such providers. Kroger shall provide Cinergy a right of first refusal to provide competitive retail electric service at the market rate offered by the competitive retail electric service provider selected by Kroger who has provided Kroger with a bona fide and verifiable service offer. Kroger shall pay to CG&E all of the applicable POLR charges, and the RTC approved by the PUCO in Case No. 99-1658-EL-ETP, and shall pay to Cinergy or the applicable Cinergy affiliated competitive retail electric service provider half of the emission allowance component of the fuel component of the price to compare. For calendar year 2008, Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the POLR charge actually paid to CG&E, except the RSC and IMF charge which shall be paid in full by Kroger (subject to Paragraph 4). Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges, and one-half of the emission allowance component of the fuel component of the price to compare, against any outstanding balance owed to any Cinergy company.

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4. To the extent that Kroger actually pays the IMF, Cinergy shall reimburse Kroger quarterly for IMF payments in excess of 4% of little g.
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 Cinergy Operating Companies shall exercise their Extension 1 and Extension 2 options under the December 14, 2000 Confirmation Letter Agreement to sell generation supply to New Energy Inc. in 2006 and 2007 for resale to Kroger under the Grocery Store Sale and State Street sale at the wholesale generation price set forth therein.
7. If, prior to December 31, 2008, Kroger adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds Kroger's combined (all accounts) maximum demand as of January 1, 2005, such new load or accounts may receive the options and benefits accruing from participation in this Agreement to the extent that such new load or accounts cumulatively represents new peak load of three (3) MW or less; any accounts representing new load beyond the foregoing limit are not included under this Agreement.
8. This agreement has no application to CG&E's transmission and distribution rates as approved by the PUCO. Kroger shall pay the applicable transmission and distribution rates of CG&E as approved by the Commission, and/or if applicable, shall pay to Cinergy Retail Sales the applicable transmission charges equal to the transmission charges approved by the PUCO for CG&E.
9. Cinergy or any affiliate thereof will comply with all regulatory requirements necessary to create an affiliated Competitive Retail Electric Service (CRES) provider to offer competitive retail electric service to Kroger as contemplated by this Agreement.
10. Kroger shall support an Application for Rehearing filed by CG&E seeking reinstatement without modification of the Stipulation signed by CG&E and Kroger or approval by the Commission without modification of CG&E's Alternative Proposal submitted in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.
11. This Agreement constitutes Kroger's contract with a creditworthy CRES to provide firm generation service for its full

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capacity, energy and transmission requirements from January 1, 2005 through December 31, 2008 and satisfies the requirements of Case No. 03-93-EL-ATA that the first 50% of eligible load by consumer rate class to switch to a CRES shall not pay the Rate Stabilization Charge (RSC) and shall not pay the Annually Adjusted Component (AAC) of the POLR. Therefore, it is not expected that Kroger will pay either the RSC or AAC.

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 invalid or ineffective any provision of this Agreement to the economic detriment of Kroger, then Cinergy will provide the same economic value to Kroger through some other mutually acceptable process.

This Agreement terminates after December 31, 2008, or as follows:

- A. The Public Utilities Commission of Ohio, in Case No. 03-93-EL-ATA, and ongoing fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in The Cincinnati Gas & Electric Company service territory served by any Cinergy company.
- B. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to issue an entry on rehearing acceptable to Cinergy such that it restores without substantial modification the original Stipulation signed by the Parties or adopts without substantial modification CG&E's Alternative Proposal made in its application for rehearing.
- C. A court or administrative agency of competent jurisdiction issues and order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement.

Before termination of the Agreement as provided by paragraph A and B above, the Parties agree to use best efforts to fulfill the intent of this Agreement, by negotiating amendments to the Agreement that provide

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the Parties with substantially the same economic benefit for substantially the same consideration as were contained in the original Agreement.

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:

The Kroger Co.
Denis George
1014 Vine Street
Cincinnati, Ohio 45202-1100

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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

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

This Agreement shall be governed by and construed in accordance

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with the laws of the State of Ohio.

Entered into on this 22nd day of November:

On behalf of Cinergy

On Behalf of Kroger



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



Michael Kurtz, Counsel
Boehm, Kurtz, & Lowry
36 East Seventh Street
Suite 2110
Cincinnati, Ohio 45202

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Agreement

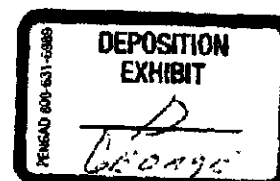
WHEREAS, on December 14, 2000, a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between New Energy, Inc. and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of certain of the grocery stores, offices and related facilities of The Kroger Co. located in the service territory of The Cincinnati Gas & Electric Company (Grocery Store Sale);

WHEREAS, on December 14, 2000, a Performance Assurance Agreement was entered into between The Kroger Co., New Energy Inc. and Cinergy Services, Inc. whereby certain performance assurances were provided by The Kroger Co. and New Energy to Cinergy Services, Inc.;

WHEREAS, on July 31, 2001, a Confirmation Letter Agreement for a transaction under the Cinergy Operating Companies market-based power sales tariff was entered into between AES New Energy and the Cinergy Operating Companies to supply firm energy to fulfill the retail power requirements of the Kroger Co. State Street Plant (State Street Sale);

WHEREAS, the Performance Assurance Agreement was amended effective July 31, 2001;

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



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

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

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

This Agreement is between Cinergy Retail Sales, LLC ("Cinergy"), and The Kroger, Co. ("Kroger"), effective this 9th day of November, 2005. This Agreement replaces and supersedes the terms and conditions of the Agreement dated November 22, 2004, between Kroger and Cinergy (Parties). It is the intent of the Parties to this Agreement to bind Cinergy and Kroger to the terms and conditions set forth herein. The following Agreement may not be amended except by the written Agreement of the Parties.

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

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

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

1. Effective January 1, 2005, and ending December 31, 2005, Kroger shall continue to purchase competitive retail electric service from New Energy, its non-Cinergy affiliated competitive retail electric service provider, under both the Grocery Store Sale and the State Street Sale. During 2005, Kroger shall pay monthly to CG&E all applicable components of the provider of last resort (POLR) charge and to Cinergy half of the emission allowance component of the fuel component of the price to compare approved by the PUCO in Case No. 03-93-EL-ATA and Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the amount actually paid of the POLR Charge except the rate stabilization charge (RSC) and the infrastructure maintenance fund (IMF) charge which shall be paid in full by Kroger. Kroger shall comply with all other requirements of the PUCO's order in Case No. 03-93-EL-ATA. Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges or emission allowance component of the price to compare, against any outstanding balance owed to any Cinergy company
2. Beginning January 1, 2006, through December 31, 2007, Cinergy or any affiliate thereof shall continue to be the wholesale power supplier to Kroger's retail electric service provider by exercising Extension 1 and Extension 2 under the Grocery Store Sale, including the wholesale price of generation contained therein. New Energy will continue to be Kroger's retail electric service provider during 2006-2007; pursuant to the existing wholesale power supply agreements with Cinergy

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under the terms and conditions as set forth in Extension 1 and Extension 2 of the Grocery Store Sale. Kroger shall pay to CG&E all of the applicable POLR Charge, the Regulatory Transition Charge (RTC) approved by the PUCO in Case No. 99-1658-EL-ETP. Cinergy or any affiliate shall reimburse Kroger quarterly for half of the amount actually paid of the POLR Charge, except the RSC and IMF Charge which shall be paid in full by Kroger. Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges, against any outstanding balance owed to any Cinergy company. With respect to the State Street Plant Kroger shall take service under the same terms, conditions and price as the grocery stores described above.

3. Effective January 1, 2008, Kroger may purchase for both its grocery stores and State Street Plant competitive retail electric service from any competitive retail electric service provider, including Cinergy, at the market rate quoted by such providers. Kroger shall provide Cinergy a right of first refusal to provide competitive retail electric service at the market rate offered by the competitive retail electric service provider selected by Kroger who has provided Kroger with a bona fide and verifiable service offer. Kroger shall pay to CG&E all of the applicable POLR Charge, and the RTC approved by the PUCO in Case No. 99-1658-EL-ETP. For calendar year 2008, Cinergy or any affiliate thereof shall reimburse Kroger quarterly for half of the POLR Charge actually paid to CG&E, except the RSC and IMF Charge which shall be paid in full by Kroger. Cinergy or any affiliate thereof may set off revenues collected for the POLR Charges, against any outstanding balance owed to any Cinergy company.
4. The Cinergy Operating Companies shall exercise their Extension 1 and Extension 2 options under the December 14, 2000 Confirmation Letter Agreement to sell generation supply to New Energy Inc. in 2006 and 2007 for resale to Kroger under the Grocery Store Sale and State Street Sale at the wholesale generation price set forth therein.
5. If, prior to December 31, 2008, Kroger adds additional load or accounts in CG&E's certified territory which exceeds Kroger's combined (all accounts) maximum demand as of January 1, 2005, such new load or accounts may receive the options and benefits accruing from participation in this Agreement to the extent that such new load or accounts cumulatively represents new peak load of three (3) MW or less; any accounts

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representing new load beyond the foregoing limit are not included under this Agreement.

6. This Agreement has no application to CG&E's transmission and distribution rates as approved by the PUCO. Kroger shall pay the applicable transmission and distribution rates of CG&E as approved by the Commission, and/or if applicable, shall pay to Cinergy Retail Sales the applicable transmission charges equal to the transmission charges approved by the PUCO for Cincinnati Gas & Electric Company.
7. Cinergy or any affiliate thereof will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service (CRES) provider to offer competitive retail electric service to Kroger as contemplated by this Agreement.
8. Kroger shall support approval of CG&E's application or any stipulation to which CG&E is a party in CG&E's pending electric distribution rate case PUCO Case No. 05-59-EL-AIR and its two pending cases with the PUCO surrounding the proposed Cinergy/Duke merger, Case No. 05-732-EL-MER and Case No. 05-733-EL-AAM.
9. This Agreement constitutes Kroger's contract with a creditworthy CRES to provide firm generation service for its full capacity, energy and transmission requirements from January 1, 2005 through December 31, 2008 and satisfies the requirements of Case No. 03-93-EL-ATA that the first 50% of eligible load by consumer rate class to switch to a CRES shall not pay the RSC and shall not pay the Annually Adjusted Component (AAC) of the POLR. Therefore, it is not expected that Kroger will pay either the RSC or AAC.
10. Nothing in this Agreement modifies or limits any settlement agreement reached by the Parties or their agents in Case No. 99-1658-EL-ETP.
11. If orders in CG&E's pending electric distribution rate case PUCO Case No. 05-59-EL-AIR and its two pending cases with the PUCO surrounding the proposed Cinergy/Duke merger, Case No. 05-732-EL-MER and Case No. 05-733-EL-AAM are issued which are acceptable to CG&E but which render invalid or ineffective any provision of this Agreement to the economic detriment of Kroger, then Cinergy will provide the same economic value to Kroger through some other mutually acceptable process.

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This Agreement terminates after December 31, 2008, or as follows:

- A. The PUCO, in Case No. 05-732-EL-MER and Case No. 05-733-EL-AAM, fails to issue entries acceptable to Cinergy approving the Cinergy/Duke Merger; or
- B. A court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or the original November 22, 2004 Agreement otherwise voiding this Agreement.

Before termination of this Agreement as provided by paragraph A and B above, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that going forward will provide the Parties with substantially the same economic benefit for substantially the same consideration as were contained in the original November 22, 2004 Agreement, and Kroger will also pay Cinergy an amount equivalent to the emission allowance costs that it would have paid to Cinergy in 2006 under the original November 22, 2004 Agreement. Under no circumstances will the terms and conditions of the existing wholesale power supply agreements between Cinergy and New Energy under Extension 1 and Extension 2 of the Grocery Store Sale be affected by the termination of this Agreement.

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:

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The Kroger Co.
Denis George
1014 Vine Street
Cincinnati, Ohio 45202-1100

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 Kroger 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.

