LARGE FILING SEPERATOR SHEET

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1 residential customers?
2 A. No.
3 Q. And DERS is a certified competitive
4 retail electric service provider now; is that
5 correct?
6 A. Now, yes.
7 Q. Okay. So most of the contracts that
8 we're talking about here are contracts between a
9 certified competitive retail electric provider and
10 consumers.
11 A. Well, I think I better have you define
12 "most of the contracts we're talking about here".
13 Q. I'm talking about all of -- all of the
14 DERS -- all of the DERS contracts, I guess. Don't
15 need to talk about what's excluded.
16 A. Well, as my testimony has explained,
17 there's different agreements at different points
18 in time. At some point in time DERS or its
19 predecessor was not yet certified as a CRES in
20 Ohio.
21 In addition, I believe we've had
22 discussion where I do not make the judgment as to
23 whether these agreements are CRES contracts.
24 In addition, some of the agreements are
25 between Cinergy Corp. One of the -- Two of the

1 agreements are between Cinergy Corp. and a
2 customer, and Cinergy Corp. as you've told me is
3 not a CRES.
4 With those caveats, I mean, that's my
5 understanding of the agreements.
6 Q. You have several times during our
7 conversation raised the issue that there was a
8 time when CRS was not a -- was not certified.
9 What's the significance of your statement
10 in that regard?
11 A. Well, most recently you asked me whether
12 or not it was a contract between a CRES provider
13 and I distinguished whether or not that entity at
14 that time was a CRES. That's why I made that
15 statement.
16 Q. You mean at the time the contracts were
17 signed?
18 A. Yes.
19 Q. Okay.
20 A. Because that's what you asked.
21 Q. Do you know when CRS started preparing
22 for its certification process?
23 MR. SMALL: Objection. Calls for her to
24 respond to what your company was doing.
25 To the extent you can, answer that.

1 MR. COLBERT: To the extent she knows.
2 THE WITNESS: I do not know when CRS
3 began preparations for certification in Ohio.
4 BY MR. COLBERT:
5 Q. The market development period began
6 January 1st of 2001, is that your understanding?
7 A. Yes.
8 Q. And do you know whether CRES providers
9 generally started signing up -- signing up
10 customers prior to that date and prior to the time
11 they were certified in preparation to begin giving
12 service January 1st, 2001?
13 A. I do not know.
14 Q. Do you know whether any consumer started
15 taking service from CRES providers on January 1st,
16 2001?
17 A. I have no personal knowledge and I cannot
18 think of anyplace where I've seen something that
19 would tell me the answer to that.
20 Q. Okay. Your third reason is alleged
21 discrimination; is that correct? That's C.
22 A. It's the regulatory problems presented by
23 the side agreements, including discrimination.
24 Q. Are there other regulatory problems
25 besides those listed that you had in mind for

1 No. C?
2 A. I discuss them on Page -- beginning on
3 Page 68.
4 Q. Okay. And the basis for your allegation
5 that the contracts are discriminatory is that not
6 all consumers have contracts?
7 A. As I describe it on Lines 13 and 14, that
8 they're discriminatory in favor of a relatively
9 small number of large users of electricity. Since
10 those large users of electricity are those that
11 have side agreements, it would be those
12 individual -- it would be those customers that do
13 not have side agreements that would be the
14 opposite piece of the discrimination.
15 Q. Are you aware of any consumers that
16 sought service from DERS that were -- that asked
17 for -- for a contract that were turned down?
18 A. No.
19 Q. Do you know whether there are any
20 additional contracts besides the ones that you
21 have discovered?
22 A. I'm not aware of any contracts that DERS
23 or its predecessor had with any other customers
24 other than the ones that were provided to us.
25 Q. If you were to learn that DERS had had

1 other inquiries subsequent to these and had given
2 an option contract at each request, that is, had
3 never turned down a request for an option
4 contract, would that change your opinion?
5 A. My opinion of what?
6 Q. That they are discriminatory.
7 A. I guess what I'm having trouble with is
8 that you're giving me a hypothetical, I assume,
9 that there were additional offers made or asked
10 for and that DERS never turned them down to other
11 customers, and I have no basis to even think that
12 that occurred, given that everything that I see
13 about DERS tells me that they have no customers
14 and that the expenses associated with option
15 payments in their financial statements are related
16 to the agreements that were given to us. So I'm
17 having trouble making that assumption.
18 Q. Well, that's an interesting statement you
19 just made.
20 Did you do any financial analysis to
21 determine whether the option payments that are
22 contained in the various financial statements that
23 you've received from DERS are exclusively related
24 to the contracts that you've received?
25 A. You asked if I did any analysis. I did

1 not do any other analysis. I know that in the
2 deposition of Mr. Savoy there were a series of
3 questions in regards to what was in the financial
4 statements and that he was not aware of any
5 other -- My recollection is that he was not aware
6 of any other customers that they had other than
7 the agreements that we were discussing. So that's
8 the basis of my understanding.
9 Q. I'll ask you the theoretical again.
10 If the basis for your understanding is
11 mistaken, if in every instance that -- Well, let
12 me back up before I ask that question.
13 You made one other assumption. You made
14 assumptions that DERS offered these contracts as
15 opposed to consumers, customers, coming to DERS
16 and requesting service. Is that your belief of
17 what has happened here?
18 A. No. I didn't make that assumption. I
19 think in responding to your question I said either
20 DERS offered or people asked for. I assumed it
21 would come either way.
22 Q. Okay. I may have misheard it then.
23 With that clarification, if the basis of
24 your assumption is mistaken so that in each
25 instance where DERS has been approached to provide

1 a contract, it has provided such a contract on
2 terms negotiated with the customers, would that
3 change your opinion regarding the discriminatory
4 aspect of these contracts?
5 A. No, I do not believe so. I believe that
6 the side agreements as presented here are related
7 to the Post-MDP Service Case and for all the
8 reasons that I've discussed in my testimony are
9 related to obtaining generation pricing plans
10 proposed by Duke Energy Ohio that were acceptable
11 and in exchange offering benefits to certain
12 customer parties, and that those customer parties
13 as a result received benefits or economic value
14 that discriminated against other consumers.
15 Q. The final reason, Reason No. 4, is OCC's
16 alleged exclusion from some negotiations by
17 DE-Ohio; is that correct? I believe that's at the
18 bottom of the Page 56.
19 A. Well, I think you've added some
20 commentary there, but exclusion of the OCC from
21 negotiations, and a course of secret negotiations
22 that resulted in support of the stipulation and
23 the alternative proposal by parties who, due to
24 those side agreements, would not bear the burden
25 of the rate increases that were being proposed.

1 Q. Was DERS or Cinergy a party to these
2 proceedings prior to the Commission's
3 November 23rd, 2004 entry on rehearing?
4 A. No, I don't believe they were.
5 - - -
6 Thereupon, DE-Ohio Exhibit No. 8 was
7 marked for purposes of identification.
8 - - -
9 BY MR. COLBERT:
10 Q. This is DE-Ohio Exhibit 8. It is a side
11 agreement between CG&E and OCC dated May 8th,
12 2000.
13 Are you familiar with this agreement?
14 A. Is this the agreement provided to Duke
15 Energy Ohio in OCC's second response to the second
16 set of discovery in this case?
17 Q. No. I confess I'm not sure what
18 agreement that was. This was never filed.
19 MR. SMALL: Pardon?
20 MR. COLBERT: This agreement --
21 MR. SMALL: I know. But she's looking at
22 a document for discovery without attachments.
23 This would have been an attachment if -- had it
24 been provided.
25 THE WITNESS: Okay.

1 MR. SMALL: Is that our document or
2 DE-Ohio's document?
3 THE WITNESS: Yes, that's ours.
4 I'm sorry. I misspoke. I was thinking
5 that this was somehow provided in discovery.
6 BY MR. COLBERT:
7 Q. I don't believe so.
8 A. No. I totally -- I'm sorry.
9 Q. We would have if you had asked, but I
10 don't believe that --
11 A. I'm sorry. Could you ask the question
12 again, please?
13 Q. Are you familiar with this agreement?
14 A. I may have seen it at one time. I am not
15 more than generally familiar with it.
16 Q. Okay. Do you recognize the cases,
17 99-1658, et cetera, as being DE-Ohio's, then
18 CG&E's transition plan case?
19 A. Yes. 99-1658-EL-ETP.
20 Q. And if you look at Paragraph 2 on the
21 bottom of Page 2 and Paragraph 3 at the top of
22 Page 3, for various things then CG&E paid OCC a
23 total of $750,000 pursuant to this agreement; is
24 that --
25 A. No.

1 Q. No?
2 A. I don't see that.
3 Q. I'm sorry. Two-hundred-and-fifty-
4 thousand of that went to the Ohio Department of
5 Development.
6 A. I don't see that it's to be paid to OCC
7 and I don't see that it was paid. I see an
8 agreement that some contribution was intended to
9 be made.
10 Q. Oh, okay. Fair enough.
11 You're saying that there's no indication
12 here that it was actually paid.
13 A. Right.
14 Q. Do you know whether it was actually paid?
15 A. I have no knowledge of that.
16 Q. Okay. In Paragraphs 4 and 5, do you see
17 references to confidentiality agreements?
18 A. Uh-huh.
19 Q. Okay. And do you know whether those
20 confidentiality agreements were ever executed?
21 A. I don't remember. I don't know.
22 Q. And the last page, the agreement is
23 signed by Eric Stephens, who was then the Legal
24 Director of Ohio Consumers' Counsel; is that
25 correct?

A. That's his signature and the title, yes.

Q. And to your knowledge, were these -- was this agreement ever made public? Was it ever filed at the Commission?

A. I don't believe it was ever filed at the Commission. I don't know whether it was ever made public or not.

Q. Okay.

MR. SMALL: Did we make that an exhibit?

MR. COLBERT: Yes, Exhibit 8.

- - -

Thereupon, DE-Ohio Exhibit No. 9 was marked for purposes of identification.

- - -

BY MR. COLBERT:

Q. Handing you now what we're marking as Exhibit 9, DE-Ohio Exhibit 9. This is a Supreme Court case that was --

MR. SMALL: This is a Supreme Court decision.

MR. COLBERT: I'm sorry.

BY MR. COLBERT:

Q. Well, Supreme Court decision, that's right, that among other things references an agreement between DP&L and OCC that OCC, I

1 believe, has litigated in several venues.
2 Are you familiar with the agreement that
3 I'm referencing?
4 A. Can you show me in the order where it
5 references the agreement?
6 Q. If you look at Paragraph 17 on Page 3, it
7 refers to "...a separate one-page sidebar
8 agreement between DP&L and the Consumers' Counsel.
9 In that sidebar agreement from June 2000, DP&L..."
10 A. Yes, I see that.
11 Q. Are you familiar with that agreement?
12 A. Yes.
13 Q. Okay. And that was an agreement between
14 OCC and DP&L that was also not filed at the
15 Commission and was not made public; is that
16 correct?
17 A. It was not filed at the Commission, but
18 it clearly was made public.
19 Q. When was it made public?
20 A. I don't know the initial date that it was
21 made public.
22 Q. Was it made public in 2000 when it was
23 signed?
24 A. I don't think so.
25 Q. Do you know was there a confidentiality

1 clause attached to the agreement?
2 A. I do not remember.
3 Q. Do you know whether OCC happened to find
4 the agreement sometime later after Mr. Tongren
5 left as Consumers' Counsel when looking through
6 its files?
7 A. No, I don't know that.
8 Q. You don't know. Okay.
9 - - -
10 Thereupon, DE-Ohio Exhibit No. 10 was
11 marked for purposes of identification.
12 - - -
13 BY MR. COLBERT:
14 Q. Handing you what is marked as DE-Ohio
15 Exhibit 10. This is several documents. It's an
16 affidavit of Mr. Jock Pitts of PWC with certain
17 attached e-mails, although I will note that the
18 e-mails, there are some, it has been represented
19 to us, missing pieces, because of the
20 confidentiality provision OCC -- or, OCC -- PWC
21 did not feel it appropriate to reveal the contents
22 of the discussions, but in these very cases OCC
23 apparently held settlement discussions that both
24 excluded DE-Ohio and other parties from those
25 discussions and made settlement proposals.

1 Were you a participant in those
2 discussions?
3 A. May I have a few minutes to read this?
4 Q. Yes.
5 (Pause.)
6 A. Okay. I think the question you had is
7 whether I was involved in those discussions.
8 Q. Uh-huh.
9 A. I heard your description of the
10 discussions. While I may not be aware of them in
11 the sense of the representation that you've given,
12 I am aware that OCC had discussions with parties
13 about this case and that I at times was asked to
14 participate or attend those discussions and, in
15 fact, as, for example, the May 13th, 2004 e-mail
16 was cc'd to me. That's my knowledge.
17 Q. Well, let's look at the May 13th, 2004
18 e-mail for a minute.
19 That e-mail, the subject of which was
20 "Confidential Settlement Proposal" sent by,
21 apparently, your counsel, Mr. Small --
22 MR. SMALL: It doesn't say that.
23 MR. COLBERT: I think the subject line
24 says, "Confidential Settlement Proposal".
25 MR. SMALL: Doesn't say I sent it.

1 MR. COLBERT: I believe right below that
2 it says, "Sent on behalf of Jeff Small".
3 MR. SMALL: On behalf of. Doesn't mean I
4 sent it.
5 BY MR. COLBERT:
6 Q. Okay. On the "To" line it has first
7 dboehmlaw@aol. Do you know who that might be?
8 A. I think it's Mr. Boehm.
9 Q. And who does -- Who did he represent in
10 the case?
11 A. I know he at least represented some of
12 the members of Ohio Energy Group, OEG.
13 Q. Okay. And the next one is
14 drinebolt@aol.com. Do you know who that is?
15 A. I believe it's Dave Rinebolt.
16 Q. And did he represent a party in the case
17 or was he a party in the case?
18 A. Subject to check of who represented who,
19 I think he represented in this particular case
20 Ohio Partners For Affordable Energy.
21 Q. And who are they? Are you familiar with
22 the group, what do they do?
23 A. I am familiar that they represent
24 interests at times related to community --
25 Q. Action agencies?

1 A. -- community action agencies, yes, but
2 beyond that, I don't know specifically who they
3 are in this service territory.
4 Q. Do you know whether Miss -- the current
5 Consumers' Counsel, Miss Migden-Ostrander, was
6 prior to becoming Consumers' Counsel on OPAE's
7 board?
8 A. I don't know.
9 Q. Do you know who mkurtzlaw@aol.com is?
10 A. I think it's probably Mr. Kurtz, who's an
11 attorney.
12 Q. And do you know who he represented in
13 this case?
14 A. I know from my current involvement that
15 he represents Kroger.
16 Q. How about Dane.Stinson@Bailey-
17 Cavalieri.com?
18 A. I'm familiar with the name. I don't know
19 who he represents.
20 Q. Could it have been the schools?
21 A. I don't know.
22 Q. Don't know.
23 sbloomfield@bricker.com and I notice
24 tobrien@bricker.com.
25 A. I know that Sally Bloomfield from my

1 current involvement represents the Ohio Hospital
2 Association.
3 Q. Do you know who else she's represented in
4 this case?
5 A. No. But I believe earlier you asked me
6 if I knew whether she represented another party,
7 and I didn't know then, and I still don't know.
8 Q. You don't know if she represented the
9 Ohio Manufacturers Association?
10 A. I don't recollect.
11 Q. How about the City of Cincinnati?
12 A. Without checking counsel of record in
13 this case, I really don't know.
14 Q. Okay. broyer@brscolaw.com. Do you know
15 who that is?
16 A. I assume it's Barth Royer and I do not
17 know who he represented.
18 Q. mchristensen@columbuslaw.org. Do you
19 know who that is?
20 A. Well, I believe that Mary Christensen's
21 name is at the bottom with her e-mail, and that
22 she has represented People Working Cooperatively.
23 Q. cgoodman@energymarketers.com?
24 A. I don't know that.
25 Q. korkoszA@FirstEnergyCorp.com?

A. I believe that's Art -- Arthur Korkosz at First Energy Solutions.

Q. By that you mean that's who he represented in the case?

A. That's the only FirstEnergy Company I know in this case.

Q. nmorgan@lascinti.org, do you know who that is?

A. I suspect the name N. Morgan stands for Noel Morgan, but I'm not sure who he represented in this case.

Q. Okay. srandazzo@mwncmh.com?

A. I assume that is Sam Randazzo.

Q. ricks@ohanet.org?

A. I don't know who that is.

Q. Okay. OHA doesn't give you a hint?

A. I don't know who that is. I could guess if you want me to.

Q. No, that's okay. You don't need to guess.

A. Okay.

Q. shawn.leyden@pseg.com, do you know who that was?

A. No.

Q. Thomas.McNamee@puc.state.oh.us?

1 A. I believe that's one of the Attorney
2 General's for the staff in this case.
3 Q. For the staff.
4 bakahn@vssp.com; do you know?
5 A. No.
6 Q. How about mhpetricoff@vssp.com?
7 A. I think that's Mr. Petricoff.
8 Q. Do you know who he represented in the
9 case?
10 A. He represented, I believe, the Ohio
11 Marketers Group in this case.
12 Q. And wjairey@vssp.com, do you know who
13 that is? W. J. Airey. I'm sorry. I said it
14 wrong.
15 A. No, I don't.
16 Q. And the rest of the names under the cc
17 column are all OCC employees, or were at the time?
18 A. Yes.
19 Q. Okay. And are there any parties missing
20 from the list that we've just gone through that
21 you are aware of in the case?
22 A. I'd have to go back and compare the list,
23 and since I didn't know what -- some of the people
24 who they represented, I don't think that would be
25 a complete comparison.

1 Q. Okay. Well, is DE-Ohio there anywhere?
2 Do you see anybody from the company?
3 A. Not that I know that that's their e-mail,
4 no.
5 Q. All right. And so OCC was holding
6 settlement discussions with parties and excluding
7 the company from those discussions. Is that your
8 understanding? And maybe other parties.
9 A. I know from this e-mail that there's a
10 settlement proposal being distributed. I don't
11 know whether the company -- I don't know what
12 contact was made or not made with the company and
13 I don't know how those discussions occurred based
14 on what's here in front of me.
15 Q. Do you see any contact with the company
16 in any of these documents?
17 A. Assuming that none of the e-mails that I
18 don't know are the company --
19 Q. Right.
20 A. -- no.
21 Q. And on the second e-mail page, which was
22 an e-mail from Denise Willis, who apparently is a
23 Case Team Assistant, the indication is that the
24 attached confidential settlement communication is
25 from Jeff Small. Do you see that?

1 A. It says, "Please see the attached
2 confidential settlement communication from Jeff
3 Small in the above captioned case".
4 Q. Now, given your concerns about having
5 exclusionary settlement discussions and secret
6 negotiations, why would OCC exclude parties from
7 settlement discussions and why would they make any
8 settlement offer confidential? Shouldn't these
9 things be done in an open and public manner?
10 A. You asked about two or three questions.
11 You want to divide them up?
12 Q. Why did OCC make any settlement
13 communication and/or offer confidential?
14 A. I don't know.
15 Q. But it is your position that settlement
16 discussions should be made in public and all of
17 the information should be available to everybody;
18 is that correct?
19 A. I don't think I make that recommendation.
20 Could you point to that in my testimony where I
21 recommend that?
22 Q. Well, a criticism that you are -- you
23 appear to make on Page 56 is exclusion of the OCC
24 from negotiations and a course of secret
25 negotiations that resulted in support for the

1 stipulation and for CG&E's alternative proposal.
2 Now, apparently, in the case of your
3 settlements, you didn't get agreement with parties
4 that resulted in support, but it appears that OCC
5 tried. You could change it to exclusion of the
6 company from negotiations and a course of secret
7 negotiations by OCC. Wouldn't the same criticism
8 apply, the same concern?
9 A. I think my clarification was where in my
10 testimony do I recommend that? I don't see that
11 in my testimony.
12 Q. I'm not asking about a recommendation.
13 A. Okay.
14 Q. I'm asking about your fourth area of
15 concern.
16 A. Well, my fourth area of concern, as you
17 look at Pages 69 through 70, discusses the
18 negotiations and the side agreements in this case,
19 the presentation to the Commission, which as it
20 says on Page 70, "The Commission was unaware of
21 the side agreements and any potential impact that
22 they may have had. Representations were made to
23 the Commission that certain things had been
24 accomplished".
25 Q. Right.

A. And --

Q. Go ahead. I'm sorry.

A. No.

Q. Really, I didn't mean to cut you off. Are you done?

A. Uh-huh.

Q. Okay. Even assuming, which, obviously, the company disagrees, but even assuming all of your characterizations to be true, that these were -- these contracts were somehow connected to the utility, to DE-Ohio, let alone to the case, which we certainly don't think they were, doesn't it seem a bit inconsistent to be concerned about the exclusion of OCC and a course of secret negotiations when OCC was engaging in the same practice itself and had, in fact, engaged in the same practice over many years on many agreements through different Consumers' Counsels?

A. Well, as far as your last statement, many years and many Consumers' Counsels, I cannot comment on that, that's very broad and not specific, but in this particular instance, to the extent that you're saying that these are secret negotiations, I don't have anything before me that tells me whether the company was informed or not

1 informed, subsequently informed, whether or not
2 settlement was provided to the company.
3 You've given one piece of information in
4 regards to this. So I cannot comment as to
5 whether or not the characterization that you're
6 making is correct.
7 Q. I'm going to hand you what's marked
8 DE-Ohio Exhibit 11 -- or, will be marked.
9 - - -
10 Thereupon, DE-Ohio Exhibit No. 11 was
11 marked for purposes of identification.
12 - - -
13 BY MR. COLBERT:
14 Q. This is an interrogatory question
15 delivered to OCC in these proceedings asking for
16 all agreements, written or oral, et cetera,
17 including confidentiality agreements.
18 Why were the confidentiality agreements,
19 oral or otherwise, that we've just discussed in
20 this case requested by OCC of other parties not
21 provided; do you know?
22 THE WITNESS: Would you reread the
23 question for me, please?
24 (Question read back as requested.)
25 THE WITNESS: I do not know. The answer

1 was prepared by counsel.
2 MR. SMALL: I object inasmuch as we
3 haven't looked at any confidentiality agreements.
4 I don't even understand what you're talking about.
5 MR. COLBERT: The affidavit and the
6 e-mails that we just discussed referenced
7 requirements by OCC that parties keep confidential
8 the terms and conditions of settlement discussions
9 discussed with them.
10 MR. SMALL: Well, it's not a
11 confidentiality agreement.
12 MR. COLBERT: I don't agree. I think
13 that's an oral confidentiality agreement, but if
14 that's the reason why it wasn't given to us,
15 that's fine. Just asking.
16 BY MR. COLBERT:
17 Q. On Page 58 of your testimony, starting at
18 Line 18, you say, "...the fundamental effect of
19 the side agreements was to insulate those large
20 customers from the rate increases proposed in the
21 stipulation filed in May 2004..."
22 Yet, during 2005 [redacted] actually paid
23 more than the stipulation required, is that
24 correct, my reading of your testimony? Is that
25 your understanding?

A. Again, I'm not sure of what the total transactions were between Kroger and some CG&E affiliate in regards to that agreement. I know what I've seen from the invoices that were sent to Kroger and for some periods of time, at least those that I have invoices for, payments were to be made by Kroger to some CG&E affiliate.

I think you may have asked whether their rates went up.

Q. I simply asked whether Kroger paid more than --

A. Okay.

Q. -- was required of them --

A. Than was required of them.

Q. -- had they stayed on the MBSSO. It's a rephrasing of the question.

A. Well, I don't think Kroger was on the MBSSO.

Q. No, they weren't. That's true.

A. So I don't know whether they paid more or not.

Q. In the first part of your answer, you said the only knowledge you had was various invoices, et cetera, that you had received in the case. That was the basis of your conclusions as

1 to Kroger.
2 A. Uh-huh.
3 Q. But you didn't really know because you
4 didn't know -- at least as I understand it, you
5 didn't know whether that information was complete
6 or, you know, all of the payments made one way or
7 the other during the course of the year. Did I
8 understand that correctly?
9 A. I'm telling you I only know what I have
10 from the information provided by DERS and DE-Ohio,
11 and that's it.
12 Q. So can you state -- Well, what is your
13 knowledge of transactions between the parties
14 regarding the other contracts? Have you seen
15 invoices and have you -- Well, let's start there.
16 Have you seen invoices?
17 A. I believe provided with Mr. Whitlock's
18 deposition subpoena were hundreds of pages of
19 documentation related to requests for payment and
20 payments made under the agreements. I know that
21 Mr. Duff and Mr. Ziolkowski processed those and I
22 believe indicated that they -- at least Mr. Duff
23 probably indicated the payments had been made.
24 Q. And did you ask and/or receive any
25 information about payments made by those companies

1 to DE-Ohio?
2 A. I think we asked some general discovery
3 about the agreements and their impact on any
4 DE-Ohio-affiliated company, but I don't have those
5 with me, but that would have covered DE-Ohio.
6 Q. Do you know -- In that information, did
7 you receive any information regarding -- regarding
8 revenues flowing to DE-Ohio from counterparties to
9 these -- to any of what you call the side
10 agreements?
11 A. Well, I'm not 100 percent sure. I don't
12 recollect any description of revenues flowing from
13 any of these customer parties to DE-Ohio.
14 Q. Okay. Did you receive any information
15 regarding revenues flowing from DERS to DE-Ohio?
16 A. I recollect that DERS made certain
17 payments to DE-Ohio related to provision of
18 service -- services related to their billing
19 system.
20 I also recollect that on DERS' financial
21 balance sheet at 12-31-05 there's both an accounts
22 receivable and accounts payable to affiliates and
23 to what extent DE-Ohio may be involved in that I
24 don't remember, but to be inclusive, that's what I
25 remember.

