

# 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: 60817

NUMBER OF PAGES: 200

DESCRIPTION OF DOCUMENT: Conf. Release

**Rick Sites**

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**From:** Colbert, Paul [Paul.Colbert@Cinergy.COM]

**Sent:** Sunday, November 07, 2004 2:31 PM

**To:** Gainer, James; Ficke, Greg; Steffen, Jack; Duff, Timothy; Kubacki, Joe; Rick Sites

**Subject:** Main3Legal-#134520-v2-OHA\_Agreement\_2\_\_10-28-04.DOC

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

1/11/2007

DEPOSITION  
EXHIBIT

#10

### Agreement

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

**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.

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2. Cinergy shall reimburse the Hospitals for any ~~rate stabilization charge~~ ~~the 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 charges~~. 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, ~~last infrastructure maintenance fund payments in excess of 75% of bills~~. The participating Hospitals will not pay the AAG (annually adjusted component) charges and any fuel adders that would apply to full service utility customers.

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

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Deleted: actual transmission costs of Cinergy's CRES.

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, 15<sup>th</sup> 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 8th day of November.

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~~Deleted: 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

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(C04194:)

**Rick Sites**

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**From:** Colbert, Paul [Paul.Colbert@Cinergy.COM]

**Sent:** Sunday, November 07, 2004 2:33 PM

**To:** Gainer, James; Ficke, Greg; Steffen, Jack; Duff, Timothy; Rick Sites; Kubacki, Joe

**Subject:** Main3Legal-#134520-v2-OHA\_Agreement\_2\_\_10-28-04.DOC

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

1/11/2007

DEPOSITION  
EXHIBIT

#11

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.

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 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

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

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, 15<sup>th</sup> 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 8th day of November:

On behalf of Cinergy

On Behalf of the Hospitals

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

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

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**OPTION AGREEMENT**

**CONFIDENTIAL PROPRIETARY  
TRADE SECRET**

**BY AND BETWEEN**

**CINERGY RETAIL SALES, LLC**

**AND**

**GENERAL MOTORS, INC.**

This Option Agreement (the "Agreement") is entered into as of this twentieth (20<sup>th</sup>) day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and General Motors, Inc. ("GM"), a Delaware limited liability company (each individually a "Party" or collectively the "Parties").

**RECITALS**

WHEREAS, General Motors, Inc. for the purposes of this agreement only refers to General Motors, Inc., West Chester Operation located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

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

WHEREAS, GM desires to grant an option to CRS to provide electric service and CRS desires to provide electric service pursuant to the terms outlined herein;

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

**ARTICLE I  
DEFINITIONS**

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

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

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

(CIT158)

DEPOSITION  
EXHIBIT

#12

Cinergy Corporate Records  
04016260



Document Code

050

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

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

**"Contract Price"** means the price in \$US as set forth in Exhibit B to be paid by GM to CRS for the purchase of the Energy under this Agreement.

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

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

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

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

**"Firm"** means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by GM is Force Majeure or the other Party's failure to perform.

**"Full Requirements Energy"** means, except as provided herein, that GM shall purchase all of its retail Energy requirements for its facility from CRS and that GM shall not resell any of the Energy provided hereunder to any third party.

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

**"GM's Maximum Demand"** means GM's combined maximum demand for all of GM's accounts listed on Exhibit C with The Cincinnati Gas & Electric Company as of January 1, 2005.

**"MW"** means megawatt.

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

**"Transmission Providers"** means the entity or entities transmitting or transporting the Energy on behalf of CRS or GM to the Delivery Point.

ARTICLE II  
OPTION

- 2.1 GM currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates, or will provide NOTICE by December 30, 2004 that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. GM hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of GM's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for GM granting CRS this option, CRS agrees to pay GM each calendar month of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). CRS shall work in good faith with GM to establish procedures so that the Option Payment is properly distributed to each applicable GM account.
- 2.4 Because this is an exclusive Option, in the event GM leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III  
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS <sup>exercise</sup> ~~exercises~~ its option, the power sale agreement between CRS and GM shall include, among others, the following terms:
- a. Energy Quantity and Type. CRS shall provide GM with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than GM's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of the Agreement, GM has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of the Agreement and CRS shall have no obligation to provide Energy and Capacity to GM above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

by GM, the transmission service charge shall be equal to transmission charges approved by the Public Utilities Commission of Ohio for the otherwise standard offer rate schedule applicable to each participating GM account or successors to such rate schedule.

- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor GM shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008 provided that GM may terminate this Agreement in its entirety, including any contract with CRS, upon twelve (12) months written notice provided that such termination shall be effective for all GM accounts and for this entire agreement.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to GM within fifteen (15) days after the end of each calendar month. The payment shall be submitted to the following account or address:

General Motors, Inc.  
NAO Util Payment Dept. C/O EUSB  
PO Box 319022  
Chicago, IL 60631

**ARTICLE VI  
DEFAULTS AND REMEDIES**

- 6.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 **Remedies upon an Event of Default.** Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 **Other Termination Events.** If performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, then such Party shall have the right upon thirty (30) days notice to terminate this Agreement without further liability. FERC's determination that CG&E is

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

## ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

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

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

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

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

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

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

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

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

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

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

#### ARTICLE IX MISCELLANEOUS

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

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conditions and risks of this Agreement.

- 9.2 **Assignment.** This Agreement shall be assignable by CRS without GM's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable by GM without CRS' consent provided such assignment is to any other direct or indirect subsidiary of GM and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than GM. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 **Notices.** All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

**To CRS:**

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

Phone -513-287-2633  
Fax-513-287-1902

**To GM:**

~~Phil~~  
Philip A. Leach  
Energy & Utility Services Group  
Worldwide Facilities Group  
PCC-Central  
Mail Code 483-520-168  
2000 Centerpoint Parkway  
Pontiac, MI 48341

Phone: (248) 753-1763  
Fax: (248) 753-6225

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supercedes and replaces in its entirety the agreement between CRS and GM, dated November 8, 2004. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy and the Industrial Energy Users-Ohio pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

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

CINERGY RETAIL SALES, LLC

GENERAL MOTORS, INC.

By: 

By:   
LEON C. BIBENI

01018

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*Vice President & General Counsel*  
Title: *Commercial Services Unit*

Date: *January 7, 2005*

Title: *DIRECTOR ENERGY & UTILITY SERVICE*

Date: *DECEMBER 21, 2004*

As to clause 9.7:

CINERGY CORP.

By: 

Title:

Date:

*Vice President, Regulatory and  
Legislative Strategy*  
*January 7, 2005*

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Title: \_\_\_\_\_

Title: DIRECTOR ENERGY & UTILITY SERVICES

Date: \_\_\_\_\_

Date: DECEMBER 21, 2004

As to clause 9.7:

CINERGY CORP.

By: 

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit A:**  
**Customer Group: General Motors, Inc.**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- Regulatory Transition Charge (RTC)
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – includes Emission Allowance Expense
- 50% of System Reliability Tracker (SRT)
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

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**EXHIBIT B:**  
**Customer Group: General Motors, Inc.**

**CRS Generation Rates for former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.8574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following FUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: General Motors, Inc.**  
**Customer Account List**

This agreement pertains to the following General Motors, Inc. accounts:

**[REDACTED]**

**Agreement**

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the Industrial Energy Users-Ohio (IEU-Ohio) for the benefit of Marathon Ashland, Inc., and General Motors, Inc., (Customers), effective this 28th day of May 2004. As to General Motors, Inc., this agreement is effective only to General Motors, Inc., West Chester Operation (GM). It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and IEU-Ohio (Parties); it may not be amended except by the written agreement of the parties.

This agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall immediately notify the other party. The Parties shall defend the confidentiality of this agreement. The Parties shall not circulate the agreement, or its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for the purpose of effectuating the agreement. For purposes of this paragraph, the term Parties includes the Customers.

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

1. Beginning January 1, 2005 or at such later time as may be specified herein for any accounts of each Customer that may be presently receiving competitive retail generation service from a supplier not affiliated with Cinergy, CRS shall supply, on a full requirements basis, and each Customer shall purchase firm competitive retail electric generation service from CRS or another Cinergy affiliated competitive retail electric service provider designated by CRS. Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall have the right to delay the start date of the above described supply relationship with CRS to a date specified by such Customer provided that such delay does not cause the supply relationship with CRS to commence later than January 1, 2006. The all requirements, firm, competitive retail generation supply provided by CRS to Customers shall be priced at the currently effective unbundled generation price specified in the otherwise applicable tariff schedule for standard offer service less an amount equal to the applicable Regulatory Transition Charge (RTC), the resulting specified price also known as "Little G".<sup>1</sup> Compliant contracts to implement the above described service relationship between Customers and CRS shall be executed as soon as reasonably possible and shall terminate no later than December 31, 2008. Cinergy shall reimburse Customers for payments made to The Cincinnati Gas & Electric Company as follows: (1) From January 1, 2005 through December 31, 2005, any Customer purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall maintain the shopping credit structure (payment of Big G less the applicable shopping credit) approved by the Commission in case no. 99-1658-EL-ETP and Cinergy shall reimburse monthly such Customers for half of the amount billed to Customers as the component of the Provider of Last Resort (POLR) charge paid to The Cincinnati Gas & Electric Company; (2) from January 1, 2005 through December 31, 2005, Cinergy shall reimburse GM monthly the full amount billed to and paid by GM as the RTC component paid to The Cincinnati Gas & Electric Company provided GM is purchasing competitive retail electric service from a non-Cinergy affiliated

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

competitive retail electric service provider during such calendar year (3) beginning January 1, 2005, through December 31, 2005, for all Customers purchasing competitive retail electric service from a Cinergy affiliated competitive retail electric service provider, Cinergy shall reimburse monthly all such Customers for the as billed and actual full amount of the RTC, the as billed and actual full amount of any Rate Stabilization Charges, and half of the amount billed to Customers as the POLR component actually paid to The Cincinnati Gas & Electric Company; (4) beginning January 1, 2006, for Customers purchasing the above described competitive retail electric service from a Cinergy affiliated competitive retail electric service provider, Cinergy shall reimburse monthly all Customers for the full amount billed to and paid by Customers as the RTC, the full amount billed to and paid by Customers as Rate Stabilization Charges, and half of the amount billed to Customers as the POLR component actually paid to The Cincinnati Gas & Electric Company.

2. If, prior to December 31, 2008, the Customers add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds the Customer's combined (all accounts) maximum demand as of 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 annual 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 purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall be deemed to have provided, through this agreement, such written notice as may be required prior to the end of such purchase contract so that the Customers may avoid any penalty or additional charge that may arise absent such notice upon returning to standard offer service provided by The Cincinnati Gas & Electric Company.
3. Cinergy shall pay the Industrial Energy Users-Ohio \$100,000.00 as compensation for legal services, upon the issuance of a final order of the Commission satisfactory to Cinergy.
4. Customers shall pay The Cincinnati Gas & Electric Company's otherwise applicable transmission and distribution rates as

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

5. Nothing in this agreement shall affect the terms and conditions agreed to by Industrial Energy Users-Ohio on behalf of General Motors, and Cinergy, pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.
6. Cinergy will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service provider to supply competitive retail electric service to Customers as required by paragraph one (1) of this agreement.
7. The Industrial Energy Users-Ohio shall support a Stipulation filed by The Cincinnati Gas & Electric Company and the IEU-Ohio in Case No. 03-93-EL-ATA subject to such reservation as IEU-Ohio has communicated to Cinergy.

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

- A. The Commission, in Case No. 03-93-EL-ATA, fails to issue a final order acceptable to Cinergy.
- B. 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.
- C. Each Customer may individually terminate this agreement in its entirety, including its contract with the CRS, upon twelve (12) months written notice to CRS provided that such termination shall be effective for all Customer accounts and for this entire 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:

Samuel C. Randazzo, Esq.  
McNees, Wallace & Nurick  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 469-8000

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

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

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

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

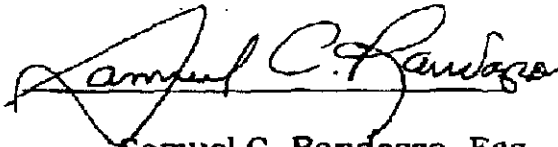
Entered into on this 28th day of May:

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



Samuel C. Randazzo, Esq.  
McNees, Wallace & Nurick  
21 East State Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215

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**Agreement**

This agreement is between Cinergy Corp. (Cinergy), through its agent Cinergy Retail Sales, LLC (CRS), and the Industrial Energy Users-Ohio (IEU-Ohio) for the benefit of Marathon Ashland, Inc., and General Motors, Inc., (Customers), effective this 8th day of November 2004. This Agreement replaces and supersedes the terms and conditions of the Agreement dated May 28th 2004, between IEU-Ohio and Cinergy. As to General Motors, Inc., this agreement is effective only to General Motors, Inc., West Chester Operation (GM). It is the intent of the parties to this agreement to bind the Customers to the terms and conditions set forth herein. The following is the entire agreement between CRS and IEU-Ohio (Parties); it may not be amended except by the written agreement of the parties.

This agreement is binding on the Parties regarding the subject matter herein and is to remain confidential among the Parties and may be released to non-parties only if ordered by a court or administrative agency of competent jurisdiction. If the issue of this agreement's confidentiality comes before a court or administrative agency of competent jurisdiction the party before such court or administrative agency shall immediately notify the other party. The Parties shall defend the confidentiality of this agreement. The Parties shall not circulate the agreement, or its existence, to any employee, agent, or assignee of the party unless such employee, agent, or assignee has a need to know for

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

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

1. Beginning January 1, 2005, or at such later time as may be specified herein for any accounts of each Customer that may be presently receiving competitive retail generation service from a supplier not affiliated with Cinergy, CRS shall supply, on a full requirements basis, and each Customer shall purchase firm competitive retail electric generation service from CRS or another Cinergy affiliated competitive retail electric service provider designated by CRS. Any accounts of each Customer presently receiving competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall have the right to delay the start date of the above described supply relationship with CRS to a date specified by such Customer provided that such delay does not cause the supply relationship with CRS to commence later than January 1, 2006. The all requirements, firm, competitive retail generation supply provided by CRS to Customers shall be priced at the currently effective unbundled generation price specified in the otherwise applicable tariff schedule of The Cincinnati Gas & Electric Company for standard offer service, less an amount equal to the applicable Regulatory Transition Charge (RTC), the resulting specified price also known as "Little G"<sup>1</sup>. Compliant contracts to implement the above described service relationship between Customers and CRS shall be executed as soon as reasonably possible and shall terminate no later than December 31, 2008. Cinergy shall reimburse Customers for actual payments made to The Cincinnati Gas & Electric Company as follows: (1) From January 1, 2005 through December 31, 2005, any Customer purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall maintain the shopping credit structure (payment of Big G less the applicable shopping credit) approved by the Commission in case no. 99-1658-EL-ETP and Cinergy shall reimburse monthly such Customers for the rate stabilization charge component, and one half of the system reliability tracker component, of the Provider of Last Resort (POLR) charge paid to The Cincinnati

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

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Gas & Electric Company; (2) from January 1, 2005, through December 31, 2005, Cinergy shall reimburse GM monthly the full amount billed to and paid by GM as the Regulatory Transition Charge paid to The Cincinnati Gas & Electric Company provided GM is purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider during such calendar year (3) beginning January 1, 2005, through December 31, 2005, for all Customers purchasing competitive retail electric service from a Cinergy affiliated competitive retail electric service provider, Cinergy shall reimburse monthly all such Customers for the as billed and actual full amount of the Regulatory Transition Charge, the as billed and actual full amount of any Rate Stabilization Charges, and one half the amount billed to Customers as the system reliability tracker component of the Provider Of Last Resort charge actually paid to The Cincinnati Gas & Electric Company; (4) beginning January 1, 2006, for Customers purchasing the above described competitive retail electric service from a Cinergy affiliated competitive retail electric service provider, Cinergy shall reimburse monthly all Customers for the full amount billed to and paid by Customers as the Regulatory Transition Charge, the full amount billed to and paid by Customers as Rate Stabilization Charge component, and one half the amount billed to Customers as the system reliability tracker component, of the Provider Of Last Resort charge actually paid to The Cincinnati Gas & Electric Company. Customers shall pay all remaining applicable market-based standard service offer charges including, but not limited to, the infrastructure maintenance fund component of the Provider of Last Resort charge. To the extent that Customers actually pay the infrastructure maintenance fund component of the Provider of last resort Charge, Cinergy shall reimburse, consistent with the reimbursement schedule contained herein, infrastructure maintenance fund payments in excess of 4% of little g. Nothing herein shall operate to limit the ability of each Customer to avoid all or such portion of any standard service offer charge that may be avoided by shopping customers. Cinergy and the Customers understand that: (1) this agreement was drafted based on the expectation that each Customer shall qualify as shopping customers so as to avoid all or such portion of any standard service offer charge that may be avoided by shopping customers; and, (2) as a shopping customer, each Customer shall not be billed any standard service offer charge that may be avoided by shopping customers.

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2. If, prior to December 31, 2008, the Customers add additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds the Customer's combined (all accounts) maximum demand as of 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 annual 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 purchasing competitive retail electric service from a non-Cinergy affiliated competitive retail electric service provider shall be deemed to have provided, through this agreement, such written notice as may be required prior to the end of such purchase contract so that the Customers may avoid any penalty or additional charge that may arise absent such notice upon returning to standard offer service provided by The Cincinnati Gas & Electric Company.
4. Cinergy shall pay the Industrial Energy Users-Ohio \$100,000.00 as compensation for legal services, upon the issuance of a final order of the Commission satisfactory to Cinergy.
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. Customers, or their appointed representative, retain all rights to participate in Commission and Federal Energy Regulatory Commission proceedings that may affect the rates, terms, or conditions of distribution and transmission service.
6. Nothing in this agreement shall affect the terms and conditions agreed to by Industrial Energy Users-Ohio on behalf of General Motors and Cinergy, pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1658-EL-ETP.

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7. Cinergy will comply with all regulatory requirements necessary to create an affiliated competitive retail electric service provider to supply competitive retail electric service to Customers as required by paragraph one (1) of this agreement.
8. The Industrial Energy Users-Ohio shall support a Stipulation filed by The Cincinnati Gas & Electric Company and the IEU-Ohio in Case No. 03-93-EL-ATA subject to such reservation as IEU-Ohio has communicated to Cinergy. The Customers shall cause the Industrial Energy Users-Ohio to support an Application for Rehearing filed by The Cincinnati Gas & Electric Company seeking reinstatement without modification of the Stipulation signed by The Cincinnati Gas & Electric Company and IEU-Ohio or approval by the Commission without modification of the CG&E alternative proposal submitted in its application for rehearing, in Case No. 03-93-EL-ATA, and any related litigation.