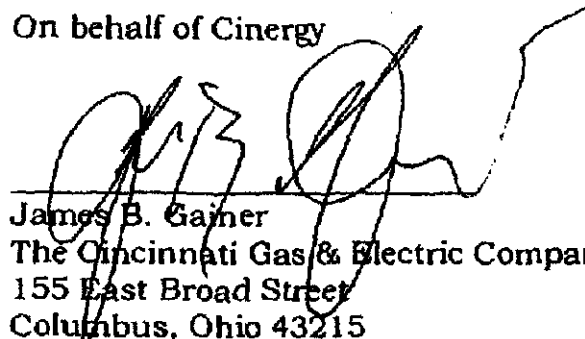
This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

000821

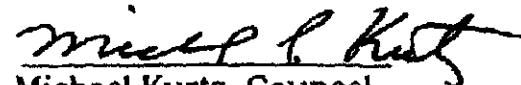
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Entered into on this 9th day of November, 2005:

On behalf of Cinergy


James B. Gainer
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

On Behalf of Kroger


Michael Kurtz, Counsel
Boehm, Kurtz, & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202

CONFIDENTIAL


Corporate Energy Department

1014 Vine Street
Cincinnati, Ohio 45202
513/762-4538 w fax: 513/762-4012



November 30, 2004

Mr. Dan Jones
Certified Supplier Business Center
The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, Ohio 45202

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

Dear Mr. Jones:

Pursuant to instructions provided by CG&E Counsel Michael Pahutski and Ordering Paragraph 25 of the PUCO's Entry on Rehearing in the above-captioned proceeding, the Kroger Co. (Kroger) hereby notifies CG&E that it intends to a) keep its current "Choice" accounts with a CRES provider and b) enroll additional accounts with a CRES provider conditioned on receipt of any available enhanced shopping credit available to the first 20% of shoppers in each applicable class. Attached to this letter is a list of the accounts applicable to groups (a) and (b) above. The Group (b) account numbers are prioritized in the sequence that Kroger would like them placed in the queue.

Kroger has issued this notice in order to place existing sales accounts in the queue to avoid RSC and ACC charges beginning January 1, 2005, and as a precaution to permit existing CRES accounts to avoid these charges for 2005 and for the period beginning January 1, 2006. To the extent Kroger's current enrollment with a CRES already permits it to avoid these charges (see e.g. Ordering Paragraph 27 of the PUCO Order on rehearing), CG&E may disregard this notice.

Please send all confirmations and correspondence regarding this matter to my attention at the address and number listed above, or via e-mail at denis.george@kroger.com.

On behalf of Kroger, I thank you for your prompt attention to this correspondence.

Sincerely,
/s/ Denis E. George

Denis E. George
Corporate Energy Manager

00823

~~00824~~

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Cc: M. Pahutski, Esq. - CG&E
M. Kurtz, Esq. - Boehm, Kurtz & Lowery

Attachment

CONFIDENTIAL

**Corporate Energy Department**

1014 Vine Street

Cincinnati, Ohio 45202

513/762-4538 w fax: 513/762-4012

December 3, 2004

Mr. Dan Jones
Certified Supplier Business Center
The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, Ohio 45202

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

Dear Mr. Jones:

In addition to the Notice issued by Letter dated November 30, 2004, The Kroger Co. wishes to notify CG&E that Kroger will enroll all of its accounts with a CRES provider for service effective January 1, 2006 for the entire calendar year.

Kroger has issued this notice in order to place these accounts in the queue to avoid RSC and ACC charges beginning January 1, 2006 in accordance with the Commission's Order on Rehearing.

Please send all confirmations and correspondence regarding this matter to my attention at the address and number listed above, or via e-mail at denis.george@kroger.com.

On behalf of Kroger, I thank you for your prompt attention to this correspondence.

Sincerely,

/s/ Denis E. George

Denis E. George
Corporate Energy Manager

Cc: M. Pahutski, Esq. - CG&E
M. Kurtz, Esq. - Boehm, Kurtz & Lowery

1 State of Ohio

:

2 SS:

3 County of HAMILTON :

I, Denis George, do hereby certify that

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

9 
10 Denis George

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

19 _____
20 Notary Public

21 My commission expires _____, 20____.
22 - - -

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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

OHIO CONSUMERS' COUNSEL
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Columbus, Ohio 43215-3485
(614) 466-8574-telephone
(614) 466-9475-facsimile
small@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

PUC

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

- - -

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

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

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

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

15 I may note it states -- also states in
16 the first paragraph effective May 19th, 2004, so to
17 give you a time period.

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

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

23 (Discussion held off the record.)

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

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

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

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

12 A. I don't believe I have.

13 Q. Were you aware that -- even having not
14 seen the document, were you aware that an affiliate
15 of Cincinnati Gas & Electric had reached an agreement
16 with the industrial customers that are mentioned in
17 the first paragraph of this document in this time
18 frame?

19 A. Yes.

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

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

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

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

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

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

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

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

17 Q. Okay. And we're talking about agreements
18 in the May 2004 time frame?

19 A. No, not May of 2004. Is this May of
20 2004?

21 Q. This is May 2004, that's what it states
22 in the first paragraph of Exhibit 2.

23 A. Okay. Okay.

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

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

4 THE WITNESS: Sure.

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

7 (Discussion held off the record.)

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

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

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

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

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

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

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

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

5 A. Is that the rate stabilization plan case?

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

8 A. Yes.

9 Q. Are you familiar from that case with the
10 intervention of the Ohio Energy Group?

11 A. Yes.

12 Q. And do you recognize the entities stated
13 in the first paragraph of Exhibit 2 as members of the
14 Ohio Energy Group?

15 A. Yes.

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

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

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

7 Now I'm going to ask you to look at the
8 May agreements so, for instance, the very first line
9 is May 28th, 2004, between CRS and General Motors,
10 and then skipping down a few lines it says May
11 28th, agreement, CRS and Marathon. Do you see the
12 pattern that I'm --

13 A. Uh-huh.

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

20 A. Yes.

21 Q. With all of them, that would be General
22 Motors, Marathon, Air Products, AK Steel, BP -- I'm
23 sorry, not BP. Ford, GE, all of the --

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

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

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

6 A. Sure.

7 Q. In this time frame.

8 A. Sure.

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

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Now, Exhibit 4 is an e-mail, actually two
13 e-mails, and it shows on a May 6th, 2004, at the
14 very top, an e-mail from James Gainer to Joseph
15 Kubacki and Rick Sites. Do you see that?

16 A. Uh-huh.

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

19 A. Uh-huh.

20 Q. And this, you're certainly welcome to
21 read it over, but this deals with the OHA, or Ohio
22 Hospital Association, and it says, subject line:
23 "OHA CG&E Settlement Terms -- Confidential." Do you
24 see that?

1 A. Yes.

2 Q. Were you informed about a process of
3 reaching agreement with the Ohio Hospital Association
4 in this time frame?

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

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

8 (Question read.)

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

11 Q. All right.

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

15 Q. Were you aware that there were settlement
16 talks that were being conducted with the Ohio
17 Hospital Association?

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

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

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

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

8 A. No.

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

12 A. I know the name.

13 Q. Is he with the Ohio Hospital Association?

14 A. I don't know that he's with the Ohio
15 Hospital Association, but I do recognize the name.

16 Q. Where do you recognize the name from?

17 A. I probably heard it before.

18 Q. Do you know Rick Sites?

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

22 Q. Do you recognize him as associated with
23 the Ohio Hospital Association?

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

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

6 Q. In your previous response, and I go back
7 to the second portion of this, it's actually a second
8 e-mail, the May 5th, 2004, it states "Note that
9 number 5 was added this afternoon at the behest of
10 one of our members, but it will not be a deal
11 breaker." Do you see that?

12 A. Yes.

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

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

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

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

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

3 Q. All right. I'm going to mark Exhibit 5.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Exhibit 5 is Bates stamped 347 through
6 351, it's an agreement between Cinergy Retail Sales,
7 oftentimes abbreviated CRS, and, as it states, the
8 hospitals, dated around May 19th, 2004. Have you
9 seen this document before?

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

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

15 A. That's fine.

16 Q. Paragraph 9 refers to the Ohio Hospital
17 Association supporting a stipulation filed by
18 Cincinnati Gas & Electric Company in case
19 03-93-EL-ATA. Do you see that?

20 A. Yes.

21 Q. Were you aware of this agreement of the
22 Ohio Hospital Association to support the stipulation
23 filed in the 03-93 case?

24 A. Yes.

1 Q. When did you become aware of that?

2 A. Would have been in the time frame of this
3 agreement, so it would be in May of 2004 time frame.

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

5 A. By reading the document I suppose.

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

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

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

12 A. In this time frame, sure.

13 Q. So there were other agreements that you
14 saw, not just this Ohio Hospital Association
15 agreement.

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

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

20 A. I may have.

21 Q. So you were aware before the May
22 agreements were executed that there were negotiations
23 for support of the stipulation in 03-93?

24 A. Yes.

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

5 A. No.

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

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

10 A. Uh-huh.

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

14 I'd like to direct your attention to what
15 is numbered as Bates stamped 330, section 5 which
16 states that "In the Cincinnati Gas & Electric
17 Company's next distribution base rate case that
18 results in a change in the Customers' rates, CG&E
19 will file a cost of service study reflecting actual
20 cost of service for all rate classes." And it states
21 "CG&E shall support the future distribution rider,
22 proposed as Rider CIR, allocated based upon
23 distribution of net plant." Do you see that?

24 A. Yes.

1 Q. When were you informed of a provision
2 that dealt with CG&E's next distribution rate case in
3 documents such as Exhibit 2?

4 A. I don't recall.

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

8 A. That case was settled.

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

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

13 Q. I see.

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

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

18 A. I believe that's right.

19 Q. Okay.

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

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

1 Exhibit 2 regarding the manner in which CG&E would
2 submit its next distribution rate case?

3 A. I think I was generally aware of it, and
4 I think at the time I did ask our Rate department
5 whether these were things that we were going to do
6 anyway, something to that effect. Is this really
7 any -- does it really cause us any problem? Is it
8 something that we were going to do anyway? And I
9 believe that that was the case. It wasn't something
10 that was binding us in any way because it was what we
11 were going to do in any event.

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

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

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

21 A. I don't know.

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

24 A. There were a number of lawyers involved.

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

3 Q. And who would that be?

4 A. From the Legal department would be Paul
5 Colbert, Jim Gainer. From Cinergy Retail Sales,
6 Jason Barker, Jack Farley, Uma whose last name I can
7 never pronounce.

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

10 A. That could be.

11 Q. Nanjundan?

12 A. That's it.

13 Q. All right. N-a-n-j-u-n-d-a-n.

14 A. Chuck Whitlock. There were a number of
15 people that I recall being involved from time to
16 time.

17 Q. And that was with the negotiations.

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

1 Q. Okay.

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

4 (Discussion held off the record.)

5 MR. SMALL: Back on the record.

6 Q. Back to Exhibit 2, page Bates stamped 330
7 which you have in front of you, paragraph 7 states
8 "If a Customer had shopped for competitive generation
9 and is subject to a minimum stay with CG&E that
10 extends beyond January 1st, 2005, then the minimum
11 stay shall be waived" and so forth and so on. Do you
12 see that?

13 A. Uh-huh. Yes.

14 Q. What corporate entity would waive the
15 minimum stay requirement? That would be Cincinnati
16 Gas & Electric Company; is that correct?

17 A. I'm not sure.

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

20 A. Generally. Generally.

21 Q. Okay. And those minimum stay
22 requirements are the Cincinnati Gas & Electric
23 tariff, filed tariff before the Public Utilities
24 Commission; is that correct?

1 A. Yes.

2 Q. So it would be CG&E that would have to
3 waive such a minimum stay; do you agree?

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

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

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

15 Q. You don't recall any -- just to make
16 sure, you don't recall this type of provision
17 regarding minimum stay in a CRS agreement?

18 A. No. And I don't recall waiving any
19 minimum stay or a minimum stay being waived.

20 Q. At any time.

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

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

1 to quote, "which is acceptable to CG&E." Do you see
2 that?

3 A. Yes.

4 Q. Did CG&E -- remember that this is an
5 agreement in a May 2004 time frame. Did CG&E
6 determine that the PUCO order was acceptable to CG&E
7 in 03-93, the 03-93 case?

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

10 Q. Were there communications between -- that
11 informed the Cinergy Retail Sales people that a order
12 unacceptable to CG&E had been issued?

13 A. Our filing for rehearing was public.

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

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

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

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

1 affiliates.

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

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

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

11 Q. Now, that paragraph refers to, and I'm
12 over here on Bates stamp 331. ". . . then Cinergy
13 will provide the same economic value to the impacted
14 customers." Do you see that?

15 A. Right.

16 Q. Are you aware of a process of -- and I
17 get the word "process" in this instance, it says a --
18 "mutually acceptable process" are the last three
19 words of that paragraph. Are you aware of a mutually
20 acceptable process that undertook to provide the same
21 economic value to the contracting parties?

22 A. No.

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

1 the Ohio Energy Group after May 2004?

2 A. No.

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

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

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

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

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

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

17 (Discussion held off the record.)

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

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

1 Cincinnati Gas & Electric Company?

2 A. I was involved in it.

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

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

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

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

1 Q. Mr. Barker and Mr. Farley and
2 Ms. Nanjundan and Mr. Whitlock are all examples of
3 that?

4 A. I don't know what their classification
5 is, but I would not be surprised if they were Cinergy
6 Services employees.

7 Q. Were you referring to anybody besides
8 that group of Cinergy Services, Inc. employees that
9 would have been involved in the process of
10 negotiating those agreements?

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

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

13 (Record read.)