1 Q. Okay. And outside of -- And I believe it
2 came in the discussion of the income statements
3 and balance sheets you're talking about now.
4 Outside of the receivable adjustment related to
5 taxes, which didn't include any actual transfer of
6 revenue, are you aware of any revenues flowing
7 from DE-Ohio to DERS?
8 A. Well, I disagree with your
9 characterization of the accounts receivable. I
10 think that taxes were part of that discussion, but
11 I'm not sure if it was complete, because there was
12 also accounts payable affiliates, but your
13 question is whether or not revenue -- I have any
14 information about revenue going from DE-Ohio to
15 DERS.
16 Q. Yes.
17 A. I don't recollect anything.
18 Q. Okay. The DERS contracts that we
19 referred to as option contracts, you referred to,
20 I think, as option side agreements, those -- DERS
21 received an option from the counterparties in each
22 of those contracts, is that your understanding?
23 A. Look at Page 50 of my testimony. I
24 indicate that under each option agreement the
25 customer would take generation either current,

1 continuation, or provide notice. The customer
2 gave exclusive options to CERS -- to CRS.
3 Q. Now known at DERS.
4 A. Yes.
5 Q. Okay. Is the option payment amount in
6 those contracts less than the increase in the
7 market price approved by the Commission on
8 November 23rd of 2004?
9 THE WITNESS: Could you read the
10 question, please?
11 (Question read back as requested.)
12 THE WITNESS: I don't know.
13 BY MR. COLBERT:
14 Q. On Page 59 of your testimony, you suggest
15 that the Commission should consider the DERS and
16 Cinergy contracts because DE-Ohio's stipulation
17 was not supported by consumers willing to pay the
18 full MBSSO amount. At the time DE-Ohio had over
19 20 percent of its nonresidential load switched.
20 Do you think the switched customers
21 agreed to pay a higher price with their new CRES
22 provider?
23 A. I'm going to have to have you restate it.
24 I'm missing what the 20 percent would have done.
25 I don't understand that.

1 Q. Well, almost 20 percent of our load was
2 switched and we're presuming paying less than they
3 would have paid had they been taking service from
4 DE-Ohio.
5 A. You'll have to restate the question. I
6 don't understand it.
7 Q. You seem to place an importance on the
8 stipulation being supported only by consumers
9 willing to pay the full MBSSO amount instead of
10 something less. Why is that an important
11 consideration to you?
12 A. You're asking about customer parties
13 supporting the stipulation willing to pay less
14 than what?
15 Q. Well, I didn't say anything about
16 customer parties.
17 A. I'm sorry.
18 Q. That's okay.
19 A. I do not understand.
20 Q. That's all right. That's all right.
21 We'll move on.
22 Maybe I can ask it a different -- a
23 simpler, different way, actually.
24 Would support from customers that
25 switched be inconsequential because they pay a

1 lower generation price than other consumers?
2 A. No. I don't think that the mere paying
3 of less through a -- through a switching is what's
4 at issue here.
5 What's at issue is those individual --
6 those customer parties, as I describe them, who
7 supported the stipulation, the alternative
8 proposal, did so in part because of the side
9 agreements.
10 The side agreements may or may not have
11 resulted in them paying less, but it's the side
12 agreements in total in relationship to the case,
13 not merely a customer who paid less.
14 Q. Has any customer told you that that's why
15 they signed the stipulation, because they were
16 getting payments from DERS?
17 A. No.
18 Q. On Page 63 of your testimony, you state
19 that the option contracts use DE-Ohio as a profit
20 center while DERS reimburses customers on behalf
21 of DE-Ohio and operates at a loss. Is that a
22 correct characterization?
23 A. That's what it states.
24 Q. Yeah.
25 I'm going to hand you what we're marking

1 as DE-Ohio Exhibit 12.
2 - - -
3 Thereupon, DE-Ohio Exhibit No. 12 was
4 marked for purposes of identification.
5 - - -
6 (Recess taken.)
7 (Discussion held off the record.)
8 MR. COLBERT: The parties have had an
9 off-the-record discussion at which they have
10 decided to unseal the record through the end of
11 Mr. Neilsen's cross-examination in the deposition
12 this morning. Thereafter, the deposition will be
13 under seal.
14 MR. SMALL: OCC agrees.
15 BY MR. COLBERT:
16 Q. Miss Hixon, I have handed you what's been
17 marked as DE-Ohio Exhibit 12. As we discussed
18 earlier, you have an accounting background, is
19 that -- that's correct, isn't it?
20 A. That's my education, yes.
21 Q. And are you familiar with what this type
22 of document is, an 1120?
23 A. I recognize it for what it says, a U.S.
24 Corporation Income Tax Return, but I have never
25 dealt with such.

1 Q. Okay. Are you generally familiar with
2 income statements and balance sheets?
3 A. Yes.
4 Q. Okay. If you will turn to the third page
5 in, not double-sided, just -- Yeah, keep going.
6 There you go. That page. Thank you.
7 MR. SMALL: I'm sorry. We've got a
8 marked Page 3. It's not that page?
9 MR. COLBERT: No. It's the page with the
10 "Combined, Combination Elimination, Adjustments
11 and Cinergy Corp."
12 MR. SMALL: Upper left-hand corner,
13 "Cinergy Corp."?
14 MR. COLBERT: Yeah, and "Consolidated
15 Schedules" right below that.
16 MR. SMALL: Yes. "1120, Page 1"?
17 MR. COLBERT: Yes, that's correct.
18 BY MR. COLBERT:
19 Q. This is Page 1 of the consolidated
20 schedules and on the following pages, if you'll
21 turn the page, you'll see income statements for
22 each of the separate then Cinergy affiliates. If
23 you look at the bottom of the page that is
24 Line 30, we won't go into special deductions and
25 NOL deductions and all that, but Line 30 you'll

1 see where it says, "Taxable Income", and you'll
2 notice that some of the figures are positive and
3 some of the figures are negative.
4 Given your understanding of income
5 statements, would you agree with me that the
6 negative figures indicate a taxable income loss?
7 A. Having not seen this document and not
8 knowing what their use of a negative connotates,
9 in general you would expect that a negative or a
10 minus sign would be a net loss.
11 Q. Would you accept, subject to check, that
12 it is? I mean, we could get a calculator and --
13 A. No. That's fine. I'm just telling you
14 I'm not familiar with this document --
15 Q. Sure.
16 A. -- but in general you would expect that
17 to be the case.
18 Q. Okay. If you would, take a minute, there
19 are a few pages there, although I don't think it
20 will take very long, would you count the number of
21 corporations that have a loss?
22 A. Am I being asked to assume that the sum
23 of all the ones in the back are what's coming
24 forward?
25 Q. Well, I mean --

1 A. And that each of those represents a
2 corporation?
3 Q. Each of them does represent a
4 corporation. Subject to -- The combined totals,
5 frankly, would be in the column marked "Combined".
6 There are some double-counting of numbers through
7 various companies due to things like service
8 company allocations, administrative expenses,
9 et cetera, that's the eliminations column, but,
10 yeah, I'm just asking you to count the number of
11 companies that had a taxable loss. The sheets go
12 across the bottom. Yeah, the companies are
13 identified across the bottom, if that's what
14 you're -- I see one page somehow got cut off,
15 but....
16 (Pause.)
17 A. Okay. Given that the document just says
18 Statement 5 and Statement 6, something's been cut
19 off and a whole page is missing --
20 Q. Here's the original.
21 A. -- I would assume that each of those
22 are --
23 Q. That's correct.
24 A. -- individual corporations based on your
25 representation --

1 Q. They are.
2 A. -- and of all the numbers, my best
3 estimate at a quick look is over 35 companies.
4 Q. I came up with 36. Would you accept that
5 subject to check?
6 A. Subject to check, have a negative before
7 them on Line 30 for taxable income.
8 Q. Okay. Fair enough.
9 MR. COLBERT: Let me have both of the
10 others. No point in prolonging this; right?
11 Will you mark these Exhibits 14 (sic)
12 and 15 (sic), DE-Ohio exhibits?
13 - - -
14 Thereupon, DE-Ohio Exhibit Nos. 13
15 and 14 were marked for purposes of
16 identification.
17 - - -
18 BY MR. COLBERT:
19 Q. Trying to short-circuit this a little
20 bit.
21 Do you see the same types of income
22 statements here that you saw with the 2003 1120?
23 A. Similar. I don't know that they're
24 identical.
25 Q. They are. They're for different years,

1 so the numbers are different.
2 A. I mean, I don't know if the corporations
3 are identical or not.
4 Q. They aren't. Corporations come and go,
5 so they aren't.
6 A. Okay.
7 Q. Would you accept, subject to check, in
8 2004 there are 44 corporations that show a loss
9 and in 2005 there are 41?
10 A. Subject to check.
11 Q. Sure. You can keep that and check, so
12 that will work.
13 In Exhibit 13, would you turn to -- It's
14 the last piece of paper, but on the inside page.
15 It has Cinergy Retail Sales as the third company
16 in. It's next to Cinergy Capital & Trading. Do
17 you see that?
18 MR. SMALL: We're on Exhibit 14?
19 THE WITNESS: Is that 2004?
20 MR. COLBERT: 2004. Yeah, I think it's
21 Exhibit 13. I'm sorry. It's the last page, Jeff,
22 just on the inside of it.
23 MR. SMALL: Second to the last page in
24 the packet?
25 MR. COLBERT: Yeah. It's got 433 at the

1 bottom of the page and a 12. 433 and then
2 Statement 12.
3 THE WITNESS: Uh-huh.
4 BY MR. COLBERT:
5 Q. Do you see Cinergy Retail Sales?
6 A. Yes.
7 Q. Okay. And do you note that it has a loss
8 there of -- I believe it's $25,200?
9 A. Assuming that those are dollars, yes.
10 Q. And do you see next to it Cinergy Capital
11 & Trading, Inc. has a loss of a little over $95
12 million?
13 A. Yes.
14 Q. Okay. Do you -- Is it your opinion that
15 CG&E is the profit center for all of these
16 companies that are showing losses?
17 A. No.
18 Q. Okay. And you think DERS is distinct
19 because of the contracts that you call side
20 agreements; is that correct?
21 A. I think that my testimony deals with the
22 option agreements and the side agreements and that
23 my testimony is that through the option agreements
24 DE-Ohio's treated as a profit center and its
25 affiliate operates at a loss. That's what I've

1 testified.
2 Q. And somehow, though, that loss is
3 distinguished from all the other losses of all the
4 other corporations for which CG&E is not a profit
5 center?
6 A. My testimony doesn't deal with that. My
7 testimony deals with the side agreements.
8 Q. On Page 65 of your testimony, you discuss
9 OAC Section 4901:1-20-16 at length and in various
10 parts. Do you see that?
11 A. I see that.
12 Q. Okay. Are you familiar with
13 4901:1-20-16(G)(3) that prohibits affiliate
14 financial transactions that obligate the
15 affiliated utility?
16 MR. SMALL: With regard to this, maybe we
17 can -- I assume you're going to ask a series of
18 questions having to do with this portion of her
19 testimony?
20 MR. COLBERT: Well, this one actually
21 doesn't. She didn't testify to (G)(3). I was
22 going to go through each part.
23 MR. SMALL: To keep the flow of things
24 going, I will state an objection to the extent the
25 answers call for a legal opinion, but she will

1 state her understanding of these provisions
2 according to your questions, and we'll just have a
3 continuing objection on this section of questions.
4 MR. COLBERT: As we previously noted, I
5 believe we have a continuing objection on the
6 record regarding that. I just didn't see how it's
7 avoidable given that she has a sizable amount of
8 her testimony related to it.
9 THE WITNESS: Could you reask the
10 question, please?
11 MR. COLBERT: Sure.
12 MR. SMALL: I'm not sure there was a
13 question pending.
14 MR. COLBERT: There was, but I'll restate
15 it.
16 BY MR. COLBERT:
17 Q. Are you familiar with 4901:1-20-16(G)(3),
18 which has to do with the prohibition of affiliate
19 financial transactions that obligate the
20 affiliated utility? If it would help, we can mark
21 as Exhibit 15 a copy of 4901:1-20-16. I brought a
22 copy.
23 - - -
24 Thereupon, DE-Ohio Exhibit No. 15 was
25 marked for purposes of identification.

1 - - -
2 MR. SMALL: This is the entire section.
3 MR. COLBERT: Yes.
4 MR. SMALL: What portion did you --
5 MR. COLBERT: We're (G)(3) on Page 2, (a)
6 through (f).
7 THE WITNESS: I'm familiar with it in
8 that I have seen it, I've read it, and that you've
9 pointed out to me that it deals with financial
10 arrangements.
11 BY MR. COLBERT:
12 Q. Do you know whether any -- any financial
13 transaction involving DERS or Cinergy is contrary
14 to anything in (G)(3), (a) through (f)?
15 A. I've done no investigation of all of the
16 financial arrangements by DERS and Cinergy -- And
17 I assume by Cinergy you mean Cinergy Corp.
18 Q. I did. I meant Cinergy Corp. Thank you.
19 A. -- in regards to these rules, so I have
20 no opinion.
21 Q. Okay.
22 MR. SMALL: Is this an exhibit or you
23 just handed it to her for a reference?
24 MR. COLBERT: Yes, it's an exhibit.
25 MR. SMALL: Okay. This was 15 then?

1 MR. COLBERT: Yes.
2 BY MR. COLBERT:
3 Q. We'll get back to that in a minute, so
4 you may want to keep it handy.
5 On Page 64 (sic) of your testimony, you
6 discuss an e-mail from Steve Schrader to Greg
7 Ficke and Julie Jansen and referring to someone
8 named Phil. Do you know who Julie Jansen is?
9 A. No, I don't.
10 Q. Do you know who Phil is?
11 A. I recollect that in Mr. Ficke's
12 deposition we asked him who Phil was. I don't
13 remember the name. I believe he indicated he was
14 a board -- a member of the board, but I don't
15 remember which board.
16 Q. All right. Would it help you if I
17 represented he was a member of both the Cinergy
18 Corporation board and now the Duke Energy
19 Corporation board?
20 A. You can represent that. I don't think
21 that's what Mr. Ficke said at the time.
22 Q. Would it help your memory if I said his
23 name was Phil Cox?
24 A. I've told you what I've remembered.
25 Q. That's fine. I was just trying to help.

1 Do you know whether it's unusual for a
2 holding company with many subsidiaries to perform
3 financial analyses of transactions across multiple
4 corporate entities?
5 A. I've not worked for a holding company, so
6 I don't know.
7 Q. Going back to Page 65 and our OAC section
8 here. You start with 4901:1-20-16(A) regarding
9 corporate separation.
10 Do you know whether DE-Ohio has an
11 approved corporate separation plan?
12 A. I believe that they are required to have
13 a corporate separation plan approved in their ETP
14 cases. There may have been conditions or waivers
15 subsequently or at that time placed upon it, but
16 my general understanding is that they should.
17 Q. Okay. Do you know whether the approved
18 corporate separation plan determines the
19 methodology for certain financial transactions
20 between DE-Ohio and affiliates?
21 A. I have not looked at their approved
22 corporation separation plan, but given the
23 corporate separation rules that -- a copy that you
24 provided me, I think you could identify what is
25 required.

1 Q. Well, I can. I was asking you a specific
2 question about the actual plan, but you haven't
3 looked --
4 A. I have not seen it.
5 Q. Okay. Going to Section (D) regarding
6 cross-subsidies, which is No. 2 -- Well, before we
7 do that, having not seen it, you're not alleging
8 any specific violation of the corporate separation
9 plan?
10 A. No. As my testimony says, I'm asking the
11 Commission to conduct an investigation to
12 determine and examine the transactions of the
13 utility and the affiliate for the reasons that I
14 state in my testimony.
15 Q. And you believe those reasons rise to the
16 level that we might have done something wrong?
17 A. I think they rise to the level that they
18 should be brought to the Commission's attention
19 for their consideration.
20 Q. You don't think they've been brought to
21 the Commission's attention? You don't think the
22 Commission is aware of this with all the pleadings
23 that have gone back and forth?
24 A. Given that the Supreme Court said that
25 the case had to be remanded back and that this

1 wasn't before the PUCO for their consideration,
2 no, I don't think the Commission is aware.
3 Q. Okay. Regarding Section (D) of the rule,
4 that -- that involves cross-subsidies and the
5 independent operation of a utility and affiliate
6 employees.
7 Did OCC discover financial transactions
8 between DE-Ohio and DERS such that one subsidized
9 the other?
10 A. Again, as I said in my testimony, I
11 reached no conclusions as to whether or not these
12 rules have been violated by the activities that we
13 have discussed. I've presented those activities
14 and raised the concern that the Commission should
15 investigate to determine that.
16 Q. You then discuss Section (G)(1)(c), which
17 refers to and embodies (G)(4) through the use of
18 shared employees.
19 The only shared employees identified in
20 these proceedings as involved in -- Well, the only
21 shared employees identified in these proceedings
22 involved in the contracts are James Gainer and I.
23 You identified Greg Ficke.
24 Is there a specific violation that you
25 are alleging? Let's start with the attorneys of

1 Jim Gainer or I.
2 A. Again, I am not alleging any specific
3 violation of these rules. I am recommending to
4 the Commission that they review the activities and
5 the transactions and the conduct of the utility
6 and its affiliates to determine whether or not
7 there have been any violations.
8 Q. And do you know whether Mr. Gainer or I
9 made any economic decisions regarding the
10 contracts on behalf of DERS?
11 A. No, I don't know that.
12 Q. Okay. You next reference Section
13 (G)(4)(e), which I believe has to do with tie-in
14 arrangements.
15 Did OCC discover any occurrence of any
16 service offered by DE-Ohio, tariffed or otherwise,
17 that requires the consumer to take service from
18 any affiliate as a condition of service?
19 A. My answer would be the same to the other
20 rules that you've cited and asked whether or not I
21 found a violation. I did not conduct an
22 investigation to determine whether or not there
23 were violations of these rules. I reviewed the
24 agreements, I've raised the concerns, and I've
25 presented them to the Commission.

1 Q. So that would be true of the remainder of
2 the sections of the rule that you discussed?
3 A. Yes. There's nowhere in here that I say
4 a violation has occurred.
5 Q. Okay. Ask you one more question about
6 that just at the end, since complaints are so
7 prevalent. You reference Section (G)(4)(j)
8 applying to emergency situations and complaint
9 procedures. I was surprised you included that
10 one.
11 A. Hold on.
12 Q. Okay. I'll wait. Tell me when you're
13 ready.
14 (Pause.)
15 A. I'm sorry. I don't see that.
16 Q. No. I got it wrong. It's (k). No,
17 that's shared employees. We've covered that. I
18 apologize. I got the wrong section.
19 Do you believe that the letters that make
20 up your Attachment 24 are Kroger's notice to
21 DE-Ohio that it will remain off of MBSSO service
22 through 2008?
23 A. My understanding of the purpose of those
24 letters is from Mr. George at his deposition in
25 regards to his statements that he had provided

1 those letters in order to avoid certain RSP
2 charges. That's my understanding.
3 Q. Okay. Do you know if Kroger gave DE-Ohio
4 such a notice that it would stay off through 2008?
5 A. No, I don't know that.
6 Q. Okay. Are you aware of a provision -- a
7 statutory provision that permits a third party to
8 pay RTC on behalf of a consumer?
9 MR. SMALL: I'm sorry. Could we have
10 that read back?
11 (Question read back as requested.)
12 MR. SMALL: Objection. It calls for a
13 legal conclusion. You may state your
14 understanding.
15 THE WITNESS: I'm not aware of such a
16 statute.
17 BY MR. COLBERT:
18 Q. Okay. Are you aware that OCC agreed in
19 the transition plan stipulation that
20 nonresidential consumers should pay the
21 residential consumers RTC for 2009 and 2010?
22 A. If you can provide a document. I do not
23 recollect that.
24 Q. Okay. Are you aware that residential
25 consumers don't pay any RTC in 2009 and 2010?

A. It's my recollection that the residential RTC ends in 2008 because the company had proposed originally for it to -- originally in this proceeding to continue past that time, so yes, I am aware that they don't pay after 2008.

Q. Do you know whether OCC met separately with DE-Ohio during settlement discussions in these proceedings?

A. I don't know.

Q. Do you know whether OCC turned down a substantial settlement offer from DE-Ohio in these proceedings?

MR. SMALL: Asked and answered. If you don't know about the negotiations, you can't know about settlements.

MR. COLBERT: I'll let her answer that.

THE WITNESS: Since I don't know whether OCC met separately with DE-Ohio, I don't know anything about whether or not an offer was made or not made.

BY MR. COLBERT:

Q. Well, DE-Ohio and OCC certainly participated in settlement discussions together in large groups.

A. But you asked if they had met separately.

1 Q. I did. And then I asked a separate
2 question whether you knew whether OCC turned down
3 a substantial settlement offer that might have
4 been made either separately or in a large group.
5 A. I don't know.
6 Q. You don't know.
7 Okay. By the way, we talked earlier
8 about several agreements that OCC had participated
9 in. Are you aware of a settlement between DE-Ohio
10 and OCC regarding the OCC's appeal of the merger
11 between Cinergy and Duke?
12 A. I'm generally aware that OCC had
13 participated in litigation in the merger case,
14 applied for rehearing, and may have noticed an
15 appeal. I believe the appeal was withdrawn. The
16 extent to whether a settlement or agreement was
17 made in that, I'm not aware.
18 Q. Okay. So you didn't participate in or --
19 and you don't know specifically about those
20 settlement discussions or the result?
21 A. I participated in no settlement
22 discussions related to the DE-Ohio merger, no.
23 Q. Okay. I'm talking about settlement
24 discussions with OCC regarding OCC's appeal.
25 A. Of the merger.

Q. Uh-huh.

A. I do not remember participating in any settlement discussions between DE-Ohio and OCC regarding the merger.

Q. Okay. Is a CRES provider permitted to reach one accommodation or contract with one consumer and a different accommodation or contract with another consumer?

A. You're asking me to go back to my understanding of CRES providers' contracts. As long as they're compliant with the PUCO rules, they can have different versions of contracts, different prices in contracts, so to that extent, yes.

Q. Okay. Do you know whether OCC approached DERS about a contract for service of any type for residential customers or any other purpose?

A. In this proceeding?

Q. At any time.

A. I'm not aware of -- I don't know whether OCC approached DE-Ohio in regards to service.

Q. I asked DERS.

A. DERS.

Q. It's okay.

A. I'm sorry.

1 Q. It's all right.
2 A. No, I don't know.
3 Q. Okay. Do you know whether the current
4 Consumers' Counsel has informed her staff of
5 settlement discussions that she's had in this
6 case?
7 A. I'm aware as to whether she's informed
8 me. I don't know as to other staff.
9 Q. Has she informed you?
10 A. No.
11 MR. COLBERT: I think that's all I have.
12 (Conclusion of confidential portion.
13
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21
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25

1 (Public record resumed.)
2 (Signature not waived.)
3 - - -
4 (Thereupon, the deposition was concluded
5 at 5:34 o'clock p.m. on Tuesday, March
6 13, 2007.)
7 - - -
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1 A F F I D A V I T
2 - - -
3 STATE OF _____,)
4) SS:
5 COUNTY OF _____,)
6 Beth Hixon, having been duly placed under
7 oath, deposes and says that:
8 I have read the transcript of my
9 deposition taken on Tuesday, March 13, 2007, and
10 made all necessary changes and/or corrections as
11 noted on the attached correction sheet, if any.
12
13
14 _____
15 Beth Hixon
16 Placed under oath before me and
17 subscribed in my presence this _____ day of
18 _____, _____.
19
20
21 _____
22 Notary Public
23
24 My Commission Expires: _____.
25 - - -

1 C E R T I F I C A T E
2 - - -
3 State of Ohio,)
) SS:
4 County of Delaware,)
5 - - -
6 I, Deborah J. Holmberg, Registered Merit
7 Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and
8 and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of
9 BETH HIXON.
I further certify that I am neither
10 attorney or counsel for, nor related to or employed by any of the parties to the action in
11 which the deposition was taken, and further that I am not a relative or employee of any attorney or
12 counsel employed in this case, nor am I financially interested in the action.
13
14
15
Deborah J. Holmberg,
16 Registered Merit Reporter and Notary Public in and
17 for the State of Ohio.
18
19 My Commission Expires:
October 07, 2011.
20 *** CAUTION ***
This certification bears an original signature in
20 nonreproducible ink. The foregoing certification
21 of the transcript does not apply to any reproduction of the same not bearing the signature
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EXHIBIT

01450 FILE

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CONFIDENTIAL SETTLEMENT DOCUMENT

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequeuent to Market Development Period	Case No. 03-93-EL-ATA
In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated With The Midwest Independent Transmission System Operator	Case No. 03-2079-EL-AAM
In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission And Distribution System And to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period	Case No. 03-2081-EL-AAM Case No. 03-2080-EL-ATA

STIPULATION AND RECOMMENDATION

Rule 4901-1-30, Ohio Administrative Code (O. A. C.) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and

EXHIBIT
Duke Energy Ohio
No. 1 DJH 3-13-04

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Technician AMN Date Processed 5/20/04

agreement of the Parties who have signed below (Parties)[1] and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by The Cincinnati Gas & Electric Company's applications in these cases.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff,[2] to resolve the aforementioned issues. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving certain issues raised by these proceedings, the Parties stipulate, agree and recommend as set forth below.

Except for dispute resolution purposes, neither this Stipulation, nor the information and data contained therein or attached, shall be

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[1] The support of the signatories to this Stipulation, does not affect, and is not binding upon, their position in any other case. The signatories retain all legal rights to participate and litigate in other proceedings. Further, the support of the Industrial Energy Users-Ohio (IEU-Ohio) as a signatory to this Stipulation, does not affect, and is not binding upon, its position in any other case. IEU-Ohio's support is, practically speaking, guided by the relatively small size of the individual member accounts affected by the settlement and shall not be construed or applied to indicate IEU-Ohio's views on settlement packages or litigation positions in other cases involving larger and more energy intensive manufacturing operations.