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

- A. 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.
- B. 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.
- C. Each Customer may individually terminate this agreement in its entirety, including its contract with the CRS, upon twelve (12) months written notice to CRS provided that such termination shall be effective for all Customer accounts and for this entire 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

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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:

Samuel C. Randazzo, Esq.  
McNees, Wallace & Norris  
21 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 469-8000

To Cinergy:

Cinergy  
James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45201

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

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

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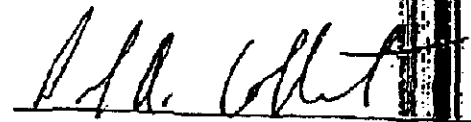
This agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of the affected Customers as well as Cinergy provided, as to the Customers, they continue to display substantially similar use and usage characteristics as those that presently exist. The Parties shall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

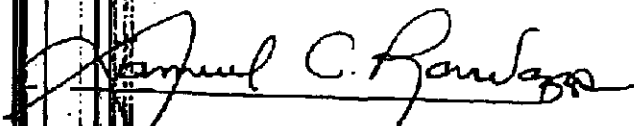
This agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Entered into on this 8th 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

  
Samuel C. Randazzo, Esq.  
Morris Wallace & Nurick LLC  
211 East State Street  
17th Floor  
Columbus, Ohio 43215

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### Agreement

This agreement is between Cinergy Corp. (Cinergy), and the Cognis<sup>1</sup> Inc. (Cognis), effective this 7th day of June 2004. It is the intent of the parties to this agreement to bind Cinergy and Cognis to the terms and conditions set forth herein. The following is the entire agreement between Cinergy and Cognis<sup>1</sup> (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. Cognis<sup>1</sup> shall, through December 31, 2008, purchase its full requirements generation service pursuant to its current tariff and pursuant to the Electric Reliability and Rate Stabilization

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

2. Cinergy shall reimburse Cognis for the first 4% of the annually adjusted component of Provider of Last Resort Charges actually paid by Cognis during the calendar year 2005; the first 8% actually paid in 2006; the first 12% actually paid in 2007, and the first 16% actually paid in 2008.
2. If, prior to December 31, 2008, Cognis adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds Cognis'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 one (1) MW or less; any accounts representing new load beyond the foregoing limit are not included under this agreement.
4. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.
5. Cognis shall support a Stipulation filed by The Cincinnati Gas & Electric Company and Cognis, 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, or any subsequent fuel cost recovery case, 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 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.

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- D. Cognis may terminate this agreement, in its entirety, upon twelve (12) months written notice to Cinergy that Cognis will purchase less than its full requirements generation service from CG&E or other Cinergy affiliate. Subject to the notice requirement of this provision, nothing in this agreement prohibits Cognis from terminating this agreement and constructing and utilizing co-generation facilities or switching generation suppliers.

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 Cognis:

Mr. Steve Kennedy  
Cognis Corp.  
5051 Estercreek Drive  
Cincinnati, Ohio 45232-1446

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 Cognis 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

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

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

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

Entered into on this 7th day of June:

On behalf of Cinergy

On Behalf of Cognis



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



Mr. Steve Kennedy  
Cognis Corp.  
5051 Estercreek Drive  
Cincinnati, Ohio 45232-1446

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### Agreement

This agreement is between Cinergy Corp. (Cinergy), and the Cognis Inc. (Cognis), effective this 28th day of October 2004. It is the intent of the parties to this agreement to bind Cinergy and Cognis to the terms and conditions set forth herein. This Agreement replaces and supersedes the terms and conditions of the Agreement dated June 7<sup>th</sup> 2004 between Cognis and Cinergy. The following is the entire agreement between Cinergy and Cognis (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:

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1. Cognis shall, through December 31, 2008, purchase its full requirements generation service pursuant to its current tariff and pursuant to the Electric Reliability and Rate Stabilization Plan approved by the Public Utilities Commission of Ohio (Commission).
2. Cinergy shall reimburse Cognis for actual payments up to the first 4% of the annually adjusted component of Provider of Last Resort Charges actually paid by Cognis during calendar year 2005; the first 8% of the annually adjusted component of Provider of Last Resort Charges actually paid in 2006; the first 12% of the annually adjusted component and system reliability component of Provider of Last Resort Charges actually paid, and the emission allowance expense component of the price to compare actually paid in 2007, and the first 16% of the annually adjusted component and system reliability component of Provider of Last Resort Charges actually paid, and the emission allowance expense component of the price to compare actually paid in 2008. Cognis shall pay the entirety of the remainder of CG&E's approved rates and charges including but not limited to the Infrastructure Maintenance Fund. To the extent that Cognis actually pays the Infrastructure Maintenance Fund component of the Provider of Last Resort Charge, CG&E shall reimburse annual Infrastructure Maintenance Fund payments in excess of 4% of little g.
3. If, prior to December 31, 2008, Cognis adds additional load or accounts in The Cincinnati Gas & Electric Company's certified territory which exceeds Cognis'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 one (1) MW or less; any accounts representing new load beyond the foregoing limit are not included under this agreement.
4. This agreement has no application to The Cincinnati Gas & Electric Company's transmission and distribution rates as approved by the Commission.
5. Cognis shall support an Application for Rehearing filed by The Cincinnati Gas & Electric Company and/or Cognis, in Case No. 03-93-EL-ATA, and any related litigation.

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

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, or any subsequent fuel cost recovery case, 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.
- D. Until March 1, 2005, Cognis may terminate this agreement, in its entirety, immediately upon providing oral notice to Cinergy. As of March 1, 2005, Cognis may terminate this agreement, in its entirety, upon twelve (12) months written notice to Cinergy that Cognis will purchase less than its full requirements generation service from CG&E or other Cinergy affiliate. Subject to the notice requirement of this provision, nothing in this agreement prohibits Cognis from terminating this agreement and constructing and utilizing co-generation facilities or switching generation suppliers.

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

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To Cognis:

Mr. Steve Kennedy  
Cognis Corp.  
5051 Estercreek Drive  
Cincinnati, Ohio 45232-1446

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

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

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### Agreement

WHEREAS, on 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 1<sup>st</sup> 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
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.

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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 7<sup>th</sup> 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

**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 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

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 bone 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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TRADE SECRET

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.

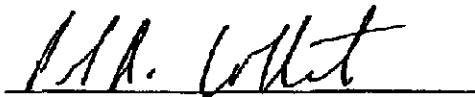
This Agreement shall be governed by and construed in accordance

with the laws of the State of Ohio.

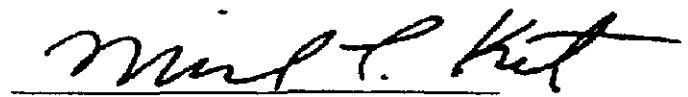
Entered into on this 22nd day of November:

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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TRADE SECRET

### **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 9<sup>th</sup> 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

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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TRADE SECRET

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:

01065

To Customers:

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

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.

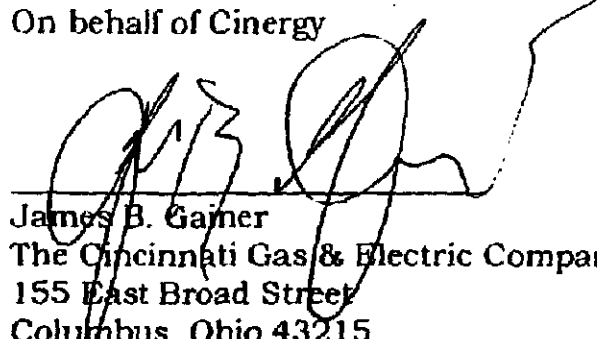
This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

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CONFIDENTIAL PROPRIETARY  
TRADE SECRET

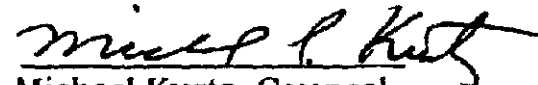
Entered into on this 9<sup>th</sup> day of November, 2005:

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

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

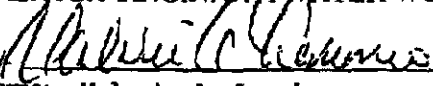
The Parties to that certain Electricity Agreement effective February 5, 2004 (the "Agreement") by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio 45202 ("CG&E"), and the City of Cincinnati, a municipality within the county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

Exhibit 1 to the Agreement is hereby deleted and amended in its entirety to provide as set forth in the amended Exhibit 1 appended to this Amendment.


All other provisions of the Agreement shall remain in full force and effect, except that the revised Exhibit 1 attached to this Amendment shall replace the prior Exhibit 1 in its entirety.

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

THE CITY OF CINCINNATI  
On behalf of  
GREATER CINCINNATI WATER WORKS

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

THE CINCINNATI GAS & ELECTRIC COMPANY

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

Attachment to  
Amendment to the Electricity Agreement

**EXHIBIT 1**

**AGGREGATE GENERATION RATE DEFINITION AND FORMULA**

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

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

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

**Notes:**

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

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

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

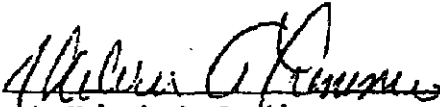
The Parties to that certain Electricity Agreement effective February 5, 2004 (the "Agreement") by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio 45202 ("CG&E"), and the City of Cincinnati, a municipality within the county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

Exhibit 1 to the Agreement is hereby deleted and amended in its entirety to provide as set forth in the amended Exhibit 1 appended to this Amendment.

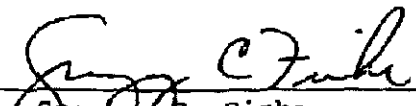
All other provisions of the Agreement shall remain in full force and effect, except that the revised Exhibit 1 attached to this Amendment shall replace the prior Exhibit 1 in its entirety.

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

THE CITY OF CINCINNATI

By:   
Name: Valerie A. Lennie  
Title: City Manager

THE CINCINNATI GAS & ELECTRIC COMPANY

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

Attachment to  
Amendment to the Electricity Agreement

**EXHIBIT 1**

**AGGREGATE GENERATION RATE DEFINITION AND FORMULA**

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

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

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

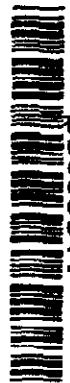
Notes:

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

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

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

Document Code

Cinergy Corporate Records  
03005641

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

without the prior written consent of the City to (i) any of its affiliates, or (ii) to any entity succeeding in substantially all of the assets of CG&E or any entity that is the result of a merger between CG&E and a third party; provided that in either instance CG&E shall not be released from any of its duties, obligations or liabilities arising under this Agreement.

10. Construction of Agreement. This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort claims), shall be governed by and construed in accordance with the substantive laws of the State of Ohio without giving any effect to any conflict of law doctrine. The Paragraph headings in this Agreement are for convenience and reference purposes only.

11. Waiver. The failure of either Party to demand strict performance of the terms of this Agreement or the failure of either Party to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of its right to assert or rely on any such terms or rights in the future, but the same shall continue to remain in full force and effect.

12. Notices. Any notice, request, protest, consent, demand, report or statement given by one Party to the other shall be in writing, and deemed duly received (a) forty-eight (48) hours after it is deposited in the United States mail, by certified mail, return receipt requested, postage prepaid, and properly addressed as shown below, (b) upon personal delivery to the addressee, (c) upon delivery by a commercial courier or overnight delivery service requiring confirmation of receipt by the addressee, or (d) upon transmission by electronic mail or facsimile if confirmed by posting of the written original by certified mail, return receipt requested, within two (2) business days.

If to the City:

Director,  
Greater Cincinnati Water Works  
4747 Spring Grove Avenue  
Cincinnati, Ohio 45232  
Ph: (513) 591.7970  
Fax: (513) 591.6519

With a copy to:

City of Cincinnati  
Attn: City Solicitor  
801 Plum Street, Rm. 212  
Cincinnati, Ohio 45202  
Ph: (513) 352-3334  
Fax: (513) 352-1515

If to CG&E:

President  
The Cincinnati Gas & Electric Company  
139 East Fourth Street

Cincinnati, Ohio 45202  
Ph: (513) 287-2660  
Fax: (513) 287-1592

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An electronic mail or a facsimile transmission of this Agreement bearing a signature on behalf of a Party will be legal and binding on such Party.

14. Entirety. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the Parties on such subject matter. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representations, statements or promises in addition to or in any way different than those contained in this Agreement, and that it is not entering into this Agreement or transaction in reliance upon any representation, statement or promise of the other Party except as expressly stated in this Agreement.

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

16. Advice of Counsel. Both Parties have had the opportunity to have this Agreement reviewed by counsel; therefore, neither Party hereto shall be construed as the drafter hereof for purposes of construction and interpretation.

17. Amendment. No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.

18. Survival. If any provision of this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected, and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Costs and Expenses. Both Parties will be responsible for any of their respective expenses incurred or imposed as a result of the Parties' execution of this Agreement. Additionally, each Party will bear sole responsibility for any orders, judgments, requirements, penalties, or fines assessed against such Party as a result of this Agreement.

20. Dispute Resolution. Should a dispute arise between the Parties relating to this Agreement, the Parties agree to use the following Alternative Dispute Resolution ("ADR") procedure prior to either Party pursuing other available remedies:

- The aggrieved Party shall send a written notice to the other Party describing the dispute.
- Within fifteen (15) days after receipt of such notice, a meeting, teleconference or videoconference, upon agreement of the Parties, shall be held between the Parties, attended by individuals with decision-making

authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

- If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties to act as a mediator ("Neutral"). If the Parties are unable to agree on the Neutral within ten (10) days after expiration of the thirty (30) day period, they shall seek assistance in such regard from CPR Institute for Dispute Resolution, Inc. in Cincinnati, Ohio ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties.
- After determination of the Neutral, the Parties shall mediate the dispute in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure.
- The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within twenty (20) days following the mediation, then, upon seven (7) days' written notice to the other Party, either Party may immediately seek other remedies available to it in law and equity, consistent with the limitations set forth in Paragraph 20.

21. Confidentiality of Proceedings. All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, the underlying facts supporting such materials may be subject to discovery, and used as evidence in any subsequent litigation.

22. Acknowledgment of ADR. Each Party fully understands its specific obligations under the ADR provisions of the Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceedings.

23. Limitation of Liability and Remedies. LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY FOR A BREACH HEREOF, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED, REGARDLESS OF CAUSE. WITHOUT LIMITING A PARTY'S OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR ANY OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

24. Party Responsibilities for Actions Arising Under This Agreement. The City shall be responsible for its own obligations under this Agreement and for defending any claims or other actions against it arising from its own acts subject to available defenses and sovereign or governmental immunities. CG&E shall be responsible for its own obligations under this Agreement and for defending any claims or other actions against it arising from its own acts subject to available defenses.

25. Appropriations. Any payment, refund or reimbursement required to be made by the City to CG&E hereunder, including, without limitation, payments for electricity or High Voltage Infrastructure Maintenance Service as contemplated in Paragraphs 1 and 2 respectively, is subject to appropriation of funds in accordance with applicable law, rules and regulations.

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

THE CITY OF CINCINNATI  
On behalf of  
GREATER CINCINNATI WATER WORKS

APPROVED AS TO FORM  
*[Signature]*  
ASSY CITY SOLICITOR

By: *[Signature]*  
Name: Timothy H. Rierdan  
Title: Assistant City Manager

THE CINCINNATI GAS & ELECTRIC COMPANY

By: *[Signature]*  
Name: Gregory C. Ficke  
Title: President - CG&E

EXHIBIT 1AGGREGATE GENERATION RATE FORMULA

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

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

Notes:

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

Please refer to Attachment 1, appended hereto as the example.

01079

Sample Calculation Of Composite Energy Costs

CITY ACCOUNTS				METROPOLITAN SEWER DISTRICT				WATER DEPARTMENT			
Rate Class	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Rate \$/MWh	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Supply Cost
DS	\$54.24	40,340	\$2,188,042	\$46.16	12,672	\$584,940	\$43.67	\$43.67	9,585	\$418,577	\$418,577
RS	\$46.44	87	\$4,040								
EH	\$58.32	633	\$36,917								
Street Lighting	\$30.91	27,907	\$862,605								
DM	\$63.98	4,478	\$286,502	\$65.63	1,622	\$106,452	\$47.89	\$47.89	238	\$11,350	\$11,350
DP				\$40.42	32,917	\$1,330,505	\$41.14	\$41.14	78,031	\$3,210,195	\$3,210,195
TS				\$39.81	57,759	\$2,289,386	\$40.38	\$40.38	44,359	\$1,791,216	\$1,791,216
Total		73,445	\$3,378,106		104,970	\$4,321,282			132,213	\$5,431,339	\$5,431,339
Average \$/MWh			\$46.00			\$41.17				\$41.08	\$41.08

03005642



Document Code

**METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI, HAMILTON  
COUNTY, OHIO**

and

**THE CINCINNATI GAS & ELECTRIC COMPANY  
ELECTRICITY AGREEMENT**

This Electricity Agreement ("Agreement") is entered into this 5<sup>th</sup> day of February, 2004 (the "Effective Date"), by and between The Cincinnati Gas & Electric Company, an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio 45202 ("CG&E"), and the City of Cincinnati, a municipality within the county of Hamilton and the State of Ohio, with offices located at 801 Plum Street, Cincinnati, Ohio 45202 (the "City") on behalf of the Metropolitan Sewer District of Greater Cincinnati, Hamilton County, Ohio ("MSD"), a district which operations are managed by the Department of Sewers, a department of the City, located at 1600 Gest Street, Cincinnati, Ohio 45204 (the "MSD"). CG&E and the City may each be referred to individually as a "Party" or collectively as "Parties."

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

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

WHEREAS the MSD desires to continue to purchase electricity from CG&E and to receive favorable prices when it seeks to purchase certain Related Energy Services (referred to in Paragraph 3 herein),

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

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

1.1 The Parties further agree that if during the period ending December 31, 2010, the "aggregate generation rate" based on the applicable CG&E tariff rates for the MSD exceeds \$42.40 per MWH in any consecutive twelve month period, or if pursuant to the other two Electricity Agreements between the City on behalf of the Greater Cincinnati Water Works and the City (for City facilities) on the one hand, and CG&E, on the other hand, the "aggregate generation rate" set forth in Paragraph 1.1 of either of those two Electricity Agreements is exceeded, the City on behalf of the MSD, has the option to terminate this Agreement, the two Electricity Agreements and the "Convention Center Naming Rights Agreement" and to make payment to Cinergy Corp., CG&E's parent company, according to the schedule listed in Paragraph 21.1 thereof entered into with the City. The formula for the "aggregate generation rate" is attached as Exhibit 1. This Agreement shall also be terminated if any of the Convention

Center Naming Rights Agreement or the two Electricity Agreements is terminated in accordance with any of its terms.