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

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

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

20 Q. Okay. I want to mark 6.

21 MR. DORTCH: You marked Exhibit 6.

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

23 A. Done with Exhibit 2?

24 Q. Yes.

1 Now, Exhibit 6 I may have mentioned is
2 Bates stamped 320 to 326 and, again, involves Cinergy
3 Retail Sales and a group of corporations that I think
4 we just recently saw, the same corporations as shown
5 on the top of Exhibit 2. This agreement is in the
6 November 2004 time period. Have you seen this
7 document before?

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

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

11 A. Around the time frame that is referenced
12 in the first paragraph; November 2004.

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

20 A. Yes.

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

24 A. Yes.

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

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

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

8 A. Generally familiar, yeah.

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

11 A. Yes.

12 Q. I mentioned that Exhibit 2 and Exhibit 6
13 have the same parties. Did Exhibit 6, which is an
14 agreement in the November time frame, result from a
15 mutually acceptable process because Exhibit 2 was
16 superseded or there was a rejection of the
17 stipulation in the 03-93 case?

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

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

21 MR. DORTCH: Okay.

22 (Question read.)

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

1 did the agreement on Exhibit 6 in the November time
2 frame come about as a result of the mutually
3 acceptable process that is mentioned on Exhibit 2?

4 A. I don't ever remember connecting it to
5 that mutually acceptable processes language, but at a
6 high level when the May 19th agreement was
7 voided -- in my words -- through the Commission's
8 action, I was aware that there was a process to come
9 up with a agreement such as Exhibit 6 that would
10 supersede that other agreement.

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

14 Q. So at a high level the, as you mentioned,
15 voiding of the May agreements resulted in further
16 negotiations that resulted in November agreements; is
17 that --

18 A. Yes.

19 Q. Okay. Who was involved in negotiating
20 those agreements in the November time frame?
21 November 2004.

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

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

5 Q. Would they generally be the same
6 individuals that you identified earlier, Mr. Colbert,
7 Mr. Gainer, Barker, Farley, Nanjundan, and Whitlock?

8 A. Sure.

9 Q. Are you familiar with a Mr. Duff?

10 A. Yeah.

11 Q. Was he involved in this process?

12 A. Tim helped --

13 Q. That's Tim Duff?

14 A. Tim Duff helped Jim Gainer. To the
15 extent that Jim Gainer was involved, Tim Duff was on
16 his staff and was involved, sure.

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

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

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

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

1 second.

2 (Discussion held off the record.)

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

4 Q. Mr. Ficke, Exhibit 7 Bates stamped 353
5 through 357 is, again, an agreement involving Cinergy
6 Retail Sales, at the top it shows October 28th,
7 2004, and it says it's with the hospitals. Have you
8 seen this document before?

9 A. I'm sure that I have.

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

12 A. Yes.

13 Q. I'll point out that this document has two
14 different dates on it, it says 8th of November on
15 the last page and October 28th on the front page,
16 but they're close in time. When you answered that
17 you saw it in this general time frame, you saw it
18 generally in the late-October time frame?

19 A. Yes.

20 Q. Now, I direct your attention to page
21 number Bates stamped 355, paragraph 9 on that page.
22 It goes over to 356. That paragraph refers to the
23 Ohio Hospital Association supporting an ap. for
24 rehearing. Do you see that?

1 A. Yes.

2 Q. And are you familiar with the
3 application? And on the next page it refers to
4 application for rehearing in case No. 03-93; do you
5 see that?

6 A. Yes, it's the application for rehearing I
7 referred to before.

8 Q. That would be in the November, roughly
9 the November 2004 time frame?

10 A. That's right.

11 Q. Were there discussions with the hospital
12 association regarding the application for rehearing
13 submitted by the Cincinnati Gas & Electric Company?

14 A. I'm not -- I'm not aware of any. That
15 doesn't mean it didn't happen.

16 Q. Were you aware that various groups had
17 been approached regarding their support for the
18 application for rehearing submitted by CG&E?

19 A. Sure.

20 Q. And how were those parties approached?
21 Let me go back a step.

22 You do recognize the Ohio Hospital
23 Association was a party to the 03-93 case.

24 A. Sure.

1 Q. Okay. How were parties approached
2 regarding their support for the application for
3 rehearing?

4 A. I don't recall specifically. It could
5 have been, you know, by meeting, could have been by
6 e-mail, could have been by letter. I don't know how.

7 Q. Were there any meetings such as you
8 described earlier of large meetings with a number of
9 parties at the Public Utilities Commission concerning
10 this application for rehearing?

11 A. That's a good question. I recall the
12 series of meetings in the May time frame with our
13 original settlement discussions with --

14 Q. Stipulation.

15 A. -- the parties.

16 Q. Stipulation.

17 A. I just don't recall whether that carried
18 on into the application for rehearing document or
19 whether that was all done in hearings and, you know,
20 formal proceedings. I just don't remember.

21 Q. Were you involved in discussions with the
22 Ohio Hospital Association or any other parties in
23 approximately this time frame, and the time frame I'm
24 referring to is approximately the time of the

1 application for rehearing in the 03-93 case?

2 A. Sure. Generally involved, yeah.

3 Q. Who did you have discussions with?

4 A. Could have -- I mean, I don't recall
5 specifically because things were moving very quickly
6 at that point in time, how many of the discussions
7 that I participated in or not, but could have been
8 any of the parties.

9 Q. And would those have involved individual
10 meetings with the parties, not just group meetings?

11 A. Sure.

12 Q. All right. Let's mark Exhibit 8.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Ficke, I've marked Exhibit 8 which is
15 a e-mail dated November 3rd, 2004, and it promises
16 an attachment which I believe is attached as the
17 remainder of Exhibit 8, and it's from Mr. Colbert to
18 Rick Sites and Joe Kubacki, and it has you as a
19 person who is CC'd on it. Do you recall seeing this
20 e-mail?

21 A. I don't recall seeing it, but I'm sure I
22 saw it.

23 Q. And did you look over the agreement at
24 that time?

1 A. I would doubt it.

2 Q. Were you familiar with an exchange of
3 drafts between -- generally between individuals in
4 the Cinergy-affiliated companies and the Ohio
5 Hospital Association during this period?

6 A. I was generally aware that it was going
7 on, yes.

8 Q. Here we have on the CC list -- we
9 mentioned Mr. Colbert, Mr. Sites, and Mr. Kubacki
10 before. You're CC'd on it. James Gainer is CC'd on
11 it. You mentioned Mr. Duff. Mr. Steffen's name
12 appears on this; can you tell me what his role was in
13 this process?

14 A. Jack was Vice President of Rates, Cinergy
15 Corp.

16 Q. And in that capacity he was assigned a
17 task as a witness in the 03-93 case; is that correct?

18 A. I'm sure that he was.

19 Q. Do you know what his role was in
20 negotiations of agreements with parties at this
21 particular point in time?

22 A. I should have mentioned him in that group
23 of names that I mentioned before, so either preparing
24 information, attending meetings, problem solving, any

1 of those functions it would have been typical for
2 Jack Steffen to participate in.

3 Q. What is the Rates department that you
4 said that he was part of? What is their
5 responsibility?

6 A. Generally for Cinergy operating companies
7 including Union Light, Heat & Power, Public
8 Service -- or, PSI Energy, Cincinnati Gas & Electric,
9 participating in the prosecution of rate increases,
10 fuel and purchased power increases, as well as
11 keeping tariffs up to date, responding to customer
12 questions, assisting the Cinergy Corp. financial area
13 with budgets and forecasting, financial projections.

14 Q. The -- I'm sorry, I didn't mean to cut
15 you off.

16 A. That's fine.

17 Q. The tariffs that you just mentioned
18 include the CG&E tariffs?

19 A. CG&E as well as other regulated companies
20 like the ones that I mentioned.

21 Q. Do you know where Mr. Steffen is today?
22 Is he with the company?

23 A. He's actually in the building I believe.

24 Q. All right. Do you know what his position

1 is?

2 A. I don't know. It is likely that he is a
3 consultant. I'm relatively certain that he is a
4 consultant as opposed to an employee.

5 Q. That's really what I was getting at. I
6 understood that he left the direct employment of the
7 Duke-affiliated companies. You believe that to be
8 the case?

9 A. And I believe he left at the end of the
10 year. I believe it was December 31st.

11 Q. I'm going to mark Exhibit 9.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

15 (Discussion held off the record.)

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

17 Q. Mr. Ficke, you have Exhibit 9 before you?

18 A. Yes.

19 Q. Do you recall seeing this -- this is,
20 again, an e-mail dated November 5th, 2004, it has
21 you copied on it. Do you recall seeing this e-mail?

22 A. I don't recall seeing it, but I'm sure
23 that I did.

24 Q. And you were generally copied on -- and

1 let's look at the document a little bit. This has
2 bubbles on it, bubble comments on revisions for the
3 agreement between Cinergy Retail Sales and the
4 hospitals. Do you recall seeing versions of changes
5 in the documents such as this?

6 A. I don't recall seeing it, but I'm sure
7 that I did.

8 Q. All right, let's move to -- you can put
9 that aside. I'm going to mark Exhibit 10.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. This e-mail and attached agreement is
12 dated November 7th, 2004, and also has you and by
13 now a familiar group of people copied on it. Do you
14 recall seeing this communication and version of the
15 agreement?

16 A. I don't recall seeing it, but I'm sure
17 that I did.

18 Q. You generally saw the transactions such
19 as this going back and forth?

20 A. I generally saw e-mails that appeared in
21 my e-mail in box.

22 Q. Okay. You can set that aside.

23 MR. SMALL: Mark this Exhibit 11.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. And, again, another e-mail close in time,
2 November 7th, 2004. If I asked you the questions
3 regarding Exhibit 11 that I asked about Exhibit 10,
4 would your answers be the same?

5 A. Yes.

6 Q. Were you generally informed, such as
7 we've seen on Exhibits 9, 10, and 11 where you were
8 copied on versions, were you also copied on other
9 exchanges of documents involving the other agreements
10 that we saw in Exhibit 3 in this time frame, the
11 November agreements?

12 A. Sure. As Cinergy Retail Sales was
13 evaluating the terms of those agreements, I would
14 periodically be copied on those e-mails.

15 Q. All right. I'm going to go back to
16 Exhibit 6, that's an agreement between Cinergy Retail
17 Sales and a number of corporations that we've
18 identified as being members of the Ohio Energy Group,
19 and this is the November 2004 time frame.

20 If you could turn to what has a Bates
21 stamp of 323, and section 7. And generally paragraph
22 7 discusses CG&E's next distribution base rate case.
23 Do you see that?

24 A. Yes.

1 Q. And it has several statements, such as
2 reading in the middle of paragraph 7, "Such
3 filing" -- this is referring to the next distribution
4 base rate case -- "Such filing shall include a rate
5 increase for rate TS of no more than zero dollars."
6 Do you see that?

7 A. Yes.

8 Q. Were you familiar with this term and its
9 negotiation as part of this agreement in the November
10 time frame?

11 A. I was familiar with this term. I've seen
12 it before.

13 Q. Okay. When did you become familiar with
14 that term?

15 A. Probably through discussions or e-mails
16 or circulation of documents, I don't recall which.

17 Q. Are you familiar with whether this term
18 was followed in CG&E's next distribution rate case
19 filing?

20 A. When this issue came up, and once again
21 I'm not sure exactly how it came up, but I do recall
22 being involved in conversations about this term and
23 how we were going to deal with it in our next
24 distribution case, and independent of this agreement

1 it's really -- this is what the increase for TS was
2 going to be, it was really -- I guess it's similar to
3 the term we talked about before, it really didn't
4 bother me that it was in this agreement because
5 according to our rate folks this was going to be how
6 the case was filed in any event.

7 So it's a term with no -- with no impact
8 on the distribution case because factually that's
9 what was going to be proposed.

10 Q. Did you have discussions with the Rates
11 department regarding that?

12 A. Yes.

13 Q. And who in the Rates department did you
14 discuss that with?

15 A. I don't recall who.

16 Q. Would Mr. Steffen --

17 A. Could be.

18 Q. -- normally be involved in --

19 A. Normally would have been involved, sure.
20 And maybe somebody on his staff, I just don't recall.

21 Q. All right. If you would refer to the
22 page Bates stamped 324, Section 9. Again, this
23 paragraph has to do with minimum stay. Were there
24 customers that -- this exhibit has OEG members. Are

1 there customers or are you familiar with situations
2 involving the customers in Exhibit 6 where they might
3 have been subject to minimum stay requirements?

4 A. No.

5 Q. Do you recall any discussion about the
6 minimum stay provision in this agreement at the time
7 when it was entered into?

8 A. I don't recall minimum stay being an
9 issue, and I don't recall any of these entities being
10 involved with minimum stay as an issue. I just don't
11 recall it being the subject of any of my discussions.

12 Q. Are you familiar with a proceeding before
13 the Public Utilities Commission where minimum stay
14 was the chief subject?