[2] Staff will be considered a party for the purpose of entering into this Stipulation by virtue of O.A.C. Rule 4901-1-10(c).

cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation and Recommendation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position which one or more of the Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon its adoption by the Commission, in its entirety and without modification. Should the Commission reject or modify all or any part of this Stipulation or impose additional conditions or requirements upon the Parties, the Parties shall have the right, within 30 days of issuance of the Commission's order, to either file an application for rehearing. Upon the Commission's issuance of an Entry on Rehearing that does not adopt the Stipulation in its entirety without modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within 30 days of the Commission's order on rehearing. Upon such notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

All the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms hereof.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues. This

Stipulation is the product of the discussions and negotiations of the Parties, and is not intended to reflect the views or proposals which any individual party may have advanced acting unilaterally. Accordingly, this Stipulation represents an accommodation of the diverse interests represented by the Parties, and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in these proceedings designed to set the market-based standard service offer price for competitive retail electric service after the end of the market development period through December 31, 2008;

NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings in accordance with the following:

1. The Parties agree that the market development period ends for non-residential consumers on December 31, 2004.
2. The Parties agree that the market development period ends for residential consumers on December 31, 2005.
3. The Parties agree upon a non-by-passable Provider of Last Resort charge made up of two components: (1) the rate stabilization

charge, as described in paragraph four (4) of this Stipulation; and (2) an annually adjusted component for maintaining adequate capacity reserves and to recover costs associated with homeland security, taxes, environmental compliance, and emission allowances. The Provider of Last Resort charge shall be effective for non-residential consumers beginning January 1, 2005, and residential consumers beginning January 1, 2006. CG&E shall implement the annually adjusted component of the Provider of Last Resort charge for all consumers beginning January 1, 2005, at its annual option through: (1) an automatic annual increase of 6% of little g; or (2) an increase of 8% of little g that CG&E must demonstrate by documenting actual costs for homeland security, taxes, environmental compliance, and emission allowances. Increases to the annually adjusted component of the Provider of Last Resort charge are cumulative. CG&E shall, however, waive collection of the annually adjusted component of the Provider of Last Resort charge for residential consumers in 2005, and calculate the charge effective January 1, 2006, as if CG&E had instituted an increase of 5% of little g in 2005. Further, CG&E shall limit the incremental annual increase for residential consumers to 6% effective January 1, 2006, to no more than 7% effective January 1, 2007, and to no more than 8% effective January 1, 2008. If, in any year, CG&E elects option two (2), it

shall demonstrate annual and cumulative costs above the baseline of costs included in CG&E's unbundled rates approved by the Commission in Case No. 99-1658-EL-ETP for the calendar year 2000 and the calculation of such charges and costs shall be subject to Staff audit and verification. Cost recovery for reserve capacity shall be subject to the limits described in this paragraph three (3) and recovered at the formula rate set forth at page 6 of the attached Stipulation Exhibit 1. CG&E hereby elects option two (2) for 2005. The Parties agree that the schedules attached as Stipulation Exhibit 1 demonstrate that CG&E has actual costs in excess of 8% of little g and therefore, may recover 8% of little g as the annually adjusted component of the Provider of Last Resort charge from non-residential consumers beginning January 1, 2005.

4. The Parties agree upon a non-by-passable rate stabilization charge (RSC) as set forth in Stipulation Exhibit 3, effective January 1, 2005, for all non-residential consumers, and effective January 1, 2006, for all residential consumers, as a component of the Provider of Last Resort charge, except that such charge will be an avoidable component of the price to compare for the first 25% of load in each consumer class to switch to a competitive retail electric service provider or governmental aggregator subject to the following conditions:

A. The ability to bypass the Rate Stabilization Charge component of the Provider of Last Resort Charge is effective January 1, 2005, for all non-residential consumers (except shopping consumers defined in paragraph 11, who retain their shopping credit through December 31, 2005, and pay their applicable unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP, which includes the Regulatory Transition Charge and Rate Stabilization Charge component of the Provider of Last Resort Charge, and is effective January 1, 2006, for all residential consumers; and

B. The first 25% of eligible load, by consumer rate class, to switch to a competitive retail electric service provider shall not pay the rate stabilization charge. All consumers in the remaining 75% of load, by consumer rate class, shall pay the rate stabilization charge. CG&E shall calculate 25% of the load by consumer class in the same manner as it calculates switched load pursuant to its transition plan stipulation approved by the Commission in Case No 99-1658-EL-ETP; and

C. CG&E shall establish and maintain a queue of switched consumers by load, effective January 1, 2005, such that as the load of one consumer returns to CG&E's market-based

standard service offer rate the applicable load of the next consumer in the queue shall move into the first 25% of switched load in the applicable consumer class, in order, until 25% has been achieved; and

D. To qualify to by-pass the rate stabilization charge, a non-residential consumer must enter a contract with a credit worthy CRES provider to provide firm generation service through December 31, 2008, or a non-residential consumer may provide CG&E an assurance that it will purchase competitive retail electric generation service from a competitive retail electric service provider by signing an agreement with CG&E to return to CG&E only at (1) the highest purchase power costs incurred by CG&E or by any affiliate to serve any of CG&E's consumers during the applicable calendar month; or (2) the highest cost generation dispatched by CG&E or by any affiliate to serve any of CG&E's consumers during the applicable calendar month. If a non-residential consumer provides a contract, such contract must satisfy the full capacity, energy, and transmission requirements associated with the consumer. The applicable non-residential consumer must provide a minimum of 90-days notice to CG&E of the effective date of the contract, and may provide notice to CG&E beginning

October 1, 2004. The applicable non-residential consumer must provide CG&E evidence of the required contract containing all of the terms specified above, at the time of notice. All loads of consumers seeking to avoid the rate stabilization charge must be in the first 25% of the load of the applicable consumer class at the time that contract notice is given to CG&E. All consumers, including those already switched, may give such notice and shall be placed in the queue for avoidance of the rate stabilization charge at the time notice is given. To calculate 25% of the load by consumer class CG&E shall count all switched consumers receiving shopping credits and consumers having given the required notice and with the required contract. Consumers that present CG&E with an acceptable contract as described above, must sign a contract with CG&E agreeing that if their contracting CRES provider defaults the consumer may only return to service from CG&E at the market rate, or, if no generation is available, be subject to disconnection. Such consumers waive their statutory right to Provider of Last Resort service. No human needs or public welfare consumer, as that term is defined by the Commission in Case No. 85-800-GA-COI, shall be subject to the disconnection requirements contained herein. Human needs and public

welfare consumers include, but are not limited to, hospitals and schools. The market rate shall vary monthly and be the higher of: (1) the highest purchase power costs incurred by CG&E or by any affiliate to serve any of CG&E's consumers during the applicable calendar month; or (2) the highest cost generation dispatched by CG&E or by any affiliate to serve any of CG&E's consumers during the applicable calendar month. Each month CG&E shall determine the applicable market rate for each consumer who shall pay that rate until they switch to a competitive retail electric service provider or December 31, 2008, whichever is sooner.

E. None of the restrictions or requirements set forth in Paragraph 4(D) of this Stipulation shall apply to residential consumers, other than any applicable tariffed minimum stay or exit fee provisions. Residential consumers may bypass the Rate Stabilization Charge if they are in the first 25% of residential load as determined by order and receipt by CG&E of a proper Direct Access Service Request (DASR). DASRs for residential consumers served under existing contracts with a competitive retail electric service provider as of January 1, 2006 shall be considered received as of their original receipt date. Residential consumers returning to CG&E due to the default of their contracting competitive retail electric service

provider or upon expiration of their contract shall be served at CG&E's market-based standard service offer rate.

5. Subject to Federal Energy Regulatory Commission (FERC) approval of the proposed Midwest Independent Transmission System Operator (MISO) Day 2 tariffs, and on-going FERC regulation, load-serving entities may rely upon CG&E's reserve capacity to meet their reserve capacity (but not energy) requirements for loads served within CG&E's Certified Service Territory.[3] If the FERC approves the proposed MISO tariffs with substantial modification relevant to this provision, the parties agree to work in good faith to implement this provision. This Stipulation shall not constitute a state requirement for reserve capacity as defined by the proposed MISO day two tariffs at proposed Sheet No. 816, FERC Electric Tariff, Third Revised Volume No. 1. Each load-serving entity shall remain responsible for its energy purchases, procurement of ancillary services, and East Central Area Reliability Coordination Agreement reserve requirements.[4]

6. The Parties agree that CG&E may establish accounting deferrals representing the difference between CG&E's current revenue

[3] It is the parties intent that this provision of the stipulation shall constitute a contract through which market participants may rely upon CG&E's reserve capacity to ensure compliance with an RTO's or state's reliability obligations, as defined by the proposed MISO day 2 tariffs at FERC Docket No. ER04-691, proposed Sheet No. 813, FERC Electric Tariff, Third Revised Volume No. 1.

[4] Original Sheet 810, Section 68 (Compliance with Existing State and Reliability Resource Organization Requirements), Module E (Resource Adequacy) of the MISO's filed Energy Markets Tariff (EMT). The East Central Area Reliability Coordination Agreement Document No. 2, Daily Operating Reserve.

requirement on the net capital investment related to CG&E's distribution business less the revenue requirement on its capital investment related to CG&E's electric distribution business approved by the Commission in Case No. 92-1464-EL-AIR, from July 1, 2004, through December 31, 2005. CG&E shall implement a rider for recovery of the accounting deferrals, effective January 1, 2006, and amortized over five (5) years. The accounting deferrals are set forth in the attached Stipulation Exhibit 2, and will be supported by the Company's filings in Case No. 04-680-EL-AIR. Stipulation Exhibit 2 shall set the amount of deferrals for the period of July 1, 2004 through December 31, 2004. CG&E shall update the amount of deferrals on Stipulation Exhibit 2 to be established and recovered for the period of January 1, 2005 through December 31, 2005 pursuant to the distribution rate case to be filed in 2005. The Parties hereby recommend that the Commission approve the accounting deferrals in this case. The Parties further recommend that the Commission approve a rate design for the recovery of the deferrals in CG&E's next electric distribution base rate case.

7. The Parties agree that CG&E will withdraw its pending distribution base rate case, Case No. 04-680-EL-AIR; will file a distribution base rate case with rates to be effective January 1, 2006; and that

increased distribution rates shall not be effective before January 1, 2006.

8. The Parties agree that CG&E's market-based standard service offer shall consist of two components, a price to compare component and a Provider of Last Resort component. The price to compare represents that portion of the market-based standard service offer that consumers switching to a competitive retail electric service provider may avoid paying to CG&E. CG&E shall set the price to compare component of its market-based standard service offer, as set forth in Column E of the attached Stipulation Exhibit 3, plus fuel and economy power purchases. The rate stabilization charge shall be part of the price to compare for the first 25% of switched load by consumer class, as set forth in paragraph 4 above, and a component of the Provider of Last Resort charge for the remaining 75% of switched load by consumer class. The Transmission cost riders described below shall be charged only to CG&E's market-based standard service offer consumers and are therefore, part of the price to compare.

9. Before December 31, 2004, CG&E shall establish a tariff applicable to first 25% of residential load to purchase competitive retail electric generation service from a competitive retail electric service provider and to residential consumers served by competitive retail electric service providers not affiliated with CG&E, such that the

applicable residential consumers receive a bill credit per kwh. The bill credits shall be limited to a total of no more than $ 7,000,000.00 for the period of January 1, 2006, through December 31, 2008, and no more than $3,000,000 in any calendar year. [5]

10. The Parties agree that CG&E shall establish transmission cost riders for non-residential consumers beginning January 1, 2005, and residential consumers beginning January 1, 2006, to recover as a pass-through charge, all Midwest Independent Transmission System Operator and Federal Energy Regulatory Commission approved transmission and ancillary service rates and charges. The first rider shall recover transmission and ancillary service costs including, but not limited to, all tariffed charges incurred by CG&E on behalf of its retail consumers under the applicable Open Access Transmission Tariff. These Open Access Transmission Tariff charges currently include the Midwest Independent Transmission System Operator's Schedule 9 – Network Integration Service, Schedule 10 - Administrative Adder, Schedule 10 - FERC, and Schedule 18 - Sub-Regional Rate Adjustment, as well as Cinergy's Open Access Transmission Tariff ancillary service charges. When the Midwest Independent Transmission System Operator's Day 2 markets become effective, it will implement Schedule 16 – Financial Transmission Rights Administrative

[5] CG&E agrees to work in good faith with the parties to draft and implement tariff language establishing the credit mechanism in Stipulation paragraph nine (9) prior to December 31, 2004.

Service Cost Recovery Adder, and Schedule 17 – Energy Market Support Administrative Service Cost Recovery Adder. All Midwest Independent Transmission System Operator's tariffed charges will be included in these riders. The second rider will recover, through a tracking mechanism, all direct and indirect transmission congestion costs, other wholesale energy market costs and congestion-related charges that CG&E pays to a third party, including the Midwest Independent Transmission System Operator, for CG&E to provide transmission service for standard service offer consumers, including energy costs, congestion costs, losses, and financial transmission rights (FTR) costs (while crediting back FTR revenues). The tracker will also recover MISO costs not covered by a schedule, such as uplift costs. These costs, which are not currently known or measurable, will be assessed to CG&E by the applicable RTO, or otherwise approved by FERC. When such costs are first incurred, CG&E will defer them until it can file for recovery of these costs with the Commission through a tracker. The transmission cost riders shall only be charged to consumers taking generation service from CG&E.

11. The Parties agree that shopping credits for all non-residential consumers shall end on December 31, 2004, and for residential consumers on December 31, 2005, except non-residential consumers that are switched on December 31, 2004, shall receive

the applicable shopping credit set forth in CG&E's transition plan stipulation approved by the Commission in Case No. 99-1658-EL-ETP and percentage of income payment plan consumers shall be eligible to receive shopping credits as set forth in paragraph 18 herein. Beginning on January 1, 2005, switched non-residential consumers shall pay the applicable Provider of Last Resort charge, and beginning January 1, 2006, residential consumers shall pay the cumulative year-two Provider of Last Resort charge, as set forth in paragraph three (3) above.

12. The Parties agree that the regulatory transition charge, as set forth in Stipulation Exhibit 4, remains a non-by-passable charge. The regulatory transition charge shall remain effective for all consumers, including residential consumers, through December 31, 2010.

13. The Parties agree that the Commission may determine and implement a competitive bidding process to test CG&E's price to compare, defined as the price to compare for the first 25% of load of each consumer class to switch to a CRES provider, against the market price. If the price to compare is significantly different than the bid price, either the Commission or CG&E may begin discussions with all Parties to continue, amend, or terminate this Stipulation.

14. The Parties agree that CG&E does not have an obligation to transfer generating assets to an Electric Wholesale Generator by December 31, 2004. CG&E has no plans to transfer generating assets to any party, other than those plans already announced. If CG&E has any plans to transfer generating assets it shall provide the Commission with written notice 60-days before the transfer of any such asset to any entity. Approval of this Stipulation shall constitute approval of an amendment to CG&E's Corporate Separation Plan with respect to the transfer of its electric generating assets in accordance with R. C. 4928.17(D).

15. The Parties agree that CG&E shall calculate the by-passable fuel cost component of the price to compare by using the average costs for fuel consumed at CG&E's plants, and economy purchase power costs, for all sales in CG&E's Certified Service Territory. CG&E shall adjust its fuel costs quarterly and shall calculate the fuel costs to be part of the price to compare by using a baseline of the fuel costs approved by the Commission in Case No. 99-103-EL-EFC. Beginning January 1, 2006, CG&E shall also calculate its fuel cost to account for voltage differentials among consumers on different rate schedules. In no instance shall fuel costs amending the price to compare be less than $ 0.00. Fuel used by CG&E's plants, and economy purchased power obtained, to serve The Union Light, Heat and Power Company load shall remain part of

the calculation of average fuel and purchase power costs until CG&E's Power Sales Agreement, Rate Schedule FERC No. 56, is terminated.

16. The Parties agree that CG&E shall extend its existing contracts for weatherization and energy assistance, pursuant to contract changes made in conjunction with the Cinergy Community Energy Partnership board, through December 31, 2008.

17. The Parties agree that CG&E shall implement a residential Demand Side Management tracker, set initially at $ 0.00. Program content shall be determined by CG&E working with Cinergy Community Energy Partnership, and Staff. CG&E shall apply for Commission approval of any proposed demand side management program and rider level.

18. CG&E shall enter into good faith discussions with the Ohio Department of Development to establish an annual arrearage crediting program for percentage of income payment program consumers. The Parties intend that the initial arrearage credit will be for the entirety of existing arrearages already recovered by CG&E, without condition, and to occur on or about December 31, 2004. Thereafter, an agreed upon arrearage crediting program shall credit arrearages already recovered by CG&E, shall retain applicable arrearages necessary to enforce current and future disconnection rules in an effort to limit the amount of arrearages,

and shall require percentage of income payment program consumers to timely pay their required percentage of income payment before they may receive a credit. If this program is approved CG&E will develop, in concert with Cinergy Community Energy Partnership, a demand side management education and energy efficiency program to educate percentage of income payment plan consumers of the opportunities available pursuant to an approved arrearage crediting program. CG&E shall also permit percentage of income payment plan consumers to receive the residential shopping credit approved by the Commission in Case No. 99-1658-EL-ETP through December 31, 2005, for the first 25% of residential load to switch to a competitive retail electric service provider conditioned upon the inclusion of such consumers toward the first 25% of residential load to switch. Implementation of these programs is conditioned upon the agreement of the Ohio Department of Development and cost recovery of the arrearages by CG&E.

19. The Parties agree that CG&E shall maintain the 5% generation rate decrease for residential consumers on CG&E's market-based standard service unless CG&E's collection of regulatory transition charges from residential consumers is not extended through December 31, 2010, in which case the residential 5% generation

decrease shall end effective immediately or January 1, 2005, whichever is later.

20. CG&E will file a Motion to Dismiss Ohio Supreme Court Case Nos. 03-1207, 03-2034, and 04-563, will cease prosecution before the Commission of any case based on its assertion that the requirements imposed on competitive retail electric service providers with respect to collateral requirements and supplier agreements apply to governmental aggregators, and will not assert this same argument in the future in any proceeding or in any dealings with governmental aggregators.

21. This Stipulation does not amend or supersede any provision of the Stipulation approved by the Commission in Case No. 99-1658-EL-ETP, except as expressly stated herein.

The Signatory Parties recommend and request that the Commission make the following findings of fact and conclusions of law in its Opinion and Order approving this Stipulation as fully described above:

Findings of fact:

1. The market-based standard service offer proposed herein, and the individual components thereof, are set at a rate such that it is not free service or service provided for less than actual cost for the purpose of destroying competition.

2. The market-based standard service offer proposed by CG&E does not give an undue or unreasonable advantage or preference to any consumer or subject any consumer to undue or unreasonable prejudice or disadvantage.

3. That portion of the market-based standard service offer proposed by CG&E to be charged to all consumers as the Provider of Last Resort charge is just and reasonable and consists of those components necessary for CG&E to provide a reliable generation supply to consumers such that it may fulfill its statutory obligation to serve.

4. CG&E has achieved twenty percent (20%) switching or effective competition in each non-residential consumer class.

5. The market-based standard service offer price, and individually the price to compare and the Provider of Last Resort components, represent the price of competitive retail electric generation service from a willing seller to willing buyers.

6. Effective competition exists for all consumer classes, as of the end of the Market Development Period for each respective consumer class, if CG&E adheres to the terms and conditions of this Stipulation.

7. Pursuant to the findings of fact set forth in paragraphs four, five, and six above, the market development period ends for all non-

residential consumer classes on December 31, 2004, and the residential consumer class on December 31, 2005.

8. The Electric Reliability and Rate Stabilization Plan stipulated to herein accomplishes generally the same market option for customers as the competitive bid process required by R. C. 4928.14(B) and no competitive bid option other than contained herein is therefore required.

9. It is just and reasonable that CG&E establish, and recover through a rider amortized over five years beginning January 1, 2006, accounting deferrals equal to the revenue requirement from July 1, 2004, through December 31, 2005, on net capital investment related to CG&E's distribution business.

10. It is just and reasonable that CG&E establish mechanisms to recover costs as follows: (1) Transmission Cost Riders to recover, in an annual proceeding as described in the application, changes in transmission costs assessed to CG&E by the applicable regional transmission organization or otherwise approved by the Federal Energy Regulatory Commission; and (2) a Demand-Side Management Cost Rider to recover the development and implementation costs for energy efficiency and load management programs agreed upon by the Cinergy Community Energy Partnership board and approved by the Commission, in an annual proceeding as described in the application.

11. It is just and reasonable for CG&E to continue to fund and recover in base rates energy efficiency programs, as approved in Case No. 99-1658-EL-ETP through December 31, 2008, or as approved by the Commission in CG&E's next distribution base rate case.

12. It is just and reasonable for CG&E to have no obligation to transfer ownership of its generation assets.

13. CG&E's collection of regulatory transition revenues from residential consumers for the period of January 1, 2009, through December 31, 2010, does not represent an increase of the charge recovering revenue requirements associated with the recovery of previously approved regulatory assets.

14. This Stipulation is supported by adequate data and information; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties representing a wide range of interests, including the Commission's Staff.

Conclusions of Law:

1. CG&E's market-based standard service offer and competitive bid process, as set forth herein, comply with R. C. Title 49, including but not limited to, R. C. Sections 4928.02, 4928.03, 4928.05, and 4928.14.

2. CG&E's market-based standard service offer, including the price to compare and Provider of Last Resort charge, is consistent with R.

C. Title 49, including but not limited to, Division B of R. C. 4905.33 and R. C. 4905.35.

3. The deferral and recovery of accounting deferrals equal to the revenue requirement from July 1, 2004, through December 31, 2005, on net capital investment related to CG&E's distribution business, is consistent with the frozen rates during the market development period required generally by R. C. Chapter 4928 and specifically by R. C. 4928.34(A)(6).

4. The approval and implementation of: (1) Transmission Cost Riders to recover, as described in the application, changes in transmission costs approved by FERC including those costs assessed to CG&E by the applicable regional transmission organization; and (2) a Demand-Side Management Cost Rider to recover the development and implementation costs for energy efficiency and load management programs agreed upon by the Cinergy Community Energy Partnership board and approved by the Commission, as described in the application, is consistent with the Commission's ratemaking authority set forth in R. C. Title 49, including, but not limited to, R. C. 4909.15, 4909.17, 4909.18, and 4909.19.

5. The end of the market development period for each consumer class, pursuant to the factual findings set forth in this Opinion and

Order, is in compliance with R. C. Title 49, including but not limited to, R. C. 4928.40.

6. The approval that CG&E may maintain ownership of its generation assets is in compliance with R. C. Chapter 4928 generally, including, but not limited to, R. C. 4928.17, 4928.18, 4928.31, and 4928.34.

7. CG&E's collection of regulatory transition revenues from residential consumers for the period of January 1, 2009, through December 31, 2010, is in compliance with R. C. 4928.40.

The undersigned hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 19th day of May, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Recommendation was sent by electronic mail to all parties of record and listed below this 19th day of May, 2004.

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.STIPULATION EXHIBIT 1

PUCO Case No. 03-93-EL-ATA
Attachment JPS-2

THE CINCINNATI GAS & ELECTRIC COMPANY
Summary of POLR Charge
Year 2005

	Amount
Emission Allowances	$ 11,030,529
Environmental Compliance	42,748,169
Homeland Security	837,275
Taxes	0
Reserve Margin	52,898,560
Total Costs to Be Recovered	$ 107,514,533
Little g Revenue for the Twelve Months Ended December 31, 2003	$ 752,156,346
Percent Increase in POLR, Before Cap	14.29%

STIPULATION EXHIBIT 1

PUCO Case No. 03-93-EL-ATA
Attachment JPS-3

THE CINCINNATI GAS & ELECTRIC COMPANY
POLR Charge Calculation
Emission Allowances

	(July 2003 - Jan 2004) 7 Months Actual	(February - June 2004) 5 Months Budget	Total
Emission Allowances			
Account 509	$ 7,750,000	$ 6,410,000	$ 14,160,000
Total Emission Allowances	$ 7,750,000	$ 6,410,000	$ 14,160,000
Total kWh Generated & Purchased for Period	10,777,000,000	7,458,000,000	18,235,000,000
EA Cost per Kwh	0.000719	0.000860	0.000777
EAs included in EFC Rate Frozen on October 6, 1999			0.000126
Change in EA Cost per Kwh			0.000651
Total kWh Sales			16,957,000,000
Amount to Be Recovered			$ 11,030,529

STIPULATION EXHIBIT 1

THE CINCINNATI GAS & ELECTRIC COMPANY
POLR Charge Calculation
Calculation of Revenue Requirement on Environmental Compliance Cost Increase
In Excess of Year 2000

Return on Environmental Plant	As of 12/31/2003	Activity	As of 6/30/2004	Amount to Be Recovered
Original Cost	$ 459,948,529		$ 459,948,529	
2001 Additions (East Bend)		$ 48,726	48,726	
2002 Additions (MF 6)		31,861,127	31,861,127	
2003 Additions (MF 7)		35,672,604	35,672,604	
2004 Additions (thru June) (EB, Stuart, Zimmer)		87,478,558	87,478,558	
	$ 459,948,529	$ 155,061,015	$ 615,009,544	
Reserve for Depreciation	$ (190,580,960)	$ (32,135,633)	$ (222,716,593)	
2001 Additions		(4,415)	(4,415)	
2002 Additions		(1,841,573)	(1,841,573)	
2003 Additions		(1,030,938)	(1,030,938)	
2004 Additions (thru June)		0	0	
	$ (190,580,960)	$ (35,012,559)	$ (225,593,519)	
Net Book Value	$ 269,367,569	$ 120,048,456	$ 389,416,025	
Construction Work in Progress at 12/31/2003		140,737,941	140,737,941	
2004 Additions (thru June)		35,184,187	35,184,187	
Total Environmental Plant	$ 269,367,569	$ 295,970,584	$ 565,338,153	
Pre-tax Return at 14.22%	$ 38,304,066		$ 80,391,085	
Environmental O&M Expenses				
Operation & Maintenance				
Year 2000	4,858,585			
July through December, 2003			1,305,839	
January through June, 2004			1,099,058	
Annualized Depreciation	9,198,971		12,900,191	
Kentucky Property Tax (East Bend Additions)			63,620	
Total Revenue Requirement	$ 52,401,624		$ 95,149,793	$ 42,748,169

PUCO Case No. 03-93-EL-ATA
Attachment JPS-5

STIPULATION EXHIBIT 1

THE CINCINNATI GAS & ELECTRIC COMPANY
POLR Charge Calculation
Homeland Security Revenue Requirement
Twelve Months Ended June 30, 2004

	Information Technology	Cyber Security	Physical Security	Total
Return on Capital Expenditures				
Original Cost	$ 136,865	$ 269,572	$ 204,250	$ 610,687
Reserve for Depreciation	0	0	0	0
Net Plant	$ 136,865	$ 269,572	$ 204,250	$ 610,687
Pre-tax Return at 14.22%	$ 19,462	$ 38,333	$ 29,044	$ 86,840
Operation & Maintenance Expenses				
Operation & Maintenance	555,374	60,520	71,250	687,144
Annualized Depreciation (at 10%)	13,687	26,957	20,425	61,069
Annualized Property Taxes	498	981	743	2,222
Amount to Be Recovered	$ 589,021	$ 126,791	$ 121,462	$ 837,275

Note: All Homeland Security Costs are incremental to the year 2000.

STIPULATION EXHIBIT 1

THE CINCINNATI GAS & ELECTRIC COMPANY
POLR Charge Calculation
Taxes
Twelve Months Ended June 30, 2004

There are no known Tax changes for this POLR calculation period.