1.2 CG&E agrees to keep the City apprised on a semi-annual basis as to the electricity rates, programs, service options and most cost effective tariff rate available to the MSD and to identify available cost savings alternatives to the MSD. CG&E representatives will meet from time to time with the City representatives to discuss and attempt to resolve any MSD reliability and service issues.

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

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

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

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

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

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

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

5. Approval of this Agreement by Board of Commissioners, Hamilton County, Ohio and Periodic Reporting to Them. Because the MSD is a governmental entity subject to the jurisdiction of the Board of Commissioners, Hamilton County, Ohio ("Commissioners") who have contracted with the City for the Department of Sewers to manage and operate the MSD, the Parties agree that this Agreement is subject to the approval of the Commissioners and that the approval of the Commissioners is a condition precedent to this Agreement becoming effective. The City shall provide CG&E with written notice of approval of the Commissioners when and if such becomes effective. Additionally each time CG&E performs an aggregate generation rate calculation in accordance with the formula set forth in Exhibit 1, CG&E shall provide the calculation results to the Hamilton County Administrator and the City.

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

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

8. Breach by City. If prior to the end of 2010, the City chooses to become a municipal aggregator or a municipal utility and if CG&E or a CG&E affiliate is not selected as

the provider of electric services, then at the option of CG&E or its parent, Cinergy Corp., this Agreement and the two Electricity Agreements between the City on behalf of the Greater Cincinnati Water Works and the City (for City facilities) on the one hand, and CG&E, on the other hand, and the "Convention Center Naming Rights Agreement" entered into with the City on the same date as this Agreement, shall terminate. If at any time during the Term, the City breaches any of its material obligations under this Agreement, and such breach is not cured within thirty (30) days after receiving written notice of such breach from CG&E, then CG&E has the right to terminate this Agreement, the two Electricity Agreements and the Convention Center Naming Rights Agreement.

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

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If to the City:

Director,  
Sewers Department and Metropolitan Sewer District  
1600 Gest Street  
Cincinnati, Ohio 45204  
Ph: (513) 244-5122  
Fax: (513) 244-1399

With a copy to:

City of Cincinnati  
Attn: City Solicitor  
801 Plum Street, Rm. 212  
Cincinnati, Ohio 45202  
Ph: (513) 352-3334  
Fax: (513) 352-1515

If to CG&E:

President  
The Cincinnati Gas & Electric Company  
139 East Fourth Street  
Cincinnati, Ohio 45202  
Ph: (513) 287-2660  
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14. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An electronic mail or a facsimile transmission of this Agreement bearing a signature on behalf of a Party will be legal and binding on such Party.

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- Within fifteen (15) days after receipt of such notice, a meeting, teleconference or videoconference, upon agreement of the Parties, shall be held between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties to act as a mediator ("Neutral"). If the Parties are unable to agree on the Neutral within ten (10) days after expiration of the thirty (30) day period, they shall seek assistance in such regard from CPR Institute for Dispute Resolution, Inc. in Cincinnati, Ohio ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties.
- After determination of the Neutral, the Parties shall mediate the dispute in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure.
- The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within twenty (20) days following the mediation, then, upon seven (7) days' written notice to the other Party, either Party may immediately seek other remedies available to it in law and equity, consistent with the limitations set forth in Paragraph 20.

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24. Limitation of Liability and Remedies. LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY FOR A BREACH HEREOF, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED, REGARDLESS OF CAUSE. WITHOUT LIMITING A PARTY'S OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR ANY OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

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

APPROVED AS TO FORM

*[Signature]*  
ASST CITY MANAGER

THE CITY OF CINCINNATI

On behalf of

THE METROPOLITAN SEWER DISTRICT OF  
GREATER CINCINNATI, HAMILTON COUNTY, OHIO

By: *[Signature]*

Name: Timothy H. Riordan

Title: Assistant City Manager

01087

THE CINCINNATI GAS & ELECTRIC COMPANY

By: James C Ficke  
Name: James C Ficke  
Title: President - CG&E

**EXHIBIT 1****AGGREGATE GENERATION RATE FORMULA**

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

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

Notes:

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

Please refer to Attachment 1, appended hereto as the example.

Sample Calculation Of Composite Energy Costs

CITY ACCOUNTS				METROPOLITAN SEWER DISTRICT				WATER DEPARTMENT			
Rate Class	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Rate \$/MWh	Cinergy Generation Rate \$/MWh	Sale Level MWh	Cinergy Generation Supply Cost	Cinergy Generation Supply Cost
DS	\$54.24	40,340	\$2,188,042	\$46.16	12,672	\$584,940	\$43.67		9,585	\$418,577	
RS	\$46.44	87	\$4,040								
EH	\$58.32	633	\$36,917								
Street Lighting	\$30.91	27,907	\$862,605								
DM	\$63.98	4,478	\$286,502	\$65.63	1,622	\$106,452	\$47.69		238	\$11,350	
DP				\$40.42	32,917	\$1,330,505	\$41.14		78,031	\$3,210,195	
TS				\$39.81	57,759	\$2,299,386	\$40.38		44,359	\$1,791,216	
Total		73,445	\$3,378,106		104,970	\$4,321,282			132,213	\$5,431,339	
Average \$/MWh			\$46.00			\$41.17				\$41.06	

01090

Schafer, Anita

From: Nanjundan, Uma  
Sent: Thursday, October 21, 2004 1:10 PM  
To: Ficke, Greg  
Cc: Farley, Jack  
Subject: RE: Industrial load pricing

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Greg,

Yes prices are current. If you like to have valuation for 4 counterparties, we can get this to you. Please let me know.

thanks,

Uma

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

From: Ficke, Greg  
Sent: Thursday, October 21, 2004 12:58 PM  
To: Nanjundan, Uma  
Cc: Farley, Jack  
Subject: RE: Industrial load pricing

Are these current? What about [REDACTED]

From: Nanjundan, Uma  
Sent: Wednesday, October 20, 2004 1:52 PM  
To: Ficke, Greg  
Cc: Farley, Jack  
Subject: FW: Industrial load pricing  
Importance: High

Greg,

As per your request made to Jack Farley, I am providing the cost to serve [REDACTED] for the period Jan 2005 - Dec 2008. The following are the assumptions used in the calculation:

&lt;&lt; OLE Object: Microsoft Excel Worksheet &gt;&gt;

Please note that load factor assumptions are critical in pricing these deals.

Please let me know if you have any questions.

Thanks,

Uma

Schafer, Anita

01091

From: Nanjundan, Uma  
Sent: Wednesday, October 20, 2004 1:52 PM  
To: Ficke, Greg  
Cc: Farley, Jack  
Subject: FW: Industrial load pricing

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Importance: High

Attachments: Microsoft Excel Worksheet

Greg,

As per your request made to Jack Farley, I am providing the cost to serve [REDACTED] for the period Jan 2005 - Dec 2008. The following are the assumptions used in the calculation:

Customer	MW - Max (peak)	Cost to serve	Load Factor	Range in prices for cost to serve
[REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]

Please note that load factor assumptions are critical in pricing these deals.

Please let me know if you have any questions.

Thanks,

Uma

Schafer, Anita

01092

From: Sprague, Dean  
Sent: Thursday, October 14, 2004 6:54 AM  
To: Ziolkowski, Jim  
Cc: Ficke, Greg; Steffen, Jack  
Subject: RE: [REDACTED]

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TRADE SECRET

Jim,

Thanks,

Dean

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

From: Ziolkowski, Jim  
Sent: Wednesday, October 13, 2004 11:00 AM  
To: Sprague, Dean  
Cc: Ficke, Greg; Steffen, Jack  
Subject: [REDACTED]

<< File: [REDACTED] 2003.xls >>

A revised version of the previous spreadsheet is attached. On the previous spreadsheet, I incorrectly labeled the 2005 through 2008 rows as "running totals". They were actually just the charges for that year.

This revised spreadsheet correctly shows the four-year totals, and I added a row that shows the four-year total of the [REDACTED]

*Jim Ziolkowski*  
Rate Services  
287-3337  
2802 ATII

01093

Schafer, Anita

From: Ficks, Greg  
Sent: Wednesday, February 14, 2007 5:07 PM  
To: Schafer, Anita  
Subject: Zhang E-mail #1

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---

From: Zhang, Ben  
Sent: Thursday, November 18, 2004 11:18 AM  
To: Ficks, Greg  
Subject: FW: CRES

Greg,

These are the CRES numbers. We priced the load together. If we price customers individually, they are pricier.

Please let me know if you have questions.

Regards,  
Ben

---

From: Zhang, Ben  
Sent: Thursday, November 18, 2004 11:05 AM  
To: Whitlock, Charles  
Subject:

ergy only  
All customer \$ [REDACTED]  
OEG \$ [REDACTED]  
IEG & Hospital \$ [REDACTED]

Capacity (\$/MWhr)  
All customer \$ [REDACTED]  
OEG \$ [REDACTED]  
IEG & Hospital \$ [REDACTED]

Energy+ Capacity (\$/MWhr)  
All customer \$ [REDACTED]  
OEG \$ [REDACTED]  
IEG & Hospital \$ [REDACTED]

Schafer, Anita

**From:** Steffen, Jack  
**Sent:** Thursday, September 29, 2005 1:58 PM  
**To:** Ficke, Greg  
**Subject:** FW: CRES Revenue Analysis - November 18.xls

**Attachments:** CRES Revenue Analysis - November 18.xls

Is this the one that you are looking for?

---

**From:** Ziolkowski, Jim  
**Sent:** Thursday, November 18, 2004 5:11 PM  
**To:** Steffen, Jack  
**Subject:** CRES Revenue Analysis - November 18.xls



CRES Revenue  
Analysis - Novemb...

Jack,

Here is the revised matrix with the supporting sheets.

Jim

NAME	DATE	SUM OF BIRTH
		SUM OF EXPLICIT RTC
		SUM OF LITTLE G 2
		SUM OF RSC
		SUM OF FINAL G
		SUM OF POLAR (8%)
		TOTAL SUM OF BIRTH
		TOTAL SUM OF EXPLICIT RTC
		TOTAL SUM OF LITTLE G 2
		TOTAL SUM OF RSC
		TOTAL SUM OF FINAL G
		TOTAL SUM OF POLAR (8%)

[illegible]

	2008	2009	2007	TOTAL 2008 - 2008
DAILY TARIFF SNOPPER CURRENT SETTLEMENT OFFER	\$TD TARIFF	CRES	\$TD TARIFF	CRES

(2) SRT IS ASSUMED TO INCREASE 2% IN 2005. THEN REMAIN LEVEL THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2009



[illegible]

Ms. A. 9.2.4. 616

2000-01-01 to 2000-01-01

SA1340-11112

9 37111 K 251641 444

**THE UNIVERSITY OF CHICAGO**

709-42

NOTES

THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2006-2008

[illegible]

314

\_\_\_\_\_

75L

**SECRET**

547200 10/16/07

15105208-1

U.S. DEPT. OF JUSTICE

1-7-4

NOTES  
1. Assume customer's probability of switching  
is 0.15 and the probability of staying is 0.85.

THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2003-2009. THERE REMAIN LEVEL. INCREASE 2% IN 2015

[illegible]

THE CINCINNATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER

DATE	TIME
Sum of BR:IN	
Sum of EXPLOIT RTC	
Sum of LITTLE G 2	
Sum of RSC	
Sum of FINAL G	
Sum of PC-R (8%)	
Total Sum of BR:IN	
Total Sum of EXPLOIT RTC	
Total Sum of LITTLE G 2	
Total Sum of RSC	
Total Sum of FINAL G	
Total Sum of PC-R (8%)	

LITTLE G  
RTC

SRT 2% OF LITTLE G  
INF 14% OF LITTLE G  
FPP 15.10 15.20% OF LITTLE G

TOTAL  
DIFFERENCE

NOTES

(1) ASSUME CUSTOMER IS NON-SWITCHER  
(2) SRT IS ASSUMED TO INCREASE 2% IN 2005, THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2008

LITTLE G  
RTC

SRT 2% OF LITTLE G  
INF 14% OF LITTLE G  
FPP 15.10 15.20% OF LITTLE G

TOTAL  
DIFFERENCE

NOTES

(1) UNDER STANDARD TARIFF SCENARIO, ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) SRT IS ASSUMED TO INCREASE 2% IN 2005, THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2008

STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER

2005	2006	2007	2008	2009	2010
STD TARIFF	CRES	STD TARIFF	CRES	STD TARIFF	CRES

STANDARD TARIFF SHOPPER VERSUS CURRENT SETTLEMENT OFFER

2005	2006	2007	2008	2009	2010
STD TARIFF	CRES	STD TARIFF	CRES	STD TARIFF	CRES

LITTLE G  
RTC

SRT 2% OF LITTLE G  
INF 14% OF LITTLE G  
FPP 15.10 15.20% OF LITTLE G

TOTAL  
DIFFERENCE

NOTES

(1) UNDER STANDARD TARIFF SCENARIO, ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) SRT IS ASSUMED TO INCREASE 2% IN 2005, THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2008

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TRADE SECRET

01098

THE CINCINNATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER

ITEM	2005	2006
Sum of BKNM		
Sum of EXP. CTRIC		
Sum of LITTLE G 2		
Sum of ASC		
Sum of FINAL G		
Sum of POL. R (B-)		
Sum of BKNM		
Sum of EXP. CTRIC		
Sum of LITTLE G 2		
Sum of ASC		
Sum of FINAL G		
Sum of POL. R (B-)		

STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER

STG TARIFF	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000	3001	3002	3003	3004	3005	3006	3007	3008	3009	3010	3011	3012	3013	3014	3015	3016	3017	3018	3019	3020	3021	3022	3023	3024	3025	3026	3027	3028	3029	3030	3031	3032	3033	3034	3035	3036	3037	3038	3039	3040	3041	3042	3043	3044	3045	3046	3047	3048	3049	3050	3051	3052	3053	3054	3055	3056	3057	3058	3059	3060	3061	3062	3063	3064	3065	3066	3067	3068	3069	3070	3071	3072	3073	3074	3075	3076	3077	3078	3079	3080	3081	3082	3083	3084	3085	3086	3087	3088	3089	3090	3091	3092	3093	3094	3095	3096	3097	3098	3099	3100	3101	3102	3103	3104	3105	3106	3107	3108	3109	3110	3111	3112	3113	3114	3115	3116	3117	3118	3119	3120	3121	3122	3123	3124	3125	3126	3127	3128	3129	3130	3131	3132	3133	3134	3135	3136	3137	3138	3139	3140	3141	3142	3143	3144	3145	3146	3147	3148	3149	3150	3151	3152	3153	3154	3155	3156	3157	3158	3159	3160	3161	3162	3163	3164	3165	3166	3167	3168	3169	3170	3171	3172	3173	3174	3175	3176	3177	3178	3179	3180	3181	3182	3183	3184	3185	3186	3187	3188	3189	3190	3191	3192	3193	3194	3195	3196	3197	3198	3199	3200	3201	3202	3203	3204	3205	3206	3207	3208	3209	3210	3211	3212	3213	3214	3215	3216	3217	3218	3219	3220	3221	3222	3223	3224	3225	3226	3227	3228	3229	3230	3231	3232	3233	3234	3235	3236	3237	3238	3239	3240	3241	3242	3243	3244	3245	3246	3247	3248	3249	3250	3251	3252	3253	3254	3255	3256	3257	3258	3259	3260	3261	3262	3263	3264	3265	3266	3267	3268	3269	3270	3271	3272	3273	3274	3275	3276	3277	3278	3279	3280	3281	3282	3283	3284	3285	3286	3287	3288	3289	3290	3291	3292	3293	3294	3295	3296	3297	3298	3299	3300	3301	3302	3303	3304	3305	3306	3307	3308	3309	3310	3311	3312	3313	3314	3315	3316	3317	3318	3319	3320	3321	3322	3323	3324	3325	3326	3327	3328	3329	3330	3331	3332	3333	3334	3335	3336	3337	3338	3339	3340	3341	3342	3343	3344	3345	3346	3347	3348	3349	3350	3351	3352	3353	3354	3355	3356	3357	3358
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01100

CONFIDENTIAL PROPRIETARY  
TRADE SECRETTHE CINCINNATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER

NAME	TYPE	100
Sum of Explicit ATC		
Sum of Little G 2		
Sum of ASC		
Sum of Final G		
Sum of PO, R (18%)		
Total Sum of Explicit ATC		
Total Sum of Little G 2		
Total Sum of ASC		
Total Sum of Final G		
Total Sum of PO, R (18%)		

## STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER

STD TARIFF	2005	CRES	2006	STD TARIFF	CRES	2007	STD TARIFF	CRES	2008	STD TARIFF	CRES	TOTAL 2005 - 2008
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ASC  
ATC  
Final G  
RTC  
ASCASC 14.9 11 13% OF LITTLE G 1  
SAT 12% OF LITTLE G  
WPP 14% OF LITTLE G  
FPP 10.9 12 18% OF LITTLE G  
EA 11.2 3.4% OF LITTLE GTOTAL  
DIFFERENCE

## NOTES

(1) ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) SAT IS ASSUMED TO INCREASE 2% IN 2006, THEN REMAIN LEVEL THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2008

## STANDARD TARIFF SHOPPER VERSUS CURRENT SETTLEMENT OFFER

STD TARIFF	2005	CRES	2006	STD TARIFF	CRES	2007	STD TARIFF	CRES	2008	STD TARIFF	CRES	TOTAL 2005 - 2008
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ASC  
ATC  
Final G  
RTCASC 14.9 11 13% OF LITTLE G 1  
SAT 12% OF LITTLE G  
WPP 14% OF LITTLE G  
FPP 10.9 12 18% OF LITTLE G  
EA 11.2 3.4% OF LITTLE GTOTAL  
DIFFERENCE

## NOTES

(1) ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) SAT IS ASSUMED TO INCREASE 2% IN 2006, THEN REMAIN LEVEL THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2008

**THE CINCINNATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIMULATION VERSUS CURRENT SETTLEMENT OFFER**

NAME	CARS
Sum of EXP-INT RC	
Sum of INTLG ?	
Sum of RSC	
Sum of Final G	
Sum of Pools (Rb)	
Total Sum of Exp-Int RC	
Total Sum of Intlg ?	
Total Sum of RSC	
Total Sum of Final G	
Total Sum of Pools (Rb)	

### **STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER**

[illegible]

(12) SAT IS ASSUMED TO INCREASE 2% IN 2035. THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2009

## NOTES

11) ASSUME CUSTOMER IS IN FIRST 24% OF EXPOSURES

1973 M. 27 353376. 1. 23.08.66 6. 1.08.69

## STANDARD VARIANCE CROPPER VERSUS CURRENT SETTLEMENT OFFER

[illegible]

(2) SAT IS ASSUMED TO INCREASE 2% IN 2005. THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL RESULTS ARE DETERMINED OVER THE YEARS 2005-2008

ASSUME CUSTODIAN IS IN FIRM 50% OF EMPLOYERS

IT SAT IS ASSUMED TO INCREASE 2% IN 2005 THEN RE

THE CHICAGO GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER

NAME	DATE
Sum of BAYN	
Sum of EXP. CTRC	
Sum of LITTLE G	
Sum of RSC	
Sum of FINAL G	
Sum of PCH. (G)	
Total Sum of BAYN	
Total Sum of EXP. CTRC	
Total Sum of LITTLE G	
Total Sum of RSC	
Total Sum of FINAL G	
Total Sum of PCH. (G)	

STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER

STANDARD TARIFF	2004	2005	2006	2007	2008	2009	TOTAL 1800 - 2500
NON-PROFESSOR TENDUS AUMENTE D'ATTACHEMENT OFFER							
	STD TARIFF	CRES	STD TARIFF	CRES	STD TARIFF	CRES	

NAME	DATE	FILE	TYPE
			Sum of DEATH
			Sum of EXPLICIT REC
			Sum of LITTLE G 2
			Sum of REC
			Sum of FINAL G
			Sum of Total (10a)
			Sum of Sum of Recs
			Sum of Sum of DEATH REC
			Sum of Sum of LITTLE G 2
			Sum of Sum of REC
			Sum of Sum of FINAL G
			Sum of Sum of Total (10a)

[illegible]

EFC  
 RYC  
 F. 9. 9. 9  
 EFC

RSC  
 A-44811 1340' U.T.E.G. (1)  
 537' 12" DE U.T.E.G.