15 A. I'm aware of that, minimum stay was an
16 issue before the Commission.

17 Q. Did you have a role in that proceeding?

18 A. No. I never -- it never became of
19 importance to me to the extent that I would even have
20 to become familiar with the issues surrounding
21 minimum stay. I generally knew it was an issue and
22 somebody was concerned about it. But it never became
23 so important that I spent any time reading anything
24 about it or asking anybody any questions about it.

1 Q. All right. If you could turn to
2 provision 12 that's on that same page, 324, Bates
3 stamped 324, and that refers to an order in case
4 03-93.

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

6 (Discussion held off the record.)

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

8 Q. Before we took a short break I referred
9 to paragraph 12 on page Bates stamped 324 and it
10 refers to an order in 03-93 which is acceptable to
11 CG&E. Do you see that?

12 A. Right. Yes.

13 Q. Now, this is in the November time frame.
14 The order that would have been issued would have been
15 an entry on rehearing; is that your understanding of
16 the situation?

17 A. Yes.

18 Q. Were you aware of the provision in these
19 agreements, in the November time frame, concerning
20 the 03-93 case such as paragraph 12?

21 A. Sure.

22 Q. And did CG&E determine that the PUCO
23 order was, in the terms of paragraph 12, acceptable
24 to CG&E?

1 A. No, it wasn't acceptable because they --
2 "they" the Commission -- in their order changed some
3 of the terms.

4 Q. If the order in 03-93 was not acceptable
5 to CG&E, why didn't CG&E submit a second application
6 for rehearing?

7 A. Other than we viewed the pros and the
8 cons and the timing that it would take to do it and
9 the likely results. I mean it's all the normal
10 things that you would consider when you decide
11 whether or not to file something. I'm not sure I
12 remember -- I mean, I'm not sure I remember exactly
13 what was on the board in terms of the pros and the
14 cons, but it's a normal process that any company
15 would go through to decide whether or not they'd take
16 a particular action.

17 Q. Okay. So the company decided to go
18 forward with the order in this time frame, the
19 November 2004 time frame, rather than submit an
20 application for rehearing?

21 A. Specifically I believe we filed tariffs
22 and put rates into effect. New rates into effect. I
23 mean this is November and the new rates went into
24 effect for commercial and industrial customers

1 January the 1st.

2 Q. This paragraph, similar to the one we saw
3 earlier in a May agreement, refers to a mutually
4 acceptable process; do you see that as the last three
5 words of paragraph 12?

6 A. Right.

7 Q. Were you aware that there was a mutually
8 acceptable process engaged in by the parties to this
9 agreement following the Commission's order in 03-93?

10 A. No. Personally, my belief was that
11 these -- this agreement was voided as a result of the
12 Commission's order. That was what I felt happened.

13 Q. Okay. I don't think you've really
14 connected with my question. This says that in the
15 case where it renders invalid or ineffective any
16 provision that -- this is up higher in paragraph
17 12 -- there will be a mutually acceptable process
18 engaged in by the parties. So if the company viewed
19 the order as having changed the proposal, did the
20 company and Cinergy affiliates engage in a mutually
21 acceptable process because it was rejected?

22 A. I don't know.

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

24 (Discussion held off the record.)

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(Luncheon recess taken.)

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Tuesday Afternoon Session,

February 20, 2007.

- - -

(EXHIBIT MARKED FOR IDENTIFICATION.)

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EXAMINATION (continued)

By Mr. Small:

Q. Mr. Ficke, I've had marked Exhibit 12 which is in front of you, it's Bates stamped 50 through 64 and is titled an Option Agreement Between Cinergy Retail Sales, LLC and General Motors, Incorporated. 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 on your Exhibit

1 No. 3 were negotiating and, in fact, entered into
2 what I called option agreements.

3 Q. Right. And when you refer to Exhibit 3,
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 Exhibit 3, the option agreements?

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

13 Q. Approximately December 2004?

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 Jim Gainer and Paul Colbert 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 May and November negotiations?

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 Mr. Steffen who you
10 mentioned earlier?

11 A. You know, I would ask -- I would ask Jack
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 May and November agreements 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 the May and
24 November than in the December.

1 A. May and November 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 2004.

10 A. Correct.

11 Q. And do you know why a third round of
12 negotiations were undertaken with customers such as
13 General Motors which is shown on Exhibit 12?

14 A. I believe that the previous agreements,
15 the November 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 December 2004?

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 November agreements and
12 this particular agreement has to do with members of
13 the Ohio Energy Group. 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 November agreement between Cinergy Corp. and
11 IEU - Ohio Bates stamped 334 through 340. 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 ". . . the parties agree to use best efforts
15 to fulfill the intent of this agreement, by
16 negotiating amendments to the agreement" 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 IEU.

1 A. And the only reason I was confused is
2 because Party 2 is Marathon, under the other one it
3 says Party 2 is GM. So is this --

4 Q. The agreement I put before you is not an
5 agreement with Marathon or with GM, it's with IEU.

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 GM, one with Marathon,
10 and a separate one with IEU?

11 Q. I believe on Exhibit 3 it would be shown
12 as 11/8 -- it's the second line, 11/8/04, as an
13 agreement.

14 A. It's shown twice on there, then, one's
15 for Marathon and one's for General Motors, 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, that is parties using their best efforts
18 to fulfill the intent of this agreement? 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 November 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 November agreements when the May 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 November ones were entered into as a
9 result of the May 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 November 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 November agreement with IEU, Exhibit 13
8 Bates stamped 341 through 346 is the May 2004
9 agreement with IEU 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 "Cinergy shall pay the Industrial Energy Users - Ohio
15 \$100,000 as compensation for legal services." Do you
16 see that?

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 Do you know what this payment was for?

24 MR. DORTCH: Objection.

1 A. Legal services.

2 Q. What legal services 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 Industrial Energy Users - Ohio?

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. I'm sorry, I reacted to "small payment."

15 Were you familiar -- are you familiar
16 with any other payments for legal services to any
17 parties other than Industrial Energy Users - Ohio?

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 May 2004
22 agreement. Exhibit 14 is the November 2004
23 agreement. Section 4 on Bates stamped 337, again,
24 there appears -- this time there's only one paragraph

1 4, and it also mentions \$100,000 in compensation for
2 legal services to Industrial Energy Users - Ohio. 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 Section 4 of that agreement there's a
12 reference to \$50,000 paid to -- "Cinergy shall pay
13 the Ohio Hospital Association \$50,000 upon issuance
14 of a final appealable order of the Public Utilities
15 Commission of Ohio satisfactory to Cinergy." If I
16 asked -- this is a May 2004 agreement. If I asked
17 the same questions that I had regarding the May 2004
18 agreement with IEU, would your responses be the same?
19 Maybe we should go through it.

20 Are you familiar with the --

21 A. Yes.

22 Q. -- payment to the Ohio Hospital
23 Association?

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

1 do recall a payment or the existence of this
2 provision in this agreement, yes.

3 Q. In agreements with more than one
4 organization, the hospital association, or are you
5 referring to earlier with the IEU?

6 A. Yeah, I'm referring to earlier with IEU.
7 You asked me there were other payments in other
8 agreements, and now that I look at this I do recall
9 this payment which was identifiable with the Ohio
10 Hospital Association.

11 Q. Do you know whether a payment of this --
12 the \$50,000 payment was made to the Ohio Hospital
13 Association?

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, were voided by the
22 Commission's actions and whether any of the terms of
23 this were actually ever implemented as these things
24 were existing and then nonexistent because of the

1 Commission's actions, 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, is October, or if you
9 read the last page of this it says November of 2004,
10 and Section 4 refers to the \$50,000 payment to the
11 hospital association. If I asked you the questions
12 regarding the October/November time frame and \$50,000
13 payment with regard to Exhibit 7, 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, June 7th, 2004, and it's between Cinergy
23 Corp. and ~~Cognia~~ Inc.

24 I'm going to have another exhibit marked,

1 Exhibit 16. This also is with Cognis. '

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 Cinergy reimbursing Cognis?

9 A. Yes.

10 Q. Have you seen these two Cognis
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, Cognis, agreed to support the stipulation
20 and later our application for rehearing.

21 Q. Okay. And when you mentioned agreed to
22 support the stipulation, you're referring to the
23 agreement that's shown on Exhibit 15? The June --

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 to support of
3 the stipulation.

4 A. Right.

5 Q. So isn't it connected -- isn't execution
6 of Exhibit 15 connected with the stipulation?

7 A. Correct.

8 Q. All right. And Exhibit 16 paragraph 5
9 refers to support of the application for rehearing.
10 So wasn't Exhibit 16 executed in connection with
11 ~~Cognis's~~ support for the ap. for rehearing?

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 ~~Cognis, which is a rather large employer,~~ was
21 undergoing a bargaining unit activity which was
22 impacting their operations. ~~They had been acquired~~
23 ~~by a foreign company~~ 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 Cognis 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 Cognis 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 Cognis. 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 October 28th agreement with

1 Cognis 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 -- I did, and I was familiar
8 with one of the affiliate companies that was
9 providing those kind of services to that general
10 geographical area, 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 Tri-Gen, Cinergy Solutions are two that I can
16 remember.

17 Q. Tri-Gen was one of those corporations
18 that you mentioned you were -- had a title connected
19 with?

20 A. No. No, that was Tri-State Improvement
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 late-October/

1 early-November 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 Cognis different than those
8 other entities for which there was an agreement for
9 alternative generation supply?

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

11 Q. Do you know of any other agreements such
12 as the Cognis 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 Cognis
19 agreements, Exhibit 15 and 16?

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 Cognis.

7 A. Sure.

8 Q. Okay. Do you know who was on the other
9 end as far as the negotiation for Cognis?

10 A. I know one individual was Steve Kennedy.
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 Mr. Kennedy hold?

14 A. I don't know by title, but he was
15 certainly involved with their energy procurement
16 activities.

17 Q. And are you familiar with Theodore
18 Schneider?

19 A. Yes.

20 Q. And he is legal counsel for Cognis?

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 Cognis?

3 A. No.

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

9 A. I don't know firsthand that the payments
10 were being made, but I believe that they were being
11 made. I wouldn't have signed any invoices or
12 processed any paper, but I believe that through the
13 normal course they would have been made, yes.

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

15 A. Sixteen?

16 Q. I'm on, yes, Exhibit 16. Page 3, B,
17 Public Utilities Commission of Ohio in case 03-93
18 fails -- I guess this is upon the occurrence of any
19 of the following: Fails to issue an entry on
20 rehearing acceptable to Cinergy. 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 PUCO did fail to issue
3 an entry on rehearing acceptable to Cinergy. I don't
4 want to mischaracterize you, but really the question
5 is if paragraph B on page 3, if you say that the
6 entry on rehearing was unacceptable, then why were
7 payments made to Cognis under this agreement?

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 Cognis and, based on the situation we found
12 ourselves in with the Commission's order, 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. In other words, there wouldn't have been
18 payments under some other agreement.

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 with the Commission
24 acting as it did. But based on what we did, we did

1 honor the terms of this agreement, I believe, and I
2 believe we did pay under the terms of this agreement.

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 7th of July, I believe that's 2004.
9 Yes, it's on 1174, 7th of July 2004 between Kroger
10 and Cinergy Retail Sales. Have you seen this
11 agreement before?

12 A. I probably have seen it.

13 Q. All right. Paragraph 8 mentions support
14 of the May 19th, 2004, stipulation. 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 Kroger 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 Kroger's 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 Kroger 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 Kroger.
9 That was mainly between Cinergy Retail Sales and
10 Kroger.

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. Mr. Whitlock and --

17 A. Sure. Jason Barker, 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 Kroger?
21 Are you familiar with Dennis George?

22 A. Sure, Dennis, and he was represented by
23 either Mike Kurtz or Dave Boehm.

24 Q. With regard to these agreements?

1 A. I get them confused. One of them usually
2 represents Kroger 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 Mr. Kurtz, so that's probably -- did you see
7 any communications with Mr. Kurtz regarding Kroger,
8 or Mr. George?

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 page November 22nd, and on
14 page Bates stamped 1181 that's a reference to
15 November 22nd, 2004, between the Cinergy operating
16 companies -- I'm sorry, between Cinergy Retail Sales
17 and Kroger Company, 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 Kroger 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 -- the high level
6 reason for that was that this stipulation was not --
7 the May stipulation in 03-93 was not accepted --

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. Are you familiar with whether there were
16 payments made to Kroger or received from Kroger under
17 the agreement that's shown in Exhibit 18?

18 A. Not personally familiar.

19 Q. Have you seen accountings where it shows
20 either payments to or received from Kroger?

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 industrial customers, GM,
3 [REDACTED] and so forth. Have you seen spreadsheets
4 where it shows either the calculation or the amounts
5 that would be paid under the option agreement?