PUCO Case No. 03-93-EL-ATA
Attachment JPS-7

STIPULATION EXHIBIT 1

THE CINCINNATI GAS & ELECTRIC COMPANY
POLR Charge Calculation
Reserve Margin
Twelve Months Ended June 30, 2004

Projected 2005 Peak MW (Switched & Non-switched) (1)		4,862	MW
Required Reserve Margin of 17%		826.54	MW
Peaking Unit Capital Cost (2)	$	64.00	per kw-year
Capital Cost of Reserve Margin	$	52,898,560	

(1) CG&E's current summer generating capacity is 5,333 MW. The projected capacity to serve The Union Light, Heat and Power Company in 2005 is 874 MW. The remaining 4,459 MW is available to meet CG&E's peak load.

(2) Annualized installed cost of a Peaking Unit using EPRI TAG costs.

Preliminary Draft

Stipulation Exhibit 2,
Increase in Distribution Revenue Requirements
(On Net Distribution-Related Capital Investment) ($000)

The Cincinnati Gas & Electric Co.

		Case No. 99-1658-EL-ETP	Current	Difference
1	Distribution Rate Base	$617,076	$836,520	$219,444
2	Rate of Return (Debt Return Only)			6.84%
3	Required Operating Income			$15,010
4	Depreciation	22,070	36,741	14,671
5	Property Taxes	32,387	48,856	16,469
6	Sub-Total (lines 3+4+5)			$46,150
7	Revenue Conversion Factor			1.0124
8	Increase in Annual Revenue Requirement			$46,722

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Settlement Document

Stipulation Exhibit 3 The Cincinnati Gas & Electric Company
Stipulation And Recommendation

Rate Schedule	"Big G"	"Little G"	Proposed EBRSP Rates: Rider RTC	RSC	"G"	POLR[1]
	A	B = A - C	C	D = 15% X B	E = B - D	F = % X B
	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh
Rate RS, Residential Service						
Summer, First 1000 kWh	5.0664	4.4180	0.6484	0.6627	3.7553	0.2209
Summer, Additional kWh	6.3534	5.5978	0.7556	0.8397	4.7581	0.2799
Winter, First 1000 kWh	5.0664	4.4180	0.6484	0.6627	3.7553	0.2209
Winter, Additional kWh	2.0546	1.6669	0.3877	0.2500	1.4169	0.0833
Rate ORH, Optional Residential Service With Electric Space Heating						
Summer, First 1000 kWh	4.7202	3.9442	0.7760	0.5916	3.3526	0.1972
Summer, Additional kWh	5.6316	4.7266	0.9044	0.7090	4.0176	0.2363
Winter, First 1000 kWh	4.7200	3.9440	0.7760	0.5916	3.3524	0.1972
Winter, Additional kWh	2.5057	2.0417	0.4640	0.3063	1.7354	0.1021
Winter, kWh greater than 150 times demand	1.6156	1.2770	0.3386	0.1916	1.0855	0.0639
Rate TD, Optional Time-of-Day Rate						
Summer, On-Peak kWh	10.6570	9.0079	1.6491	1.3512	7.6567	0.4504
Summer, Off-Peak kWh	1.6734	1.3156	0.3578	0.1973	1.1183	0.0658
Winter, On-Peak kWh	8.4072	7.0811	1.3261	1.0622	6.0189	0.3541
Winter, Off-Peak kWh	1.6739	1.3161	0.3578	0.1974	1.1187	0.0658
Rate DS, Service at Secondary Distribution Voltage						
First 1000 kW ($ per kW)	$ 7.6574	$ 7.6574	-	$ 1.1486	$ 6.5088	$ 0.6126
Additional kW ($ per kW)	$ 6.0574	$ 6.0574	-	$ 0.9086	$ 5.1488	$ 0.4845
Billing Demand Times 300	2.8588	1.9576	0.8992	0.2936	1.6640	0.1566
Additional kWh	1.6366	1.6266	0.0100	0.2440	1.3826	0.1301
Rate GS-FL, Optional Unmetered For Small Fixed Loads						
kWh Greater Than or Equal to 540 Hours	7.1760	6.5041	0.6719	0.9756	5.5285	0.5203
kWh Less Than 540 Hours	8.1484	7.4765	0.6719	1.1215	6.3550	0.5981
Rate EH, Optional Rate For Electric Space Heating						
All kWh	3.3405	2.6686	0.6719	0.4003	2.2683	0.2135
Rate DM, Secondary Distribution Service, Small						
Summer, First 2800 kWh	7.0728	5.8562	1.2166	0.8784	4.9778	0.4685
Summer, Next 3200 kWh	1.8173	1.4952	0.3221	0.2243	1.2709	0.1196
Summer, Additional kWh	0.9004	0.6520	0.2484	0.0978	0.5542	0.0522
Winter, First 2800 kWh	5.5302	4.6480	0.9822	0.6972	3.9508	0.3718
Winter, Next 3200 kWh	1.8172	1.4969	0.3203	0.2245	1.2724	0.1198
Winter, Additional kWh	0.8633	0.6191	0.2442	0.0929	0.5262	0.0495

Privileged and Confidential
Settlement Document

Stipulation Exhibit 3 The Cincinnati Gas & Electric Company
Stipulation And Recommendation

Rate Schedule	"Big G"	"Little G"	Rider RTC	RSC	"G"	POLR[1]
			Proposed EKRSP Rates			
	A	B = A - C	C	D = 15% X B	E = B - D	F = % X B
	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh	¢ per kWh
Rate DP, Service at Primary Distribution Voltage						
First 1000 kW ($ per kW)	$ 6.9150	$ 6.9150	-	$ 1.0373	$ 5.8778	$ 0.5532
Additional kW ($ per kW)	$ 5.4550	$ 5.4550	-	$ 0.8183	$ 4.6368	$ 0.4364
Billing Demand Times 300	2.8898	2.2048	0.6850	0.3307	1.8741	0.1764
Additional kWh	1.7782	1.7682	0.0100	0.2652	1.5030	0.1415
Rate TS, Service at Transmission Voltage						
First 50,000 KVA ($ per KVA)	$ 8.3830	$ 8.3830	-	$ 1.2575	$ 7.1256	$ 0.6706
Additional KVA ($ per KVA)	$ 6.0430	$ 6.0430	-	$ 0.9065	$ 5.1366	$ 0.4834
Billing Demand Times 300	1.9994	1.4404	0.5590	0.2161	1.2243	0.1152
Additional kWh	1.6461	1.6361	0.0100	0.2457	1.3924	0.1310
Rate SL, Street Lighting Service						
All kWh	3.1094	2.8804	0.2290	0.4321	2.4483	0.2304
Rate TL, Traffic Lighting Service						
All kWh	1.9148	1.6858	0.2290	0.2529	1.4329	0.1349
Rate OL, Outdoor Lighting Service						
All kWh	3.1094	2.8804	0.2290	0.4321	2.4483	0.2304
Rate NSU, Street Lighting Service for Non-Standard Units						
All kWh	3.1094	2.8804	0.2290	0.4321	2.4483	0.2304
Rate NSP, Private Outdoor Lighting for Non-Standard Units						
All kWh	3.1094	2.8804	0.2290	0.4321	2.4483	0.2304
Rate SC, Street Lighting Service - Customer Owned						
All kWh	1.3749	1.1459	0.2290	0.1719	0.9740	0.0917
Rate SE, Street Lighting Service - Overhead Equivalent						
All kWh	3.1094	2.8804	0.2290	0.4321	2.4483	0.2304
Rate UOLS, Unmetered Outdoor Lighting Electric Service						
All kWh	1.4148	1.1858	0.2290	0.1779	1.0079	0.0949

Notes:
[1] The 2005 POLR increase is 8% of "Little g" for non-residential rate schedules. For residential rate schedules, a 5% increase is shown; however, per the terms of this stipulation, the 2005 POLR increase for residential customers will not be collected in 2005, but will be included in the cumulative amount to be collected in 2006.

Stipulation Exhibit 4
19

P.U.C.O. Electric No.

Sheet No. 84.1
Cancels and Supersedes
Sheet No. 84
Page 1 of 2

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

RIDER RTC

REGULATORY TRANSITION CHARGE RIDER

APPLICABILITY

Applicable to all jurisdictional retail customers in the Company's electric service area.

CHARGE

The Regulatory Transition Charges detailed below are applicable ~~after the end of the Market Development Period~~January 1, 2005 for non-residential customers, except that they will not apply to those non-residential customers taking their energy from a Certified Supplier at the end of the Market Development Period until either the customer resumes energy procurement from CG&E or December 31, 2005, whichever is earlier. The Regulatory Transition Charges detailed below are applicable to residential customers January 1, 2006. All applicable kWh are subject to the Regulatory Transition Charge. See Section VI, Item 7 of the Electric Service Regulations for the definition of the term "Market Development Period."

~~For residential customers, these rates are effective until December 31, 2006.~~ For all ~~other customers,~~ these rates are effective through December 31, 2010.

Tariff Sheet	RTC (cents per kilowatt-hour)
Rate RS, Residential Service	

Filed pursuant to an Entry dated ~~November 21, 2000~~ in Case No. ~~99-1658-EL-ETP~~03-93-EL-ATA before the Public Utilities Commission of Ohio.

Issued: ~~December 13, 2000~~ Effective: ~~February 2, 2001~~
Issued by Gregory C. Ficke~~J. Joseph Hale, Jr.~~, President

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

Summer, First 1000 kWh	0.6484
Summer, Additional kWh	0.7556
Winter, First 1000 kWh	0.6484
Winter, Additional kWh	0.3877
Rate ORH, Optional Residential Service With Electric Space Heating	
Summer, First 1000 kWh	0.7760
Summer, Additional kWh	0.9044
Winter, First 1000 kWh	0.7760
Winter, Additional kWh	0.4640
Winter, kWh greater than 150 times demand	0.3386
Rate TD, Optional Time-of-Day Rate	
Summer, On-Peak kWh	1.6491
Summer, Off-Peak kWh	0.3578
Winter, On-Peak kWh	1.3261
Winter, Off-Peak kWh	0.3578
Rate DS, Service at Secondary Distribution Voltage	
Billing Demand Times 300	0.8992
Additional kWh	0.0100
Rate GS-FL, Optional Unmetered For Small Fixed Loads	
kWh Greater Than or Equal to 540 Hours	0.6719
kWh Less Than 540 Hours	0.6719

Filed pursuant to an Entry dated ~~November 24, 2000~~ in Case No. ~~99-1658-EL-ETP03-93-EL-ATA~~ before the Public Utilities Commission of Ohio.

Issued: ~~December 13, 2000~~ Effective: ~~February 2, 2001~~
Issued by Gregory C. Ficke~~J. Joseph Hale, Jr.~~, President

P.U.C.O. Electric No.

Sheet No. 84.1
Cancels and Supersedes
Sheet No. 84
Page 3 of 2

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

CHARGES (Contd.)

Tariff Sheet	RTC (cents per kilowatt-hour)
Rate EH, Optional Rate For Electric Space Heating	
All kWh	0.6719
Rate DM, Secondary Distribution Service, Small	
Summer, First 2800 kWh	1.2166
Summer, Next 3200 kWh	0.3221
Summer, Additional kWh	0.2484
Winter, First 2800 kWh	0.9822
Winter, Next 3200 kWh	0.3203
Winter, Additional kWh	0.2442
Rate DP, Service at Primary Distribution Voltage	
Billing Demand Times 300	0.6850
Additional kWh	0.0100
Rate TS, Service at Transmission Voltage	
Billing Demand Times 300	0.5590
Additional kWh	0.0100
Rate SL, Street Lighting Service	
All kWh	0.2290
Rate TL, Traffic Lighting Service	
All kWh	0.2290
Rate OL, Outdoor Lighting Service	
All kWh	0.2290
Rate NSU, Street Lighting Service for Non-Standard Units	
All kWh	0.2290
Rate NSP, Private Outdoor Lighting for Non-Standard Units	
All kWh	0.2290
Rate SC, Street Lighting Service - Customer Owned	
All kWh	0.2290
Rate SE, Street Lighting Service - Overhead Equivalent	
All kWh	0.2290
Rate UOLS, Unmetered Outdoor Lighting Electric Service	
All kWh	0.2290

Filed pursuant to an Entry dated ~~November 21, 2000~~ in Case No. ~~99-1658-EL-ETP03-93-EL-ATA~~ before the Public Utilities Commission of Ohio.

Issued: ~~December 13, 2000~~ Effective: ~~February 2, 2001~~
Issued by Gregory C. Ficke~~J. Joseph Hale, Jr.~~, President

EXHIBIT

1 settlement, and as a result, you know, that process
2 proceeded and we ultimately did enter into a
3 settlement agreement with a lot of the parties.
4 But it was done in the Commission offices
5 with all parties' awareness and, for the most part,
6 all parties' attendance.
7 Q. Do you know what the reference is in both
8 of these e-mails to the new item 5?
9 A. No.
10 Q. Down in the second e-mail, the one
11 from -- by the way, do you know who Joseph Kubacki
12 is?
13 A. I know the name.
14 Q. Is he with the Ohio Hospital Association?
15 A. I don't know that he's with the Ohio
16 Hospital Association, but I do recognize the name.
17 Q. Where do you recognize the name from?
18 A. I probably heard it before.
19 Q. Do you know Rick Sites?
20 A. I recognize the name. Don't think I've
21 met either one of the two, although I may have been
22 in large meetings with them.
23 Q. Do you recognize him as associated with
24 the Ohio Hospital Association?

1 A. I wouldn't -- I couldn't -- without this
2 I couldn't have told you that. If you would have
3 mentioned the name and asked me who they worked for,
4 I couldn't have told you, but seeing this in context
5 it doesn't surprise me that they're with the OHA, but
6 I would have had to have something to jog my memory.
7 Q. In your previous response, and I go back
8 to the second portion of this, it's actually a second
9 e-mail, the May 5th, 2004, it states "Note that
10 number 5 was added this afternoon at the behest of
11 one of our members, but it will not be a deal
12 breaker." Do you see that?
13 A. Yes.
14 Q. Do you believe this was part of the --
15 that appears to be a statement between the OHA and
16 CG&E. Is this part of the public process of
17 negotiating?
18 A. I have no idea what they're talking about
19 here. I can't characterize it.
20 Q. It is part of the settlement discussions
21 that you mentioned, though. Wouldn't you agree?
22 Even without knowing what No. 5 was.
23 A. I don't recall this whole No. 5 issue
24 coming up. I don't recall what it was. I don't

1 recall how it was resolved. I just don't remember
2 the substance of it. It doesn't look to be very
3 important.
4 Q. All right. I'm going to mark Exhibit 5.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 Q. Exhibit 5 is Bates stamped 347 through
7 351, it's an agreement between Cinergy Retail Sales,
8 oftentimes abbreviated CRS, and, as it states, the
9 hospitals, dated around May 19th, 2004. Have you
10 seen this document before?
11 A. I'm sure that I've seen it.
12 Q. Now turning to what's marked as Bates
13 stamp 349. Throughout this deposition I will tend to
14 use these numbers rather than the numbers on the
15 documents, 349 is at the bottom right.
16 A. That's fine.
17 Q. Paragraph 9 refers to the Ohio Hospital
18 Association supporting a stipulation filed by
19 Cincinnati Gas & Electric Company in case
20 03-93-EL-ATA. Do you see that?
21 A. Yes.
22 Q. Were you aware of this agreement of the
23 Ohio Hospital Association to support the stipulation
24 filed in the 03-93 case?

1 A. Yes.
2 Q. When did you become aware of that?
3 A. Would have been in the time frame of this
4 agreement, so it would be in May of 2004 time frame.
5 Q. And how did that come to your attention?
6 A. By reading the document I suppose.
7 Q. And how did you come by the document?
8 A. I don't recall the delivery method.
9 Q. Were agreements of this type that dealt
10 with support of the stipulation in 03-93 routinely
11 brought to your attention? Would you have seen those
12 types of documents in this time frame?
13 A. In this time frame, sure.
14 Q. So there were other agreements that you
15 saw, not just this Ohio Hospital Association
16 agreement.
17 A. Much like those that you showed me in
18 your Exhibit No. 3.
19 Q. Did you see what's marked as Exhibit 5 or
20 drafts of it before this agreement was executed?
21 A. I may have.
22 Q. So you were aware before the May
23 agreements were executed that there were negotiations
24 for support of the stipulation in 03-93?

27

A. Yes.
Q. And were those negotiations that resulted in the agreements such as that shown on Exhibit 5, were those part of a public process that involved all the parties to the 03-93 case?
A. No.
Q. I'm going to mark Exhibit 6.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. Let's set Exhibit 6 aside for a second. If you could pick up Exhibit 2. Do you have that?
A. Uh-huh.
Q. Okay. You may want to find a more comfortable position, I'm going to ask a few questions about Exhibit 2 again.
I'd like to direct your attention to what is numbered as Bates stamped 330, section 5 which states that "In the Cincinnati Gas & Electric Company's next distribution base rate case that results in a change in the Customers' rates, CG&E will file a cost of service study reflecting actual cost of service for all rate classes." And it states "CG&E shall support the future distribution rider, proposed as Rider CIR, allocated based upon distribution of net plant." Do you see that?

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A. Yes.
Q. When were you informed of a provision that dealt with CG&E's next distribution rate case in documents such as Exhibit 2?
A. I don't recall.
Q. You were a witness in the Cincinnati Gas & Electric distribution rate case; is that correct?
A. That case was settled.
Q. Not really the question. I asked -- oh, I see.
A. I'm thinking out loud. I don't recall being on the stand.
Q. I see.
A. I have to go back and think whether I submitted testimony. I believe -- I think I did.
Q. I understand. So you filed -- you had prefiled testimony but did not take the stand.
A. I believe that's right.
Q. Okay.
A. Sometimes I do testify in cases, other times I don't. I believe in that one my plan was to testify.
Q. And were you aware that there were commitments made in agreements such as that shown in Exhibit 2 regarding the manner in which CG&E would submit its next distribution rate case?

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A. I think I was generally aware of it, and I think at the time I did ask our Rate department whether these were things that we were going to do anyway, something to that effect. Is this really any -- does it really cause us any problem? Is it something that we were going to do anyway? And I believe that that was the case. It wasn't something that was binding us in any way because it was what we were going to do in any event.
Q. So do you believe that CG&E fulfilled -- the, for lack of a better word, dictates of that paragraph 5?
A. I don't think that this could dictate what we did or didn't do. My belief is that this is how we were approaching the case in any event.
Q. All right. Really my question is did the provisions of paragraph 5, did that actually come to pass?
A. I don't know.
Q. Who in the CG&E and affiliated companies negotiated these agreements?

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A. There were a number of lawyers involved. There were representatives from Cinergy Retail Sales that were involved.
Q. And who would that be?
A. From the Legal department would be Paul Colbert, Jim Gainer. From Cinergy Retail Sales, Jason Barker, Jack Farley, Uma whose last name I can never pronounce.
Q. That would be a person who's listed as the contact person in the Commission's docketing?
A. That could be.
Q. Nanjundan?
A. That's it.
Q. All right. N-a-n-j-u-n-d-a-n.
A. Chuck Whitlock. There were a number of people that I recall being involved from time to time.
Q. And that was with the negotiations.
A. Either with the -- and it depends how you define "negotiations." I mean, there's a lot of preparation for negotiations which a lot of people are involved in. They aren't all involved in sitting across the table if that's how you're defining "negotiations." I was more defining people that were

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1 involved with the process.
2 Q. Okay.
3 MR. SMALL: Let's go off the record for a
4 second.
5 (Discussion held off the record.)
6 MR. SMALL: Back on the record.
7 Q. Back to Exhibit 2, page Bates stamped 330
8 which you have in front of you, paragraph 7 states
9 "If a Customer had shopped for competitive generation
10 and is subject to a minimum stay with CG&E that
11 extends beyond January 1st, 2005, then the minimum
12 stay shall be waived" and so forth and so on. Do you
13 see that?
14 A. Uh-huh. Yes.
15 Q. What corporate entity would waive the
16 minimum stay requirement? That would be Cincinnati
17 Gas & Electric Company; is that correct?
18 A. I'm not sure.
19 Q. Are you familiar with the minimum stay
20 requirements?
21 A. Generally. Generally.
22 Q. Okay. And those minimum stay
23 requirements are the Cincinnati Gas & Electric
24 tariff, filed tariff before the Public Utilities

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1 Commission; is that correct?
2 A. Yes.
3 Q. So it would be CG&E that would have to
4 waive such a minimum stay; do you agree?
5 A. I assume so. I don't know. And I don't
6 recall this provision to be honest with you.
7 Q. And just to wrap things up, when you say
8 not familiar with this provision, not familiar with
9 that provision in this agreement or in any other
10 agreement? Or are you familiar with that kind of
11 agreement in some other agreement?
12 A. No, I'm not -- I don't recall being
13 familiar with this portion of this document and what
14 the ramifications were of it. I just don't recall
15 it.
16 Q. You don't recall any -- just to make
17 sure, you don't recall this type of provision
18 regarding minimum stay in a CRS agreement?
19 A. No. And I don't recall waiving any
20 minimum stay or a minimum stay being waived.
21 Q. At any time.
22 A. I don't recall that, no.
23 Q. Now if you could move down to paragraph
24 10 which goes between page Bates stamped 330 and 331,

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1 and it refers to an order being issued in 03-93, and
2 to quote, "which is acceptable to CG&E." Do you see
3 that?
4 A. Yes.
5 Q. Did CG&E -- remember that this is an
6 agreement in a May 2004 time frame. Did CG&E
7 determine that the PUCO order was acceptable to CG&E
8 in 03-93, the 03-93 case?
9 A. We submitted it for rehearing, so I would
10 say it was found to be not acceptable.
11 Q. Were there communications between -- that
12 informed the Cinergy Retail Sales people that a order
13 unacceptable to CG&E had been issued?
14 A. Our filing for rehearing was public.
15 Q. So are you saying that the communications
16 within your own organization would depend on people
17 being aware of filings at the PUCO?
18 A. I don't recall specifically informing
19 Cinergy Retail Sales. I do believe that they knew it
20 since the filing was a public filing.
21 Q. And I believe you also said that the same
22 legal people who represented Cincinnati Gas &
23 Electric also represented CRS; is that correct? You
24 mentioned Mr. Colbert just a few moments ago.

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1 A. Sure, they work for a number of different
2 affiliates.
3 Q. So if the same people were informed --
4 were involved, CRS would just know that fact; is that
5 correct?
6 MR. DORTCH: Objection. Go ahead and
7 answer if you can.
8 A. I don't know. I mean, I believe what
9 you're saying, but just because one person knows it
10 I'm not sure that I can say with certainty that
11 somebody else does.
12 Q. Now, that paragraph refers to, and I'm
13 over here on Bates stamp 331. "... then Cinergy
14 will provide the same economic value to the impacted
15 customers." Do you see that?
16 A. Right.
17 Q. Are you aware of a process of -- and I
18 get the word "process" in this instance, it says a --
19 "mutually acceptable process" are the last three
20 words of that paragraph. Are you aware of a mutually
21 acceptable process that undertook to provide the same
22 economic value to the contracting parties?
23 A. No.
24 Q. Is your response meant to state that you

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1 were unaware of any negotiations with the members of
2 the Ohio Energy Group after May 2004?
3 A. No.
4 Q. Okay. All right. If I understand that
5 response, you are aware that there were additional
6 negotiations with the members of the -- with the OEG
7 or the members of the OEG.
8 A. Yeah. Back to your Exhibit 3, those
9 agreements are after this time frame, and I was aware
10 of those agreements.
11 Q. Okay. And are you saying that those
12 were -- the agreements that were after the May time
13 frame and that are shown on Exhibit 3 did not result
14 from the provision on paragraph 10?
15 A. I don't believe that they did.
16 Q. You stated that you were not aware of --
17 MR. SMALL: Let's go off the record.
18 (Discussion held off the record.)
19 MR. SMALL: Let's go back on the record.
20 Q. A little while ago you mentioned who were
21 several individuals that were involved in negotiating
22 agreements between CRS and other parties in the May
23 time frame. Was there a CG&E representative involved
24 in that process considering all the provisions in

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1 this, for instance, Exhibit 5 that relate to
2 Cincinnati Gas & Electric Company?
3 A. I was involved in it.
4 Q. Okay. Anybody else besides you? You
5 were involved in the negotiations of these
6 agreements; is that correct?
7 A. I was involved in preparations of
8 information, reviewing information, those sorts of
9 things in my role as a vice president of Cinergy
10 Corp. I guess if you're asking for someone involved
11 in the negotiations who is exclusively a CG&E
12 employee, you know like maybe some of the workers on
13 the coal pile at some of the stations, they're CG&E
14 employees, they only work for a CG&E plant, I don't
15 think there was anybody involved in the negotiations
16 that was like that.
17 Q. So the only people who would be in some
18 way connected with CG&E would be you as President and
19 also legal counsel that represented more than one
20 corporation.
21 A. Yeah, and there were a number of Cinergy
22 Services folks that did work for a number of the
23 affiliates. And Legal is a good example of that,
24 being Cinergy Services and doing work for a number of

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1 different affiliates.
2 Q. Mr. Barker and Mr. Farley and
3 Ms. Nanjundan and Mr. Whitlock are all examples of
4 that?
5 A. I don't know what their classification
6 is, but I would not be surprised if they were Cinergy
7 Services employees.
8 Q. Were you referring to anybody besides
9 that group of Cinergy Services, Inc. employees that
10 would have been involved in the process of
11 negotiating those agreements?
12 A. I'm sorry, was I referring to?
13 MR. SMALL: Let's have it reread.
14 (Record read.)
15 A. No, although I just -- I don't mean for
16 that to be an exhaustive list. I didn't want you to
17 think that I had exhausted the list of people that
18 would have been involved from time to time.
19 Q. Those are the people you could think of.
20 A. Off the top of my head, yeah.
21 Q. Okay. I want to mark 6.
22 MR. DORTCH: You marked Exhibit 6.
23 Q. Okay, then I'll return to Exhibit 6.
24 A. Done with Exhibit 2?