INF 14% OF LITTLE G,  
FPP (4 B, 12 10% OF LITTLE G)  
BA (1 2 3 4% OF LITTLE G)

TOYAL  
Coffin

**NOTES**

(1) ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) S&P IS ASSUMED TO INCREASE 2% IN 2005, THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2003-2004

[illegible]

REC  
RTG  
FILED

NSC  
[REDACTED]  
[REDACTED] 12% OF LITTLE G)  
[REDACTED] 12% OF LITTLE G)

WAS 100 OF LITTLE,  
FPO 140 12 100 OF LITTLE,  
EAL 1 3 1 100 OF LITTLE.

TOTAL

Notes

(1) ASSUME CUSTOMER IS IN FIRST 50% OF SWITCHERS  
(2) GAT IS ASSUMED TO INCREASE 2% IN 2005 THEN REMAIN LEVEL THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2009

	DATE	TIME	TO WHAT?	TOTAL SUM OF EXP. ACT. REC.	TOTAL SUM OF THE G. 2	TOTAL SUM OF REC.	TOTAL SUM OF THE G.	TOTAL SUM OF REC.	TOTAL SUM OF THE G.
			SUM OF EXP. ACT. REC.						
			SUM OF THE G. 2						
			SUM OF REC.						
			SUM OF THE G.						
			SUM OF REC.						
			SUM OF THE G. 2						

STANDARD TARIFF NON-SHOPPER VERSUS CURRENT SETTLEMENT OFFER

	2003		2007		2008	
	STD	TARIFF	STD	TARIFF	STD	TARIFF
STANDARD TARIFF HIGH-SHOPPER VERSUS CURRENT SETTLEMENT OFFER						
TOTAL 2008 - 2008						

RSC  
 RTC  
 F.W.M. G  
 RTC

100.18.11 13% OF LITTLE G (1)  
 58.12% OF LITTLE G  
 107.16% OF LITTLE G  
 FPP 4.8.12 16% OF LITTLE G  
 EA. 1.2.3 4% OF LITTLE G

TOTAL  
CUMULATIVE

NOTES

CITY IS ASSUMED TO INCREASE 2% IN 2005, THEN REMAIN LEVEL. THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2005-2009.

## STANDARD TAHOE SHOPPER VERSUS CURRENT SETTLEMENT OFFER

	2003	2004	2007	2008	TOTAL 2003 - 2008
STANDARD TARIFF SHOPPER VERSUS CURRENT SETTLEMENT OFFER					
	CRIES	CRIES	CRIES	CRIES	CRIES
	STD TARIFF	STD TARIFF	STD TARIFF	STD TARIFF	STD TARIFF

13  
 14  
 15  
 16

22C (40.11% OF LITTLE G.) (1)  
SRT (2% OF LITTLE G.)  
WIP (100% OF LITTLE G.)  
FPP (4.812% OF LITTLE G.)  
EAL (2.34% OF LITTLE G.)

7-15-61

22

(2) SAT IS ASSUMED TO INCREASE 2% IN 2005 THEN REMAIN LEVEL THIS COULD CHANGE AS ACTUAL NEEDS ARE DETERMINED OVER THE YEARS 2000-2009

01105

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THE CINCINNATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER

NAME	DATA
	Sum of BROW
	Sum of EXPLICIT RTC
	Sum of LITTLE G 2
	Sum of RSC
	Sum of FINAL G
	Sum of FOUR (8%)
	Total Sum of BROW
	Total Sum of EXPLICIT RTC
	Total Sum of LITTLE G 2
	Total Sum of RSC
	Total Sum of FINAL G
	Total Sum of FOUR (8%)

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**THE CINCHINATI GAS & ELECTRIC COMPANY  
ANALYSIS OF STIPULATION VERSUS CURRENT SETTLEMENT OFFER  
SUMMARY OF ALL CRES CUSTOMERS**

[illegible]

DE AND IS IN FIRST 50% OF SWITCHERS UNDER BOTH STANDARD TARIFF AND CRES SCENARIOS

**TOTAL  
DIFFERENCE**

## NOTES

### iii. ASSESS

THE CINCINNATI GAS & ELECTRIC COMPANY  
 COMPARISON OF STANDARD TARIFF, SETTLEMENT OFFER, AND MARKET  
 SUMMARY OF ALL CRES CUSTOMERS

01107

	ANNUAL MWH	STD TARIFF	AVG. @ STD TARIFF	CRES	AVG. CRES
IEU	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OHA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OEG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL EXCH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL 2005 - 2008

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THE CINCINNATI GAS & ELECTRIC COMPANY  
 COMPARISON OF STANDARD TARIFF, SETTLEMENT OFFER, AND MARKET  
 SUMMARY OF ALL CRES CUSTOMERS

01108

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	ANNUAL MWH	STD TARIFF	AVG. @ STD TARIFF	CRES	AVG. CRES
IEU	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OHA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OEG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

01109

Schafer, Anita

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---

**From:** Schrader, Steve  
**Sent:** Friday, January 28, 2005 2:23 PM  
**To:** Ficke, Greg; ^Janson, Julie - cell phone  
**Subject:** FW: RSP Impacts by Year.xls  
**Attachments:** RSP Impacts by Year.xls

Thought I would walk Phil through this.

---

# RSP EBIT Impacts on Plan

2004 2005 2006 2007 2008

## RSP RELATED REVENUES

Transmission Cost rider on C&I (MISO tracker)  
Distribution Deferral Recovery

AAC Revenues (net switching)  
Less: CRES Reimbursement (CRS, LLC)  
Net AAC Revenues

FPP (Fuel/E&A and PP) Tracker  
Less: CRES Reimbursement (CRS, LLC)  
Total FPP Tracker

SRT (System Reserve Tracker) Revenues  
Less: CRES Reimbursement (CRS, LLC)  
Net SRT Revenues

RSC reimbursement to CRES (CRS, LLC)  
RTC reimbursement to CRES (CRS, LLC)  
1 Mil/Kwh discount on CRES (CRS, LLC)

IMF (Infrastructure Maintenance) Revenues

Total Revenue Items

## RSP RELATED EXPENSES

Deferral of Distribution Depr., Prop. Tax, and Carrying cost  
MISO Expenses  
Fuel/PP and EA Costs over Frozen Base Rates  
Reserve Purchase Power Costs  
Total On-going Expenses

Total Net RSP Impacts

Year to Year Change

EPS estimate

Recovery of C&I only in 2005. All classes 2006-2008  
Offset by Amortization of 2004/2005 Deferrals

C&I only in 2005. All classes in 2006-2008 plus rate increases

C&I only in 2005. All in classes in 2006-2008

Assumes full recovery of costs (except CRES)

C&I only in 2005. All in 2006. Rate start in 2007

5-year amort. starts in 2006 (not shown is 2004 \$11.2m deferral)  
Increase in 2006 to end of MDP deferral on Res  
Fuel expense exceeding \$12.45/Mwh in frozen rate

011110

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01111

Schafer, Anita

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**From:** Lemke, Walt  
**Sent:** Tuesday, October 26, 2004 10:44 AM  
**To:** Steffen, Jack; Ficke, Greg; Schrader, Steve  
**Cc:** Wathen, Don  
**Subject:** RSP update  
**Attachments:** Summary of Rate Stabilization Plan Items Update 10-26.xls

Attached is an update RSP comparison. The only change from the comparison done Friday is to remove the [REDACTED] reimbursement on CRES [REDACTED] from item 8 on the worksheet.

This change was made after a conversation with Jack and Greg where it was determined that the presentation of the [REDACTED] and [REDACTED] reimbursements on the CRES contracts was not consistent and that the [REDACTED] reimbursement should not be on the analysis. In both the [REDACTED] and [REDACTED] reimbursement [REDACTED] the customers are in essence paying these charges [REDACTED] and getting reimbursed [REDACTED]. Since the comparison worksheet does not show the [REDACTED] it would be incorrect to show the credit. The [REDACTED] was presented this way [REDACTED] and this update makes the [REDACTED] presentation consistent the [REDACTED] presentation.

**Note:** Since the CRES agreement assumptions have remained unchanged across all the different scenarios, there is no difference in the incremental differences between the base and any of the scenarios. However, since both the numerator and denominator in the percent calculation have changed (by approx. [REDACTED] net for the 2005-2008 period), the percent will change slightly. For example, the percent on the Friday (10-22) analysis was [REDACTED] and the same scenario with the update to item 8 is now [REDACTED].

## Current 5-year Forecast with original assumptions

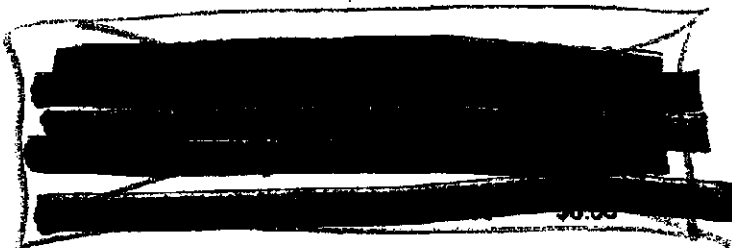
2004      2005      2006      2007      2008

## Item 1: Deferral of T&amp;D expenses in 2004 and 2005 with Recovery in 2006-2010

\$46 million annual T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005. Recovery is over five years 2006-2010.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact (diluted shares)

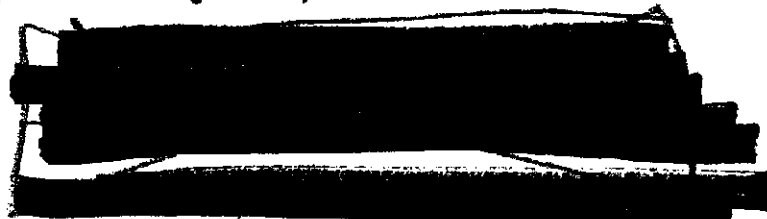



## Item 2: Extend the Residential RTC collection through 2009 and 2010

Collection of RTC revenues from Residential customers is extended from the end of 2008 to the end of 2010. This allows for a higher return and thus lower RTC amortization over the period 2005-2010 (assumed no change in 2004).

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

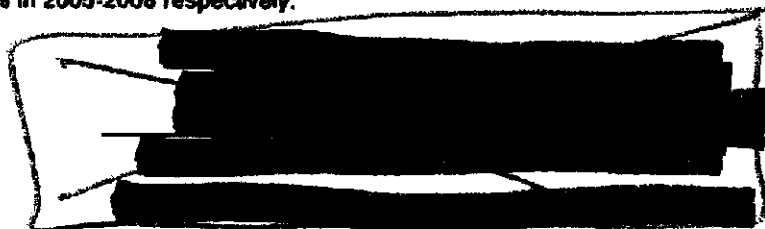



## Item 3: Add POLR charge on non-switch and CRES

Added a POLR revenue charge each year (based on 8% of little g for C&I and OPA). Amounts are cumulative -- for example: the 2006 is 12% (6% 2005 + 6% 2006). Residential is 0%, 11%, 17%, and 23% in 2005-2008 respectively.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

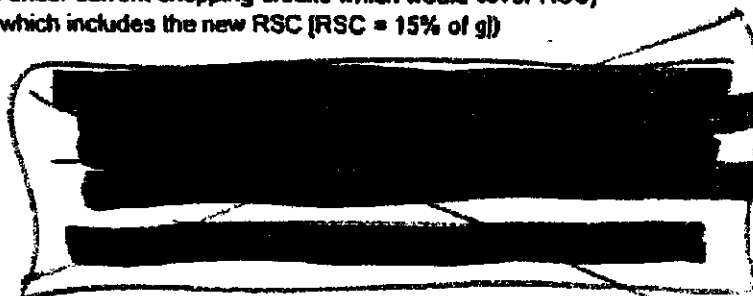



## Item 4: Rate Stabilization Charge "Credit" up to 25% on Switch customers (excl CRES)

(note: 2005 assumes switch customers are under current shopping credits which would cover RSC)  
(The current shopping credits cover little g which includes the new RSC [RSC = 15% of g])

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact




**Current 5-year Forecast with original assumptions**

**Item 5: Implement CG&E Fuel Cost recovery mechanism.**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
--	-------------	-------------	-------------	-------------	-------------

Reflects the incremental fuel costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 6: POLR collected from Switching (not included in POLR charge above see item 3)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 7: Continue Generation 5% credit on Residential**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 8: CRES Settlement Items**

RTC reimbursement and discount on generation rate (note: POLR charge impact included in item 3)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 9: Switching at maximum for RSC credit (25% Residential 50% C&I)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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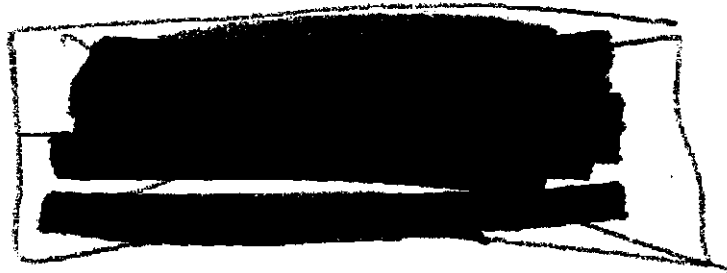
## Current 5-year Forecast with original assumptions

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Item 10: System Sustainability Charges					

Not applicable in 5-year plan

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact



Item 11: Reserve Power Tracker

Not applicable in 5-year plan (included in POLR/AAC)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

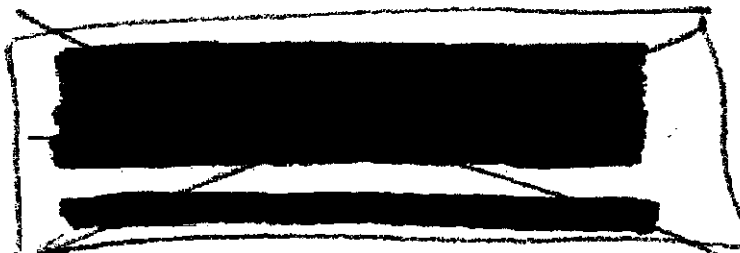


Item 12: Residential 10% cap on rider increases

Not applicable in 5-year plan

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

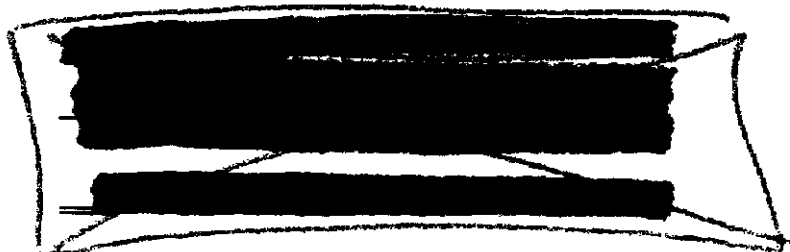
EPS Impact



Net Impact of all RSP Items:

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

RSP Items EPS Impact



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**Current 5-year Forecast updated 10-22-04 Proposal**

IMF 3%/AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Del to RTC

20042005200620072008**Item 1: Deferral of T&D expenses in 2004 and 2005 with Recovery in 2006-2010**

\$22 million annual of C&I T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005. \$24m Residential deferred to RTC balance and affects the return (Item 2)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 2: Residential RTC collection extended through 12/31/2010**

Collection of RTC revenues from Residential customers is extended through 2010  
The residential Distribution deferral (item 1) is charged to the RTC asset.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 3: Add (AAC) charge default customers**

Added a AAC revenue charge each year - 4% of little g for C&I in 2005 and 4% in 2006 for 2006-2008. 6% for Residential in 2008. All classes justified incr 2007-2008  
Amounts exclude reserves and EA (see items 5 & 11) (amounts per Rates)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 4: Reflect Rate Stabilization Charge "Credit" of 100% on up to 50% C&I on Switch Customers and up to 25% Residential. Reflects impact on "existing" Switch customers**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Current 5-year Forecast updated 10-22-04 Proposal**

UMF 3%/AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Def to RTC

20042005200620072008**Item 5: Implement CG&E Fuel and EA Cost recovery mechanism.**

Reflects the incremental fuel and EA costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 6: Existing Switching (up to 50%) avoid 100% of POLR (AAC)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 7: Residential generation 5% credit ends 1/1/2006**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 8: CRES Settlement Items**

RTC reimbursement and discount on generation rate

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 9: Switching at maximum for RSC and POLR (AAC) credit (25% Res & 50% C&I)**

Worst Case Sensitivity on switching -- reflects additional RSC credits and AAC credits

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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**Current 5-year Forecast updated 10-22-04 Proposal**

IMF 1%/AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Def to RTC

20042005200620072008**Item 10: IMF Charge**

Based on 2% of "little g" rate. C&amp;I starts 2005, Res starts 2006

Revenue Impact

Expense Impact

Tax Impact

Net Income Change

EPS Impact

**Item 11: Reserve Power Tracker**

Reserve purchases recovered through non-bypassable charge starting in 2005

Revenue Impact

Expense Impact

Tax Impact

Net Income Change

EPS Impact

**Item 12: Residential 10% cap on rider increases**Cap residential increases due to AAC, Fuel/EA, IMF, System Reliability, and 5% gen credit at 10%/yr  
Any "over cap" amounts are carried forward for future recovery