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, that value the various moving pieces of the
16 rate stabilization plan.

17 Q. By "moving pieces" do you mean the
18 components such as AAC and IMF, is that what you
19 mean?

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 GM, [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 Kroger listed on
6 those spreadsheets?

7 A. I believe that Kroger 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 confirmation letter agreement in the first paragraph.
21 Have you seen a confirmation agreement December
22 14th, 2000?

23 A. No.

24 Q. And then there's a performance assurance

1 agreement mentioned after the second whereas,
2 December 14th, 2000; have you seen that agreement?

3 A. No.

4 Q. Then there's a July 31st, 2001,
5 confirmation letter agreement mentioned in the third
6 whereas; have you seen that agreement?

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 ~~Kroger's~~
21 generation supply arrangements following January
22 1st, 2001? 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 New Energy
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 Kroger was being served.

7 I do remember that it was different. It
8 was different than some of the other industrial
9 customers. 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 Kroger operates groceries, groceries run all the
13 time, they're a flat load as opposed to a peaking
14 load and that might have given them an advantage in
15 the marketplace.

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 Kroger 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 dated 9th of November 2005, 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 November of 2005.

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 Kroger.

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 October 21st, 2004,
4 12:58 p.m., it's from you and it was sent to Uma
5 Nanjundan with a CC to Jack Farley. 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 and they were evaluating the costs to serve those

1 customers as markets changed, assumptions changed.
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 late-October/early-November 2004?

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 cost to serve
14 question that you asked?

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. October 20th.
21 1:52, to me, copy Jack, 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. Now, cost to serve, what's your
4 understanding of cost to serve as used in this
5 document? How was the cost to serve arrived at?

6 A. Well, you understand it was relevant to
7 Cinergy Retail Sales so -- and not necessarily to
8 Cincinnati Gas & Electric, but my understanding is
9 and was that [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]

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]

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 contact on October 21st, 2004?

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 three, 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, 12:58 on
12 October 21st, 2004. 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 October 20th.

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 Mr. Farley, if I understand that
4 e-mail at the bottom. "As per your request made to
5 Jack Farley." Do you see that?

6 A. Yes.

7 Q. What request did you make to Mr. Farley?

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 Ben Zhang is? Z-h-a-n-g.

16 A. As I recall, Ben -- Ben 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 "These are the
4 CRES numbers."

5 Q. All right. So you're referring to the
6 bottom e-mail from Mr. Zhang to Charles Whitlock?

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]
13 [REDACTED]
14 [REDACTED]
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 Jack Steffen to you
8 September 29th, 2005. 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. It looks like Ziolkowski, Jim Ziolkowski
15 in the Rate department, was evaluating the standard
16 tariff versus the settlement offer in the November
17 2004 time frame.

18 Q. Okay. When you say "settlement offer,"
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 September 29th 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 September
7 29th, but Mr. Ziolkowski answered on November
8 18th?

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 September 29th of
15 2005.

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 November
21 18th, 2004?

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 Mr. Ziolkowski.

8 A. Sure.

9 Q. And Mr. Ziolkowski 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 Mr. Ziolkowski's
13 work?

14 A. I worked on a number of issues with Jim.

15 Q. Could you be more specific than that?

16 A. Rate issues. Jim Ziolkowski is a member
17 of the Rate department, and whether it be
18 transmission, distribution, rate stabilization plan,
19 rate issues, Jim was involved in a number of them.
20 He worked for Jack Steffen.

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 an Analysis of Stipulation Versus
4 Current Settlement Offer. Do you see that?

5 A. Yes.

6 Q. Do you know, does this refresh your
7 memory about what the stipulation is that's referred
8 to and what the current settlement offer was?

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 STD, which I read as
13 Standard Tariff, and CRES. Do you see that?

14 A. Uh-huh.

15 Q. Is one of them connected with the
16 stipulation and the other one connected with the
17 current settlement offer that are found in the title?

18 A. Sure.

19 Q. What's the connection?

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

21 Q. Okay.

22 A. -- by year by company.

23 Q. All right. What's your understanding of
24 Standard Tariff? What are the values that are in

1 those columns?

2 A. First of all, I'll be honest with you, I
3 don't understand the difference between standard
4 tariff shopper and standard tariff nonshopper, but if
5 you disregard the bottom for a second, the numbers
6 seem to be somewhat irrelevant, but it looks like
7 what Jim was trying to do is compare, presumably for
8 Cinergy Retail Sales, the difference between the
9 standard tariffs and the agreements that they were
10 contemplating with these companies.

11 Q. What agreements would those be?

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

13 Q. Well, we've been talking about May and
14 November and option agreements, so --

15 A. Well, this is in the November time frame.

16 Q. Okay. So --

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

22 Q. Okay. So your interpretation of CRES,
23 the columns that say "CRES," is that that's connected
24 with current settlement offer and that's referring to

1 agreements in the November time frame.

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 members of IEU, OHA, and OEG, 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 November
23 agreements that we were discussing previously, not
24 the May 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 Cognis or Kroger with Cinergy Retail Sales.
7 Would you agree with that?

8 A. We discussed the Cognis agreement as
9 being entered into between Cinergy Corp. and Cognis,
10 I believe, and we can always go back and look at it.
11 I thought that the Kroger contract was similarly
12 entered into between Cinergy Retail Sales and Kroger.
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 Cognis.

20 Q. All right.

21 A. Can't explain it.

22 Q. The title of this document promises a
23 comparison of three things, standard tariff,
24 settlement offer, and market. Do you see that?

1 A. Yes.

2 Q. I see Standard Tariff as a column. I'm a
3 little bit confused. Can you point out where the
4 settlement offer and the market comparisons are?

5 A. I don't see Market. And in my mind the
6 settlement offer would be under the CRES column in
7 terms of revenue and average CRES in terms of dollars
8 per megawatt-hour.

9 Q. Similar to the previous tables where
10 you've identified settlement offer and CRES as being
11 the same.

12 A. Yeah, but I don't see Market on here.

13 Q. All right.

14 A. Market was an illusive concept and it
15 depended on the author as to what Market 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 Standard
22 Tariff which is [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 whether they wanted to serve
7 these customers for [REDACTED] under a [REDACTED] year
8 contract. And that's how Market comes into play
9 because a lot of their service of these customers,
10 they would be out in the market trying to serve it
11 and they were trying to evaluate whether they could
12 do it profitably.

13 Q. Do you see the title towards the top, it
14 says "Total 2005-2008"?

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 IEU customers,
24 that's a dollar number.

1 Q. Per year?

2 A. No, it's 2005 to 2008. Four years.

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

6 A. Sure.

7 Q. Okay. So all these values are
8 multiple-year values.

9 A. My belief would be yes.

10 MR. DORTCH: Objection. I'm going to
11 point out that one of the values is annual
12 megawatt-hours.

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 2005-2008
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 A. That would be my visual interpretation.
- 2 Q. Okay.
- 3 A. I'm not sure I have an understanding.
- 4 Q. Okay. Let's go to the next page, GCF-20.
- 5 This e-mail is from Steve Schrader and it is to you
- 6 and also Julie Janson. Can you tell me who Steve
- 7 Schrader is?
- 8 A. Steve Schrader was the CFO of the
- 9 Regulated Business unit.
- 10 Q. And I notice that you used past tense.
- 11 He has stopped performing that function?
- 12 A. Yes. He left.
- 13 Q. When did he leave?
- 14 A. I believe that he left in June of 2006.
- 15 Q. And do you know where he left for?
- 16 A. I had lunch with him last week. He is
- 17 working as a CFO for a group of oncology physicians
- 18 here in Cincinnati.
- 19 Q. What was his involvement regarding the
- 20 rate stabilization plan? Subject matter of this
- 21 e-mail is RSP Impacts.
- 22 A. The financial impact to the corporation.
- 23 Q. What corporation?
- 24 A. Cinergy Corp.

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 Mr. Schrader
6 regarding the negotiation or the process involved in
7 the May, the November, and the December 2004
8 agreements?

9 A. Yes.

10 Q. What was Mr. Schrader's 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 May. I believe that there was more involvement in
18 the November and the subsequent agreements.

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

21 A. I recall one. Walt Lemke is a staff
22 person that works for Steve -- that used to work for
23 Steve. 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 Mr. Schrader and Mr. Lemke work for?

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. Well, each business unit had a CFO, chief
9 financial officer, and under that would be
10 accounting, budgeting, forecasting, financial
11 analysis, and I don't know where Walt worked within
12 Steve's organization, but those were the functions
13 that Steve Schrader would have had as a business unit
14 CFO.

15 Q. Referring back to GCF-20, who is Phil?

16 A. That would be Phil Cox.

17 Q. What did Mr. Cox do with regard to RSP
18 impacts in this time frame?

19 A. He didn't do anything. Phil 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. He was a board member.

24 Q. Member of what board?

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 January 28th e-mail?

10 A. I believe it is.

11 Q. Now this document that appears on GCF-21
12 refers to RSP EBIT Impacts on Plan. What is EBIT?

13 A. Earnings before interest and taxes.

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 January 28th, 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 are revenues and then there are CRES payments by
6 Cinergy Retail Sales that are netted out against
7 those revenues?

8 A. Yeah. Once again, we don't know what the
9 time frame is, but in both the November agreements
10 and the March [sic] agreements and the option
11 agreements there were references to how to calculate
12 the dollar value of those CRES contracts. And I'm
13 assuming -- depending on what time frame this was,
14 that's what Steve would have been -- that's what
15 Steve would have been using. Steve and Walt.

16 Q. Do you see at the bottom there is an EPS
17 estimate?

18 A. Uh-huh.

19 Q. Can you tell me what that is?

20 A. Yeah. When somebody like Steve would
21 look at it, I mean all this other stuff is
22 interesting, but from his standpoint he's looking at
23 when the year is done and the plan is implemented,
24 what is going to be the impact on the earnings per

1 share. And you can see he has quantified it by year,
2 [REDACTED] the first year, [REDACTED] the second year, [REDACTED]
3 [REDACTED] the third, and [REDACTED] in the fourth; that was
4 the purpose of this evaluation.

5 Q. I notice at the bottom right of this page
6 it says "RBU Financial Forecasts." Who prepares the
7 RBU financial forecasts?

8 A. Would be the RBU CFO's organization.

9 Q. RBU is?

10 A. Regulated Business unit. I'm not even
11 sure they have an RBU anymore, but that's what it was
12 back then.

13 Q. And what's the connection between
14 Mr. Schrader and the Regulated Business unit?

15 A. He's the Regulated Business unit CFO, was
16 at this time.

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

19 A. No.

20 Q. Just the RBU.

21 A. Yes.

22 Q. All right. Now I'm looking at the top of
23 the chart versus the bottom of the chart. The bottom
24 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 costs connected with the AAC
3 or the IMF; tell me why that is.

4 A. Well, we are trying to determine -- Steve
5 is trying to determine the relative costs of the --
6 the relative impact of the RSP. We're going to have
7 those costs whether we implement the RSP or not, the
8 only difference is going to be with the RSP we get a
9 revenue component associated with the AAC.

10 AAC costs are going to be there whether
11 we enter into the RSP or not because we've got to
12 meet environmental requirements, we've got to meet
13 Homeland Security requirements. Those dollars we're
14 going to spend, so they wouldn't be relevant to this.
15 This is trying to get the net impact.

16 With regard to AAC costs, there is only a
17 positive effect of the RSP, there is no negative
18 effect.

19 Q. I'm not sure I understand that. What do
20 you mean, positive effect?

21 A. We're going to build a scrubber at some
22 plant. We're going to build that scrubber whether we
23 get an RSP reimbursement as part of the AAC or not.
24 So the only relevant aspect of the RSP to a financial

1 evaluation is how much does it increase your
2 revenues. Your costs are not going to be affected
3 because we're going to build the scrubber anyway.

4 Q. All right. The next one is GCF-22 and I
5 believe here's Mr. Lemke that you referred to. Is
6 that the same Mr. Lemke?

7 A. Uh-huh.

8 Q. He worked for Mr. Schrader; is that
9 correct?

10 A. Uh-huh.

11 Q. This e-mail dated October 26th, 2004,
12 is from Mr. Lemke to, 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 Jack and Greg. That would be a
20 reference to -- Greg is you?

21 A. Yes.

22 Q. And Jack is Mr. Steffen, 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 Walt had done
10 previously.

11 Q. What's the reference here to the RTC
12 reimbursement? 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 certain percentages.

17 A. Right.

18 Q. The percent on Friday was 82.5 percent,
19 now 83.4 percent. Do you know what those percentages
20 represent?

21 A. I believe I do.

22 Q. What do those percentages represent?

23 A. As a part of the RSP we were entering
24 into a four-year commitment to serve nonswitching

1 customers. 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. So basically what I believe those
9 numbers are are the decrease in projected revenue
10 collections under the RSP from the initial Commission
11 decision to what we thought might be the decision on
12 rehearing.