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1 Q. Yes.
2 Now, Exhibit 6 I may have mentioned is
3 Bates stamped 320 to 326 and, again, involves Cinergy
4 Retail Sales and a group of corporations that I think
5 we just recently saw, the same corporations as shown
6 on the top of Exhibit 2. This agreement is in the
7 November 2004 time period. Have you seen this
8 document before?
9 A. I believe that I've probably seen it,
10 yes.
11 Q. And when did you first see this document?
12 A. Around the time frame that is referenced
13 in the first paragraph; November 2004.
14 Q. Okay. Would you turn to Exhibit 3 again,
15 that was the list of agreements? And you'll note the
16 pattern that I mentioned earlier, there are
17 agreements in the May time frame and then below them
18 oftentimes there is something listed in the November
19 time frame. Do you see the November agreements, for
20 instance the second line --
21 A. Yes.
22 Q. -- and the fifth line? Did you see other
23 agreements in the November time frame similar to that
24 which is shown on Exhibit 6?

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A. Yes.
Q. And are the ones that are shown on Exhibit 3 for the November time frame, have you seen those documents?
A. I can't say that I've seen every one of them.
Q. Are you generally familiar with those documents?
A. Generally familiar, yeah.
Q. And you're generally familiar in the same way that you're generally familiar with Exhibit 6?
A. Yes.
Q. I mentioned that Exhibit 2 and Exhibit 6 have the same parties. Did Exhibit 6, which is an agreement in the November time frame, result from a mutually acceptable process because Exhibit 2 was superseded or there was a rejection of the stipulation in the 03-93 case?
MR. DORTCH: Objection. There's about three questions there, Jeff.
MR. SMALL: Let's have it read back.
MR. DORTCH: Okay.
(Question read.)
Q. I think that's one question. Forget

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about the superseded part, but the real question is did the agreement on Exhibit 6 in the November time frame come about as a result of the mutually acceptable process that is mentioned on Exhibit 2?
A. I don't ever remember connecting it to that mutually acceptable processes language, but at a high level when the May 19th agreement was voided -- in my words -- through the Commission's action, I was aware that there was a process to come up with a agreement such as Exhibit 6 that would supersede that other agreement.
I didn't connect it to that specific term that you were referring to. I guess I was involved at a higher level. I didn't connect it to that term.
Q. So at a high level the, as you mentioned, voiding of the May agreements resulted in further negotiations that resulted in November agreements; is that --
A. Yes.
Q. Okay. Who was involved in negotiating those agreements in the November time frame? November 2004.
A. I would say it was primarily -- these organizations were represented by counsel. We had a

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number of attorneys that were involved in dealing with those. And as I mentioned before, there were a lot of folks internally that had their eyes on the pros, cons, and other impacts associated with entering into these agreements.
Q. Would they generally be the same individuals that you identified earlier, Mr. Colbert, Mr. Gainer, Barker, Farley, Nanjundan, and Whitlock?
A. Sure.
Q. Are you familiar with a Mr. Duff?
A. Yeah.
Q. Was he involved in this process?
A. Tim helped --
Q. That's Tim Duff?
A. Tim Duff helped Jim Gainer. To the extent that Jim Gainer was involved, Tim Duff was on his staff and was involved, sure.
Q. And you mentioned that you were, at least in background terms, were involved in the May agreements; was that also your involvement in the November agreements? I think you --
A. I would say it was similar, yeah.
Q. Okay. I'm going to mark Exhibit 7.
(EXHIBIT MARKED FOR IDENTIFICATION.)

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MR. SMALL: Let's go off the record for a second.
(Discussion held off the record.)
MR. SMALL: Let's go back on the record.
Q. Mr. Ficke, Exhibit 7 Bates stamped 353 through 357 is, again, an agreement involving Cinergy Retail Sales, at the top it shows October 28th, 2004, and it says it's with the hospitals. Have you seen this document before?
A. I'm sure that I have.
Q. And did you see it in generally the time frame that's indicated in the first paragraph?
A. Yes.
Q. I'll point out that this document has two different dates on it, it says 8th of November on the last page and October 28th on the front page, but they're close in time. When you answered that you saw it in this general time frame, you saw it generally in the late-October time frame?
A. Yes.
Q. Now, I direct your attention to page number Bates stamped 355, paragraph 9 on that page. It goes over to 356. That paragraph refers to the Ohio Hospital Association supporting an ap. for

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1 No. 3 were negotiating and, in fact, entered into
2 what I called option agreements.
3 **Q. Right. And when you refer to Exhibit 3,**
4 **you're referring to the parties in the column labeled**
5 **Party 2 and the agreements that are listed as option**
6 **agreements.**
7 A. Correct.
8 **Q. When did you become aware of the --**
9 **generally aware of the agreements that you referred**
10 **to on Exhibit 3, the option agreements?**
11 A. Around the time frame that they were
12 signed.
13 **Q. Approximately December 2004?**
14 A. Yes.
15 **Q. And how did you become aware of those**
16 **agreements?**
17 A. It would have either been through e-mail
18 or hallway conversation, a letter. I don't recall
19 how, but it could have been any one of those.
20 **Q. And are you familiar with the individuals**
21 **who worked on drafting the option agreements?**
22 A. Not firsthand, although I would have
23 assumed that Jim Gainer and Paul Colbert would have
24 been involved in that drafting.

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1 **Q. Would it have included the other**
2 **individuals that you mentioned earlier as having been**
3 **involved in the May and November negotiations?**
4 A. Yeah. You asked about the drafting
5 specifically here, but with regard to the entire
6 agreement, the individuals that I mentioned that were
7 representing Cinergy Retail Sales of course would
8 have guided the drafting of these option agreements.
9 **Q. Okay. How about Mr. Steffen who you**
10 **mentioned earlier?**
11 A. You know, I would ask -- I would ask Jack
12 that question. I am not aware of his level of
13 involvement with the option agreements, because I
14 wasn't involved. I knew he was involved in the
15 others because I was involved in those, but I don't
16 know to what extent he was involved in the option
17 agreements.
18 **Q. So you're more involved in the**
19 **negotiations over the May and November agreements and**
20 **not involved in negotiating or -- when you say**
21 **"negotiating," I'm talking about the broader context**
22 **that you were talking about, preparing and background**
23 **and so forth, you were more involved in the May and**
24 **November than in the December.**

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1 A. May and November I occasionally got
2 e-mails from the Cinergy Retail Sales representatives
3 or from the lawyers as things were going on. I don't
4 recall ever getting a copy of the option agreements
5 either drafts or finals. And I think that just
6 speaks to my level of involvement during that
7 particular time frame.
8 **Q. The time frame you're talking about is**
9 **the end of 2004.**
10 A. Correct.
11 **Q. And do you know why a third round of**
12 **negotiations were undertaken with customers such as**
13 **[redacted] which is shown on Exhibit 12?**
14 A. I believe that the previous agreements,
15 the November agreements, would have been voided by
16 the Commission's action.
17 **Q. And how is that connected with the option--**
18 **agreements that were dated around December 2004?**
19 A. I don't know that it is connected.
20 **Q. Well, my question was why were the**
21 **agreements -- third round of negotiations undertaken,**
22 **and your response was that others' second round was**
23 **voided. I don't think that's responsive to my**
24 **question which is: Why was a third round of**

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1 **negotiations and agreements undertaken?**
2 MR. DORTCH: Objection; question was
3 asked and answered.
4 MR. SMALL: Well, the question wasn't
5 answered, so . . .
6 A. The only thing that I can speculate is
7 that the Cinergy Retail Sales was interested in the
8 option and the customers were interested in, you
9 know, selling that option.
10 **Q. Previously, and I'll refer to Exhibit 6,**
11 **we had a discussion about the November agreements and**
12 **this particular agreement has to do with members of**
13 **the Ohio Energy Group. Is it your understanding that**
14 **the agreements about this time, those agreements that**
15 **we showed in Exhibit 3, were all pretty much the same**
16 **agreement, general terms and conditions?**
17 MR. DORTCH: Objection; documents speak
18 for themselves, and there's a whole lot of agreements
19 there and not all of them have been shown to the
20 witness, but --
21 MR. SMALL: I'm asking for his general
22 understanding since he doesn't know the particulars
23 of any agreements.
24 **Q. Do you have a general understanding**

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1 **whether those were patterned after a --**
2 A. My understanding is that they were all
3 different.
4 MR. SMALL: Let's go off the record for a
5 second.
6 (Discussion held off the record.)
7 MR. SMALL: Back on the record.
8 **Q. I have here in front of me, I'm not going**
9 **to make this an exhibit, but I have here in front of**
10 **me a November agreement between Cinergy Corp. and**
11 **IEU - Ohio Bates stamped 334 through 340. I'm going**
12 **to ask you to read the -- or familiarize yourself**
13 **with the bottom of 338 and the top of 339 where it**
14 **states ". . . the parties agree to use best efforts**
15 **to fulfill the intent of this agreement, by**
16 ***negotiating amendments to the agreement" so forth and***
17 **so on.**
18 MR. SMALL: Counselor, if you would like
19 to look at that, I think you have copies of it.
20 **Q. Let's mark this as an exhibit. And I'm**
21 **going to do this out of order because it's one of my**
22 **upcoming exhibits. Exhibit 14.**
23 **(EXHIBIT MARKED FOR IDENTIFICATION.)**
24 **Q. So we're on Exhibit 14 --**

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1 MR. DORTCH: It's the same document we
2 were just looking at.
3 MR. SMALL: Yes, it's the same document I
4 just handed you.
5 **Q. And at the bottom of page Bates stamped**
6 **338 and the top of 339.**
7 MR. DORTCH: Go ahead and take your time,
8 Greg, to read that.
9 A. I don't know if you want to go off the
10 record or not, but I did have one question maybe so I
11 can help everyone.
12 MR. SMALL: I don't know where he's
13 going.
14 MR. DORTCH: I don't either.
15 **Q. Is it concerning the documents or my**
16 **question?**
17 A. Yes.
18 **Q. Okay.**
19 A. Is this one of the agreements that's on
20 your Exhibit No. 3?
21 **Q. Yes, I believe it is.**
22 A. Okay. That was my question.
23 **Q. I saw you looking at Exhibit 3. Yes, I**
24 **believe you can find it under IEU.**

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1 A. And the only reason I was confused is
2 because Party 2 is Marathon, under the other one it
3 says Party 2 is GM. So is this --
4 **Q. The agreement I put before you is not an**
5 **agreement with Marathon or with GM, it's with IEU.**
6 A. So is it on this list? That was my
7 question.
8 **Q. Oh, I'm sorry.**
9 A. Is there one with GM, one with Marathon,
10 and a separate one with IEU?
11 **Q. I believe on Exhibit 3 it would be shown**
12 **as 11/8 -- it's the second line, 11/8/04, as an**
13 **agreement.**
14 A. It's shown twice on there, then, one's
15 for Marathon and one's for General Motors, but one
16 and the same document.
17 **Q. Yes.**
18 A. That's my question.
19 **Q. And that's the reason why the same date,**
20 **yes.**
21 A. Gotcha, okay. Now I understand what I'm
22 looking at.
23 **Q. So Exhibit 3 was put together by company**
24 **and it doesn't mean that there are that many**

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1 **agreements.**
2 A. I understand.
3 MR. DORTCH: And by "company" you mean --
4 MR. SMALL: By Party 2.
5 MR. DORTCH: You're referring to the --
6 MR. SMALL: By Party 2.
7 MR. DORTCH: -- "Party 2" and not by "the
8 companies" meaning the Cinergy companies.
9 MR. SMALL: I'm not going to further
10 confuse it because I don't understand that, but I
11 think the witness is clear, so . . .
12 A. You would think.
13 Okay.
14 **Q. The question is, did the option**
15 **agreements result from following through with**
16 **revisions that are shown at the bottom of 338 and the**
17 **top of 339, that is parties using their best efforts**
18 **to fulfill the intent of this agreement? Is that the**
19 **reason why the option agreements were entered into?**
20 A. You know, not being involved in the
21 option agreements I guess I can't really say from my
22 personal participation; however -- however, when the
23 November agreements were, for lack of a better term,
24 voided by the Commission's actions, you know, the

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1 option agreements then came into being, so -- but I
2 wasn't at the table negotiating those.
3 **Q. Okay. Earlier you stated that the,**
4 **although you weren't specifically negotiating the**
5 **November agreements when the May ones were, I think**
6 **the word you used was probably "voided" in that**
7 **instance too, that your high level of understanding**
8 **was that the November ones were entered into as a**
9 **result of the May ones being voided, is that also the**
10 **case here, that despite the fact you weren't involved**
11 **in the negotiation of the option agreement, that your**
12 **high-level understanding is they replaced the**
13 **November agreements?**
14 MR. DORTCH: Objection; form of the
15 question. Go ahead and answer that if you can.
16 A. This is a little bit different because a
17 new provision was inserted, you know, the existence
18 of an option under these contracts, and whether it
19 was exactly the same or not, I mean I guess I would
20 have had to have been party to those discussions to
21 really answer your question from firsthand knowledge.
22 **Q. All right, I'll mark the next exhibit.**
23 A. Excuse me, are we done with 12?
24 **Q. We're done with 12 but we will return to**

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1 **14, so why don't you just keep the 14 out. Yes. I**
2 **think you've done that right.**
3 A. Twelve was the option agreement.
4 **Q. Right. I'm marking Exhibit 13.**
5 **(EXHIBIT MARKED FOR IDENTIFICATION.)**
6 **Q. Now, we just looked -- Exhibit 14 we just**
7 **looked at, a November agreement with IEU, Exhibit 13**
8 **Bates stamped 341 through 346 is the May 2004**
9 **agreement with IEU as shown in the first paragraph.**
10 **Now if you could turn to section 3 of that, of**
11 **Exhibit 13.**
12 A. Section?
13 **Q. 343, Bates stamped 343 and section 3,**
14 **"Cinergy shall pay the Industrial Energy Users - Ohio**
15 **$100,000 as compensation for legal services." Do you**
16 **see that?**
17 A. Yes.
18 **Q. Do you know what --**
19 A. That's the second No. 3, actually.
20 **Q. Yes. Which is probably the reason why it**
21 **got confused there for a second. Yes, it's the**
22 **second No. 3.**
23 **Do you know what this payment was for?**
24 MR. DORTCH: Objection.

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1 A. Legal services.
2 **Q. What legal services were those?**
3 A. I don't know what particular documents,
4 what particular work. I don't know.
5 **Q. Do you know whether these payments were**
6 **made to Industrial Energy Users - Ohio?**
7 A. I don't know. I mean, firsthand
8 knowledge, no, I don't know.
9 **Q. Do you know as a result of seeing**
10 **reports, spreadsheets, financial statements**
11 **indirectly?**
12 A. No. I would have not seen a line item --
13 for this kind of a small payment.
14 **Q. I'm sorry, I reacted to "small payment."**
15 **Were you familiar -- are you familiar**
16 **with any other payments for legal services to any**
17 **parties other than Industrial Energy Users - Ohio?**
18 A. I couldn't say for sure. Not that I
19 recall.
20 **Q. Okay. Let's turn to Exhibit 14 which I**
21 **believe you already have. Exhibit 13 was a May 2004**
22 **agreement. Exhibit 14 is the November 2004**
23 **agreement. Section 4 on Bates stamped 337, again,**
24 **there appears -- this time there's only one paragraph**

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1 **4, and it also mentions $100,000 in compensation for**
2 **legal services to Industrial Energy Users - Ohio. If**
3 **I asked you the same questions I asked you regarding**
4 **Exhibit 13, would your responses be the same?**
5 A. Yes.
6 **Q. I'm going to refer to Exhibit 5. It's**
7 **quite a ways back in your packet so I have, for your**
8 **convenience, I have that agreement again but I'm not**
9 **going to relabel it, but this is Exhibit 5. And**
10 **that's Bates stamped 347 through 352.**
11 **Section 4 of that agreement there's a**
12 **reference to $50,000 paid to -- "Cinergy shall pay**
13 **the Ohio Hospital Association $50,000 upon issuance**
14 **of a final appealable order of the Public Utilities**
15 **Commission of Ohio satisfactory to Cinergy." If I**
16 **asked -- this is a May 2004 agreement. If I asked**
17 **the same questions that I had regarding the May 2004**
18 **agreement with IEU, would your responses be the same?**
19 **Maybe we should go through it.**
20 **Are you familiar with the --**
21 A. Yes.
22 **Q. -- payment to the Ohio Hospital**
23 **Association?**
24 A. Right. Now that I've looked at this, I

A. Yes.
Q. Your understanding of the relationship; okay.
Exhibit 6 dated close to November, it's October 28th, 2004, and Exhibit 6 is Bates stamped 353 through 357. And that's with, well, it refers to the hospitals; do you see that?
A. Yes.
Q. And is that another one of these late-2004 agreements that you were referring to in your e-mail? The negotiation of generation service to the intervenors at prespecified, contract rates.
A. I believe I was referring to this agreement also.
Q. You can set those aside.
A little bit further down in your e-mail, the same paragraph, third full paragraph, and this is sort of in the middle of that paragraph, it says, "The CRES settlement was too risky." Do you see that?
A. Yes.
Q. By "CRES settlement" you are referring to the entering into agreements of the nature of Exhibits 4, 5, and 6; is that correct?

A. Yes.
Q. What do you understand about the riskiness of the settlements? What did you mean by the settlement was too risky?
A. I recall when I wrote this memo my understanding was that the contracts were risky to serve large industrials at a fixed price given the volatile market conditions.
Q. Would you turn back to Exhibit 4 -- I apologize for asking you to turn that back in -- 334, starts with Bates stamp 334? And that's an agreement involving Cinergy Corp. and IEU and mentions Marathon, Ashland and General Motors. Is there something in this agreement which is a fixed price and nature that caused the risk that you referred to in your recent answer?
A. I don't know.
Q. You haven't analyzed the agreement that I put in front of you, Exhibit 4?
A. No.
Q. Did you ever do any analysis on this?
A. No.
Q. Did you, and specifically with respect to the risk that you referred to in your e-mail, did you

discuss that feature of the CRES settlements with anyone else in the company?
A. No. I just at the time I wrote this quick memo I recalled someone mentioning, and I don't even remember who, saying that someone had decided that the contracts were too risky.
Q. Was that somebody in the Rate department? Somebody in close proximity to your work?
A. Possibly, yes.
Q. Do you recall any analysis that was performed by your group or any others regarding the likely outcomes of moving forward with the CRES settlements? Some kind of risk analysis or anything of that nature?
A. No, I don't.
Q. All right. A little further down in your memo, same paragraph, you stated that -- it states -- that "Cinergy entered into negotiations with each of the parties." Do you see that?
A. Yes.
Q. What's your understanding about an -- additional round of negotiations?
A. Well, I recall that the November contracts contain a clause that required Cinergy

Retail Services to renegotiate with these CRS customers, this group of customers, if --
Q. Your term is "CRS" here? CRS customers?
A. Yes, the CRS.
Q. Meaning customers that had an option agreement with Cinergy Retail Sales?
MR. COLBERT: I'm going to object.
MR. SMALL: I'm not trying to be difficult, I'm just trying to distinguish CRS from CRES here.
MR. COLBERT: No; I understand. I appreciate that. But I think that you're confusing the time line because at least at this point there are no option agreements. You haven't reached that in the time line.
MR. SMALL: Okay.
MR. COLBERT: That's all. I'm trying to prevent that confusion.
MR. SMALL: Why don't we start over again and, I didn't mean to interrupt your answer, just that terminology of CRES and CRS is sometimes difficult to deal with, so why don't we have the question read back and you can respond to it again.
(Record read.)

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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 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

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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,

1 and I pick that point as when you said you joined the
2 Rate department and you worked for Cinergy Services,
3 since that time have you filled out time sheets to
4 allocate your time to one or another organization
5 within the, first the Cinergy organization, later the
6 Duke organization?
7 A. Our time reporting is done only by
8 exception.
9 Q. Exception meaning for vacations and that
10 type of thing?
11 A. Vacations and that type of thing. And
12 also if we had some long-term special project, for
13 example, you might do an exception report.
14 Q. Have you ever done an allocation of time
15 for instance to CRS or DERS, Cinergy Retail Sales or
16 Duke Energy Retail Sales?
17 A. No.
18 Q. That is -- do you fill out -- let me
19 summarize. I think what I understand is you said
20 it's only done by exception, so at the end of the
21 week or pay period or whatever you don't hand in
22 anything if there have been no exceptions.
23 A. That's correct.
24 Q. Do you know how your time gets allocated

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PAUL A. COLBERT
Senior Counsel

CINERGY.

May 8, 2000

Mr. Robert S. Tongren
Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43215

Re: PUCO Case No's. 99-1658-EL-ETP, 99-1659-EL-ATA, 99-1660-EL-ATA, 99-1661-EL-AAM, 99-1662-EL-AAM, and 99-1663-EL-UNC.

Dear Mr. Tongren:

Conditioned upon the settlement of all issues between the Office of the Ohio Consumers' Counsel (OCC) and The Cincinnati Gas & Electric Company (CG&E) in the above referenced cases, and a Commission final order adopting such settlement without material modification, CG&E agrees to enter into the following Agreement with the OCC:

1. To develop and implement, by July 1, 2001, a customer information database to track customer complaints associated with CG&E's electric and gas customers as stated below:

   a. CG&E shall accept customer complaints through its call center, in person or in writing.

   b. CG&E shall create and maintain a customer complaint coding system, interfaced with its CSS system, that enables CG&E to track and prepare periodic reports

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regarding customer complaints by certified supplier and complaint classification.

c. CG&E shall electronically distribute incoming complaints to a CG&E representative, the OCC and the affected gas marketer or certified electric supplier. Nothing prohibits CG&E from providing this information to the PUCO.

d. CG&E shall document the actions taken by it or the subject gas marketer or certified electric supplier to resolve each complaint and log such actions into the tracking system.

e. The OCC shall have access and authority to log complaints into the tracking system.

f. CG&E may defer the costs of, but shall not seek cost recovery of the development of its tracking system other than through the RTC approved in its Transition Plan Case.

g. OCC agrees and will not challenge deferral of the costs against the Transition Revenues that the Commission approves for recovery by CG&E in the above referenced cases.

2. CG&E will contribute $500,000 to a customer education campaign concerning customer choice jointly managed and designed by CG&E and OCC. Such contribution will be made within 30 days after the Final Order of the Commission in the above referenced cases. The campaign shall target residential customers in CG&E's certified territory. The goal of the campaign shall be to facilitate the implementation of competitive electric retail competition for residential customers in CG&E's certified territory in the most efficient manner practicable. OCC agrees and will not challenge deferral of the costs against the Transition Revenues that the Commission approves for recovery by CG&E in the above referenced cases. CG&E may defer the costs of, but shall not seek recovery of this contribution

other than through the RTC approved in its Transition Plan Case.

3. CG&E will contribute $250,000 to the Ohio Department of Development (ODOD) over the next two years as requested by ODOD for development programs in the State. OCC agrees with and will not challenge deferral of the costs against the Transition Revenues that the Commission approves for recovery by CG&E in the above referenced cases. CG&E may defer the costs of, but shall not seek recovery of this contribution other than through the RTC approved in its Transition Plan.

4. CG&E agrees that OCC may review CG&E's Cost Allocation Manual (CAM). Prior to reviewing the CAM, CG&E and OCC shall execute a confidentiality agreement regarding the treatment of non-public information contained in the CAM. Such confidentiality agreement shall be executed no later than December 31, 2000.

5. Pursuant to a confidentiality agreement, CG&E agrees that the OCC may review the market monitoring information that CG&E must maintain pursuant to Commission Order and Ohio Administrative Code Section 4901:1-21-02. CG&E and OCC shall enter into such confidentiality agreement no later than December 31, 2000.

The above represents the entire Agreement between CG&E and OCC and may not be amended unless agreed to by both parties in writing. The undersigned hereby execute this Agreement and each represents that it is authorized to enter into this Agreement this 8th day of May, 2000.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: Paul A. Colbert

Paul A. Colbert, Senior Counsel
Its Attorney

OHIO CONSUMERS' COUNSEL

By: Eric Stephens

Eric B. Stephens, Legal Director
Its Attorney

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OHIO CONSUMERS' COUNSEL, APPELLANT, v. PUBLIC UTILITIES COMMISSION OF OHIO ET AL., APPELLEES.

No. 2005-0945

SUPREME COURT OF OHIO

110 Ohio St. 3d 394; 2006 Ohio 4706; 853 N.E.2d 1153; 2006 Ohio LEXIS 2900

May 9, 2006, Submitted
September 27, 2006, Decided

PRIOR HISTORY: APPEAL from the Public Utilities Commission, Nos. 03-2405-EL-CSS, 04-85-EL-CSS, and 03-2341-EL-ATA. Ohio Consumers' Counsel v. PUC, 109 Ohio St. 3d 1412, 2006 Ohio 1892, 846 N.E.2d 50, 2006 Ohio LEXIS 967 (2006)

DISPOSITION: Order affirmed.

HEADNOTES: *Public utilities -- Consolidated billing by electricity-distribution company -- Costs of billing for providers of competitive retail electric service -- Expenses caused by default of provider of competitive retail electric service.*

COUNSEL: Janine L. Migden-Ostrander, Ohio Consumers' Counsel, Jeffrey L. Small, and Larry S. Sauer, for appellant.

Jim Petro, Attorney General, Duane Luckey, Senior Deputy Attorney General, and Steven T. Nourse and William L. Wright, Assistant Attorneys General, for appellee, Public Utilities Commission of Ohio.

Faruki, Ireland & Cox, P.L.L., Charles J. Faruki, and Jeffrey S. Sharkey, for intervening appellee, the Dayton Power & Light Company.

Bell, Royer & Sanders Co., L.P.A., Barth E. Royer, and Judith B. Sanders, urging affirmance for amicus curiae, Dominion Retail, Inc.

JUDGES: O'DONNELL, J. MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR and LANZINGER, JJ., concur.

OPINION BY: O'DONNELL

OPINION:

[*394] [***1155] O'DONNELL, J.

[**P1] In this appeal, the Ohio Consumers' Counsel challenges an order issued by the Public Utilities Commission of Ohio ("PUCO") that approved a 2004 agreement between the Dayton Power & Light Company ("DP&L") and several other entities, Dominion Retail, Inc., Green Mountain Energy Company, Miami Valley Communications Council, and Industrial Energy Users-Ohio, each of which had questioned DP&L's efforts to recoup the cost of changing its billing practices after the General Assembly deregulated the retail electricity market in 1999.

[**P2] The PUCO order at issue changed the way in which DP&L could recover its billing-system costs. For the reasons that follow, we affirm the PUCO's order.

Facts

[**P3] DP&L incurred the $ 18.8 million in billing-system costs at issue in this case because the statutes that deregulated electricity in Ohio required electric utilities to "unbundle" or separate the costs of electricity generation from the costs of electricity distribution. See R.C. 4928.10(C)(2) and 4928.35. As a result, DP&L developed new computer programs enabling the company to produce the type of customer bills that the statutes and PUCO regulations required in a deregulated electricity market.