Revenue Impact

Expense Impact

Tax Impact

Net Income Change

EPS Impact

**Net Impact of all RSP items:**

Revenue Impact

Expense Impact

Tax Impact

Net Income Change

RSP Items EPS Impact

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**Comparison: 10-22-04 Proposal less original assumptions**

IMP 3%/AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Def to RTC

20042005200620072008**Item 1: Deferral of T&D expenses in 2004 and 2005 with Recovery in 2006-2010**

\$22 million annual of C&I T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005. \$24m Residential deferred to RTC balance and affects the return (item 2)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 2: Residential RTC collection ends 12/31/2008**

Collection of RTC revenues from Residential customers is extended through 2010  
The residential Distribution deferral (item 1) is charged to the RTC asset.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 3: Add (AAC) charge default customers**

Added a AAC revenue charge each year -- 4% of little g for C&I in 2005 and 4% in 2006 for 2006-2008. 6% for Residential in 2008. All classes justified incr 2007-2008  
Amounts exclude reserves and EA (see items 5 & 11) (amounts per Rates)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 4: Reflect Rate Stabilization Charge "Credit" of 100% on up to 50% C&I on Switch Customers and up to 25% Residential. Reflects impact on "existing" Switch customers**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Comparison: 10-22-04 Proposal less original assumptions**

MF 3% AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Def to RTC

20042005200620072008**Item 5: Implement CG&E Fuel and EA Cost recovery mechanism.**

Reflects the incremental fuel and EA costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 6: Existing Switching (up to 50%) avoid 100% of POLR (AAC)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 7: Residential generation 5% credit ends 1/1/2006**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 8: CRES Settlement Items**

RTC reimbursement and discount on generation rate

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 9: Switching at maximum for RSC and POLR (AAC) credit (25% Res & 50% C&I)**

Worst Case Sensitivity on switching -- reflects additional RSC credits and AAC credits

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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**Comparison: 10-22-04 Proposal less original assumptions**

IMF 3%/AAC C&amp;I 4% in 2005, Res 6% in 2006, Res 10% cap, RTC Extension, Res Def to RTC

20042005200620072008**Item 10: IMF Charge**

Based on 2% of "little g" rate. C&amp;I starts 2005, Res starts 2006

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 11: Reserve Power Tracker**

Reserve purchases recovered through non-bypassable charge starting in 2005

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 12: Residential 10% cap on rider increases**

Cap residential increases due to AAC, Fuel/EA, IMF, System Reliability, and 5% gen credit at 10%/yr  
Any "over cap" amounts are carried forward for future recovery

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Net Impact of all RSP Items:**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

RSP Items EPS Impact

Percent of Settlement

83%

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Schafer, Anita

01121

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~~TRADE SECRET~~

From: Lemke, Walt  
Sent: Tuesday, October 26, 2004 11:00 AM  
To: Ficke, Greg; Steffen, Jack; Schrader, Steve  
Cc: Wathen, Don  
Subject: RE: RSP update  
Attachments: Summary of Rate Stabilization Plan Items Update 10-21 Update for RTC Reimb.xls

Per your request, the attached is the 10-21 [REDACTED] worksheet updated to remove the [REDACTED] reimbursement on the CRES [REDACTED]

From: Ficke, Greg  
Sent: Tuesday, October 26, 2004 9:55 AM  
To: Lemke, Walt; Steffen, Jack; Schrader, Steve  
Cc: Wathen, Don  
Subject: RE: RSP update

Can you make this change to the 10/21 [REDACTED] version? Do you know which one I'm referring to?

From: Lemke, Walt  
Sent: Tuesday, October 26, 2004 10:44 AM  
To: Steffen, Jack; Ficke, Greg; Schrader, Steve  
Cc: Wathen, Don  
Subject: RSP update

[REDACTED] is an update RSP comparison. The only change from the comparison done Friday is to remove the [REDACTED] reimbursement RES [REDACTED] from item 8 on the worksheet.

This change was made after a conversation with Jack and Greg where it was determined that the presentation of the [REDACTED] and [REDACTED] reimbursements on the CRES contracts was not consistent and that the [REDACTED] reimbursement should not be on the analysis. In both the [REDACTED] and [REDACTED] reimbursement [REDACTED] the customers are in essence paying these charges [REDACTED] and getting reimbursed [REDACTED]. Since the comparison worksheet does not show the [REDACTED] it would be incorrect to show the credit. The [REDACTED] was presented this way [REDACTED] and this update makes the [REDACTED] presentation consistent the [REDACTED] presentation.

Note: Since the CRES agreement assumptions have remained unchanged across all the different scenarios, there is no difference in the incremental differences between the base and any of the scenarios. However, since both the numerator and denominator in the percent calculation have changed (by approx. [REDACTED] net for the 2005-2008 period), the percent will change slightly. For example, the percent on the Friday (10-22) analysis was [REDACTED] and the same scenario with the update to item 8 is now [REDACTED].

## Current 5-year Forecast with original assumptions

2004      2005      2006      2007      2008

## Item 1: Deferral of T&amp;D expenses in 2004 and 2005 with Recovery in 2006-2010

\$48 million annual T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005. Recovery is over five years 2006-2010.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact (diluted shares)

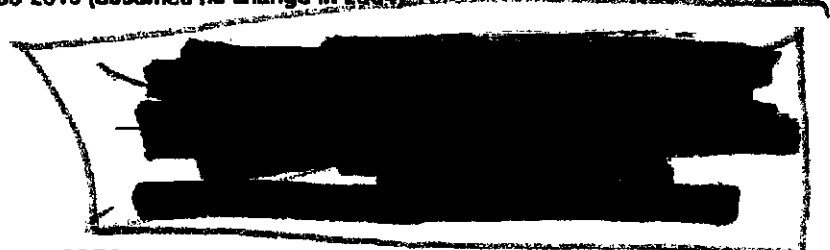


## Item 2: Extend the Residential RTC collection through 2009 and 2010

Collection of RTC revenues from Residential customers is extended from the end of 2008 to the end of 2010. This allows for a higher return and thus lower RTC amortization over the period 2005-2010 (assumed no change in 2004).

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

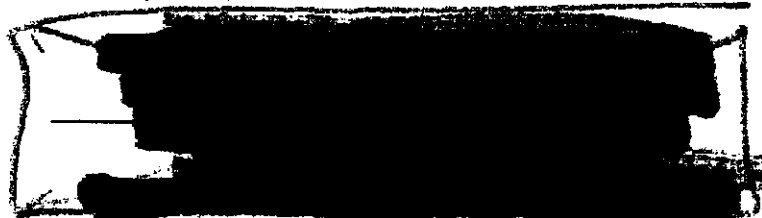


## Item 3: Add POLR charge on non-switch and CRES

Added a POLR revenue charge each year (based on 8% of little g for C&I and OPA). Amounts are cumulative – for example: the 2006 is 12% (6% 2005 + 6% 2006). Residential is 0%, 11%, 17%, and 23% in 2005-2008 respectively.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

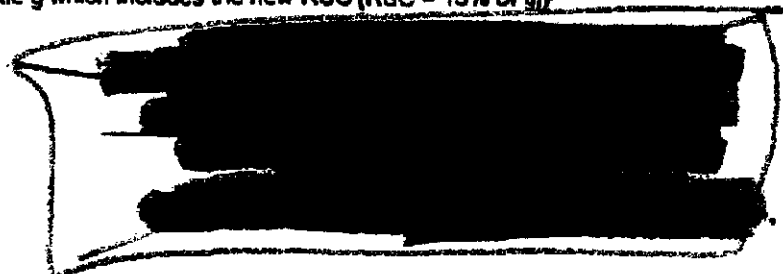


## Item 4: Rate Stabilization Charge "Credit" up to 25% on Switch customers (excl CRES)

(note: 2005 assumes switch customers are under current shopping credits which would cover RSC)  
(The current shopping credits cover little g which includes the new RSC (RSC = 15% of g))

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact



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**Current 5-year Forecast with original assumptions**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Item 5: Implement CG&E Fuel Cost recovery mechanism.					

Reflects the incremental fuel costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

Item 6: POLR collected from Switching (not included in POLR charge above see item 3)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

Item 7: Continue Generation 5% credit on Residential

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

Item 8: CRES Settlement Items

RTC reimbursement and discount on generation rate (note: POLR charge impact included in item 3)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

Item 9: Switching at maximum for RSC credit (25% Residential 50% C&I)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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## Current 5-year Forecast with original assumptions

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Item 10: System Sustainability Charges</b>					
Not applicable in 5-year plan					
Revenue Impact					
Expense Impact					
Tax Impact					
Net Income Change					
EPS Impact					
<b>Item 11: Reserve Power Tracker</b>					
Not applicable in 5-year plan (included in POLR/AAC)					
Revenue Impact					
Expense Impact					
Tax Impact					
Net Income Change					
EPS Impact					
<b>Item 12: Residential 10% cap on rider increases</b>					
Not applicable in 5-year plan					
Revenue Impact					
Expense Impact					
Tax Impact					
Net Income Change					
EPS Impact					
<b>Net Impact of all RSP items:</b>					
Revenue Impact					
Expense Impact					
Tax Impact					
Net Income Change					
RSP Items EPS Impact					

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**Current 5-year Forecast updated 10-21-04 Proposal**

INF 1%/AAC C&amp;I 5% in 2005, Res 7% in 2006 - Res 10% cap

20042005200620072008**Item 1: Deferral of T&D expenses in 2004 and 2005 with Recovery in 2006-2010**

\$23 million annual of C&I T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 2: Residential RTC collection ends 12/31/2008**

Collection of RTC revenues from Residential customers is NOT extended through 2010  
See SSC charge (Item 10)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 3: Add (AAC) charge default customers**

Added a AAC revenue charge each year -- 4% of little g for C&I in 2005 and 4% in 2006 for 2006-2008. 6% for Residential in 2006. All classes justified incr 2007-2008  
Amounts exclude reserves and EA (see Items 5 & 11) (amounts per Rates)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 4: Reflect Rate Stabilization Charge "Credit" of 100% on up to 50% C&I on Switch Customers and up to 25% Residential. Reflects impact on "existing" Switch customers**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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**Current 5-year Forecast updated 10-21-04 Proposal**

IMF 3%/AAC C&amp;I 5% in 2005, Res 7% in 2006 - Res 10% cap

20042005200620072008**Item 5: Implement CG&E Fuel and EA Cost recovery mechanism.**

Reflects the incremental fuel and EA costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 6: Existing Switching (up to 50%) avoid 100% of POLR (AAC)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 7: Residential generation 5% credit ends 1/1/2006**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 8: CRES Settlement Items**

RTC reimbursement and discount on generation rate

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 9: Switching at maximum for RSC and POLR (AAC) credit (25% Res & 50% C&I)**

Worst Case Sensitivity on switching - reflects additional RSC credits and AAC credits

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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**Current 5-year Forecast updated 10-21-04 Proposal**

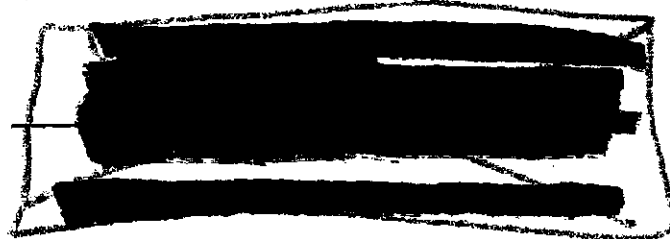
IMF 3%/AAC C&amp;I 3% in 2005, Res 7% in 2006 - Res 10% cap

20042005200620072008**Item 10: IMF Charge**

Based on 4% of "little g" rate. C&amp;I starts 2005, Res starts 2006

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

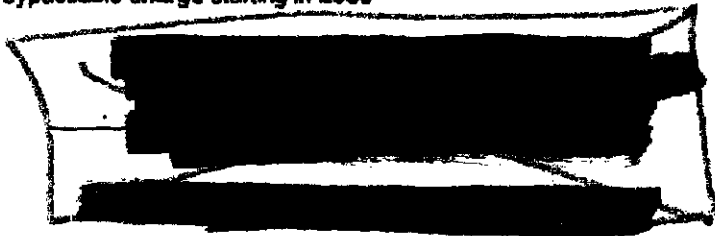
EPS Impact

**Item 11: Reserve Power Tracker**

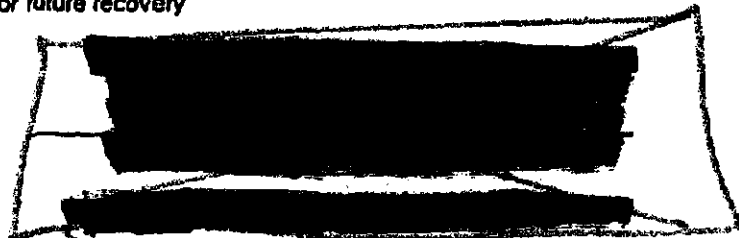
Reserve purchases recovered through non-bypassable charge starting in 2005

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

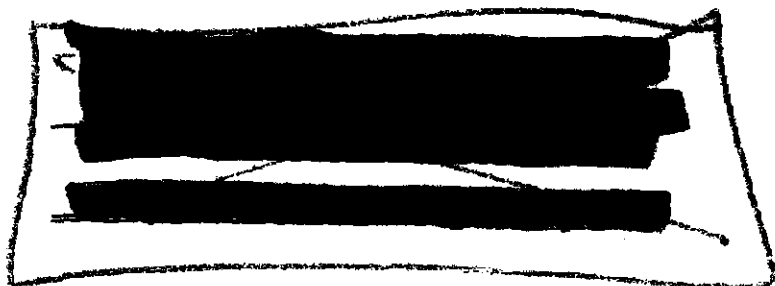
EPS Impact

**Item 12: Residential 10% cap on rider increases**Cap residential increases due to AAC, Fuel/EA, IMF, System Reliability, and 5% gen credit at 10%/yr  
Any "over cap" amounts are carried forward for future recoveryRevenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Net Impact of all RSP Items:**Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

RSP Items EPS Impact

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TRADE SECRET

**Comparison: 10-21-04 Proposal less original assumptions**

IMF 3%/AAC C&amp;I 5% in 2005, Res 7% in 2006 - Res 10% cap

<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
-------------	-------------	-------------	-------------	-------------

**Item 1: Deferral of T&D expenses in 2004 and 2005 with Recovery in 2006-2010**

\$23 million annual of C&I T&D expenses are deferred to a regulatory asset starting mid 2004 through the end of 2005.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 2: Residential RTC collection ends 12/31/2008**

Collection of RTC revenues from Residential customers is NOT extended through 2010  
See SSC charge (Item 10)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 3: Add (AAC) charge default customers**

Added a AAC revenue charge each year -- 4% of little g for C&I in 2005 and 4% in 2006 for 2006-2008. 6% for Residential in 2008. All classes justified incr 2007-2008  
Amounts exclude reserves and EA (see items 5 & 11) (amounts per Rates)

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 4: Reflect Rate Stabilization Charge "Credit" of 100% on up to 50% C&I on Switch Customers and up to 25% Residential. Reflects impact on "existing" Switch customers**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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**Comparison: 10-21-04 Proposal less original assumptions**

IMF 3%/AAC C&amp;I 5% in 2005, Res 7% in 2006 - Res 10% cap

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Item 5: Implement CG&amp;E Fuel and EA Cost recovery mechanism.</b>					

Reflects the incremental fuel and EA costs between the frozen fuel rate and the actual cost of fuel to serve the non-switching customers. Com, Ind, & OPA starts in 2005, Residential starts in 2006.

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 6: Existing Switching (up to 50%) avoid 100% of POLR (AAC)**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 7: Residential generation 5% credit ends 1/1/2006**

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 8: CRES Settlement Items**

RTC reimbursement and discount on generation rate

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 9: Switching at maximum for RSC and POLR (AAC) credit (25% Res & 50% C&I)**

Worst Case Sensitivity on switching - reflects additional RSC credits and AAC credits

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

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TRADE SECRET

**Comparison: 10-21-04 Proposal less original assumptions**

IMF 3%/AAC C&amp;I 5% in 2005, Res 7% in 2006 - Res 10% cap

2004      2005      2006      2007      2008**Item 10: IMF Charge**

Based on 4% of "little g" rate. C&amp;I starts 2005, Res starts 2006

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 11: Reserve Power Tracker**

Reserve purchases recovered through non-bypassable charge starting in 2005

Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Item 12: Residential 10% cap on rider increases**Cap residential increases due to AAC, Fuel/EA, IMF, System Reliability, and 5% gen credit at 10%/yr  
Any "over cap" amounts are carried forward for future recoveryRevenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

EPS Impact

**Net Impact of all RSP items:**Revenue Impact  
Expense Impact  
Tax Impact  
Net Income Change

RSP Items EPS Impact

Percent of Settlement

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TRADE SECRET

**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.	)	

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**CONFIDENTIAL PORTION OF DEPOSITION TRANSCRIPT AND  
CONFIDENTIAL EXHIBITS OF  
JAMES E. ZIOLKOWSKI TAKEN FEBRUARY 13, 2007**

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1 housekeeping task here. I'm going to mark as Exhibit  
2 1 the notice of deposition. You don't need to look  
3 at this, but I'll just make this Exhibit 1.

4 What we'll be doing here today is we'll  
5 just put the exhibits aside and -- after you get done  
6 looking at them when I ask my questions, we'll put  
7 them aside and that will be the court reporter's  
8 copies. All right?

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

11 (Discussion held off the record.)

12 Q. Mr. Ziolkowski, I'm going to ask several  
13 questions concerning what's been -- oh, I'm sorry.  
14 We haven't marked it. This will be Exhibit 2.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Yes, that Exhibit 2 is Bates stamped 644  
17 through 649. I'm going to ask you several questions  
18 related to this group of e-mails. Would you please  
19 refer to page 648 and 649 of this exhibit? This is  
20 a -- first e-mail is from Paul Smith who we've just  
21 discussed a little bit, August 1<sup>st</sup>, 2006. At the  
22 time of this e-mail what was your relationship to  
23 Mr. Smith and Mr. Storck? Is this a time when you  
24 reported to Mr. Storck?

1 A. Yes, I reported to Mr. Storck.

2 Q. And what was Mr. Smith doing?

3 A. Could you clarify that question?

4 Q. Well, we went over -- I just wanted to  
5 make sure, you just responded to what Mr. Smith does  
6 today, but I wanted to make sure or confirm what he  
7 did at the time of this e-mail which was not very  
8 long ago.

9 A. Mr. Smith -- Mr. Smith's duties were  
10 essentially the same as they are today. Don Storck  
11 reported to Mr. Smith.

12 Q. When did Mr. Bailey become your  
13 supervisor this last time?

14 A. It was about November 2006.

15 Q. Now, it's a fairly short e-mail, this is  
16 Bates stamped 648, and there's a reference in the --  
17 at the beginning of the first sentence that talks  
18 about C&I -- "C&I" is for commercial and industrial;  
19 is that correct?