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. It is the percentage -- it is the
19 comparison between the original stipulation revenue
20 and the offer that we made on rehearing. So if you
21 looked at the revenue -- once again, this is all
22 based on assumptions of what would happen.

23 If you look at the revenue that we
24 presented to the Commission that we believed that we

1 would receive as a part of the stipulation in May of
2 2004 and you compare that to what we were offering on
3 rehearing, I believe that these numbers are saying
4 that we were offering a structure on rehearing that
5 represented about 83 percent of the revenues that we
6 felt like we would have received under the original
7 stipulation.

8 Q. Okay. I think I had the -- I may have --
9 I think I'm close to understanding the mathematics
10 here. You've got a percentage which has a numerator
11 and a denominator.

12 A. Right.

13 Q. The numerator is which, the May or the
14 November figure?

15 A. It would be the rehearing structure.

16 Q. November is the numerator.

17 A. Right. And it is smaller than the May
18 stipulation. So the offer that we made on rehearing
19 to serve these customers from 2005 through 2008 was
20 some 15-odd percent less than the stipulation that we
21 offered in May.

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. I'm an old numbers guy so the numerators
3 and denominators --

4 A. It was a way for us to gauge where we
5 were in our RSP efforts.

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 Mr. Lemke's name on it with yours as
9 recipient. The second one is -- the second one on
10 page, but earlier in time, was from you to Mr. Lemke,
11 Mr. Steffen, and Mr. Schrader. 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 10/21 version. 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 Mr. Lemke 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. What is the 79 percent that appears in
3 your e-mail? Do you know what that -- why there's a
4 79 percent there?

5 A. That is the percentage change between the
6 offer that we made on rehearing and the original
7 stipulation in one version of the spreadsheet that
8 Walt had done.

9 Q. And what are the versions that
10 Mr. Lemke's 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. Walt,
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 this percentage
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 Steve
8 Schrader analysis that was put together because that
9 was in late-January when 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 is a January 28th date which 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.)

15

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22

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24

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 Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

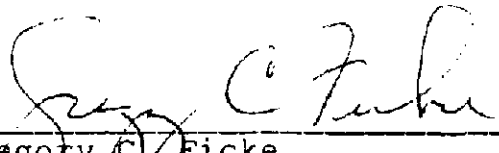
My commission expires June 19, 2011.

(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
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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 28th day
17 of FEB, 2007.

18 
19 Notary Public

20 My commission expires FEB- 16, 2009.

21
22
23
24
JULIA SCARBOROUGH
Notary Public, State of Ohio
My Commission Expires February 16, 2009

ERRATA SHEET

TO THE REPORTER:

[illegible]

Date 2/28/07 Signature *Gregory C Furbel*

Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and AK Steel Corporation, Air Products & Chemicals, Inc., Ford Motor Company, GE Aircraft Engines, and The Proctor and Gamble Co. (Customers), effective this 19th day of May 2004. 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, select one of the following options for competitive retail electric service no later than sixty (60) days after the Public Utilities Commission of Ohio's (Commission) Order in Case No. 03-93-EL-ATA or December 1, 2004, whichever comes first:

CONFIDENTIAL PROPRIETARY
TRADE SECRET

- a. Beginning January 1, 2005 and ending December 31, 2008, each Customer except General Electric 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, plus an amount equal to the quarterly adjusted fuel component of The Cincinnati Gas & Electric Company's price to compare component of its market-based standard service offer approved by the Commission in case no. 03-93-EL-ATA, as such rate may be periodically approved by the PUCO. It is agreed that for any Customer who elects this option (a) and that elects to keep a competitive retail electric service contract extending beyond January 1, 2005, but ending no later than December 31, 2005, Cinergy shall reimburse such Customer one half the annually adjusted component of the POLR during 2005 and the Customer shall begin service under this option (a) no later than January 1, 2006. Beginning January 1, 2005, General Electric and P&G's Ivorydale and Healthcare Research Center facilities may purchase through December 31, 2008 competitive retail electric service from Cinergy pursuant to the terms and conditions of its existing Service Agreement for Supply of Electric Energy with The Cincinnati Gas & Electric Company adjusted quarterly for fuel as noted above. P&G's BDH and CBL for the Ivorydale and Healthcare Research Center facilities, as those terms are defined in their current RTP agreements, may be adjusted annually, unless the parties agree otherwise. Cinergy shall reimburse quarterly all Customers for actual Regulatory Transition Charges, Rate Stabilization Charges, and the annually adjusted component of the Provider of Last Resort charges paid to The Cincinnati Gas & Electric Company. The effect of such reimbursement shall be that Customers will pay the unbundled generation rate approved in Case No. 99-1658-EL-ETP plus quarterly fuel increases. Cinergy may set off revenues collected for actual Regulatory Transition Charges, Rate Stabilization Charges, and annually adjusted component of the Provider of Last Resort charges paid against any outstanding balance owed to any Cinergy company; or,
- b. Each Customer may accept The Cincinnati Gas & Electric Company's market-based standard service offer price, including the price to compare and provider of last resort charge, approved by the Commission in case no. 03-93-EL-

ATA, but retain the right through December 31, 2008, 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 shall reimburse each such Customer one-half of the annually adjusted component of the Provider of Last Resort charges (such charges do not include the Rate Stabilization Charge component of the Provider of last Resort Charge) thereafter paid to The Cincinnati Gas & Electric Company through December 31, 2008. If a Customer is taking service from a non-Cinergy affiliated competitive retail electric service provider on January 1, 2005, Cinergy shall reimburse such Customer for one-half of the annually adjusted component of the Provider of Last Resort charges (such charges do not include the Rate Stabilization Charge component of the Provider of last Resort Charge) until December 31, 2005. If a Customer notifies Cinergy no later than 60 days after the order is issued in Case No. 03-93-EL-ATA or December 1, 2004 (whichever comes first) that it intends to purchase generation from a competitive retail electric service provider (including a Cinergy affiliated CRES) for the period January 1, 2005 thru December 31, 2008 then: a) Cinergy shall reimburse the Customer for one-half of the annually adjusted component of the Provider of Last Resort charge for the period January 1, 2005 through December 31, 2008; and b) this notice constitutes Customer's contract with a credit worthy CRES to provide firm generation service for its full capacity, energy and transmission requirements through December 31, 2008. Cinergy may set off revenues collected for one half of the annually adjusted component of the Provider Of Last Resort charges to be reimbursed to the applicable Customers against any outstanding balance owed to any Cinergy affiliated company. Customers choosing this option may switch from a non-Cinergy affiliated competitive retail electric service provider to Cinergy at the market rate approved by the Commission in case no. 03-93-EL-ATA or the market rate offered by Cinergy, whichever is higher.

2. If, prior to December 31, 2008, 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 January 1, 2005, such new load or accounts may receive the options and benefits accruing from participation in this Agreement to the extent that, for each Customer, such new load or accounts

cumulatively represents new peak load of three (3) MW or less; 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. 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.
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. The Cincinnati Gas & Electric Company shall support the future distribution rider, proposed as Rider CIR, allocated based upon distribution net plant.
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 that extends beyond January 1, 2005, then the minimum stay shall be waived and the Customer may elect under Paragraph 1 for service to be effective January 1, 2005.
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 carry out the intent of Paragraph 1, including the development of CRES contracts with terms and conditions as similar as possible to the existing unbundled tariffs. Cinergy will not require surety bonds, deposits or other corporate guarantees under Paragraph 1.
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 economic detriment of the

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Customers, then Cinergy will provide the same economic value to the impacted Customer(s) through some other mutually acceptable process.

This Agreement terminates after December 31, 2008, or as follows:

- A. The Commission, in Case No. 03-93-EL-ATA, and ongoing fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in The Cincinnati Gas & Electric Company service territory served by any Cinergy company.
- B. The Commission, in Case No. 03-93-EL-ATA or a related case necessary to carry out the terms and conditions of this Agreement, issues an order unacceptable to Cinergy.
- C. A court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement.

Before termination of the Agreement as provided in paragraphs A and B above, the Parties agree to use best efforts to fulfill the intent of this Agreement, by negotiating amendments to the Agreement that provide the Parties with substantially the same economic benefit for substantially the same consideration as contained in the original Agreement.

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:

David F. Boehm, Esq. or
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 2110
Cincinnati, Ohio 45202

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TRADE SECRET

To Cinergy:

James B. Gainer
Cinergy Services, Inc.
139 East Fourth Street
Cincinnati, OH 45202

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.

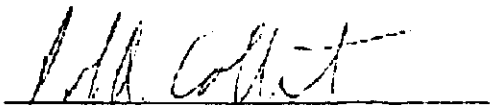
This Agreement is for the exclusive benefit of the Parties and may not be assigned without the written consent of the non-assigning Party.

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

Entered into on this 19th day of May:

On behalf of Cinergy

On Behalf of the Customers



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



David Boehm, Counsel
Michael L. Kurtz, Counsel
Boehm, Kurtz, & Lowry
36 East Seventh Street
Suite 2110
Cincinnati, Ohio 45202

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CONFIDENTIAL PROPRIETARY
TRADE SECRET

CINERGY.
SERVICES

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

April 4, 2005

Mr. David F. Boehm
Attorney for the Ohio Energy Group
Boehm, Kurtz & Lowry
Attorneys at Law
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

Re: Calculation of RTP Option Payments

Dear Dave:


As you are aware, in the course of negotiating the CRS option agreements with OEG members [REDACTED] it was agreed that the terms and conditions of their existing RTP would continue through December 31, 2008. More specifically with respect to [REDACTED] it was agreed that the CBL and BDH defined in the RTP would remain in effect for the entire term of the agreement provided there was no substantive increase in their load during the term of the agreement. 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 calculation of the option payments to be made quarterly by Cinergy Retail Sales to OEG members taking RTP service.

The Ohio Energy Group, on behalf of its members, and Cinergy Retail Sales, LLC (the Parties), hereby agree that under the Option Agreement dated January 20, 2005 between Cinergy Retail Sales, LLC and [REDACTED] (Option Agreement), the amount referred to as "Big G" will be calculated based upon the defined BDH and CBL for [REDACTED] RTP Account [REDACTED]. The parties also agree that all of the riders established in the CG&E rate stabilization plan, with the exception of [REDACTED] will be calculated based upon actual demand and energy consumption rather than the BDH and CBL defined in any RTP Agreement.

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

Sincerely,

James B. Gainer


David F. Boehm
Attorney for the Ohio Energy Group

Deposition Questions - Greg Ficke

CC964

Tuke Energy Ohio Case No. 03-93-EL-ATA (Remand)										
AGREEMENTS										
From	Type	Date	Document	Super Party 1	Party 2	Multiple?	Group	Ref No	Bag	End
DERS	Super Agr	5/28/04	Agreement	CRS		Y	IEU		341	348
DERS	Super Agr	11/8/04	Agreement	5/28/04 CRS		Y	IEU		334	340
DERS	Option Agr	12/20/04	Option Agreement	CRS			IEU	508387	50	84
DERS	Super Agr	5/28/04	Agreement	CRS		Y	IEU		341	348
DERS	Super Agr	11/8/04	Agreement	5/28/04 CRS		Y	IEU		334	340
DERS	Option Agr	12/20/04	Option Agreement	CRS			IEU	508388	32	49
DERS	Super Agr	5/19/04	Agreement	CRS		Y	OEG		327	332
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	1/19/05	Option Agreement	CRS			OEG	508389	178	190
DERS	Super Agr	5/19/04	Agreement	CRS		Y	OEG		327	332
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	2/2/05	Option Agreement	CRS			OEG	508388	1	14
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	1/1/05	Option Agreement	CRS			OEG	508384	65	78
DERS	Super Agr	5/19/04	Agreement	CRS		Y	OEG		327	332
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	1/12/05	Option Agreement	CRS			OEG	508390	133	145
DERS	Super Agr	5/19/04	Agreement	CRS		Y	OEG		327	332
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	12/31/04	Option Agreement	CRS			OEG	508387	15	31
DERS	Super Agr	4/4/05	Letter re: 1/20/05 Agr.	1/20/05 CRS		Y	OEG		333	333
DERS	Super Agr	4/4/05	Copy of Page 333	1/20/05 CRS		Y	OEG		386	386
DERS	Super Agr	5/19/04	Agreement	CRS		Y	OEG		327	332
DERS	Super Agr	11/22/04	Agreement	5/19/04 CRS		Y	OEG		320	328
DERS	Option Agr	1/14/05	Option Agreement	CRS			OEG	508389	158	175
DERS	Super Agr	4/4/05	Letter re: 1/20/05 Agr.	1/20/05 CRS		Y	OEG		333	333
DERS	Super Agr	4/4/05	Copy of Page 334	1/20/05 CRS		Y	OEG		388	388
DERS	Super Agr	5/19/04	Agreement	CRS		Y (a)	OHA		347	352
DERS	Super Agr	10/28/04	Agreement (signature 11/8/04)	5/19/04 CRS		Y (a)	OHA		353	357
DERS	Option Agr	1/25/05	Option Agreement	CRS			OHA	508381	220	236
DERS	Option Agr	1/25/05	Option Agreement	CRS			OHA	508372	191	203
DERS	Option Agr	12/30/04	Option Agreement	CRS			OHA	508373	308	318
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508388	237	250
DERS	Option Agr	1/25/05	Option Agreement	CRS			OHA	508371	204	220
DERS	Option Agr	12/30/04	Option Agreement	CRS			OHA	508379	282	305
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508378	279	291
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508374	79	91
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508377	265	278
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508378	251	264
DERS	Option Agr	12/28/04	Option Agreement	CRS			OHA	508379	109	118
DERS	Option Agr	1/11/05	Option Agreement	CRS			OHA	508382	119	133
DERS	Option Agr	1/14/05	Option Agreement	CRS			OHA	508380	148	158
DERS	Option Agr	12/29/04	Option Agreement	CRS			OHA	508383	92	104
DERS	Super Agr	7/7/04	Superseded Agreement	12/14/00 CRS					1173	1179
DERS	Super Agr	11/22/04	Superseded Agreement	7/7/04 CRS					1180	1187
DERS	Agreement	11/8/05	Agreement	11/22/04 CRS					1188	1195