[**P4] In 2000, the PUCO approved DP&L's initial plan to charge "CRES providers" for the costs associated with the billing-system changes. A CRES provider is a provider of competitive retail electric service. See Ohio Adm.Code 4901:1-10-01(F) and 4901:1-21-01(A)(10). Both Dominion Retail, Inc. and Green [*395] Mountain Energy Company -- which joined the 2004 agreement at issue -- are CRES providers.

[**P5] In the competitive retail market for electricity established by the General Assembly in 1999, cus-

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tomers have the option to choose to continue paying their original electricity provider for generation service or to select a CRES provider for that service. R.C. 4928.14. Regardless of which provider the customer selects, the electricity generated by the provider is delivered over wires owned and maintained by the electric utility, and that company can continue to charge for the delivery service.

[**P6] The PUCO requires electric utilities such as DP&L that distribute electricity to offer "consolidated billing" to the CRES providers that want to offer competing electricity generation service to retail customers in the utility company's territory. *Ohio Adm.Code* 4901:1-10-29(G). See, also, Ohio Adm.Code 4901:1-10-01(D) ("'Consolidated billing' means that a customer receives a single bill for electric services provided during a billing period" for both distribution services and generation services). Evidence in the record before us indicates that DP&L had to do substantial reprogramming of its computers to accommodate the new requirement that it offer a consolidated bill showing the unbundled charges incurred by any customer in its territory who chose to buy electricity generation service from a CRES provider while DP&L continued to provide electricity-distribution service to the customer.

[**P7] [***1156] In making its initial 2000 plan to charge CRES providers for the billing-system changes, DP&L calculated that it would have to charge $ 4.76 for each consolidated bill it generated for a CRES provider to fully recover the costs of the billing changes. DP&L concluded that potential CRES providers in its territory would not be willing to pay such a high price for the production of each customer bill, so DP&L chose to charge CRES providers $ 1.90 per bill under a one-year contract or $ 1.56 per bill under a two-year contract.

[**P8] The lesser amount did not satisfy CRES providers such as Dominion Retail and Green Mountain Energy Company, and as a result, *Dominion* filed a complaint with the PUCO in 2003, and Green Mountain then intervened to challenge the amount DP&L charged CRES providers for each consolidated customer bill DP&L generated for them. The Miami Valley Communications Council -- a regional council of governments interested in promoting competition in the retail electricity market -- likewise filed a complaint against DP&L with the PUCO in 2003 alleging that DP&L charged CRES providers excessive amounts for billing services.

[**P9] The PUCO consolidated the cases and granted motions to intervene filed by the Consumers' Counsel and Industrial Energy Users-Ohio. At a hearing before the PUCO on these complaints, Dominion Retail and Miami Valley offered [*396] evidence that the DP&L charges were "excessive and unreasonable," "discourage[d] shopping," and constituted a "barrier to competition." Expert testimony presented by the Consumers' Counsel echoed those views, describing the charges to CRES providers as "a significant impediment to competition" that would "significantly decrease the savings a residential customer would expect to realize" from switching to a new provider of retail electric-generation service.

[**P10] After several days of hearings before the PUCO in 2004, all parties except the Consumers' Counsel reached an agreement to change the way in which DP&L could recover the $ 18.8 million in billing-related costs it had incurred from 1999 to 2001. The stipulation called for DP&L to charge CRES providers only $ .20 per customer bill (to cover the cost of transmitting customer data electronically between DP&L and the CRES provider) and then -- beginning January 1, 2006 -- allowed DP&L to recover from all of its customers those costs of the billing-system changes that had been approved in an audit.

[**P11] The stipulation also provided for DP&L to recover from a CRES provider's customers any of DP&L's out-of-pocket costs resulting from the default of that CRES provider after reasonable efforts to recover from the CRES provider.

[**P12] The Consumers' Counsel refused to join the stipulation. The PUCO considered the objections raised by the Consumers' Counsel but nonetheless approved the agreement in February 2005, concluding that a reasonable arrangement would benefit ratepayers and the public. The Consumers' Counsel filed an application for rehearing, but the PUCO denied that application. This appeal followed.

Standard of Review

[**P13] "R.C. 4903.13 provides that a PUCO order shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable." *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004 Ohio 6767, P50, 820 N.E.2d 885. The court will not reverse or modify a PUCO decision as to questions of fact if the decision was not manifestly against the weight [***1157] of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004 Ohio 6896, 820 N.E.2d 921, P 29. The appellant bears the burden of demonstrating that the PUCO's decision is against the manifest weight of the evidence or is clearly unsupported by the record. Id.

[**P14] Although the court has "complete and independent power of review as to all questions of law" in

appeals from the PUCO, *Ohio Edison Co. v. Pub. Util. Comm.* (1997), 78 Ohio St.3d 466, 469, 1997 Ohio 196, 678 N.E.2d 922, the court has explained [*397] that it may rely on the expertise of a state agency like the PUCO in interpreting a law where "highly specialized issues" are involved "and where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly." *Consumers' Counsel v. Pub. Util. Comm.* (1979), 58 Ohio St. 2d 108, 110, 12 O.O.3d 115, 388 N.E.2d 1370.

Analysis

The Order Allowing DP&L to Charge Customers for the Billing-Related Changes Made by DP&L Is Reasonable

[**P15] The Consumers' Counsel contends first that the multiparty agreement approved by the PUCO is not beneficial to ratepayers and that it improperly deviates from DP&L's initial intention to recover from CRES providers rather than from consumers the $ 18.8 million cost of reprogramming DP&L's computers to accommodate new billing practices mandated by the General Assembly when the competitive retail market for electricity was established in Ohio. The PUCO, DP&L, and Dominion Retail each counter those arguments, claiming that the PUCO's approval of the agreement was entirely reasonable.

[**P16] This court applies a three-part test when evaluating the reasonableness of settlements approved by the PUCO: whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement, as a package, benefits ratepayers and the public interest; and whether the settlement package violates any important regulatory principles or practices. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 1992 Ohio 122, 592 N.E.2d 1370. See, also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St. 3d 81, 82-83, 2002 Ohio 1735, 765 N.E.2d 862.

[**P17] The Consumers' Counsel urges that the agreement in this case fails the second and third prongs of the test, alleging that consumers will pay costs under the agreement that DP&L initially planned to recover solely from CRES providers. To support its argument, the Consumers' Counsel points to a separate one-page sidebar agreement between DP&L and the Consumers' Counsel. In that sidebar agreement from June 2000, DP&L had agreed that it would "not seek recovery from residential customers" for costs associated with "billing system modifications" made by DP&L. The PUCO's failure to enforce that earlier agreement when DP&L and other parties presented their new agreement in October 2004 represented a "willful disregard of duty," according to the Consumers' Counsel.

[**P18] However, the June 2000 sidebar agreement was never filed with or approved by the PUCO, and for that reason, the PUCO refused to consider it when weighing the reasonableness of the 2004 agreement, explaining that "[u]nderstandings among parties that are important enough that the parties wish to [*398] have a means to bring them to the Commission's attention at a later time" should be [***1158] brought "to the Commission for approval" when those understandings are reached. The PUCO has taken a similar approach in past cases, and we have approved that practice. See, e.g., *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004 Ohio 6767, P14-15, 820 N.E.2d 885 (approving the PUCO's refusal to consider side agreements that had not been incorporated into the agreement at issue); *Cookson Pottery v. Pub. Util. Comm.* (1954), 161 Ohio St. 498, 505, 53 O.O. 374, 120 N.E.2d 98, citing G.C. 614-17, the predecessor of R.C. 4905.31 (contracts between a public utility and its customers that are not filed with the PUCO "shall not be lawful"). R.C. 4905.31(E) provides that no financial arrangement between a public utility and consumers "is lawful unless it is filed with and approved by" the PUCO.

[**P19] The PUCO's refusal, then, to consider the unapproved June 2000 sidebar agreement between the Consumers' Counsel and DP&L appears consistent with past practice and with the relevant statutory provision.

[**P20] The PUCO also properly applied our three-part test for weighing the reasonableness of the October 2004 agreement at issue in this case. Ample evidence in the record supports the PUCO's conclusion that the agreement would be a "benefit to ratepayers and the public interest" and would "limit[] any negative impact on competition in DP&L's territory" by doing away with DP&L's initial plan to charge CRES providers up to $ 1.90 for each consolidated electric bill prepared by the utility company.

[**P21] As the PUCO noted in its order, "it is a benefit to the ratepayers and the public interest for the parties to these cases to agree to a per-bill fee that is substantially lower than DP&L currently charges." The PUCO also explained that the 2004 agreement is consistent with standard regulatory practices because other electric and gas utility companies have been allowed to recover from their customers the same kind of billing-related charges that the agreement calls for DP&L to recover from its customers.

[**P22] The agreement also brings other benefits to the consumer. The reduced charges to CRES providers for each customer bill will lower any barrier that may have kept Dominion Retail and other competitors of DP&L from winning customers for retail electricity gen-

eration service in DP&L's territory. And because all customers benefit from having greater choices in a competitive retail electricity market, the stipulation's removal of a significant barrier to the entry of new competitors in DP&L's territory benefits all customers in that area. As a result, as one witness testified, it is reasonable to ask all customers to pay for that benefit.

[**P23] Upon review, we have concluded that the record supports the reasonableness of the PUCO's order approving the 2004 agreement and contains [*399] sufficient probative evidence to justify the PUCO's factual findings that the agreement would benefit ratepayers and the public interest and would not violate any important regulatory principles or practices. The PUCO's decision finding the agreement reasonable is therefore not "manifestly against the weight of the evidence" and is not "so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty." *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.* (2000), 88 Ohio St. 3d 549, 555, 2000 Ohio 422, 2000 Ohio 423, 728 N.E.2d 371.

The Order Allowing DP&L to Charge Customers for the Billing-Related Changes Made by DP&L Is Lawful

[**P24] The Consumers' Counsel further challenges the lawfulness of the [***1159] PUCO's order, arguing that the PUCO should not have deviated from one of its own earlier orders and should have enforced various statutory requirements that apply to utility rate increases. We conclude that the PUCO properly rejected both arguments.

[**P25] First, the Consumers' Counsel contends that in accordance with the PUCO's 2000 order, DP&L could not recover its billing-related costs from CRES providers before 2007. However, in *Consumers' Counsel v. Pub. Util. Comm.* (1984), 10 Ohio St. 3d 49, 50-51, 10 Ohio B. 312, 461 N.E.2d 303, we explained that the PUCO may change or modify earlier orders as long as it justifies any changes. The agreement reached by DP&L and the other parties in 2004, and approved by the PUCO in the proceedings below in 2005, created a new and entirely reasonable way for DP&L to recover the billing-related costs it had incurred between 1999 and 2001. As explained above, the record supported the change, and the PUCO fully explained its reasons for approving the agreement. The PUCO was not bound to adhere to an earlier arrangement that had created anticompetitive barriers to the entry of new CRES providers in DP&L's territory, and the PUCO's decision to remove those barriers by modifying an earlier PUCO order was not unlawful.

[**P26] The Consumers' Counsel next contends that the statutory requirements for utility rate increases should have been followed in the proceedings below. Under the statute cited by the Consumers' Counsel, a public utility seeking to change its existing rates for customers must "file a written application" with the PUCO and must prove at any hearing held on the request that it is "just and reasonable." R.C. 4909.18. The application for a rate increase must also be published by the PUCO in a newspaper in the utility company's territory, R.C. 4909.19, and public hearings must be held in large municipalities in the affected service area, R.C. 4903.083.

[**P27] Those specific statutory provisions were not followed in this case, as the proposal that DP&L's customers pay for the expenses it incurred to reprogram [*400] its computers between 1999 and 2001 to accommodate consolidated billing had emerged not from a formal rate-increase application but from the agreement between DP&L and the other parties in October 2004. Nonetheless, the agreement is valid, and the PUCO lawfully approved it in February 2005.

[**P28] The agreement in this case was reached in an R.C. 4905.26 complaint proceeding, not an R.C. 4909.18 rate-increase proceeding (with all of the attendant procedural requirements cited by the Consumers' Counsel). That former statutory provision was cited by CRES provider Dominion Retail and by the Miami Valley Communications Council when they filed their separate complaints against DP&L to initiate the proceedings that led to the agreement at issue several months later. In its February 2005 order approving the parties' settlement agreement, the PUCO acknowledged that the agreement "arose in the context of a complaint case" rather than in a rate-increase proceeding.

[**P29] We have repeatedly held that utility rates may be changed by the PUCO in an R.C. 4905.26 complaint proceeding such as this, without compelling the affected utility to apply for a rate increase under R.C. 4909.18. See, e.g., *Lucas Cty. Commrs. v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344, 347, 1997 Ohio 112, 686 N.E.2d 501 ("Pursuant to R.C. 4905.26 * * *, the commission may conduct an investigation and hearing, and fix new rates to be substituted for existing rates, if it determines that [***1160] the rates charged by the utility are unjust and unreasonable"); *Allnet Communications Servs., Inc. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 115, 117, 512 N.E.2d 350 ("R.C. 4905.26 is broad in scope as to what kinds of matters may be raised by complaint before the PUCO. In fact, this court has held that reasonable grounds may exist to raise issues which might strictly be viewed as 'collateral attacks' on previous orders"); *Ohio Util. Co. v. Pub. Util. Comm.* (1979), 58 Ohio St. 2d 153, 157, 12 O.O.3d 167, 389 N.E.2d 483 (in an R.C. 4905.26 proceeding, the PUCO can "order[] that new rates be put in effect").

[**P30] As R.C. 4905.26 itself provides, "any person, firm, or corporation," as well as the PUCO itself,

may file a complaint alleging that an existing or proposed utility rate or charge is unjust or unreasonable. That kind of allegation was raised by both Dominion Retail and the Miami Valley Communications Council in the proceedings below, each of which questioned the charges that DP&L imposed on CRES providers for consolidated-billing services. R.C. 4905.26 indicates that the parties to a complaint proceeding "shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses." No allegation exists that those requirements were not met in the proceedings below, and in fact the PUCO held several days of hearings on the complaints and heard from multiple witnesses, including a witness who testified on behalf of the Consumers' Counsel.

[*401] [**P31] Some of the testimony in the R.C. 4905.26 complaint proceeding before the PUCO in 2004 indicated that the PUCO's 2000 order -- which allowed DP&L to charge CRES providers for the computer-related consolidated-billing costs that it incurred between 1999 and 2001 -- was unreasonable and posed a barrier to the entry of new CRES providers in DP&L's service area. Testimony presented after most of the parties in the complaint proceeding reached their October 2004 agreement indicated that shifting the computer-related costs from CRES providers to DP&L's customers would foster competition in DP&L's service area by "mak[ing] it easier for CRES providers to offer savings to customers." Multiple witnesses also testified that the agreed resolution of the complaint proceeding was reasonable and appropriate. Relying on that evidence in the record, the PUCO approved the agreement in February 2005.

[**P32] The PUCO acted lawfully. As noted above, this court has allowed the PUCO to impose new utility rates or to change existing rates in other R.C. 4905.26 complaint proceedings, and there is no dispute that the PUCO complied with all of the procedural requirements in the statute by holding a hearing and by allowing the parties to be represented by counsel and to compel the attendance of witnesses.

The Portion of the PUCO's Order Giving DP&L Additional Protections in the Event of a CRES Provider's Default Is Also Reasonable and Lawful

[**P33] Although the Consumers' Counsel primarily focuses on the reasonableness and lawfulness of the PUCO decision permitting DP&L to charge its customers for the costs that DP&L incurred when it made software changes in order to produce unbundled consolidated customer bills, the Consumers' Counsel also challenges a provision of the PUCO order allowing DP&L to recover from a CRES provider's customers any of DP&L's out-of-pocket costs resulting from the default of that CRES provider.

[**P34] The PUCO and DP&L argue that the Consumers' Counsel should not be permitted to raise this issue because she did not first raise it in the application for [***1161] rehearing before the PUCO. Those parties are correct in that R.C. 4903.10 states, "No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application.." Yet the Consumers' Counsel *did* challenge the default recovery mechanism in the application for rehearing, and the PUCO addressed the issue in its order denying rehearing. The Consumers' Counsel has therefore properly raised the issue.

[**P35] The default-recovery mechanism approved by the PUCO is unlawful according to the Consumers' Counsel because no statutory or regulatory provisions in Ohio expressly permit that kind of financial protection to be given to an [*402] electricity distributor like DP&L. Notably, though, the Consumers' Counsel cites no statutory provisions that *disallow* the practice either.

[**P36] R.C. 4928.08(B) requires CRES providers to "provid[e] a financial guarantee sufficient to protect customers and electric distribution utilities from default," and Ohio Adm.Code 4901:1-24-08(C) allows an electricity distributor (like DP&L) to "apply for relief" at the PUCO if a CRES provider fails to maintain such a guarantee. Those provisions -- the only ones cited by the Consumers' Counsel -- do not prevent the PUCO from approving the kind of additional financial protections given to DP&L to ensure that it will not incur losses when a CRES provider in its territory defaults.

[**P37] As one witness testified before the PUCO about this so-called default recovery rider, it "establishes a reasonable and appropriate process for the recovery by DP&L of prudently incurred costs of a CRES provider default * * * [and] will protect DP&L from costs that DP&L may incur to procure replacement power to serve customers who had been served by a defaulting CRES provider." Another witness testified that because DP&L does not select CRES providers (customers do), and because DP&L does not benefit from CRES providers' services (customers do), it is reasonable for the customers of a CRES provider to reimburse an electricity distributor such as DP&L for the out-of-pocket costs DP&L incurs when the CRES provider defaults. Testimony before the PUCO also indicated that similar default recovery mechanisms currently protect natural gas distributors.

[**P38] The PUCO cited and agreed with all of that testimony, stating in its February 2005 order that the default recovery mechanism "is not prohibited by any current statute or rule" and is in fact "permissible under the current statutory system." The likelihood that DP&L will ever invoke the default recovery mechanism is

small, the PUCO noted, but it is "a reasonable method to spread the risk of the competitive market."

[**P39] The PUCO's findings as to the reasonableness of this particular provision of the 2004 agreement are supported by the record, and its legal conclusion that the provision is not unlawful is correct. The order, therefore, allowing DP&L to recover from a CRES provider's customers any of DP&L's out-of-pocket costs resulting from the default of the CRES provider was both reasonable and lawful.

Conclusion

[**P40] For the reasons explained above, the order of the PUCO that allowed DP&L (1) to shift from CRES providers to DP&L's customers the costs that DP&L incurred to update its computer software in order to provide consolidated customer bills for CRES providers in its territory and (2) to recover from a [*403] CRES provider's customers any of DP&L's out-of-pocket costs resulting from the default of the CRES provider was both reasonable and lawful. The PUCO fully explained the rationale [***1162] for its order, evidence in the record supports the PUCO's decision, and the order is not inconsistent with any statutory or regulatory requirements. Therefore, the order of the PUCO is affirmed. n1

n1 In accordance with S.Ct.Prac.R. IX(8), the Consumers' Counsel filed a list of additional authorities before the oral argument in this case. That list of citations was timely filed, and we therefore deny the PUCO's and DP&L's motions to strike the list.

Order affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR and LANZINGER, JJ., concur.

EXHIBIT

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE CONSOLIDATED DUKE ENERGY OHIO, INC. RATE STABILIZATION PLAN REMAND AND RIDER ADJUSTMENT CASES	))))	Case Nos. 03-93-EL-ATA *et al.*

AFFIDAVIT OF JOCK J. PITTS

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

I, JOCK J. PITTS, being first duly cautioned and sworn, hereby state as follows:

1. I am the President of People Working Cooperatively, Inc. ("PWC"), a Cincinnati-based, Ohio non-profit corporation whose mission is to provide critical home repairs, including weatherization services, for the very low-income elderly and disabled homeowners residing in the Duke Energy-Ohio ("DE-O") service territory. PWC has been an intervenor in the earlier phase of this proceeding (referred to as the "DE-O RSP Case"), which resulted in an Opinion and Order by the Public Utilities Commission of Ohio ("PUCO") that was overturned by the Ohio Supreme Court on appeal and remanded to the PUCO for this second phase. I make this statement in response to *Duke Energy Ohio's FirstSet of Interrogatories and Requests for Production of Documents Propounded to PWC.*

2. In response to DE-O's Interrogatories 10-12, I was party to meetings with the Office of Consumers' Counsel ("OCC") and to several conference calls with representatives of the OCC during the course of the RSP Case, the purpose of which was to discuss the possibility of reaching a stipulation among the consumer and marketer parties. In particular, on April 13,

EXHIBIT
DE-Ohio
No. 10 3-13-09

2004, I was present at a meeting at OCC's offices, attended by OCC personnel, representatives of the consumer parties and representatives of the marketer parties. Although the parties did not sign a written confidentiality agreement, OCC counsel asked at the beginning of the meeting to agree to keep the discussions held during the meeting confidential. Subsequent to the meeting, OCC counsel provided a proposed stipulation for the consumer and marketer parties' review, comment and agreement, with the proposed stipulation marked "CONFIDENTIAL SETTLEMENT OFFER MATERIAL (NOT FOR ANY OTHER USE)." All subsequent e-mail versions of the OCC proposal were similarly marked. While counsel for PWC was the addressee on e-mails from OCC and the parties participating in the negotiations with OCC, PWC counsel forwarded all communications from OCC to me personally.

3. PWC also engaged in settlement discussions with OPAE separately, although informed by its counsel that he was having similar discussions with other consumer parties. Again, no written confidentiality agreement was entered into. Rather, the parties agreed orally to keep the discussions held in pursuit of settlement of their consumer issues confidential.

Further Affiant sayeth naught.

Jock J. Pitts, President

SWORN TO AND SUBSCRIBED before me, a Notary public, this 12th day of March, 2007.

Notary Public

(SEAL)

STEFAN L. OLSON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-25-11

Date: Thu, 13 May 2004 17:53:42 -0400
From: "DENISE WILLIS" <WILLIS@occ.state.oh.us>
To: <dboehmlaw@aol.com>, <drinebolt@aol.com>, <mkurtzlaw@aol.com>,
<Dane.Stinson@BaileyCavalieri.com>, <SBLOOMFIELD@BRICKER.COM>,
<tobrien@BRICKER.COM>, <broyer@brscolaw.com>,
<Mchristensen@Columbuslaw.org>, <cgoodman@energymarketers.com>,
<KorkoszA@FirstEnergyCorp.com>, <nmorgan@lascinti.org>,
<srandazzo@mwncmh.com>, <RICKS@OHANET.ORG>,
<shawn.leyden@pseg.com>,
<Thomas.McNamee@puc.state.oh.us>, <bakahn@vssp.com>,
<mhpetricoff@vssp.com>, <wjairey@vssp.com>
Cc: "RANDY CORBIN" <CORBIN@occ.state.oh.us>,
"BRUCE HAYES" <HAYES@occ.state.oh.us>,
"BETH HIXON" <HIXON@occ.state.oh.us>,
"ANN HOTZ" <HOTZ@occ.state.oh.us>,
"RYAN LIPPE" <LIPPE@occ.state.oh.us>,
"ROSS PULTZ" <PULTZ@occ.state.oh.us>,
"DAWN REDMOND-TARKINGTON" <REDMOND@occ.state.oh.us>,
"LARRY SAUER" <SAUER@occ.state.oh.us>,
"JEFF SMALL" <SMALL@occ.state.oh.us>,
"DENISE WILLIS" <WILLIS@occ.state.oh.us>
Subject: CONFIDENTIAL Settlement Proposal

Sent on behalf of Jeff Small:

The attached Settlement Proposal is being distributed to our regular service list. Please inform me if you believe that others should receive this material.

Jeff Small
small@occ.state.oh.us

Denise Willis
Case Team Assistant
OCC
willis@occ.state.oh.us

CONFIDENTIALITY NOTICE:

THIS COMMUNICATION IS INTENDED ONLY FOR THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN CONFIDENTIAL AND/OR PRIVILEGED LEGAL GOVERNMENTAL MATERIAL. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION IS PROHIBITED. IF YOU ARE NOT OR BELIEVE THAT YOU ARE NOT THE INTENDED RECIPIENT OF THIS COMMUNICATION, DO NOT READ IT. PLEASE REPLY TO THE SENDER ONLY AND INDICATE THAT YOU HAVE RECEIVED THIS MESSAGE, THEN IMMEDIATELY DELETE IT AND ALL OTHER COPIES OF IT. THANK YOU.

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03/13/2007 07:39 4199461972 OBC PAGE 05/07

Date: Wed, 27 Oct 2004 16:30:07 -0400
From: "DENISE WILLIS" <WILLIS@occ.state.oh.us>
To: <dboehmlaw@aol.com>, <drinebolt@aol.com>, <mkurtzlaw@aol.com>,
<Dane.Stinson@BaileyCavalieri.com>, <SBLOOMFIELD@BRICKER.COM>,
<tobrien@BRICKER.COM>, <broyer@brscolaw.com>,
<Mchristensen@Columbuslaw.org>, <cgoodman@energymarketers.com>,
<KorkoszA@FirstEnergyCorp.com>, <nmorgan@lascinti.org>,
<tschneider@mgsglaw.com>, <srandazzo@mwncmh.com>,
<RICKS@OHANET.ORG>,
<shawn.leyden@pseg.com>, <Thomas.McNamee@puc.state.oh.us>,
<vern.margard@puc.state.oh.us>, <William.Wright@puc.state.oh.us>,
<bakahn@vssp.com>, <mhpetricoff@vssp.com>, <wjairey@vssp.com>
Subject: Confidential Settlement Communication in Case No. 03-93-EL-ATA

Please see the attached confidential settlement communication from Jeff Small in the above captioned case.

Please contact me if you have any trouble with this email.

Denise Willis
Case Team Assistant
OCC
willis@occ.state.oh.us

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Attachment converted: Macintosh HD:SettlementComm10-27-04.pdf (PDF /CARO) (000F6CD5)
Attachment converted: Macintosh HD:BulletResponses10-27-04.pdf (PDF /CARO) (000F6CD6)

Date: Wed, 03 Nov 2004 17:38:03 -0500
From: "DENISE WILLIS" <WILLIS@occ.state.oh.us>
To: <Mchristensen@Columbuslaw.org>, <jpitts@pwchomerepairs.org>
Subject: Fwd: Confidential Settlement Communication in Case No. 03-93-EL-ATA

As promised during your discussion today with Janine and Bruce, please find attached the confidential settlement communication from OCC, dated October 27th. Please feel free to discuss these matters with Janine or Bruce.