20 A. Yes.

21 Q. And it discusses a -- or there's  
22 something about a C&I rate increase in 2009 and 2010.  
23 Can you tell me, do you understand what that means?

24 A. Yes.

1 Q. What does that mean? What is the  
2 increase that this is referring to?

3 A. Mr. Smith, I believe, is referring to the  
4 filing that Duke Energy - Ohio made to extend its  
5 market based standard service offer.

6 Q. That's the case 06-986 that I referred  
7 to. Are you familiar with those case numbers?

8 A. That case number sounds familiar.

9 Q. It's not terribly important, but it's the  
10 continuation of the rate stabilization plan; is that  
11 the gist of it?

12 MR. COLBERT: I'm going to object.  
13 That's not a correct characterization of its title.  
14 It's an amendment as opposed to continuation.

15 MR. SMALL: Whatever.

16 MR. COLBERT: You can answer.

17 Q. It's in that case.

18 A. Yes.

19 Q. And what is the increase that's referred  
20 to here? Is it some component of rates?

21 A. Well, the increase that's referred to  
22 here are increases that are specifically defined in  
23 that particular filing in that particular case  
24 number.

1           Q.    You have me at a little bit of a loss.  
2    Do you know what components there are or what they're  
3    called, the increases?

4           A.    I'm somewhat familiar with that filing  
5    that we made, yes.

6           Q.    And what -- are there components that are  
7    increasing in 2010 for C&I customers?

8           A.    Yes.

9           Q.    And what are they?

10          A.    I recall the rate stabilization charge  
11    would go up somewhat, and the IMF would go up  
12    somewhat.

13          Q.    All right. Right after that there's a  
14    reference to calculating the percent of the increase  
15    that would be rebated to CRES customers. Do you see  
16    that?

17          A.    Yes.

18          Q.    Do you understand Mr. Smith's reference  
19    in that portion of his sentence?

20          A.    Yes.

21          Q.    And what is that?

22          A.    My understanding is that Mr. Smith was  
23    asking for the changes in the option payments that  
24    the company makes and how those would be impacted in

1 2009 and 2010.

2 Q. Now, in my deposition of Mr. Gomez, Jon  
3 Gomez, yesterday -- are you familiar with Mr. Gomez?

4 A. No.

5 Q. Oh.

6 A. Just his name. I don't know him  
7 personally.

8 Q. Okay. You've had some communication with  
9 him, though.

10 A. Via e-mails.

11 Q. Right. And he mentioned yesterday a CRES  
12 line item that he deals with in his revenue model.  
13 Is that this -- do you know whether that's the same  
14 reference to CRES as in this e-mail?

15 A. I don't know.

16 Q. Have you communicated with Mr. Gomez  
17 about his revenue model?

18 A. I recall having communicated via e-mail  
19 with Mr. Gomez, but I don't recall exactly what any  
20 information was related to.

21 Q. All right. Going down a little bit in  
22 this e-mail, do you understand the reference to  
23 "between 15 and 30 percent"?

24 A. No.

1 Q. You don't understand that part of the  
2 e-mail?

3 A. No, I don't.

4 Q. All right. On the next page Bates  
5 stamped 649 Mr. Storck, who was copied on the earlier  
6 e-mail August 1<sup>st</sup>, appears to respond to that  
7 e-mail with a short e-mail of his own to you saying  
8 "Let's discuss." Do you see that?

9 A. Yes.

10 Q. And did you receive this e-mail from  
11 Mr. Storck?

12 A. Yes, I did.

13 Q. Did you discuss the matter with  
14 Mr. Storck?

15 A. Yes.

16 Q. And what was discussed?

17 A. I recall that Mr. Storck, who reported to  
18 Mr. Smith, wanted to make sure I understood what  
19 Mr. Smith was looking for and wanted to make sure  
20 that I would accomplish his task for Mr. Smith.

21 Q. Did you complete a project for Mr. Smith  
22 as a result of that discussion?

23 A. I believe so.

24 Q. And what did you do?

1           A.    I believe I prepared a spreadsheet, but I  
2   don't recall any of the details of this particular  
3   spreadsheet.

4           Q.    Okay.

5           MR. SMALL: Can I have that last answer  
6   read back to me?

7                    (Answer read.)

8           Q.    Without going into the details which you  
9   don't remember, do you remember the general topic of  
10   this spreadsheet that you prepared?

11          A.    I think so.

12          Q.    And what was it -- did it relate to what  
13   Mr. Smith referred to as the CRES customers?

14          A.    Yes, it did.

15          Q.    And what are those customers?

16          A.    The CRES customers are those customers  
17   that receive option payments from Cinergy Retail  
18   Services or Duke Energy Retail Services.

19          Q.    And that's the universe of the customers  
20   that are referred to in this -- or that you prepared  
21   the spreadsheet for for the CRES customers that  
22   are -- CRES customers, they're customers that receive  
23   payments from CRS which is now called DERS, Duke  
24   Energy Retail Sales?

1 A. Yes.

2 Q. Okay. That's the entities. What was the  
3 general nature of the spreadsheet?

4 A. I'm having a hard time recalling what  
5 that spreadsheet looked like, so I'm not sure.

6 Q. Just on a general topic, did it have  
7 something to do with the C&I rate increase in  
8 2009-2010?

9 A. It would have, because my goal would be  
10 to answer the question for Mr. Smith.

11 Q. Okay. On the bottom of the same exhibit,  
12 but -- on the bottom of 646. Bates stamp at the  
13 bottom of it says "646." Do you have that?

14 A. Yes.

15 Q. Okay. On the bottom of that there's an  
16 e-mail from Don Wathen and it's to you. And it  
17 states that "You and Tim are the only ones I'm aware  
18 of who know this stuff." Do you see that?

19 A. Yes.

20 Q. Now, the reference to Tim, that's Timothy  
21 Duff; is that correct?

22 A. Yes.

23 Q. And the reference to "stuff" is a little  
24 bit vague, but is that the CRES payments that are

1 mentioned in the e-mail on Bates stamp 647?

2 A. Yes.

3 Q. Mr. Wathen's e-mail was responding to or  
4 resulted from Mr. Gomez's inquiry; is that correct?

5 A. Yes.

6 Q. Okay. Now, is this the nature of the --  
7 did you exchange e-mail with Mr. Gomez as a result of  
8 this inquiry?

9 A. Yes, I did.

10 Q. And have you ever had any communications  
11 with Mr. Gomez on any other subjects other than the  
12 CRES payments?

13 A. I don't recall.

14 Q. Okay.

15 MR. SMALL: Let's go off the -- stay on  
16 the record.

17 Q. I'm being careful about this word "CRES"  
18 and I'm trying to be clear about this, and the reason  
19 I'm being clear about this, I'll just sort of warn  
20 you, is that CRES and CRS, for Cinergy Retail Sales,  
21 are very close to one another when you say them, so  
22 I'm going to be trying to be clear, and if you could  
23 do the same, I would appreciate it.

24 All right. If you would just keep that

1 for a moment, we will come back to it in a little  
2 bit. I'm going to mark another exhibit, Exhibit 3.

3 MR. SMALL: Paul, this is not from your  
4 material.

5 MR. COLBERT: Right.

6 MR. SERIO: You've seen it before,  
7 though.

8 MR. COLBERT: Yeah.

9 MR. SMALL: If you would mark that as  
10 Exhibit 3.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Small) All right. Exhibit 3 has  
13 a number of agreements on it. What I'd like to  
14 concentrate on the lines that say "Option Agreement,"  
15 and let me explain this chart to you a little bit.  
16 If you see the third agreement down, the first three  
17 are all labeled under Party 2, they're all labeled --  
18 GM for General Motors. The third one down says  
19 "Option Agreement"; do you see that?

20 A. Yes.

21 Q. That would be -- that means option  
22 agreement for GM. And then you look three lines down  
23 below that, it says "Option Agreement," and under  
24 Party 2 it says "Marathon"; do you see that?

1 A. Yes.

2 Q. And down the chart it has a similar  
3 structure where there are option agreements under the  
4 title Document and then a party's name next to it  
5 under "Party 2." Do you see that?

6 A. Yes.

7 Q. Now, you refer to CRES customers as those  
8 that receive option payments; is that correct?

9 A. Yes.

10 Q. When you refer to the customers that  
11 receive option payments, are you referring to the  
12 parties listed under the column Party 2 that are  
13 listed under Document as having option agreements?  
14 Do these look like the customers that you are  
15 referring to?

16 A. Yes.

17 Q. Does this look like a complete list of  
18 the parties that have option agreements and receive  
19 option payments?

20 A. It looks complete.

21 Q. At the bottom you'll see three lines that  
22 are devoted to [REDACTED] as the -- [REDACTED] is listed  
23 under Party 2. Is [REDACTED] one of the entities that  
24 you've been referring to as a CRES customer? You'll

1 notice it's not listed as having an option agreement.

2 A. No.

3 Q. [REDACTED] is not one of the CRES customers  
4 that you've been referring to?

5 A. No.

6 Q. Okay. There's another agreement that  
7 we've seen in this case dealing with [REDACTED]

8 [REDACTED] Is [REDACTED] one of the CRES  
9 customers that you've been referring to?

10 A. Yes, it is.

11 Q. Okay. So all the customers listed here  
12 as having an option agreement, not [REDACTED] but [REDACTED]  
13 is included as a CRES customer in your terminology.

14 A. Yes.

15 Q. I believe you can set that aside.

16 I'm going to go back to Exhibit 2. I see  
17 you still have it in front of you. That's it, yes.  
18 And I'm going to be asking a series of questions  
19 concerning an e-mail that starts at the bottom of  
20 page Bates stamped 645 and extends over to 646. That  
21 e-mail was from you to Don Wathen and Jon Gomez May  
22 11<sup>th</sup>, 2006, with a copy to Don Storck. Topic is  
23 CRES Payments. Is this an e-mail that you sent at  
24 least partially in response to Mr. Gomez's inquiries?

1 A. Yes.

2 Q. And the inquiries we just looked at a  
3 moment ago.

4 A. Yes.

5 Q. There are many little features in it so  
6 I'd like to go over it a little bit at a time.  
7 There's a reference to Customer Choice, I'm at the  
8 very bottom of 645, "Customer Choice in January 2001"  
9 is what it says. You are familiar with electric  
10 restructuring legislation that was passed in the  
11 state of Ohio?

12 A. Yes.

13 Q. Are you familiar with the terminology  
14 "SB3"?

15 A. Yes.

16 Q. And that was a designation for the  
17 electric restructuring legislation; is that correct?

18 A. Yes.

19 Q. And you are familiar that that electric  
20 restructuring legislation permitted customers to  
21 choose their supplier of generation service beginning  
22 January 1<sup>st</sup>, 2001?

23 A. Yes.

24 Q. Now, again at the bottom of 645 there's a

1 reference to market development period. Do you see  
2 that?

3 A. Yes.

4 Q. What is your understanding of the term  
5 "market development period"?

6 A. Market development period was a period  
7 covering -- starting in January 2001 and ending no  
8 later than December 31<sup>st</sup>, 2005, during which CG&E's  
9 electric rates were frozen and customers could switch  
10 to CRESs, and those that switched would receive a  
11 shopping credit.

12 Q. That's one of those instances where it  
13 would be best if you used the CRES because we're  
14 going to get into -- it may get a little messy. Your  
15 reference was to competitive retail electric  
16 suppliers, CRES?

17 A. Yes.

18 Q. Thank you.

19 Are you familiar with a CG&E filing  
20 around January 3<sup>rd</sup>, 2003, concerning generation  
21 rates to be charged after the market development  
22 period?

23 A. Yes.

24 Q. And that was the -- that original filing

1 is what you referred to earlier as the competitive  
2 market option; is that correct?

3 A. Yes.

4 Q. And what happened to that filing, that  
5 first initial filing in 2003?

6 A. As far as I'm aware, no action was taken  
7 during 2003 on that filing.

8 Q. All right. And I believe that's the  
9 topic of your first full paragraph on page 646 which  
10 starts out "By 2003." What is your understanding of  
11 the treatment of the company's proposal in 2003?

12 A. Could you restate that?

13 Q. Well, what's your understanding of the  
14 PUCO's treatment of the company's filing, and in  
15 particular you make several statements in this first  
16 full paragraph on 646 about the PUCO's treatment of  
17 the competitive electric retail market in Ohio?

18 A. My understanding was that the PUCO took  
19 no action on our filing, and I believe that the PUCO  
20 did not like that particular filing.

21 Q. And are you familiar with them actually  
22 asking the company to file some alternative to the  
23 competitive market option?

24 A. Yes.

1 Q. And that took place in early-2004,  
2 correct?

3 A. Yes.

4 Q. And that's the nature of the comment that  
5 you make at the top of the second full paragraph that  
6 starts "CG&E filed its RSP" and so forth.

7 A. Yes.

8 Q. In that same paragraph there's a  
9 reference to large customers and the term that you  
10 use is "The intervenors represented a roadblock"; do  
11 you see that?

12 A. Yes.

13 Q. And in making that statement -- and I'm  
14 sorry, we're not quite done with Exhibit 3, would you  
15 refer to Exhibit 3? Thank you. -- the large  
16 customers that you're referring to in that paragraph,  
17 is that a reference to the customers that we see on  
18 Exhibit 3?

19 A. Yes.

20 Q. And that's including, for instance, I'm  
21 referring to all the customers here, not just the  
22 ones with option payments, just to be clear,  
23 including [REDACTED]

24 A. Yes.

1 Q. Okay. And that's what you're referring  
2 to in the second full paragraph on page 646?

3 A. Yes.

4 Q. All right. I believe you can put Exhibit  
5 3 aside, we're going to stay with Exhibit 2. I'm  
6 going to mark a few more exhibits, three exhibits.  
7 We'll do this one at a time.

8 MR. SMALL: Let's go off the record for a  
9 second.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 (Recess taken.)

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

13 Q. All right. We're going to be going back  
14 and forth between your e-mail and the Exhibits 4, 5,  
15 and 6. In your e-mail you mention, and this is the  
16 third full -- I'm still over on your e-mail, the  
17 third full paragraph of your e-mail, there's a  
18 reference to "generation service for the intervenors  
19 at prespecified, contractual rates." Do you see  
20 that?

21 A. Yes.

22 Q. And I've got Exhibit 4 which shows an  
23 agreement between Cinergy Corp. and Industrial Energy  
24 Users - Ohio, that's in the first sentence at the

1 very top.

2 A. Yes.

3 Q. Is this one of the agreements that you're  
4 referring to in your e-mail concerning negotiation of  
5 generation service for the intervenors?

6 A. Possibly. When I wrote this memo, I  
7 didn't have any contracts or anything in front of me.

8 Q. Understood. But you're referring to some  
9 agreements.

10 A. Yes. I -- yes.

11 Q. Is Exhibit 4 in the nature of the  
12 agreement that you're referring to?

13 A. Yes.

14 Q. And Exhibit 5 is another agreement dated  
15 at approximately the same period of time. I'm wrong  
16 about that. For the company's system here, Exhibit 4  
17 is Bates stamped 334 through 340.

18 Let's try to do this with the exhibits.  
19 I've made a small error here in mixing dates.  
20 Exhibit 4 is dated around November 2004. The  
21 agreement in Exhibit 5 is dated around May 2004. Did  
22 you understand that there were difference sets of  
23 agreements for service to these industrial customers?  
24 Some, with earlier dates and some with later dates?

1           A.    I understood that particularly because  
2 the November agreements said that they superseded May  
3 agreements --

4           Q.    Right.

5           A.    -- which meant that May agreements must  
6 have existed.

7           Q.    Okay. I know you said you didn't have  
8 the contracts in front of you when you wrote this,  
9 but had you ever seen these agreements?

10          A.    I was somewhat familiar with the November  
11 agreements.

12          Q.    And the November agreements would be like  
13 the one that's shown on Exhibit 4.

14          A.    Yes.

15          Q.    And then Exhibit 5 I'm showing a May  
16 agreement. Is your understanding there would also be  
17 a November agreement with the same customers?

18          A.    Well, Exhibit 4 is the November agreement  
19 that's associated with Exhibit 5.

20          Q.    Ah, you're correct. You're correct.  
21 They both have to do with IEU, so Exhibit 4 is the  
22 November agreement, and I think you've said it  
23 superseded the May 2004 agreement for IEU; is that  
24 correct?

1 A. Yes.

2 Q. Your understanding of the relationship;  
3 okay.

4 Exhibit 6 dated close to November, it's  
5 October 28<sup>th</sup>, 2004, and Exhibit 6 is Bates stamped  
6 353 through 357. And that's with, well, it refers to  
7 the hospitals; do you see that?

8 A. Yes.

9 Q. And is that another one of these  
10 late-2004 agreements that you were referring to in  
11 your e-mail? The negotiation of generation service  
12 to the intervenors at prespecified, contract rates.

13 A. I believe I was referring to this  
14 agreement also.

15 Q. You can set those aside.

16 A little bit further down in your e-mail,  
17 the same paragraph, third full paragraph, and this is  
18 sort of in the middle of that paragraph, it says,  
19 "The CRES settlement was too risky." Do you see  
20 that?

21 A. Yes.

22 Q. By "CRES settlement" you are referring to  
23 the entering into agreements of the nature of  
24 Exhibits 4, 5, and 6; is that correct?

1 A. Yes.

2 Q. What do you understand about the  
3 riskiness of the settlements? What did you mean by  
4 the settlement was too risky?

5 A. I recall when I wrote this memo my  
6 understanding was that the contracts were risky to  
7 serve large industrials at a fixed price given the  
8 volatile market conditions.

9 Q. Would you turn back to Exhibit 4 -- I  
10 apologize for asking you to turn that back in -- 334,  
11 starts with Bates stamp 334? And that's an agreement  
12 involving Cinergy Corp. and IEU and mentions Marathon,  
13 Ashland and General Motors. Is there something in  
14 this agreement which is a fixed price and nature that  
15 caused the risk that you referred to in your recent  
16 answer?

17 A. I don't know.

18 Q. You haven't analyzed the agreement that I  
19 put in front of you, Exhibit 4?

20 A. No.

21 Q. Did you ever do any analysis on this?

22 A. No.

23 Q. Did you, and specifically with respect to  
24 the risk that you referred to in your e-mail, did you

1 discuss that feature of the CRES settlements with  
2 anyone else in the company?

3 A. No. I just at the time I wrote this  
4 quick memo I recalled someone mentioning, and I don't  
5 even remember who, saying that someone had decided  
6 that the contracts were too risky.