DEPOSITION
EXHIBIT
3
FICKE

Rick Sites

From: Gainer, James [James.Gainer@clenergy.com]
 Sent: Thursday, May 06, 2004 9:09 AM
 To: Kubacki, Joseph; Rick Sites
 Cc: Colbert, Paul; Ficke, Greg
 Subject: RE: OHA CG&E Settlement Terms -- Confidential

Importance: High

Rick and Joe, 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. JBG

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

From: Kubacki, Joseph [mailto:jkubacki@sel.com]
 Sent: Wednesday, May 05, 2004 5:56 PM
 To: Gainer, James; Colbert, Paul
 Cc: Rick Sites (E-mail)
 Subject: OHA CG&E Settlement Terms -- Confidential
 Importance: High

> Jim and Paul,
 Rick and I would like to thank you for cooperating in our settlement discussions and together developing a proposal that the OHA members were able to provide their consent. Attached is our proposed consolidation of settlement terms which we believe are agreeable to both OHA 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. Rick 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.

> Joe

>

>

> <<SETTLEMENT TERMS 5 5 04.doc>> .

>

> Joseph Kubacki Jr., CEP, CEM

> 412-394-5603

>

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.

CONFIDENTIAL PROPRIETARY
TRADE SECRET**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 (Hospitals), effective this 19th day of May 2004. It is the intent of the parties to this agreement to bind Cinergy and the Hospitals to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the Hospitals (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:

DEPOSITION EXHIBIT #5 FICKE

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1. Beginning January 1, 2005, and through December 31, 2008,, Cinergy will offer to sell retail electric generation service to the Hospitals for all their CG&E accounts at a firm power, all-in, fixed rate equal to the applicable tariff rate of The Cincinnati Gas & Electric Company's unbundled generation rate approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP less the regulatory transition charge approved in the same case less one (1) mil per kwh, except that Jewish Hospital and Children's Hospital shall purchase competitive retail electric generation service from Cinergy at a rate equal to the real time pricing tariff rate and currently effective service agreement they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The retail electric generation offer indicated above will be an option for Hospital accounts to accept anytime prior to 12/31/08 and the term of such generation arrangement will be designated by the Hospital accounts but will extend no longer than 12/31/08.
2. Cinergy shall reimburse the Hospitals for any rate stabilization charge (a component of the provider of last resort charge) paid to The Cincinnati Gas & Electric Company by the Hospitals purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall reimburse and rate stabilization charges actually paid quarterly through the term of this agreement.
3. If, prior to December 31, 2008, the Hospitals add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory, such new load or accounts may receive the options and benefits accruing from participation in this agreement to the extent that such new load or accounts represents new peak load of three (3) MW or less, 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 Ohio Hospital Association \$50,000.00 upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy.
5. The Hospitals 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 except as set forth herein.

6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to December 31, 2004, until at least December 31, 2008. 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 as of December 31, 2004, may continue to purchase generation service pursuant to such load management riders through 12/31/08.
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 Hospitals shall cause the Ohio Hospital Association to support a Stipulation filed by The Cincinnati Gas & Electric Company and the Ohio Hospital Association, in case no. 03-93-EL-ATA, and any related litigation.

This agreement terminates after December 31, 2008, or upon the occurrence of any of the following:

- A. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to approve as part of the capped provider of last resort charge, a fuel cost recovery mechanism such that The Cincinnati Gas & Electric Company may recover fuel costs equal to the average costs for fuel consumed at The Cincinnati Gas & Electric Company's plants, and economy purchase power costs, for sales in The Cincinnati Gas & Electric Company's Certified Service Territory.
- B. The Public Utilities Commission of Ohio, in Case No. 03-93-EL-ATA or a related case necessary to carry out the terms and conditions of this agreement, fails to issue an order acceptable to Cinergy.
- C. Upon thirty (30) days written notice by either party upon the issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing its obligations pursuant to this agreement.

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 Hospitals:

Rick Sites, General Counsel
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 OHA 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 of the Hospitals



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



Rick Sites, General Counsel
155 East Broad St., 15th Floor
Columbus, Ohio 43215-3620

Agreement

This Agreement is between Cinergy Retail Sales, LLC (Cinergy), and AK Steel Corporation., Air Products & Chemicals, Inc., BP Products North America, Ford Motor Company, GE Aircraft Engines, and The Proctor and Gamble Co. (Customers), effective this 22nd day of November, 2004. *This Agreement replaces and supersedes the terms and conditions of the Agreement dated May 19, 2004, 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:

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: 1) Rate Stabilization Charge (RSC); 2) Annually Adjusted Component (AAC); 3) Infrastructure Maintenance Fund (IMF); and 4) System Reliability Tracker (SRT).
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 December 15, 2004.

Option A

A. Beginning no earlier than January 1, 2005, and ending December 31, 2008, each Customer (except General Electric) may purchase competitive retail electric generation service from a Cinergy affiliated certified competitive retail electric service (CRES) provider at their current tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as Big G, plus an amount equal to the quarterly adjusted fuel component (which shall not include any amount for emission allowances) of CG&E's price to compare component of its market-based standard service offer set forth by the Commission in Case No. 03-93-EL-ATA. Cinergy shall reimburse quarterly all Customers for all amounts actually paid to CG&E for the following items: 1) Regulatory Transition Charges (RTC); 2) RSC; 3) AAC; and 4) SRT. From January 1, 2005 through December 31, 2008, Cinergy shall also reimburse quarterly all Customers for any actual payment made to CG&E of the IMF in excess of 4% of little g. The effect of such reimbursement shall be that Customers will pay the unbundled generation rate, Big G, plus quarterly fuel increases (not including emission allowances) plus the IMF up to 4% of little g.

For any Customer who elects this Option A and has a CRES contract extending beyond January 1, 2005, but ending no later than December 31, 2005, Cinergy shall reimburse such Customer, during 2005 until the Customer begins service under this Option A no later than January 1, 2006, for the following items: 1) one half of the SRT actually paid; 2) and one half of the AAC actually paid; and 3) any IMF charge in excess of 4% of little g actually paid.

Beginning no earlier than January 1, 2005 and ending December 31, 2008, General Electric and P&G's Ivorydale and Healthcare Research Center facilities may purchase competitive retail electric service from a Cinergy affiliated CRES pursuant to the terms and conditions of their existing Service Agreements for Supply of Electric Energy with CG&E adjusted quarterly for fuel (with no cost for emission allowances). Cinergy shall reimburse quarterly General Electric and P&G for all amounts actually paid to CG&E for: 1) RTC; 2) RSC; 3) AAC; and SRT. Cinergy shall also reimburse quarterly General Electric and P&G for all IMF payments made to CG&E in excess of 4% of little g. P&G's BDH and CBL for the Ivorydale and Healthcare Research Center facilities are defined in their current RTP agreements and may be adjusted annually unless the parties agree otherwise.

Under this Option A, Cinergy may set off revenues collected for actual RTC, RSC, AAC, SRT, or IMF charges against any outstanding balance owed to Cinergy or CG&E; or,

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 December 31, 2008, to switch to a CRES under the terms and conditions of the Commission's Order. During any time between January 1, 2005, and December 31, 2008, when it is purchasing from a CRES under Option B, Cinergy shall reimburse quarterly each Customer amounts actually paid to CG&E for the following items: 1) 50% of RSC; 2) 50% of AAC; 3) 50% of SRT, and 4) any actual payment made to CG&E of the IMF in excess of 4% of little g. During January 1, 2005, through December 31, 2008, Customers choosing Option B must pay to Cinergy quarterly one half of the emission allowance component of the fuel component of the price to compare. Cinergy may set off revenues collected for actual RTC, RSC, AAC, SRT, or IMF charges against any outstanding balance owed to Cinergy or CG&E.

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 January 1, 2005, through December 31, 2008, and satisfies to the maximum extent

possible the requirements of Case No. 03-93-EL-ATA that the first 50% of eligible load by customer class to switch to a CRES shall not pay the RSC and shall not pay the AAC.

4. If, prior to December 31, 2008, 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 January 1, 2005, such new load or accounts may receive the options and benefits accruing from participation in this Agreement to the extent that, for each Customer, such new load or accounts cumulatively represents new peak load of ~~three (3) MW~~ or less; any accounts representing new load beyond the foregoing limit are not included under this Agreement.
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, shall pay to Cinergy Retail Sales the applicable transmission charges equal to the transmission charges approved by the Public Utilities Commission of Ohio for Cincinnati Gas & Electric Company.
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. Such filing shall include a rate increase for rate TS of no more than \$ 0.00. The Parties retain all 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 shall support the future distribution rider, proposed as Rider CIR, allocated based upon distribution net plant.
8. The Customers shall cause the Ohio Energy Group to support an Application for Rehearing filed by The Cincinnati Gas & Electric Company and/or OEG seeking reinstatement without

modification of the Stipulation signed by The Cincinnati Gas & Electric Company and OEG or approval by the Commission without modification of CG&E alternative proposal submitted in its application for rehearing in Case No. 03-93-EL-ATA, and any related litigation.

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, then the minimum stay shall be waived and the Customer may elect under Paragraph 1 for service to be effective during 2005.
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. The Parties agree to work in good faith to carry out the intent of Paragraph 1, including the development of CRES contracts with terms and conditions as similar as possible to the existing unbundled tariffs. Cinergy will not require surety bonds, deposits or other corporate guarantees under Paragraph 1.
12. 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 economic detriment of the Customers, then Cinergy will provide the same economic value to the impacted Customer(s) through some other mutually acceptable process.

This Agreement terminates after December 31, 2008, or as follows:

- A. The Commission, in Case No. 03-93-EL-ATA, and ongoing fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in The Cincinnati Gas & Electric Company service territory served by any Cinergy company.
- B. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to issue an entry on rehearing acceptable to Cinergy such that it restores without substantial modification the original Stipulation signed by the Parties or adopts without

substantial modification CG&E's alternative proposal made in its application for rehearing.

- C. A court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement.

Before termination of the Agreement as provided in paragraphs A and B above, the Parties agree to use best efforts to fulfill the intent of this Agreement, by negotiating amendments to the Agreement that provide the Parties with substantially the same economic benefit for substantially the same consideration as contained in the original Agreement.

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:

David F. Boehm, Esq. or
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 2110
Cincinnati, Ohio 45202

To Cinergy:

James B. Gainer
Cinergy Services, Inc.
139 East Fourth Street
Cincinnati, OH 45202

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 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 22nd day of November:

On behalf of Cinergy

On Behalf of the Customers



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



David Boehm, Counsel
Michael L. Kurtz, Counsel
Boehm, Kurtz, & Lowry
36 East Seventh Street
Suite 2110
Cincinnati, Ohio 45202

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 (Hospitals), effective this 28th day of October 2004. This Agreement replaces and supersedes the terms and conditions of the Agreement dated May 19th 2004 between Hospitals and Cinergy. It is the intent of the parties to this agreement to bind Cinergy and the Hospitals to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the Hospitals (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.