Thank you.

Denise Willis
Case Team Assistant
OCC
willis@occ.state.oh.us

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Date: Wed, 27 Oct 2004 16:30:07 -0400
From: "DENISE WILLIS" <WILLIS@occ.state.oh.us>
Subject: Confidential Settlement Communication in Case No. 03-93-EL-ATA
Mime-Version: 1.0
Content-Type: multipart/mixed; boundary="=_0828CDF5.B3D2BB21"

Please see the attached confidential settlement communication from Jeff Small in the above captioned case.

Please contact me if you have any trouble with this email.

Denise Willis
Case Team Assistant
OCC
willis@occ.state.oh.us

CONFIDENTIALITY NOTICE:

THIS COMMUNICATION IS INTENDED ONLY FOR THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN CONFIDENTIAL AND/OR PRIVILEGED LEGAL GOVERNMENTAL MATERIAL. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION IS PROHIBITED. IF YOU ARE NOT OR BELIEVE THAT YOU ARE NOT THE INTENDED RECIPIENT OF THIS COMMUNICATION, DO NOT READ IT. PLEASE REPLY TO THE SENDER ONLY AND INDICATE THAT YOU HAVE RECEIVED THIS MESSAGE, THEN IMMEDIATELY DELETE IT AND ALL OTHER COPIES OF IT. THANK YOU.

Attachment converted: Macintosh HD:SettlementComm10-27-04.pdf 2 (PDF /CARO) (000F849E)

01529

EXHIBIT

PREPARED BY: Counsel

15. Provide and describe all agreements between OCC and any Party to the above proceedings or any member or affiliate of a Party to the proceedings. Agreements include written or oral terms agreed upon by the participants and include, but are not limited to, protective agreements, confidentiality agreements, agreements to support or oppose any item or position, and any other commitments made among the counterparties.

RESPONSE: See General Objection Nos. 1, 3, and 5. Nonetheless, without waiving these objections, OCC states that Protective Agreements have been executed between the OCC and the following entities: Duke Energy; Duke Energy Retail Sales, LLC; Cinergy Corp.; and the Ohio Hospital Association. The former three agreements were executed with counsel who serve Duke Energy, and are readily available to Duke Energy. The Ohio Hospital Association agreement is attached.

PREPARED BY: Counsel

16. Provide any analysis by OCC or its employees, agents, contractors, experts, or persons regarding the auctions and retail or wholesale competitive prices in Ohio and any other states including, but not limited to, New Jersey, Maryland, New York, Maine, Massachusetts, Michigan, Illinois, Texas, and Georgia.

RESPONSE: See General Objection Nos. 1, 2, 3, 5, and 7. Nonetheless, without waiving these objections, OCC states that it has filed testimony, comments and/or other pleadings in Commission proceedings related to this subject matter regarding electricity, which are located on the Commission's website. For example, see Case Nos. 03-2144-EL-ATA, 04-1371-EL-ATA, 05-936-EL-ATA, 06-1112-EL-UNC, 04-169-EL-UNC, 06-1153-EL-UNC, 04-1047-EL-ATA, 03-93-EL-ATA, et al., 05-276-EL-AIR, 02-2779-EL-ATA, et al., 01-2164-EL-ORD, and 05-376-EL-UNC. Additionally, general information

EXHIBIT
DE-Ohio
D6.11 3-13-07

EXHIBIT

01532

Form **1120** Department of the Treasury Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2003 or tax year beginning _____, 2003, ending _____

▶ Instructions are separate. See page 20 for Paperwork Reduction Act Notice.

OMB No. 1545-0123

2003

A Check if a: 1 Consolidated return (attach Form 851) [X] 2 Personal holding co. (attach Sch. PH) [ ] 3 Personal service corp. (as defined in Regulations sec. 1.441-4T(c) - see instructions) [ ]

Name: Cinergy Corp.

Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions.): 139 East Fourth Street

City or town, state, and ZIP code: Cincinnati, OH 45202

B Employer identification number: 31-1385023

C Date incorporated: 06/30/1993

D Total assets (see page 8 of instructions): $14,133,049,701.

E Check applicable boxes: (1) [ ] Initial return (2) [ ] Final return (3) [ ] Name change (4) [ ] Address change

Income	1a Gross receipts or sales: 4,407,498,587. b Less returns and allowances:	c Bal ▶	1c	4,407,498,587.
	2 Cost of goods sold (Schedule A, line 8)		2	1,817,216,668.
	3 Gross profit. Subtract line 2 from line 1c		3	2,590,281,919.
	4 Dividends (Schedule C, line 19)		4	10,617,249.
	5 Interest		5	43,542,647.
	6 Gross rents		6	14,891,929.
	7 Gross royalties		7	
	8 Capital gain net income (attach Schedule D (Form 1120))		8	11,605,205.
	9 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)		9	44,017,653.
	10 Other income (see page 9 of instructions - attach schedule) See Statement 14		10	230,349,321.
	11 Total income. Add lines 3 through 10	▶	11	2,945,305,923.
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)		12	
	13 Salaries and wages (less employment credits)		13	386,258,912.
	14 Repairs and maintenance		14	22,144,606.
	15 Bad debts		15	
	16 Rents		16	61,470,947.
	17 Taxes and licenses See Statement 23		17	289,430,949.
	18 Interest		18	302,453,946.
	19 Charitable contributions (see page 11 of instructions for 10% limitation) See Statement 36		19	3,901,792.
	20 Depreciation (attach Form 4562) 20: 548,403,888.			
	21 Less depreciation claimed on Schedule A and elsewhere on return 21a:		21b	548,403,888.
	22 Depletion		22	
	23 Advertising		23	1,052,646.
	24 Pension, profit-sharing, etc., plans		24	
	25 Employee benefit programs		25	220,045,177.
	26 Other deductions (attach schedule) See Statement 38		26	851,112,869.
	27 Total deductions. Add lines 12 through 26	▶	27	2,686,275,732.
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28	259,030,191.
	29 Less: a Net operating loss (NOL) deduction (see page 13 of instructions) 29a:			
	b Special deductions (Schedule C, line 20) 29b: 132,300.		29c	132,300.
Tax and Payments	30 Taxable income. Subtract line 29c from line 28		30	258,897,891.
	31 Total tax (Schedule J, line 11)		31	58,163,473.
	32 Payments: a 2002 overpayment credited to 2003 32a: 32,000,000.			
	b 2003 estimated tax payments 32b: 28,000,000.			
	c Less 2003 refund applied for on Form 4466 32c: ( ) d Bal ▶	32d: 60,000,000.		
	e Tax deposited with Form 7004	32e: 6,000,000.		
	f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f:		
	g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g: 66,587.	32h	66,066,587.
	33 Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached ▶ [X]		33	NONE
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed		34	
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		35	7,903,114.
	36 Enter amount of line 35 you want: Credited to 2004 estimated tax ▶ 7,903,114. Refunded ▶		36	

Sign Here: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer: Ronald Peisey | 09/10/2004 | Vice President

May the IRS discuss this return with the preparer shown below (see instructions)? [ ] Yes [ ] No

Paid Preparer's Use Only: Preparer's signature ▶ [redacted] Check if self-employed [ ] Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶ EIN Phone no.

JSA 3C1110 2.000

Form **1120** (2003)

Schedule A Cost of Goods Sold (see page 14 of instructions)

1	Inventory at beginning of year	1	237,665,055.
2	Purchases	2	477,616,585.
	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) See Statement 53	5	1,314,860,257.
6	Total. Add lines 1 through 5	6	2,030,141,897.
7	Inventory at end of year	7	212,925,229.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1	8	1,817,216,668.

9 a Check all methods used for valuing closing inventory:

(i) ☐ Cost as described in Regulations section 1.471-3

(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4

(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☒ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

Schedule C Dividends and Special Deductions (see instructions beginning on page 15)

		(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	189,000.	70	132,300.
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations (section 246A)			
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))		100	
9	Total. Add lines 1 through 8. See page 16 of instructions for limitation Stmt.			132,300.
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))		100	
12	Dividends from affiliated group members subject to the 100% deduction (section 243(a)(3))		100	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11	5,852,618.		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)	4,575,631.		
15	Foreign dividend gross-up (section 78)			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1 ▶	10,617,249.		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1 ▶			132,300.

Schedule E Compensation of Officers (see instructions for line 12, page 1, on page 10 of instructions)

Note: *Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are $500,000 or more.*

	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
1	Information available in		%	%	%	
	taxpayer's office		%	%	%	
			%	%	%	
			%	%	%	
			%	%	%	

2 Total compensation of officers

3 Compensation of officers claimed on Schedule A and elsewhere on return

4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1

Schedule J Tax Computation (See page 17 of instructions)

1 Check if the corporation is a member of a controlled group (see sections 1561 and 1563) ▶ ☐
Important: Members of a controlled group, see instructions on page 17.

a If the box on line 1 is checked, enter the corporation's share of the $50,000, $25,000, and $9,925,000 taxable income brackets (in that order):
(1) (2) (3)

b Enter the corporation's share of: (1) Additional 5% tax (not more than $11,750)
(2) Additional 3% tax (not more than $100,000)

3 Income tax. Check if a qualified personal service corporation under section 448(d)(2) (see page 17) ▶ ☐		3	90,614,262.
4 Alternative minimum tax (attach Form 4626)		4	NONE
5 Add lines 3 and 4		5	90,614,262.
6a Foreign tax credit (attach Form 1118)	6a		
b Possessions tax credit (attach Form 5735)	6b		
c Check: [X] Nonconventional source fuel credit ☐ QEV credit (attach Form 8834)	6c	32,450,789.	
d General business credit. Check box(es) and indicate which form are attached. [X] Form 3800 ☐ Form(s) (specify) ▶	6d	NONE	
e Credit for prior year minimum tax (attach Form 8827)	6e		
f Qualified zone academy bond credit (attach Form 8860)	6f		
7 Total credits. Add lines 6a through 6f		7	32,450,789.
8 Subtract line 7 from line 5		8	58,163,473.
9 Personal holding company tax (attach Schedule PH (Form 1120))		9	
10 Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8697 ☐ Form 8866 ☐ Other (attach schedule)		10	
11 Total tax. Add lines 8 through 10. Enter here and on line 31, page 1		11	58,163,473.

Schedule K Other information (see page 19 of instructions)

1 Check method of accounting: a ☐ Cash
b [X] Accrual c ☐ Other (specify) ▶

2 See page 21 of the instructions and enter the:
a Business activity code no. ▶ 221100
b Business activity ▶ Comb Utility Serves
c Product or service ▶ Dist of Gas & Elec

	Yes	No
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) See Form 851 If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.	X	
4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
5 At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned ▶		X
6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 5452, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		X
7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation? If "Yes," enter: (a) Percentage owned ▶ and (b) Owner's country ▶ c The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached ▶		X
8 Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ ☐ If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
9 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ 475,858.		
10 Enter the number of shareholders at the end of the tax year (if 75 or fewer) ▶		
11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ▶ ☐ If the corporation is filing a consolidated return, the statement required by Temporary Regulations section 1.1502-21T(b)(3)(i) or (ii) must be attached or the election will not be valid.		
12 Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.) ▶ $		
13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶ $		X

Note: *If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.*

Note: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		161,649,350.		170,089,137.
2a Trade notes and accounts receivable	1,540,055,299.		1,453,617,380.	
b Less allowance for bad debts	( )	1,540,055,299.	( )	1,453,617,380.
3 Inventories		237,665,055.		212,925,229.
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)		177,052,173.		184,825,738.
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)		801,580,309.		933,390,321.
10a Buildings and other depreciable assets	13,639,353,948.		14,164,900,747.	
b Less accumulated depreciation	5,147,043,063.	8,492,310,885.	4,998,885,321.	9,166,015,426.
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets (attach schedule)		1,896,715,137.		2,012,186,470.
15 Total assets		3,307,028,208.		4,133,049,701.
Liabilities and Shareholders' Equity				
16 Accounts payable		1,457,525,914.		1,338,982,082.
17 Mortgages, notes, bonds payable in less than 1 year		-53,258,638.		-24,148,001.
18 Other current liabilities (attach schedule)		421,304,640.		413,798,810.
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more		4,875,336,794.		4,906,407,679.
21 Other liabilities (attach schedule)		2,911,344,852.		3,679,265,654.
22 Capital stock: a Preferred stock	371,015,201.		62,818,000.	
b Common stock	1,686,631.	372,701,832.	1,784,384.	64,602,384.
23 Additional paid-in capital		1,918,135,803.		2,211,979,325.
24 Retained earnings-Appropriated (attach schedule)		484,000.		609,000.
25 Retained earnings - Unappropriated		1,403,453,011.		1,541,552,758.
26 Adjustments to shareholders' equity (attach schedule)				
27 Less cost of treasury stock		( )		( )
28 Total liabilities and shareholders' equity		3,307,028,208.		4,133,049,701.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 20 of instructions)

1 Net income (loss) per books	469,771,551.	7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books	137,786,192.		
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		See Statement 183	70,252,847.
See Statement 171	174,253,203.	8 Deductions on this return not charged against book income this year (itemize):	
5 Expenses recorded on books this year not deducted on this return (itemize):		a Depreciation $	
a Depreciation $		b Charitable contributions $	
b Charitable contributions $			
c Travel and entertainment $		See Statement 184	468,238,706.
See Statement 174	196,333,508.	9 Add lines 7 and 8	1,097,973,284.
6 Add lines 1 through 5	1,357,003,475.	10 Income (line 28, page 1) - line 6 less line 9	259,030,191.

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	1,403,453,011.	5 Distributions: a Cash	322,558,707.
2 Net income (loss) per books	469,771,551.	b Stock	
3 Other increases (itemize):		c Property	
		6 Other decreases (itemize): Stmt 193	11,211,425.
See Statement 193	2,098,328.	7 Add lines 5 and 6	333,770,132.
4 Add lines 1, 2, and 3	1,875,322,890.	8 Balance at end of year (line 4 less line 7)	1,541,552,758.

Consolidated Schedules

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		Combined	Combination Elimination	Adjustments	Cinergy Corp.
1 a	Gross receipts or sales	5,088,174,887.	-680,676,300.		4,407,498,587.
1 b	Less returns and allowances				
1 c	Balance	5,088,174,887.	-680,676,300.		4,407,498,587.
2	Cost of goods sold	2,664,605,297.	-847,388,539.		1,817,216,668.
3	Gross profit	2,423,569,590.	166,712,239.		2,590,281,919.
4	Dividends	10,617,249.			10,617,249.
5	Interest	275,046,601.	-231,503,954.		43,542,647.
6	Gross rents	15,962,088.	-1,070,159.		14,891,929.
7	Gross royalties				
8	Capital gain net income	64,581,616.		-52,976,411.	11,605,205.
9	Net gain or (loss) from Form 4797	-2,890,711.		46,908,364.	44,017,653.
10	Other income	671,788,880.	-441,439,559.		230,349,321.
11	Total income	3,458,975,403.	-507,301,433.	-6,368,047.	2,945,305,923.
12	Compensation of officers				
13	Salaries and wages	386,258,912.			386,258,912.
14	Repairs and maintenance	24,830,019.	-2,685,413.		22,144,606.
15	Bad debts				
16	Rents	81,322,090.	-19,851,143.		61,470,947.
17	Taxes and licenses	308,168,454.	-18,737,505.		289,430,949.
18	Interest	530,527,026.	-228,073,080.		302,453,946.
19	Charitable contributions	3,901,792.			3,901,792.
20	Depreciation	548,403,888.			548,403,888.
21 a	Less depreciation claimed elsewhere				
21 b	Net depreciation	548,403,888.			548,403,888.
22	Depletion				
23	Advertising	1,052,646.			1,052,646.
24	Pension, profit-sharing, etc. plans				
25	Employee benefit programs	220,045,177.			220,045,177.
26	Other deductions	602,546,943.	248,565,926.		851,112,869.
27	Total deductions	2,707,056,947.	-20,781,215.		2,686,275,732.
28	Taxable income before NOL & Spec. Deductions	751,918,456.	-486,520,218.	-6,368,047.	259,030,191.
29 a	NOL deduction				
29 b	Special deductions	132,300.			132,300.
30	Taxable income	751,786,156.	-486,520,218.	-6,368,047.	258,897,891.

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Consolidated Schedules 1120 Page 1	Cinergy Corp. 31-1385023	Brownsville Power I LLC 76-0580178	Caledonia Power I LLC 76-0580189	CinCap Madison LLC DIVISION	CinCap VII LLC DIVISION	CinCap VIII LLC DIVISION	Cinergy Centrus Communications, Inc. 31-1624694	Cinergy Centrus, Inc. 31-1605377
1 a Gross receipts or sales	25,512.	3,807,102.	3,035,444.	437,080.				
1 b Less returns and allowances								
1 c Balance	25,512.	3,807,102.	3,035,444.	437,080.				
2 Cost of goods sold	5,524,091.	3,311,810.	3,849,377.	2,877,846.	58,716.		120.	
3 Gross profit	-5,498,579.	495,292.	-813,933.	-2,440,766.	-58,716.		-120.	
4 Dividends								
5 Interest	105,511,131.	764,339.	2,161,371.	421,579.	68,454.			16,835
6 Gross rents								
7 Gross royalties								
8 Capital gain net income			67,328.					
9 Net gain or (loss) from Form 4797		-3,822.	-8,553.					
10 Other income	456,932,359.	6,469.	3,660.	2,347,385.	34.			
11 Total income	556,944,911.	1,263,260.	1,412,881.	328,198.	9,772.		-120.	16,835
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	484,295.	399,818.	1,155,287.	368,223.	1,338.		150.	50
18 Interest	85,656,190.	91,477.	305,498.	91,252.	35,762.		23,763.	
19 Charitable contributions	69,840.		12,791.					
20 Depreciation	1,099,218.	20,455,902.	21,159,363.	12,359,166.	3,284,856.			
21 a Less depreciation claimed elsewhere								
21 b Net depreciation	1,099,218.	20,455,902.	21,159,363.	12,359,166.	3,284,856.			
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs	-4,175,555.							
26 Other deductions	20,662,482.	103,271.	126,311.	18,147.	6,739.			
27 Total deductions	103,776,448.	21,250,468.	22,759,217.	12,816,788.	3,328,755.		23,913.	50
28 Taxable income before NOL & Spec. Deductions	453,168,471.	-19,987,208.	-21,346,336.	-12,508,590.	-3,318,983.		-24,041.	16,785
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	453,168,471.	-19,987,208.	-21,346,336.	-12,508,590.	-3,318,983.		-24,041.	16,785

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Consolidated Schedules

1120 Page 1	Cinergy Energy Solutions, Inc. 31-1738310	Cinergy Engineering, Inc 31-1521743	Cinergy EPCON College Park LLC DIVISION	...ergy EPCON LLC DIVISION	Cinergy e-Supply Network LLC DIVISION	Cinergy GASCO Solutions LLC DIVISION	Cinergy Global Chandler Holding Inc. 31-1738409	.inergy Global Chandler I, Inc. 31-1738139
1a Gross receipts or sales				41,974.		503,381.		145,889
1b Less returns and allowances								
1c Balance				41,974.		503,381.		145,889
2 Cost of goods sold		1,313.	-157,314.	36,698.		625,207.		37,363
3 Gross profit		-1,313.	157,314.	5,276.		-121,826.		108,526
4 Dividends								
5 Interest								
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								634,919
9 Net gain or (loss) from Form 4797								281,461
10 Other income						NONE		2,556
11 Total income		-3,313.	157,314.	5,276.		-121,826.		1,027,462
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses		208.	188.	112.	100.	359.		50
18 Interest		63,217.	323,530.	264,671.	419,055.	372,606.		1
19 Charitable contributions								
20 Depreciation								266,672
21a Less depreciation claimed elsewhere								
21b Net depreciation								266,672
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc., plans								
25 Employee benefit programs								
26 Other deductions		29.				520,590.		NONE
27 Total deductions		63,454.	323,670.	264,783.	419,155.	892,555.		266,723
28 Taxable income before NOL & Spec. Deductions		-66,767.	-166,356.	-259,507.	-419,155.	-1,015,381.		760,739
29a NOL deduction								
29b Special deductions								
30 Taxable income		-66,767.	-166,356.	-259,507.	-419,155.	-1,015,381.		760,739

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Consolidated Schedules

1120 Page 1	Cinergy Global Ely, Inc. 31-1637639	Cinergy Global Foote Creek II, Inc. 31-1697009	Cinergy Global Foote Creek IV, Inc. 31-1732375	Cinergy Global Foote Creek, Inc 31-1681477	Cinergy Global Holdings, Inc. 31-1637643	Cinergy Global One, Inc. 31-1698275	Cinergy Global Power, Inc. 31-1873140	Cinergy Global Resources, Inc. 31-1800199
1 a Gross receipts or sales		66,496.	943,262.	2,106,461.				
1 b Less returns and allowances								
1 c Balance		66,496.	943,262.	2,106,461.			2,409,863.	6,077,379.
2 Cost of goods sold		62,055.	303,306.	780,165.			-2,409,863.	-6,077,379.
3 Gross profit		4,441.	639,956.	1,326,296.			10,428,249.	
4 Dividends							490,885.	11,395,461
5 Interest			3,834.					
6 Gross rents								
7 Gross royalties							NONE	
8 Capital gain net income		111,401.	5,821,922.	8,123,425.				
9 Net gain or (loss) from Form 4797		22,635.	8,252,059.	14,276,327.			-8,476,264.	17,326
10 Other income		NONE	584,966.	121,752.			33,007.	5,334,809
11 Total income		138,540.	15,302,328.	23,847,800.				
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents							21,930.	101,412
17 Taxes and licenses		50.	50.	190.			5,672,295.	16,410,331
18 Interest		1.	916,455.	711,053.				
19 Charitable contributions								
20 Depreciation		50,420.	1,202,841.	1,827,563.				
21 a Less depreciation claimed elsewhere								
21 b Net depreciation		50,420.	1,202,841.	1,827,563.				
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								-667,530
25 Employee benefit programs								
26 Other deductions		67.	65,500.	87,998.		NONE	3,016,363.	6,201,777
27 Total deductions		50,538.	2,184,844.	2,626,744.		NONE	8,710,508.	22,121,190
28 Taxable income before NOL & Spec. Deductions		88,010.	13,117,384.	21,221,036.		NONE	-8,677,581.	-16,787,381
29 a NOL deduction								
29 b Special deductions								
30 Taxable income		88,010.	13,117,384.	21,221,036.		NONE	-8,677,581.	-16,787,381

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Consolidated Schedules

1120 Page 1	Cinergy Global San Gorgonio, Inc. 31-1621582	Cinergy Investments, Inc 31-1421190	Cinergy Marketing & Trading, LP 76-0483617	Cinergy Ons, Inc 31-1751104	Cinergy Power Generation Services LLC DIVISION	Cinergy Power Investments, Inc 31-1758336	Cinergy Retail Power General, Inc. 31-1814320	Cinergy Retail Power Limited, Inc. 31-1814321
1a Gross receipts or sales			196,553,092.	3,707,887.	168,141,547.			
1b Less returns and allowances								
1c Balance			196,553,092.	3,707,887.	168,141,547.			
2 Cost of goods sold		886,317.	159,758,521.	3,125,469.	78,138,346.			
3 Gross profit		-886,317.	36,794,571.	582,418.	90,003,201.			
4 Dividends								
5 Interest		80,717,659.	180,456.	1,474.	1,894,393.			
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income		8,842,874.	37,993,986.	3,789.	1,071,721.			
11 Total income		87,874,316.	74,969,015.	587,681.	92,979,317.			
12 Compensation of officers								
13 Salaries and wages					17,384,803.			
14 Repairs and maintenance					207,126.			
15 Bad debts								
16 Rents					2,493,276.			
17 Taxes and licenses	50.	149,934.	1,111,100.	91,316.	5,948,326.			
18 Interest	2,161.	75,963,999.	5,731,732.	61,814.	20,023.			
19 Charitable contributions					7,827.			
20 Depreciation			928,382.					
21a Less depreciation claimed elsewhere								
21b Net depreciation			928,382.					
22 Depletion								
23 Advertising					14,655.			
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs			504,212.		30,312,128.			
26 Other deductions		55,565.	14,431,876.	434,240.	42,801,368.			
27 Total deductions	2,211.	76,169,498.	22,707,171.	577,370.	99,239,532.			
28 Taxable income before NOL & Spec. Deductions	-2,211.	11,704,818.	52,261,844.	10,311.	-7,160,215.			
29a NOL deduction								
29b Special deductions								
30 Taxable income	-2,211.	11,704,818.	52,261,844.	10,311.	-7,160,215.			