7 Q. Was that somebody in the Rate department?  
8 Somebody in close proximity to your work?

9 A. Possibly, yes.

10 Q. Do you recall any analysis that was  
11 performed by your group or any others regarding the  
12 likely outcomes of moving forward with the CRES  
13 settlements? Some kind of risk analysis or anything  
14 of that nature?

15 A. No, I don't.

16 Q. All right. A little further down in your  
17 memo, same paragraph, you stated that -- it states  
18 that "Cinergy entered into negotiations with each of  
19 the parties." Do you see that?

20 A. Yes.

21 Q. What's your understanding about an  
22 additional round of negotiations?

23 A. Well, I recall that the November  
24 contracts contain a clause that required Cinergy

1     Retail Services to renegotiate with these CRS  
2     customers, this group of customers, if --

3             Q.     Your term is "CRS" here?  CRS customers?

4             A.     Yes, the CRS.

5             Q.     Meaning customers that had an option  
6     agreement with Cinergy Retail Sales?

7             MR. COLBERT:  I'm going to object.

8             MR. SMALL:  I'm not trying to be  
9     difficult, I'm just trying to distinguish CRS from  
10    CRES here.

11            MR. COLBERT:  No; I understand.  I  
12    appreciate that.  But I think that you're confusing  
13    the time line because at least at this point there  
14    are no option agreements.  You haven't reached that  
15    in the time line.

16            MR. SMALL:  Okay.

17            MR. COLBERT:  That's all.  I'm trying to  
18    prevent that confusion.

19            MR. SMALL:  Why don't we start over again  
20    and, I didn't mean to interrupt your answer, just  
21    that terminology of CRES and CRS is sometimes  
22    difficult to deal with, so why don't we have the  
23    question read back and you can respond to it again.

24            (Record read.)

1           A.    My understanding is that the November  
2   2004 contracts contained a clause that required  
3   Cinergy Retail Sales to renegotiate if there was some  
4   kind of adverse ruling from the PUCO.

5           Q.    And was there an adverse ruling by the  
6   PUCO?

7           A.    I recall that in November, late-November  
8   of 2004 there was a ruling from the PUCO, but I am  
9   not in the position to -- was not in the position to  
10   decide whether it was adverse or not.

11          Q.    It is the order under which customers are  
12   being charged today; isn't it? I'm sorry, let me go  
13   back.

14                It is the order under which customers  
15   were being charged at least until the remand from the  
16   Supreme Court.

17          A.    Yes. I'm referring to the November  
18   22<sup>nd</sup> entry on rehearing, I think that's what it  
19   was.

20          Q.    And from there to at least the time  
21   when -- November 2006 when it remand, that was the  
22   order that was in effect for charging standard  
23   service offer rates to customers.

24          A.    That's correct. Although I recall in

1 2005 there were some -- there was another  
2 clarification order about April of 2005 regarding  
3 return pricing and things like that.

4 Q. Okay. I'm going to mark Exhibit 7. It's  
5 Bates stamped 1 through 14.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Ziolkowski, the Exhibit 7 is labeled  
8 Option Agreement By and Between Cinergy Retail Sales,  
9 LLC and [REDACTED] Do you have that in  
10 front of you?

11 A. Yes.

12 MR. COLBERT: Excuse me, Mr. Small, might  
13 this be a good time to go to a sealed transcript?

14 MR. SMALL: Sure. It's your designation.

15 MR. COLBERT: While he's talking about  
16 the specific option agreements, the rest of this  
17 should be under seal.

18 (CONFIDENTIAL PORTION EXCERPTED.)  
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18 Q. Have you ever seen this agreement which  
19 we've labeled as Exhibit 7?

20 A. No.

21 Q. Is it your understanding, and here I'm  
22 referring back to your e-mail where it says "entered  
23 into negotiations with each of the parties and agreed  
24 to make monthly or quarterly payments," is it your

1 understanding that the next round of negotiations  
2 resulted in agreements with large customers?

3 A. It was my understanding that agreements  
4 resulted, but I did not know the nature -- the exact  
5 nature of those agreements.

6 Q. All right. You refer to not knowing the  
7 exact nature of the agreements, but earlier you  
8 referred to option agreements and option payments; do  
9 you remember that?

10 A. Yes.

11 Q. So you did know the general nature of the  
12 agreements.

13 A. The monthly payments that I calculated,  
14 and quarterly payments, were generally called "option  
15 payments" by various people around the company;  
16 however, when I wrote that at the time I wrote this  
17 memo, I had never seen an actual option contract nor  
18 did I know that they existed.

19 Q. Do I understand it, then, that you  
20 understood that, as you state, Cinergy entered into  
21 negotiations with the large customers, and you also  
22 understood that payments were being made to large  
23 customers, but you'd never actually seen the  
24 agreements themselves?

1           A.    I had seen the November 2004 agreements,  
2   but I had never seen any option agreements, nor did I  
3   even know that they existed.

4           Q.    But you were aware that there were  
5   references, for instance in e-mails and so forth, to  
6   option agreements and option payments.

7           A.    I had oftentimes seen the term and used  
8   the term "option payments."

9           Q.    And did you connect them with this next  
10   round of negotiations that you mentioned here, that  
11   Cinergy entered into negotiations with each of the  
12   parties? Did you connect those two things?

13          A.    My job -- my job each month and each  
14   quarter in 2006 was to calculate the payments and we  
15   sometimes called those "option payments," and I  
16   assume that something had gone on during late-2004,  
17   but I wasn't a party to those negotiations, so I  
18   didn't know what, and -- but in 2006 when Tim Duff  
19   moved to a new job, I took over and started  
20   calculating those option payments and we did those  
21   every month, so . . .

22          Q.    And is it your understanding, I think  
23   that's close to what you state in the next paragraph,  
24   it says, starting with the word "so," "but they

1 receive payments," referring here to CRES customers,  
2 "but they receive payments from the company instead  
3 of receiving generation service from the Cinergy  
4 CRES." So your response was about calculating the  
5 amounts of those payments in lieu of generation  
6 service to the Cinergy -- from a Cinergy CRES; is  
7 that correct? Those were the payments that you were  
8 calculating.

9 A. Those are the payments that I'm  
10 calculating, yes.

11 MR. COLBERT: Mr. Small, if I might  
12 inquire, are you done asking about specific  
13 agreements? If you are, I have no objection to this  
14 part of the questioning and the e-mail becoming  
15 public.

16 MR. SMALL: Well, I'm not sure I'm done.

17 MR. COLBERT: Okay. Fair enough.

18 MR. SMALL: Just pause it here for a  
19 second. Collecting my thoughts.

20 MR. COLBERT: I was just trying to  
21 minimize the portion under seal, that's all.

22 MR. SMALL: Let's go off the record for  
23 just a moment.

24 (Discussion held off the record.)

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

2 Q. If you could pull out Exhibit 7. I  
3 believe it's in front of you. Right here. And you  
4 said you're not familiar with that document; is that  
5 correct?

6 A. That is correct.

7 Q. Okay. Would you turn to Exhibit B at the  
8 very end of the document, actually there are two  
9 Exhibit Bs Bates stamped 12 and Bates stamped 13. Do  
10 you see that?

11 A. Yes.

12 Q. Do these rates look familiar to you from  
13 the tariffs of Cincinnati Gas & Electric or what it's  
14 now called, Duke Energy - Ohio?

15 A. I don't have the tariffs memorized, but  
16 these look like they're structured in a similar  
17 manner.

18 MR. COLBERT: Mr. Small, would it be  
19 helpful if we printed out a copy of the DP rate?

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

21 (Recess taken.)

22 MR. SMALL: Let's go on the record.

23 Q. You mentioned that you have been doing  
24 calculations having to do with payments to what is

1 referred to in your e-mail as CRES customers. When  
2 did you take over that -- I understand from previous  
3 depositions that you didn't always have that task,  
4 when did you take over that task?

5 A. It was about April of 2006.

6 Q. And who did you take that task over from?

7 A. Tim Duff.

8 Q. And why did you take that task on from  
9 Mr. Duff, that Mr. Duff had performed?

10 A. Mr. Duff took a new job in Charlotte.

11 Q. Now, from my deposition yesterday I  
12 didn't understand that Mr. Duff and you are in  
13 similar type of positions. Can you tell me why the  
14 function was given to essentially a person in the  
15 Rate department?

16 A. I think that was because these option  
17 payments are calculated based on various MBSSO  
18 components, and I'm very familiar with our retail  
19 rates including all of the MBSSO components of those  
20 rates. And I'm very good with spreadsheets, too.

21 Q. Had you worked with Mr. Duff during the  
22 03-93 case, the case that began in January 2003?

23 A. Could you restate that or be more  
24 specific?

1 Q. Well, when was your first contact with --  
2 what was your first contact with Mr. Duff,  
3 professional contact within the Cinergy organization?

4 A. I recall that it was sometime during  
5 mid-2004.

6 Q. What was the subject matter of your  
7 contact?

8 A. I don't recall specifically, but I  
9 believe that it was related to our rate stabilization  
10 plan.

11 Q. What was his responsibility regarding the  
12 rate stabilization plan?

13 A. I'm not sure.

14 Q. And did you have regular dealings with  
15 Mr. Duff? There's -- of course there's an e-mail  
16 that says that you and Mr. Duff understand this  
17 stuff, so did you have regular contact with Mr. Duff?

18 A. I think that during the fall or during  
19 late-2004 I worked with Mr. Duff to help him put  
20 together his spreadsheet model for calculating these  
21 monthly payments.

22 Q. And those would have been the  
23 spreadsheets, just to be clear here, the spreadsheets  
24 to calculate payments related to the companies that

1 we looked at on Exhibit 3 that had option payments  
2 plus [REDACTED] is that correct?

3 A. Yes.

4 Q. And when you perform your calculations --  
5 how often do you do your calculations? There's a  
6 reference to monthly or quarterly payments. Are you  
7 doing calculations monthly and quarterly for these  
8 payments?

9 A. Just to be clear, I no longer do these  
10 calculations.

11 Q. All right.

12 A. As of September of 2006.

13 Q. Who performs the function now?

14 A. Rick Ehlers.

15 Q. Spell that last name, please.

16 A. E-h-l-e-r-s.

17 Q. We looked at an e-mail yesterday which  
18 referred to you and Mr. Ehlers sharing the  
19 responsibility. Did you share the responsibility for  
20 a time, or maybe there was a hand-off period?

21 A. There was a hand-off period during the  
22 fall of 2006. Probably September through November  
23 time frame.

24 Q. And during that period you helped

1 Mr. Ehlers with the computations and that sort of  
2 thing?

3 A. Yes.

4 Q. Anything else that you dealt with  
5 Mr. Ehlers on?

6 A. Mr. Ehlers is a member of the Rate  
7 department.

8 Q. Okay.

9 A. So I deal with Mr. Ehlers on various  
10 topics, various issues.

11 Q. Do you report to the same person?

12 A. No.

13 Q. Who does he report to?

14 A. Mr. Ehlers reports to Mr. Storck.

15 Q. Is there some distinction between --  
16 there must be. What is the distinction between the  
17 group that you work in and the group that Mr. Ehlers  
18 works in?

19 A. Formally my group is -- working for  
20 Mr. Bailey is a rate design group, and Mr. Ehlers  
21 working under Don Storck is, at least on paper deals  
22 with revenue requirements, cost of service, but the  
23 reality of the organization is that we all chip in  
24 and do whatever needs to be done.

1 Q. Regardless of whether you're under  
2 Mr. Bailey or Mr. Storck's --

3 A. That's correct.

4 Q. -- supervision.

5 A. Yes.

6 Q. There is a reference -- I'm going back to  
7 your e-mail again, Exhibit 2, Bates stamped 646.  
8 There's a reference, third-to-the-last paragraph,  
9 paragraph starts "The payments." Do you see that?

10 A. Yes.

11 Q. And in the middle of that it refers to  
12 "receive refunds of various RSP riders," and then it  
13 has, for example, AAC, FPP, IMF, SRT. Do you see  
14 that?

15 A. Yes, I do.

16 Q. Would you turn to Exhibit 7? There's an  
17 Exhibit A within that that's at Bates stamp 11. Can  
18 you tell me whether the reference to the refunds of  
19 various RSP riders refer to the information that  
20 appears on Exhibit A?

21 A. When I wrote this memo, I was actually  
22 referring to the November 2004 contract because I  
23 have never seen Exhibit 7 before.

24 Q. Okay. I see. So just up above that it

1 says "Generally speaking, the contracts with each  
2 group," the reference to "contracts" is to the  
3 November or -- higher up in that e-mail you refer to  
4 it as generation service for the intervenors at  
5 prespecified, contractual rates. Those are the  
6 contracts you were referring to.

7 A. Those are referring to the November 2004  
8 contracts.

9 Q. Okay. Sticking with that paragraph for a  
10 second, there's a reference at the very end of it to  
11 "and payments are made from the CBU's (nonregulated  
12 generation) budget." What is CBU?

13 A. CBU stands for Commercial Business unit.

14 Q. What is a Commercial Business unit?

15 A. Commercial Business unit handles  
16 generation, both -- well, I'm not an expert on CBU,  
17 but they handle generation and off-system sales  
18 nonregulated generation aspects.

19 Q. Could you give me an example within the  
20 Cinergy-Duke organization?

21 A. Well, Duke Energy Retail Sales, or CRS,  
22 Cinergy Retail Service, they were part of the CBU.

23 Q. All right. This says "Nonregulated  
24 Generation." DERS does not own generation, does it?

1 I'm struggling here a little bit with the use of the  
2 word "generation." It talks about a budget. Are we  
3 talking about generation service or are we talking  
4 about ownership of generation units?

5 A. When I wrote the word "budget," I was not  
6 very precise in my choice of words. What I really  
7 meant was that those option payments were being paid  
8 by Cinergy Retail Sales.

9 Q. It was being paid by Cinergy Retail Sales  
10 and not an entity such as Cincinnati Gas & Electric  
11 Company.

12 A. That's correct.

13 Q. Is there a separate budget for -- for  
14 regulated and nonregulated portions at the time of  
15 this e-mail -- Cinergy organization affiliated  
16 companies?

17 A. I don't know.

18 Q. I'm really asking what you meant by the  
19 word "budget." Or are you just saying it was by one  
20 of those entities?

21 A. It was paid by one of those entities  
22 although I assume that most organizations and  
23 departments within organizations have their own  
24 budgets or sub-budgets, and I was just speaking very

1 generally.

2 Q. Okay. I think that was the problem, I  
3 thought maybe it might be a more precise term.

4 I've been provided with a copy of -- yes,  
5 we're going to turn back to our question about  
6 Exhibit 7 and Bates stamp 12 and 13 and the reference  
7 to rate DP and rate TS; do you see that?

8 A. Yes.

9 Q. I have what appear to be the rates from  
10 the rate DP and rate TS in front of me. We'll see  
11 if -- well, I'll --

12 MR. COLBERT: He has a copy.

13 MR. SMALL: I'm sorry. We'll see whether  
14 we mark this as an exhibit.

15 MR. COLBERT: And Ms. Hixon also has a  
16 copy.

17 MR. SMALL: Thank you.

18 Q. Is there a relationship between the  
19 Exhibit B rate DP and the Duke Energy - Ohio rate DP  
20 tariff that you have in front of you?

21 A. The block structure is the same, and the  
22 demand -- generation demand charges are the same as  
23 what's in the tariff. The generation energy charges  
24 are different.

1 Q. Are they proportional? Or you can't  
2 tell?

3 A. I'm not sure what you mean.

4 Q. [REDACTED] is to [REDACTED] as [REDACTED] is to  
5 [REDACTED]. Did you follow that? Those are the energy  
6 charges.

7 A. I don't know.

8 Q. You followed the question, you just don't  
9 know the answer.

10 A. That's correct.

11 MR. SMALL: I'll label that Exhibit 8.

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 call this Exhibit 9.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. We've labeled what appears to be the  
19 current rate TS tariff from the Duke Energy - Ohio  
20 tariff sheets. Are you familiar with those tariff  
21 sheets?

22 A. Yes, I am.

23 Q. And those are the correct rate TS  
24 currently in effect?

1 A. Yes.

2 Q. And let's move on to Exhibit B Bates  
3 stamped 13 on Exhibit 7. Do you have that?

4 A. Yes.

5 Q. What's the relationship between Exhibit 8  
6 and Bates stamp 13?

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 A. That's correct.

19 Q. Do you know whether the customers for  
20 which you did the calculations, whether they've  
21 remained, as you referred to your e-mail, full  
22 requirement customers of Duke Energy - Ohio?

23 A. It's my understanding that they are all  
24 nonshoppers, they purchase their generation from Duke

1 Energy - Ohio.

2 MR. SMALL: In answer to your question,  
3 Mr. Colbert, I think you'll want to -- we're going to  
4 deal with another document we've seen here before so  
5 we'll bring it in under the protected portion of it.

6 MR. COLBERT: Fair enough. Thank you.

7 Q. I believe you can set the other exhibits  
8 aside. I'll have this exhibit marked Exhibit 10.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Ziolkowski, Exhibit 10 is Bates  
11 stamped 513 and 514. Mr. Ziolkowski, have you ever  
12 seen this document before?

13 A. No.

14 Q. Okay. Had you had any contact with CRS  
15 or it's now called Duke Energy Retail Sales before --  
16 well, I'll just ask the question.

17 When was the first contact you had with  
18 matters dealing with Cinergy Retail Sales?

19 A. I recall some meetings in late-2004 and  
20 saw Tim Duff and some people from Cinergy Retail  
21 Sales regarding the processing of the option  
22 payments, monthly and quarterly payments that were to  
23 be made starting in January of 2005.

24 Q. All right. You referred to, in your

1 response to CRS, was it personnel or persons; who are  
2 you referring to?

3 A. At the time I think it was Jason Barker.

4 Q. So there was just one person that you had  
5 discussions with?

6 A. I recall someone else coming also  
7 representing CRS, but I don't remember who that  
8 person was, nor what the person's role was.

9 Q. And how could you tell that they were  
10 CRS -- dealing with CRS?

11 A. I recall that during those meetings the  
12 topic was how to calculate and process these monthly  
13 and quarterly payments, and actually early on I  
14 recall some discussion as to who should actually do  
15 these calculations each month.

16 Q. All right. Who did that task end up  
17 with?

18 A. Tim Duff.

19 Q. How did Mr. Duff end up with that task?

20 A. I think he got the task because he was  
21 capable of doing it and he had the time to do it. He  
22 had the knowledge and the time.

23 Q. All right. What transpired in these  
24 discussions with Mr. Barker? You determined who

1 would be doing the calculations; that was part of it?

2 A. That was part of it. There's also  
3 discussion about which person in CRS would sign the  
4 payment requests.

5 Q. What was determined on that matter?

6 A. I don't recall.

7 Q. What other topics were discussed?

8 A. I recall at a meeting or two there was a  
9 discussion as to whether -- I recall discussions  
10 about doing some accounting entries related to the  
11 size and timing of these payments in accordance with  
12 normal accounting standards, but I'm not an  
13 accountant, so that issue really wasn't all that  
14 pertinent to me.