00979

CONFIDENTIAL PROPRIETARY
TRADE SECRET

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

1. Beginning January 1, 2005, and through December 31, 2008, Cinergy will offer to sell retail electric generation service to the Hospitals for all their CG&E accounts at a firm power, all-in, fixed rate equal to the applicable tariff rate of The Cincinnati Gas & Electric Company's unbundled generation rate approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP less the regulatory transition charge approved in the same case less one (1) mil per kwh, except that Jewish Hospital and Children's Hospital shall purchase competitive retail electric generation service from Cinergy at a rate equal to the real time pricing tariff rate and currently effective service agreement they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The retail electric generation offer indicated above will be an option for Hospital accounts to accept anytime prior to December 31, 2008 and the term of such generation arrangement will be designated by the Hospital accounts but will extend no longer than December 31, 2008. The generation rate shall include a payment of amounts for emission allowances equal to the emission allowance cost CG&E is permitted to recover as part of its price to compare charge of the market-based standard service offer.
2. Cinergy shall reimburse the Hospitals for any rate stabilization charge (a component of the provider of last resort charge) actually paid to The Cincinnati Gas & Electric Company by the Hospitals purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall reimburse rate stabilization charges actually paid quarterly through the term of this agreement. The Hospitals shall pay the infrastructure maintenance fund and the system reliability tracker. To the extent that hospitals actually pay the infrastructure maintenance fund component of the Provider of last resort Charge, CG&E shall reimburse, consistent with the reimbursement schedule contained herein, total infrastructure maintenance fund payments in excess of 4% of little g. The participating Hospitals will not pay the AAC (annually adjusted component) charges and any fuel adders that would apply to full service tariff customers.
3. If, prior to December 31, 2008, the Hospitals add additional load or accounts in The Cincinnati Gas & Electric Company's

CONFIDENTIAL PROPRIETARY
TRADE SECRET

certified territory, such new load or accounts may receive the options and benefits accruing from participation in this agreement to the extent that such new load or accounts represents new peak load of three (3) MW or less, 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 Ohio Hospital Association \$50,000.00 upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy.
5. The Hospitals 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 except as set forth herein.
6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to December 31, 2004, until at least December 31, 2008. 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 as of December 31, 2004, may continue to purchase generation service pursuant to such load management riders through December 31, 2008.
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. Hospitals shall pay the applicable transmission and distribution rates of The Cincinnati Gas & Electric Company as approved by the Commission, and/or if applicable, shall pay to Cinergy Retail Sales the applicable transmission charges equal to the transmission charges approved by the Public Utilities Commission of Ohio for Cincinnati Gas & Electric Company.
9. The Hospitals shall cause the Ohio Hospital Association to support an Application for Rehearing filed by The Cincinnati Gas & Electric Company and/or the Ohio Hospital Association seeking to restore the Stipulation, without modification, signed by The Cincinnati gas & Electric Company and the Ohio Hospital Association or seeking approval, without modification

CONFIDENTIAL PROPRIETARY
TRADE SECRET

00081

of the alternative proposal 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 December 31, 2008, or upon the occurrence of any of the following:

- A. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to approve as part of the capped provider of last resort charge, a fuel cost recovery mechanism such that The Cincinnati Gas & Electric Company may recover fuel costs equal to the average costs for fuel consumed at The Cincinnati Gas & Electric Company's plants, and economy purchase power costs, for sales in The Cincinnati Gas & Electric Company's Certified Service Territory.
- B. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to issue an entry on rehearing acceptable to Cinergy such that it restores without modification the original Stipulation signed by the Parties or adopts without modification CG&E's alternative proposal made in its application for rehearing.
- C. Upon thirty (30) days written notice by either party upon the issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing its obligations pursuant to this agreement.

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 Hospitals:

Rick Sites, General Counsel
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 OHA 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.

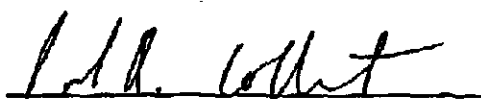
This agreement is for the exclusive benefit of the parties and may not be assigned without the written consent of the non-assigning party.

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 of the Hospitals



Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215



Rick Sites, General Counsel
155 East Broad St., 15th Floor
Columbus, Ohio 43215-3620

Rick Sites

From: Colbert, Paul [Paul.Colbert@Cinergy.COM]
Sent: Wednesday, November 03, 2004 5:23 PM
To: Rick Sites; Kubacki, Joe
Cc: Steffen, Jack; Ficke, Greg; Duff, Timothy; Gainer, James
Subject: OHA Agreement 2, 10-28-04

Attached is the amended agreement with OHA. Please execute a copy and send it to us. We will execute the copy and send a signed copy back to you. Please file in support of the Alternative Proposal on Monday. Contact us with any questions. Thank you.

1/11/2007

DEPOSITION
EXHIBIT
8
FIC 11.15

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 (Hospitals), effective this 28th day of October 2004. This Agreement replaces and supersedes the terms and conditions of the Agreement dated May 19th 2004 between Cognis and Cinergy. It is the intent of the parties to this agreement to bind Cinergy and the Hospitals to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the Hospitals (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 January 1, 2005, and through December 31, 2008, Cinergy will offer to sell retail electric generation service to the Hospitals for all their CG&E accounts at a firm power, all-in, fixed rate equal to the applicable tariff rate of The Cincinnati Gas & Electric Company's unbundled generation rate approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP less the regulatory transition charge approved in the same case less one (1) mil per kw/h, except that Jewish Hospital and Children's Hospital shall purchase competitive retail electric generation service from Cinergy at a rate equal to the real time pricing tariff rate and currently effective service agreement they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The retail electric generation offer indicated above will be an option for Hospital accounts to accept anytime prior to 12/31/08 and the term of such generation arrangement will be designated by the Hospital accounts but will extend no longer than 12/31/08. The generation rate shall include a payment of amounts for emission allowances.
2. Cinergy shall reimburse the Hospitals for any rate stabilization charge (a component of the provider of last resort charge) actually paid to The Cincinnati Gas & Electric Company by the Hospitals purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall reimburse rate stabilization charges actually paid quarterly through the term of this agreement. The Hospitals shall pay all other Provider of Last Resort charges including, but not limited to, the infrastructure maintenance fund and the system reliability tracker. To the extent that hospitals actually pay the infrastructure maintenance fund component of the Provider of last resort Charge, CG&E shall reimburse, consistent with the reimbursement schedule contained herein, infrastructure maintenance fund payments in excess of 4% of little g.
3. If, prior to December 31, 2008, the Hospitals add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory, such new load or accounts may receive the options and benefits accruing from participation in this agreement to the extent that such new load or accounts represents new peak load of three (3) MW or less, 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 Ohio Hospital Association \$50,000.00 upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy.
5. The Hospitals 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 except as set forth herein.
6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to December 31, 2004, until at least December 31, 2008. 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 as of December 31, 2004, may continue to purchase generation service pursuant to such load management riders through 12/31/08.
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. Hospitals shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission, or if applicable, the transmission charges equal to the actual transmission costs of Cinergy's CRES.
9. The Hospitals shall cause the Ohio Hospital Association to support an Application for Rehearing filed by The Cincinnati Gas & Electric Company and/or the Ohio Hospital Association seeking to restore the Stipulation, without modification, signed by The Cincinnati gas & Electric Company and the Ohio Hospital Association or seeking approval, without modification of the alternative proposal 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 December 31, 2008, or upon the occurrence of any of the following:

- A. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to approve as part of the capped provider of last resort charge, a fuel cost recovery mechanism such that The Cincinnati Gas & Electric Company may recover fuel costs equal to the average costs for fuel consumed at The Cincinnati Gas & Electric Company's plants, and economy purchase power costs, for sales in The Cincinnati Gas & Electric Company's Certified Service Territory.
- B. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to issue an entry on rehearing acceptable to Cinergy such that it restores without modification the original Stipulation signed by the Parties or adopts without modification CG&E's alternative proposal made in its application for rehearing.
- C. Upon thirty (30) days written notice by either party upon the issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing its obligations pursuant to this agreement.

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 Hospitals:

Rick Sites, General Counsel
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 OHA 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 of the Hospitals

Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

Rick Sites, General Counsel
155 East Broad St., 15th Floor
Columbus, Ohio 43215-3620

Rick Sites

From: Colbert, Paul [Paul.Colbert@Cinergy.COM]
Sent: Friday, November 05, 2004 11:20 AM
To: Kubacki, Joe; Rick Sites
Cc: Gainer, James; Ficke, Greg; Steffen, Jack
Subject: OHA CGE agreement revisions 11-4-04.DOC

Joe and Rick, 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
FICKE

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 (Hospitals), effective this 28th day of October 2004. This Agreement replaces and supersedes the terms and conditions of the Agreement dated May 19th 2004 between Hospitals and Cinergy. It is the intent of the parties to this agreement to bind Cinergy and the Hospitals to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and the Hospitals (parties); it may not be amended except by the written agreement of the parties.

Deleted: Cognis

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 January 1, 2005, and through December 31, 2008, Cinergy will offer to sell retail electric generation service to the Hospitals for all their CG&E accounts at a firm power, all-in, fixed rate equal to the applicable tariff rate of The Cincinnati Gas & Electric Company's unbundled generation rate approved by the Public Utilities Commission of Ohio (Commission) in case no. 99-1658-EL-ETP less the regulatory transition charge approved in the same case less one (1) mil per kwh, except that Jewish Hospital and Children's Hospital shall purchase competitive retail electric generation service from Cinergy at a rate equal to the real time pricing tariff rate and currently effective service agreement they are receiving from The Cincinnati Gas & Electric Company on December 31, 2004. The retail electric generation offer indicated above will be an option for Hospital accounts to accept anytime prior to 12/31/08 and the term of such generation arrangement will be designated by the Hospital accounts but will extend no longer than 12/31/08. The generation rate shall include a payment of amounts for emission allowances equal to the emission allowance cost CG&E is permitted to recover as part of its price to compare charge of the market-based standard service offer.

Deleted: which shall be limited to a total of 1% of little g

2. Cinergy shall reimburse the Hospitals for any rate stabilization charge (a component of the provider of last resort charge) actually paid to The Cincinnati Gas & Electric Company by the Hospitals purchasing competitive retail electric generation service from Cinergy pursuant to paragraph one (1) above. Cinergy shall reimburse rate stabilization charges actually paid quarterly through the term of this agreement. The Hospitals shall pay the infrastructure maintenance fund and the system reliability tracker. To the extent that hospitals actually pay the infrastructure maintenance fund component of the Provider of last resort Charge, CG&E shall reimburse, consistent with the reimbursement schedule contained herein, total infrastructure maintenance fund payments in excess of 4% of little g. The participating Hospitals will not pay the AAC (annually adjusted component) charges and any fuel adders that would apply to full service tariff customers.

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

Deleted: any

3. If, prior to December 31, 2008, the Hospitals add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory, such new load or accounts may receive the

options and benefits accruing from participation in this agreement to the extent that such new load or accounts represents new peak load of three (3) MW or less, 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 Ohio Hospital Association \$50,000.00 upon the issuance of a final appealable order of the Public Utilities Commission of Ohio satisfactory to Cinergy.
5. The Hospitals 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 except as set forth herein.
6. Cinergy shall not amend the rates charged by The Cincinnati Gas & Electric Company for dual feeds for load existing prior to December 31, 2004, until at least December 31, 2008. 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 as of December 31, 2004, may continue to purchase generation service pursuant to such load management riders through 12/31/08.
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. Hospitals shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission, or if applicable, the transmission charges equal to the actual transmission costs of Cinergy's CRES.
9. The Hospitals shall cause the Ohio Hospital Association to support an Application for Rehearing filed by The Cincinnati Gas & Electric Company and/or the Ohio Hospital Association seeking to restore the Stipulation, without modification, signed by The Cincinnati Gas & Electric Company and the Ohio Hospital Association or seeking approval, without modification of the alternative proposal made by The Cincinnati Gas & Electric Company in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.

Deleted: Hospitals shall pay The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission, or if applicable, the transmission charges equal to the actual transmission costs of Cinergy's CRES.

Deleted:

This agreement terminates after December 31, 2008, or upon the occurrence of any of the following:

- A. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to approve as part of the capped provider of last resort charge, a fuel cost recovery mechanism such that The Cincinnati Gas & Electric Company may recover fuel costs equal to the average costs for fuel consumed at The Cincinnati Gas & Electric Company's plants, and economy purchase power costs, for sales in The Cincinnati Gas & Electric Company's Certified Service Territory.
- B. The Public Utilities Commission of Ohio, in case no. 03-93-EL-ATA, fails to issue an entry on rehearing acceptable to Cinergy such that it restores without modification the original Stipulation signed by the Parties or adopts without modification CG&E's alternative proposal made in its application for rehearing.
- C. Upon thirty (30) days written notice by either party upon the issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing its obligations pursuant to this agreement.

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 Hospitals:

Rick Sites, General Counsel
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620

To Cinergy:

Cinergy
James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

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 OHA 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 of the Hospitals

Paul A. Colbert, Senior Counsel
The Cincinnati Gas & Electric Company
155 East Broad Street
Columbus, Ohio 43215

Rick Sites, General Counsel
155 East Broad St., 15th Floor
Columbus, Ohio 43215-3620