15 Q. There was a discussion of GAAP standards?

16 A. The discussion that I recall dealt with,  
17 and I'm trying to think about this, more to do with  
18 accruals. These were some quarterly payments that  
19 were made after the end of the quarter and it might  
20 have had to do with that.

21 Q. All right. What else was discussed?

22 A. I really don't recall any other topics.

23 Q. Have you had any other dealings with CRS  
24 or DERS, CRS - Cinergy Retail Sales, DERS - Duke

1 Energy Retail Sales, matters other than this  
2 discussion and the calculations and spreadsheets that  
3 you dealt with?

4 A. The only topics that I recall discussing  
5 with anybody from DERS or CRS were just related to  
6 these monthly option payments.

7 Q. Have you met Charles Whitlock?

8 A. Yes, I have.

9 Q. In what business role did you meet  
10 Mr. Whitlock?

11 A. During mid-2006 I took a stack of monthly  
12 and quarterly option payments request vouchers to him  
13 for his signature and had him sign them.

14 Q. I wanted to ask about that. During the  
15 time when you were doing these calculations for the  
16 option payments, what did you do with the results  
17 after you came up with your results of your  
18 calculations? What did you do with them, transmit  
19 them to somebody?

20 A. The payment results were in Excel  
21 spreadsheets, then we took those numbers and plugged  
22 them into other spreadsheets that were set up in the  
23 form of a payment request form. We'd take that  
24 payment request form to the appropriate person in

1 Chuck Whitlock's organization, whether it was Chuck  
2 or someone working reporting to Chuck, they would  
3 review the payment requests and sign the payment  
4 requests. And then we would forward the signed  
5 payment requests to Accounts Payable who would then  
6 prepare checks and mail checks to each of these  
7 customers.

8 Q. Were you doing this, then, in hard copy  
9 getting the actual signatures, or was this all being  
10 done electronically?

11 A. The signatures were all hard copy.

12 Q. So you were providing hard copies,  
13 getting the signatures from Mr. Whitlock and someone  
14 else?

15 A. Yes. We would get the hard copy  
16 signatures and send the hard copies, the paper  
17 copies, to Accounts Payable for payment.

18 Q. Did you have contact with Mr. Whitlock  
19 over any other matters?

20 A. I don't recall any contacts.

21 Q. Do you recall in any of your discussions  
22 about Cinergy Retail Sales or Duke Energy Retail  
23 Sales there being a hand-off issue, one that's in the  
24 title of Exhibit 10?

1           A.    I'm really not familiar with what this  
2 hand-off issue is. I don't know.

3           Q.    Okay. You can set that -- it looked  
4 there for a moment that you recognized something.

5           A.    Well, there was one hand-off issue that  
6 was discussed and that was eventually -- Duff planned  
7 eventually to hand off the monthly payment  
8 calculation process to me which happened in April of  
9 2006.

10          Q.    And that was in connection with the, one  
11 way or another, with the merger, this movement.

12          A.    The merger forced the issue.

13          MR. SMALL: I believe I am done with  
14 those documents, then.

15          MR. COLBERT: Okay. If you question on  
16 the e-mail anymore, there are some names attached to  
17 the bottom of that, are you going to be referring to  
18 those?

19          MR. SMALL: I'm not following you.

20          MR. COLBERT: In the e-mail which I  
21 believe is Exhibit 2 --

22          MR. SMALL: Yes.

23          MR. COLBERT: -- at the bottom there are  
24 a number of.

1 MR. SMALL: Of what?

2 MR. COLBERT: Of names of customers that  
3 signed those contracts.

4 MR. SMALL: Still not following you. Ah.

5 MR. COLBERT: I'm sorry.

6 MR. SMALL: 646?

7 MR. COLBERT: Yeah. I don't know the  
8 Bates stamp number.

9 MR. SMALL: I think we covered that with  
10 Exhibit 3.

11 MR. COLBERT: Okay. Then yes, we can  
12 unseal.

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1 Let's go off the record for a second.

2 MR. SMALL: Exhibit 11.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Ziolkowski, do you know John Deeds?

5 A. Yes.

6 Q. And what contact have you had, business  
7 contact have you had with Mr. Deeds? When did you  
8 first meet Mr. Deeds?

9 A. It's hard for me to say when I first met  
10 him because I've seen him around the halls for --  
11 since I started in 1990 or thereabouts, early-'90s,  
12 and back around 1995 he -- or 1996 he was working in  
13 Marketing which was a department that I had just  
14 left, and so I ran into him there. So over the years  
15 I've known him somewhat enough to say hi to him in  
16 the hall.

17 Q. Okay. Did you have dealings with him  
18 having to do with Cinergy Retail Sales?

19 A. I don't recall any direct dealings with  
20 John Deeds.

21 Q. And in my question, just to be clear, I  
22 was referring to personal or e-mail or telephone, any  
23 kind of contact.

24 MR. COLBERT: I'm going to object. I

1 think you have several questions there then because I  
2 believe the original question was whether he had any  
3 contact regarding CRS.

4 MR. SMALL: No, the question is contact  
5 regarding CRS, and I'm just verifying that it's all  
6 forms of contact and not -- occasionally we've had a  
7 response "I don't know the person personally but I've  
8 interacted with him electronically."

9 MR. COLBERT: Okay.

10 Q. So the same question has to do with CRS,  
11 I'm just making sure that the question means all  
12 contact.

13 A. I don't recall any specific times dealing  
14 with John Deeds when he was -- regarding CRS. It's  
15 possible, but I don't recall any.

16 Q. Would you please turn to Exhibit 11,  
17 which is a complaint filed by John Deeds against Duke  
18 Energy Corporation and Duke Energy Retail Sales? Do  
19 you have that?

20 A. Yes.

21 Q. And have you seen this complaint before?

22 A. I think I have.

23 Q. I'll give you a chance to look at it if  
24 you'd like.

1 A. I believe I've seen this document.

2 Q. Would you turn to paragraph 7 of that  
3 complaint? I'm going to ask you about its contents  
4 so I think it will probably help if you read  
5 paragraph 7.

6 I see that you're finished. The reason  
7 why I bring paragraph 7 to your attention is it  
8 covers some of the same grounds as your e-mail which  
9 we had, Exhibit 2. I want to give you as much time  
10 as you need for this, but I'd just note the subject  
11 matter similarity. Is there any portion of paragraph  
12 7 with which you disagree?

13 A. Without studying the option contracts I'm  
14 not sure that I could agree with the statement that  
15 says "The outlined charges represent the rate  
16 increases requested by CG&E and approved by the PUCO  
17 in 2004."

18 Q. Okay. Just to be clear about that,  
19 you're not sure about it without the option  
20 agreements in front of you.

21 A. Well, we would have to do the analysis.

22 Q. Okay. Without the analysis you can't  
23 verify that you agree with that.

24 A. And the generation -- our generation

1 charge is our market based standard service offer, so  
2 technically that's not a regulated rate the same way  
3 as, say, a distribution charge would be.

4 Q. Okay. Could you point out the words?  
5 I'm not following you.

6 A. Well, he says -- John Deeds states "The  
7 outlined charges represent the rate increases," and  
8 not all of that is normal regulated rates such as  
9 distribution, that's really part of our market based  
10 standard service offer.

11 Q. So you're disagreeing with the word  
12 "requested"?

13 A. No, "rate."

14 Q. Oh, "rate." Because you wouldn't use the  
15 word "rate" for that.

16 A. Correct. Probably --

17 Q. Standard service offer.

18 A. Standard service offer price.

19 Q. Would be better terminology, in your  
20 opinion.

21 A. Yes.

22 And in the sentence "In effect, CRS  
23 agreed to pay certain members of the IEU the exact  
24 amount of the rate increase," the same objections, I

1 don't know that and I don't recall what those  
2 payments were based on.

3 Q. You would need an analysis to verify  
4 that.

5 A. Right.

6 And also, once again, I object to the  
7 word "rate."

8 Q. Which is found where? In that same  
9 sentence?

10 A. Yes.

11 Q. Rate; I see it. The amount of the rate  
12 increase, and again, you would prefer the terminology  
13 or you would think "standard service offer" is a  
14 better terminology.

15 A. Right. Some of these issues I don't  
16 know. For example, discovery of the agreements  
17 during the PUCO litigation was refused by defendants;  
18 I have no knowledge of that.

19 Q. Okay.

20 A. And I also do not know, I wasn't a party  
21 to the option agreement so I don't know what was and  
22 what was not made public.

23 Q. Okay. So basically the entire last  
24 sentence you have no knowledge of. No knowledge on

1       which to base --

2               A.     And the second-to-last sentence also, the  
3       sentence says "Because the contracts were created by  
4       CRS . . . the agreements were not made public," I  
5       have no knowledge of that.

6               Q.     Okay.

7               A.     I was not a party.

8               Q.     All right. Does that do it?

9               A.     (Witness nods head.)

10              Q.     That was a "yes."

11              A.     Yes.

12              Q.     All right, I'm going to ask you to read  
13       paragraph 8 and I'll ask the same question, whether  
14       there's anything in paragraph 8 that you disagree  
15       with. Take your time.

16              MR. COLBERT: Jeff, before the witness  
17       answers, I'm going to state a continuing objection.  
18       We're not here to confirm or deny the Deeds  
19       complaint; this isn't a deposition about that. I'll  
20       let him answer this next question. You know, if  
21       we're going to go down this road paragraph by  
22       paragraph, at some point, frankly, I'm going to  
23       instruct him not to answer.

24              MR. SMALL: We're only concerned with --

1 I'm only concerned with paragraphs 7 and 8 and they  
2 do concern the rate stabilization plan, and I don't  
3 intend on getting into the Deeds complaint as a  
4 wrongful discharge. We're not here for that today.

5 MR. COLBERT: You may answer.

6 A. Regarding paragraph 8, I was never a  
7 party to any of the discussions or negotiations or  
8 the stipulation agreements or all that, so I cannot  
9 say that I agree with or disagree with any of this  
10 because I was not a party.

11 Q. Okay. You can set that aside.

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

14 (Discussion held off the record.)

15 Q. All right. Would you pull out Exhibit 2  
16 again? Bates stamp 646, it's in the memo that you  
17 wrote that we've gone through extensively, the  
18 paragraph that starts "The original settlement  
19 agreement." Do you see that?

20 A. Yes.

21 Q. About midway through that paragraph you  
22 refer to Cinergy's top management. Do you see that?

23 A. Yes.

24 Q. Who's that a reference to? Who is

1 Cinergy's top management as you refer to in this  
2 e-mail?

3 A. When I wrote this, I was -- I didn't  
4 really know who exactly I was referring to, but  
5 somebody -- but people at the senior vice president  
6 level who had the ability to say that the contract  
7 was not going to be followed through with.

8 Q. Okay.

9 A. But I didn't have anybody specifically in  
10 mind.

11 Q. When you're referring to the senior vice  
12 president level, are you referring to the Cinergy  
13 organization or to CG&E? Really the question is who  
14 is at the senior vice president level?

15 A. Could you restate that last question?

16 Q. You referred to people -- you said that  
17 your e-mail refers to people at the senior vice  
18 president level and I'm asking who those people would  
19 be. For instance, would that include Mr. Ficke?

20 A. That would.

21 Q. Okay. And what was his position?

22 A. Well, he was president of CG&E. When I  
23 wrote this memo, though, this was just a quick  
24 five-minute memo and I wasn't differentiating between

1 this vice president or that vice president, all I  
2 knew was that somebody up on high said that we're not  
3 going to follow through with this contract. So I  
4 didn't have anybody specifically in mind.

5 Q. Did you have any organization in mind,  
6 though?

7 A. No.

8 Q. Just somebody in the Cinergy-affiliated  
9 companies.

10 A. Somebody up on high, yes.

11 Q. Okay. During the period of time you  
12 said, and we've discussed it extensively, that you  
13 did calculations, these spreadsheet calculations, how  
14 did you know that your calculations were accurate if  
15 you didn't have the underlying agreements or you were  
16 unfamiliar with the underlying agreements?

17 A. We used the model that Tim Duff prepared,  
18 and he passed it on to us, and for 2006 he had  
19 already been using it in 2006 -- in 2005, he used it  
20 in 2006, and the customers weren't complaining, and  
21 so we just continued using that model. And so  
22 that's -- we just, we made the assumption that  
23 everything was working correctly.

24 Q. All right. And what information did you

1 need in order to update your spreadsheet? Was that  
2 customer information?

3 A. Each month we would get customer  
4 information.

5 Q. Of the nature of demand and energy usage?

6 A. Yes.

7 Q. From a variety of accounts? For  
8 instance, if a customer has multiple accounts?

9 A. Yes.

10 Q. Anything else that you needed for your  
11 work?

12 A. Each month a report was generated  
13 automatically with these accounts that showed demand,  
14 energy -- I'm actually not sure about demand, but  
15 energy, and would also show various MBSSO components;  
16 for example, generation, rider AAC, rider IMF  
17 revenues for that account for that month and so  
18 forth. And from that, then, we would bring the data  
19 into the appropriate sheet within that spreadsheet  
20 file and calculate and summarize what the payment  
21 would be for that month.

22 Q. Okay. And when you generated reports,  
23 who did those reports go to?

24 A. The report appears on a network. The

1 basic data appears in a file on one of our network  
2 drives and then at first Tim, and when I took over  
3 the job, me, and now Rick Ehlers, we would pull that  
4 info up and bring it into Excel into our  
5 calculations.

6 Q. I'm referring to the output. When you've  
7 done your calculations and so forth, where do those  
8 reports go?

9 A. Those reports stay within Rates in a  
10 three-ring binder. We make hard copy printouts.

11 Q. They're transmitted to Mr. Whitlock or  
12 somebody who deals with CRS matters; isn't that  
13 right? I mean, there must be something that goes  
14 outside the Rate department.

15 A. As we discussed previously, we take the  
16 output from those reports, from those calculations,  
17 and take the data and put them into another  
18 spreadsheet file which is set up in the form of a  
19 request for payment, we print all that out, and then  
20 hand carry it, hard copies, over to Mr. Whitlock or  
21 the appropriate person in Mr. Whitlock's group for  
22 signature.

23 Q. Do you know whether any of this material  
24 goes out to the customers?

1           A.   Occasionally some customers request the  
2 detail behind their payment. They're not satisfied  
3 with just receiving a check, and they want to know  
4 the detail behind the payment.

5           Q.   And what do you do in that instance?

6           A.   Comply with the customer's request.

7           Q.   And is that -- was that your task when  
8 you were doing these calculations?

9           A.   Yes.

10          Q.   How does the customer make contact with  
11 you to say that they want to question a calculation  
12 or want more information? Do they know that -- while  
13 you were doing the calculations did they know to  
14 contact you?

15          A.   Yes.

16          Q.   And would you respond, then, directly to  
17 the customer?

18          A.   Yes.

19          Q.   And none of those instances raised a  
20 question of whether the calculations were being done  
21 properly. You provided the documentation and  
22 everybody was satisfied.

23          A.   That's correct.

24          Q.   Since you joined -- since January 1998,

01192

Ziolkowski, Jim

From: Burns, Jennifer  
it: Thursday, July 27, 2006 8:41 AM  
To: Ziolkowski, Jim  
Cc: Gomez, Jon  
Subject: RE: CRES Payments

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

That would be great. How about Tuesday morning, maybe around 10:00? I'll see if Jon wants to sit in as well. Thanks.

---

From: Ziolkowski, Jim  
Sent: Thursday, July 27, 2006 8:35 AM  
To: Burns, Jennifer  
Subject: RE: CRES Payments

Jennifer,

I calculate the monthly and quarterly CRES payments. Therefore, I am probably the best person to help you with this.

I am presently finishing up the 2nd quarter payment calculations. They should be done by early next week. Maybe we could schedule a time to discuss this on Monday or Tuesday, if that works for you.

*Jim Ziolkowski*

Gate Services  
J 419-5337

---

From: Burns, Jennifer  
Sent: Wednesday, July 26, 2006 12:54 PM  
To: Ziolkowski, Jim  
Subject: FW: CRES Payments

Jim,

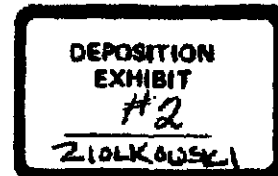
I work for Jon under the Non-Reg side and we are gearing up for the Aug 15 prelim budget deadline. I have been assigned to the CRES portion and was curious if you would be able to help us with the budget, or at least help me determine who to contact. Thanks for your help!

fyi...your description below is very helpful!

Jennifer Burns  
DEA Budgeting & Forecasting  
317-838-4765  
Jennifer.Burns@Duke-Energy.com

---

From: Gomez, Jon



Sent: Monday, July 24, 2006 1:12 PM  
To: Burns, Jennifer; Ditt, Michael  
Subject: FW: CRES Payments

01193

CONFIDENTIAL PROPRIETARY  
TRADE SECRET

1. This is the CRES 101 that I got from Rates.

---

From: Ziolkowski, Jim  
Sent: Monday, May 15, 2006 10:19 AM  
To: Gomez, Jon; Wathen, Don  
Cc: Storck, Don  
Subject: RE: CRES Payments

Jon,

These are all native-load, retail customers located in the DE Ohio (CG&E) service territory. As described below, the original plan was to have them become "shoppers" in accordance with Ohio Electric Customer Choice, and they would receive their generation service from the newly-formed Cinergy CRES. At the last minute, Cinergy deemed the contracts to be too risky, and negotiated the payments instead.

*Jim Ziolkowski*  
Rate Services  
513 287-3337

---

From: Gomez, Jon  
Sent: Monday, May 15, 2006 10:11 AM  
To: Ziolkowski, Jim; Wathen, Don  
Cc: Storck, Don  
Subject: RE: CRES Payments

Thank you very much for the background. I do have one follow up question. We went through the budget with Chuck Whitlock last week and he has asked to start seeing the CRES payments as part of his native load budget since it is related to the RSP. It sounds like from your history explanation it is related to full requirements customers which we call non-native. Why would the non-native customers intervene on rates that would not affect them or are you considering those customers as part of the retail load? Thanks again, Jon

---

From: Ziolkowski, Jim  
Sent: Thursday, May 11, 2006 4:03 PM  
To: Wathen, Don; Gomez, Jon  
Cc: Storck, Don  
Subject: RE: CRES Payments

Jon,

Here is the history behind the so-called "CRES" payments:

During late 2003, the Public Utilities Commission of Ohio asked all of the electric investor-owned utilities in the State of Ohio to prepare and submit Rate Stabilization Plans. At that time, we were still in our Market Development Period following the implementation of electric Customer Choice in January 2001. During the Market Development Period,