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Consolidated Schedules 1120 Page 1	Cinergy Services Inc. 31-1413889	Cinergy Solutions Holding Company, Inc. 31-1503859	Cinergy Solutions of Philadelphia LLC 31-1785993	Cinergy Solutions of Tuscola, Inc. 31-1624696	Cinergy Solutions, Inc. 31-1735253	Cinergy Supply Network, Inc. 31-1582985	Cinergy Technologies, Inc. 31-1734648	Cinergy Technology, Inc. 35-1851260
1a Gross receipts or sales	470,487,424.		6,044,607.					
1b Less returns and allowances								
1c Balance	470,487,424.		6,044,607.					
2 Cost of goods sold	2,133,661.	3,109,830.	3,136,596.	-70,747.	5,788,295.	17,222.	1,068.	225
3 Gross profit	468,354,033.	-3,109,830.	908,101.	70,747.	-5,788,295.	-17,222.	-1,068.	-225
4 Dividends								
5 Interest	1,826,431.	31,836.	80.	121.	9,523,267.	1,467,013.	7,559,410.	151
6 Gross rents								
7 Gross royalties								
8 Capital gain net income		22,626,693.						
9 Net gain or (loss) from Form 4797		162,291.				-861.		
10 Other income	2,202,253.	2,359,843.	1,679.	37,522.	33,623,978.	15.	30.	
11 Total income	472,176,701.	21,778,833.	909,659.	108,481.	15,218,950.	1,449,945.	7,558,372.	-74
12 Compensation of officers								
13 Salaries and wages	232,997,473.							
14 Repairs and maintenance	5,356,376.							
15 Bad debts								
16 Rents	40,887,555.							
17 Taxes and licenses	12,353,235.	-6,769.	47,180.	114,882.	329,379.	-4,980.	162.	268
18 Interest	35,086.	5,106,584.	294,445.	3,539,087.	3,650,104.	1,481,324.	7,516,954.	200,511
19 Charitable contributions						2,770.		
20 Depreciation								
21a Less depreciation claimed elsewhere								
21b Net depreciation								
22 Depletion								
23 Advertising	473,040.							
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs	61,685,772.	1,266,957.	18,989.		50,573.			
26 Other deductions	117,138,130.	9,411.	58,991.	379,805.	34,638,877.	326,365.	8,220,085.	6
27 Total deductions	472,176,709.	11,876,153.	415,605.	3,833,784.	50,865,933.	1,815,329.	15,737,201.	200,785
28 Taxable income before NOL & Spec. Deductions	NONE	10,696,680.	490,054.	-3,725,303.	-45,625,983.	-365,384.	-8,178,829.	-200,859
29a NOL deduction								
29b Special deductions								
30 Taxable income	NONE	10,696,680.	490,054.	-3,725,303.	-45,625,983.	-365,384.	-8,178,829.	-200,859

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Consolidated Schedules 1120 Page 1	Cinergy Telecommunications Holding Company, I 31-1480521	Cinergy Transportation LLC 31-1735909	Cinergy Two, Inc [illegible]	[illegible]rgy UK, Inc. [illegible]-1481522	Cinergy Ventures LLC DIVISION	Cinergy Wholesale Energy Inc. 31-1742083	Cinergy-Cadence, Inc. 35-1893018	[illegible]inTec I LLC DIVISION
1a Gross receipts or sales	-23,540.							
1b Less returns and allowances								
1c Balance	-23,540.							
2 Cost of goods sold	-15,489.	183,987.						
3 Gross profit	-8,059.	-183,987.						
4 Dividends								
5 Interest	5,821.	373.			377,333.	702,052.		6.
6 Gross rents								
7 Gross royalties								
8 Capital gain net income					NONE			
9 Net gain or (loss) from Form 4797	-245,016.							
10 Other income	NONE				6,484.	748,453.	NONE	NONE
11 Total income	-249,054.	-183,614.			383,817.	1,450,505.	NONE	6.
12 Compensation of officers								
13 Salaries and wages					1,718,673.			
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	275.		50.	50.	45,668.	503,569.	154.	
18 Interest	3,219,683.	43.	16.	5,283,601.	6,446,886.	637,307.	363,507.	
19 Charitable contributions								
20 Depreciation								
21a Less depreciation claimed elsewhere								
21b Net depreciation								
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	1,061,651.				2,092,488.	NONE		1,325,125.
27 Total deductions	4,281,609.	43.	66.	5,283,651.	10,303,715.	1,140,876.	363,661.	1,325,125.
28 Taxable income before NOL & Spec. Deductions	-4,529,663.	-183,657.	-66.	-5,283,651.	-9,919,898.	309,629.	-363,661.	-1,325,119.
29a NOL deduction								
29b Special deductions								
30 Taxable income	-4,529,663.	-183,657.	-66.	-5,283,651.	-9,919,898.	309,629.	-363,661.	-1,325,119.

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Consolidated Schedules 1120 Page 1	CinTec LLC 33-[illegible]	CPI Allowance Management, LLC 22-3448549	CPI Investments, LLC 51-0414706	CSGP of Southwest Texas LLC [illegible]	KO Transmission Company [illegible]	Lansing Grand River Utilities LLC [illegible]	Lawrenceburg Gas Company 35-0463130	Miami Power Corporation 31-6037703
1 a Gross receipts or sales					1,518,281.		10,924,920.	19,090.
1 b Less returns and allowances								
1 c Balance					1,518,281.		10,924,920.	19,090.
2 Cost of goods sold				1,583,061.	482,613.	105,646.	9,177,264.	
3 Gross profit				-1,583,061.	1,035,668.	-105,646.	1,747,656.	19,090.
4 Dividends								
5 Interest			2,751,018.	71.		158,385.	363.	
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797							-79,550.	
10 Other income	NONE	10,384,761.	19,123,562.	117,344.	20,368.	18.	11,881.	4
11 Total income	NONE	10,384,761.	21,874,580.	-1,465,746.	1,056,036.	52,757.	1,680,330.	19,094
12 Compensation of officers								
13 Salaries and wages			7,140.		326,961.		115,886.	530
14 Repairs and maintenance					270.		168,005.	
15 Bad debts								
16 Rents			5,712.		2,474.		54,481.	
17 Taxes and licenses	300.	6,200.	510.	394,010.	25,645.	5,516.	512,457.	20,847
18 Interest	938,399.	2,751,018.		1,820,829.	1.		45,704.	
19 Charitable contributions					24.		71.	
20 Depreciation					106,755.		1,209,219.	659
21 a Less depreciation claimed elsewhere								
21 b Net depreciation					106,755.		1,209,219.	659
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs				122,349.	58,050.		231,030.	197
26 Other deductions	1,084,526.	837,686.	840,943.	106,645.	58,220.	18,225.	335,363.	573
27 Total deductions	2,023,125.	3,594,904.	854,313.	2,343,833.	580,190.	23,743.	2,672,314.	22,806
28 Taxable income before NOL & Spec. Deductions	-2,023,125.	6,789,857.	21,020,267.	-3,809,579.	475,846.	29,014.	-991,984.	-3,712
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	-2,023,125.	6,789,857.	21,020,267.	-3,809,579.	475,846.	29,014.	-991,984.	-3,712

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Consolidated Schedules 1120 Page 1	Cinergy Global Peak Table I, Inc.	SynCap I LLC	Syncap II LLC	Cincinnati Gas & Electric Company	The Union Light, Heat & Power Company	Tri-State Improvement Company	Vestar, Inc.	3036243 Nova Scotia Co.
	31-1773727	DIVISION	DIVISION	31-0240030	31-0473080	31-0677812	31-1801267	DIVISION
1 a Gross receipts or sales	1,852,710.			2,196,580,282.	332,153,207.		15,129,497.	
1 b Less returns and allowances								
1 c Balance	1,852,710.			2,196,580,282.	332,153,207.		15,129,497.	
2 Cost of goods sold	1,009,382.			1,166,745,888.	266,540,168.		17,857,026.	1,306
3 Gross profit	843,328.			1,029,834,394.	65,613,039.		-2,727,529.	-1,306
4 Dividends				189,000.				
5 Interest				32,928,362.	1,533,515.	61.		
6 Gross rents				22,530,285.	2,045,768.	9,696.		
7 Gross royalties								
8 Capital gain net income	9,290,323.			15,558,128.	NONE	2,347,796.		
9 Net gain or (loss) from Form 4797	7,243,948.			-11,868,341.	-1,233,129.			
10 Other income	NONE			67,977,570.	888,620.	4,964,230.	6,715,826.	NONE
11 Total income	17,377,669.			1,128,150,398.	68,767,813.	7,321,787.	3,988,297.	-1,306
12 Compensation of officers								
13 Salaries and wages				50,735,248.	7,134,912.	52.		
14 Repairs and maintenance				10,846,820.	2,517,150.			
15 Bad debts								
16 Rents				18,759,234.	2,114,778.			
17 Taxes and licenses	100.			106,346,017.	3,860,886.	527,956.		58,586
18 Interest	1,244,776.		14.	118,965,619.	6,198,010.	-285.	2,797,800.	180,492
19 Charitable contributions				1,803,111.	19,602.	3.		
20 Depreciation	3,057,876.			229,553,641.	30,309,911.	599,202.	62,769.	
21 a Less depreciation claimed elsewhere								
21 b Net depreciation	3,057,876.			229,553,641.	30,309,911.	599,202.	62,769.	
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs				69,391,652.	4,630,817.	-5.		
26 Other deductions	117,230.			162,615,236.	8,256,398.	2,262,276.	NONE	10,092,164
27 Total deductions	4,419,382.		14.	859,094,178.	65,142,464.	3,389,199.	2,860,569.	10,331,242
28 Taxable income before NOL & Spec. Deductions	12,957,687.		-14.	270,056,220.	3,625,349.	3,932,588.	1,127,728.	-10,332,548
29 a NOL deduction								
29 b Special deductions				132,300.				
30 Taxable income	12,957,687.		-14.	269,923,920.	3,625,349.	3,932,588.	1,127,728.	-10,332,548

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Consolidated Schedules

1120 Page 1	Ohio River Valley Propane, LLC	CSGP Services LP	CSGP Limited LLC	CinFuel Resources, Inc.	Cinergy Limited Holdings, LLC	CINERGY GENERAL HOLDINGS, LLC	Cinergy Ventures II LLC	Funding Trust I
	DIVISION	DIVISION	Not Reg.	10-0023971	DIVISION	DIVISION	Not Reg.	DIVISION
1a Gross receipts or sales	1,767,731.	31,267,236.						
1b Less returns and allowances								
1c Balance	1,767,731.	31,267,236.						
2 Cost of goods sold	1,305,172.	14,054,669.						
3 Gross profit	462,559.	17,212,567.						
4 Dividends								
5 Interest	1,550.			7,302.				12,277,397
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income	NONE		11,188,069.	NONE	11,431,987.	134,202.		
11 Total income	464,109.	17,212,567.	11,188,069.	7,302.	11,431,987.	134,202.		12,277,397
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	484.	100.			100.	100.		
18 Interest	1,632.	53.		48.	11.	11.	991,627.	
19 Charitable contributions								
20 Depreciation	272,971.							
21a Less depreciation claimed elsewhere								
21b Net depreciation	272,971.							
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	5,210.			614,887.				
27 Total deductions	280,497.	153.		614,935.	111.	111.	991,627.	
28 Taxable income before NOL & Spec. Deductions	83,612.	17,212,414.	11,188,069.	-607,633.	11,431,876.	134,091.	-991,627.	12,277,397
29a NOL deduction								
29b Special deductions								
30 Taxable income	83,612.	17,212,414.	11,188,069.	-607,633.	11,431,876.	134,091.	-991,627.	12,277,397

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Consolidated Schedules 1120 Page 1	PSI Energy, Inc. 35-0594457	South Construction Company, Inc. 35-6038829	CinCap IV DIVISION	CinCap V DIVISION	Cinergy Broadband LLC Not Req.	Cinergy Climate Change Investments, LLC 35-2312088	Cinergy Solutions of Boca Raton	Cinergy Solutions of Cincinnati
1 a Gross receipts or sales	1,603,010,788.		1,979,602.	385,511.			810,897.	2,082,030
1 b Less returns and allowances								
1 c Balance	1,603,010,788.		1,979,602.	385,511.			810,897.	2,082,030
2 Cost of goods sold	870,357,608.		147,892.	112,262.			342,047.	750,585
3 Gross profit	732,661,180.		931,710.	273,249.			468,850.	1,331,445
4 Dividends								
5 Interest	9,179,296.		4,782,066.	5,239,123.	12,521.			
6 Gross rents	376,337.							
7 Gross royalties								
8 Capital gain net income	NONE							
9 Net gain or (loss) from Form 4797	-18,747,913.							
10 Other income	20,243,898.						108.	22
11 Total income	743,712,778.		5,713,776.	5,512,372.	12,521.		468,958.	1,331,467
12 Compensation of officers								
13 Salaries and wages	74,837,336.							
14 Repairs and maintenance	5,736,252.							
15 Bad debts								
16 Rents	17,334,580.							
17 Taxes and licenses	88,736,167.						2,932.	7,959
18 Interest	99,098,097.		4,507,841.	4,970,219.	13,292.		781.	233,622
19 Charitable contributions	1,905,753.							
20 Depreciation	219,058,769.						324,186.	495,201
21a Less depreciation claimed elsewhere								
21b Net depreciation	219,058,769.						324,186.	495,201
22 Depletion								
23 Advertising	564,303.							
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs	54,484,711.							
26 Other deductions	82,079,768.		100,368.	77,557.			51,564.	72,098
27 Total deductions	637,836,154.		4,608,309.	5,055,776.	13,292.		379,463.	808,880
28 Taxable income before NOL & Spec. Deductions	105,876,624.		1,105,467.	456,596.	-771.		89,495.	522,587
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	105,876,624.		1,105,467.	456,596.	-771.		89,495.	522,587

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Consolidated Schedules 1120 Page 1	Cinergy Solutions of Narrows LLC	Cinergy Solutions of Rock Hill LLC	Cinergy Solutions of St. Bernard LLC	Cinergy Solutions of St. Paul	CSOS of Lansing LLC	CSOS of Oklahoma LLC	CSOS of Shreveport LLC	Alta Township Utilities LLC
	35-2203630	35-2203631	33-1039904	31-4021005	31-1735353	31-1735383	31-1735383	Not Reg.
1a Gross receipts or sales	12,039,011.	3,496,118.	17,784,340.	13,517.				
1b Less returns and allowances								
1c Balance	12,039,011.	3,496,118.	17,784,340.	13,517.				
2 Cost of goods sold	10,545,159.	2,716,814.	16,772,837.	8,636.				
3 Gross profit	1,493,852.	779,304.	1,011,503.	4,881.				
4 Dividends								
5 Interest					3,924.	9,701.	6,449.	
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income		NONE	174,516.	1,956,357.				
11 Total income	1,493,852.	779,304.	1,186,019.	1,961,438.	3,924.	9,701.	6,449.	
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	24,642.	14,736.	81,380.	326.				
18 Interest	138,914.	8,737.	315,617.		41.	22.	356.	
19 Charitable contributions								
20 Depreciation	4,414.	18,184.	344,918.					
21a Less depreciation claimed elsewhere								
21b Net depreciation	4,414.	18,184.	344,918.					
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs	37,644.	237.	41,073.					
26 Other deductions	425,420.	158,715.	12,581.	NONE				
27 Total deductions	701,034.	221,599.	795,579.	326.	41.	22.	356.	
28 Taxable income before NOL & Spec. Deductions	792,818.	557,705.	390,440.	1,061,112.	3,883.	9,679.	6,093.	
29a NOL deduction								
29b Special deductions								
30 Taxable income	792,818.	557,705.	390,440.	1,061,112.	3,883.	9,679.	6,093.	

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Cinergy Capital
& Trading, Inc.

Consolidated Schedules

1120 Page 1	39-[illegible]
1 a Gross receipts or sales	2,248,169.
1 b Less returns and allowances	
1 c Balance	2,248,169.
2 Cost of goods sold	2,799,358.
3 Gross profit	-551,189.
4 Dividends	
5 Interest	2,230,542.
6 Gross rents	
7 Gross royalties	
8 Capital gain net income	
9 Net gain or (loss) from Form 4797	-566,288.
10 Other income	1,823,663.
11 Total income	2,936,808.
12 Compensation of officers	
13 Salaries and wages	
14 Repairs and maintenance	
15 Bad debts	
16 Rents	
17 Taxes and licenses	-272,137.
18 Interest	50,123,927.
19 Charitable contributions	
20 Depreciation	49,960.
21 a Less depreciation claimed elsewhere	
21 b Net depreciation	49,960.
22 Depletion	
23 Advertising	
24 Pension, profit-sharing, etc. plans	
25 Employee benefit programs	1,303,676.
26 Other deductions	58,770,800.
27 Total deductions	109,875,826.
28 Taxable income before NOL & Spec. Deductions	-106,938,018.
29 a NOL deduction	
29 b Special deductions	
30 Taxable income	-106,938,018.

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EXHIBIT

Form **1120** Department of the Treasury Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2004 or tax year beginning _____, ending _____

▶ See separate instructions.

OMB No. 1545-0123

2004

A Check if: 1 Consolidated return (attach Form 851) [X] 2 Personal holding co. (attach Sch. PH) [ ] 3 Personal service corp. (see instructions) [ ] 4 Schedule M-3 required (attach Sch. M-3) [X]

Use IRS label. Otherwise, print or type.

Name: Cinergy Corp.

Number, street, and room or suite no. If a P.O. box, see page 9 of instructions.: 139 East Fourth Street

City or town, state, and ZIP code: Cincinnati, OH 45202

B Employer identification number: 31-1385023

C Date incorporated: 06/30/1993

D Total assets (see page 8 of instructions): $ 14,982,316,909.

E Check if: (1) [ ] Initial return (2) [ ] Final return (3) [ ] Name change (4) [ ] Address change

Income	1a Gross receipts or sales: 4,646,170,151. b Less returns and allowances: c Bal ▶		1c	4,646,170,151.
	2 Cost of goods sold (Schedule A, line 8)		2	1,724,471,958.
	3 Gross profit. Subtract line 2 from line 1c		3	2,921,698,193.
	4 Dividends (Schedule C, line 19)		4	1,744,190.
	5 Interest		5	48,466,325.
	6 Gross rents		6	14,086,704.
	7 Gross royalties		7	
	8 Capital gain net income (attach Schedule D (Form 1120))		8	NONE
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		9	-8,952,666.
	10 Other income (see page 11 of instructions - attach schedule) See Statement 14		10	193,416,982.
	11 Total income. Add lines 3 through 10 ▶		11	3,170,459,628.
Limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)		12	
	13 Salaries and wages (less employment credits)		13	299,553,768.
	14 Repairs and maintenance		14	20,535,513.
	15 Bad debts		15	7,468,381.
	16 Rents		16	63,796,708.
	17 Taxes and licenses See Statement 21		17	297,968,219.
	18 Interest		18	287,993,366.
	19 Charitable contributions (see page 14 of instructions for 10% limitation) See Statement 41		19	4,097,687.
	20 Depreciation (attach Form 4562) 20: 539,245,141.			
	21 Less depreciation claimed on Schedule A and elsewhere on return 21a:		21b	539,245,141.
Deductions (See instructions	22 Depletion		22	
	23 Advertising		23	1,033,683.
	24 Pension, profit-sharing, etc., plans		24	
	25 Employee benefit programs		25	210,619,939.
	26 Other deductions (attach schedule) See Statement 56		26	1,091,950,720.
	27 Total deductions. Add lines 12 through 26 ▶		27	2,824,262,124.
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28	346,197,504.
	29 Less: a Net operating loss deduction (see page 16 of instructions) 29a:			
	b Special deductions (Schedule C, line 20) 29b:	172,706.	29c	172,706.
Tax and Payments	30 Taxable income. Subtract line 29c from line 28 (see instructions if Schedule C, line 12, was completed)		30	346,024,798.
	31 Total tax (Schedule J, line 11)		31	77,395,371.
	32 Payments: a 2003 overpayment credited to 2004 32a: 7,903,114.			
	b 2004 estimated tax payments 32b: 47,600,026.			
	c Less 2004 refund applied for on Form 4466 32c: ( ) d Bal ▶	32d: 55,503,140.		
	e Tax deposited with Form 7004	32e: 18,000,000.		
	f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f:		
	g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g: 4,569.	32h	73,507,709.
	33 Estimated tax penalty (see page 17 of instructions). Check if Form 2220 is attached ▶ [X]		33	NONE
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed		34	3,887,662.
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		35	
	36 Enter amount of line 35 you want: Credited to 2005 estimated tax ▶ Refunded ▶		36	

Sign Here ▶ Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer: [signature] Date: 6/23/05 Title: VP & Comptroller

May the IRS discuss this return with the preparer shown below (see instructions)? [ ] Yes [ ] No

Paid Preparer's Use Only: Preparer's signature ▶ [redacted] Check if self-employed [ ] Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶ EIN Phone no.

JSA For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Form **1120** (2004)

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Schedule A Cost of Goods Sold (see page 17 of instructions)

1	Inventory at beginning of year	1	212,925,229.
2	Purchases	2	411,392,571.
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) See Statement 85.	5	1,300,126,551.
6	Total. Add lines 1 through 5	6	1,924,444,351.
7	Inventory at end of year	7	199,972,393.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	1,724,471,958.

9 a Check all methods used for valuing closing inventory:
(i) ☐ Cost as described in Regulations section 1.471-3
(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ ☐
c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐
d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d
e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☒ Yes ☐ No
f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

Schedule C Dividends and Special Deductions (see page 18 of instructions)

		(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	162,000.	70	113,400.
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	74,133.	80	59,306.
3	Dividends on debt-financed stock of domestic and foreign corporations (section 246A)			
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))		100	
9	Total. Add lines 1 through 8. See page 19 of instructions for limitation Stmt.	110		172,706.
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members and certain FSCs that are subject to the 100% deduction		100	
12	Dividends from controlled foreign corporations subject to the 85% deduction (attach Form 8895)		85	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)	1,374,624.		
15	Foreign dividend gross-up (section 78)			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))			
17	Other dividends Stmt. 109	133,433.		
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4 ▶	1,744,190.		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ▶			172,706.

Schedule E Compensation of Officers (see instructions for page 1, line 12, on page 13 of instructions)

Note: *Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are $500,000 or more.*

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
1 See "Statements" section.		%	%	%	
Additional information		%	%	%	
available in taxpayer's office.		%	%	%	
		%	%	%	
		%	%	%	
2 Total compensation of officers					
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on page 1, line 12					

Schedule J Tax Computation (See page 20 of instructions)

1 Check if the corporation is a member of a controlled group (see sections 1561 and 1563) . . . . . ▶ ☐
Important: Members of a controlled group, see page 20 of instructions.

2 a If the box on line 1 is checked, enter the corporation's share of the $50,000, $25,000, and $9,925,000 taxable income brackets (in that order):
(1) (2) (3)

b Enter the corporation's share of: (1) Additional 5% tax (not more than $11,750)
(2) Additional 3% tax (not more than $100,000)

3 Income tax. Check if a qualified personal service corporation under section 448(d)(2) (see page 21) ▶ ☐		3	121,108,679.
4 Alternative minimum tax (attach Form 4626)		4	NONE
5 Add lines 3 and 4		5	121,108,679.
6 a Foreign tax credit (attach Form 1118)	6a		
b Possessions tax credit (attach Form 5735)	6b		
c Check: [X] Nonconventional source fuel credit [ ] QEV credit (attach Form 8834) Stmt 11	6c	43,713,308.	
d General business credit. Check box(es) and indicate which forms are attached. [X] Form 3800 [ ] Form(s) (specify) ▶	6d	NONE	
e Credit for prior year minimum tax (attach Form 8827)	6e		
f Qualified zone academy bond credit (attach Form 8860)	6f		
7 Total credits. Add lines 6a through 6f		7	43,713,308.
8 Subtract line 7 from line 5		8	77,395,371.
9 Personal holding company tax (attach Schedule PH (Form 1120))		9	
10 Other taxes. Check if from: [ ] Form 4255 [ ] Form 8611 [ ] Form 8697 [ ] Form 8866 [ ] Other (attach schedule)		10	
11 Total tax. Add lines 8 through 10. Enter here and on page 1, line 31		11	77,395,371.

Schedule K Other Information (see page 23 of instructions)

1 Check accounting method: a [ ] Cash
b [X] Accrual c [ ] Other (specify) ▶

2 See page 25 of the instructions and enter the:
a Business activity code no. ▶ 221100
b Business activity ▶ Comb Utility Servcs
c Product or service ▶ Dist of Gas & Elec

	Yes	No
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) . . See Form 851. . . . . If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.	X	
4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? . . . . . If "Yes," enter name and EIN of the parent corporation ▶		X
5 At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) . . . . . If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned ▶		X
6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) . . . . . If "Yes," file Form 5452, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		X
7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation? . . . . . If "Yes," enter: (a) Percentage owned ▶ and (b) Owner's country ▶ c The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached ▶		X
8 Check this box if the corporation issued publicly offered debt instruments with original issue discount . . . . ▶ [ ] If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
9 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ 1,172,071.		
10 Enter the number of shareholders at the end of the tax year (if 75 or fewer) ▶		
11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ▶ [ ] If the corporation is filing a consolidated return, the statement required by Temporary Regulations section 1.1502-21T(b)(3)(i) or (ii) must be attached or the election will not be valid.		
12 Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.) ▶ $		
13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than $250,000? . . . . . If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶ $		X

Note: *If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.*

Note: *The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."*

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
Cash		170,089,136.		547,410,520.
Trade notes and accounts receivable	1,453,617,380.		1,286,143,637.	
b Less allowance for bad debts	( )	1,453,617,380.	( )	1,286,143,637.
3 Inventories		212,925,229.		199,972,393.
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)	Stmt 138	184,825,738.		385,812,858.
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)	Stmt 142	933,390,321.		650,327,443.
10a Buildings and other depreciable assets	14,164,900,747.		15,057,057,834.	
b Less accumulated depreciation	(4,998,885,321.)	9,166,015,426.	(5,180,414,181.)	9,876,643,653.
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets (attach schedule)	Stmt 148	2,012,186,470.		2,036,006,405.
15 Total assets		14,133,049,700.		14,982,316,909.
Liabilities and Shareholders' Equity				
16 Accounts payable		1,338,982,082.		1,266,981,381.
17 Mortgages, notes, bonds payable in less than 1 year		-24,148,001.		
18 Other current liabilities (attach schedule)	Stmt 156	413,798,810.		547,760,677.
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more		4,906,407,679.		5,080,585,153.
21 Other liabilities (attach schedule)	Stmt 170	3,679,265,664.		3,908,249,032.
22 Capital stock: a Preferred stock	62,818,000.		62,818,000.	
b Common stock	1,784,384.	64,602,384.	1,876,535.	64,694,535.
23 Additional paid-in capital		2,211,979,325.		2,500,705,036.
24 Retained earnings-Appropriated (attach schedule)		609,000.		
25 Retained earnings - Unappropriated		1,541,552,757.		1,613,341,095.
26 Adjustments to shareholders' equity (attach schedule)				
27 Less cost of treasury stock		( )		( )
28 Total liabilities and shareholders' equity		14,133,049,700.		14,982,316,909.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 20 of instructions)

1 Net income (loss) per books		7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books			
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize): a Depreciation $	
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $		b Charitable contributions $	
b Charitable contributions $			
c Travel and entertainment $		9 Add lines 7 and 8	
6 Add lines 1 through 5		10 Income (page 1, line 28) - line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	1,541,552,757.	5 Distributions: a Cash	338,848,746.
2 Net income (loss) per books	408,779,339.	b Stock	
3 Other increases (itemize):		c Property	
See Statement 197	13,398,692.	6 Other decreases (itemize): Stmt 202	11,540,947.
		7 Add lines 5 and 6	350,389,693.
4 Add lines 1, 2, and 3	1,963,730,788.	8 Balance at end of year (line 4 less line 7)	1,613,341,095.

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Consolidated Schedules
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		Combined	Combination Elimination	Adjustments	Cinergy Corp.
1 a	Gross receipts or sales	5,192,224,713.	-546,054,562.		4,646,170,151.
1 b	Less returns and allowances				
1 c	Balance	5,192,224,713.	-546,054,562.		4,646,170,151.
2	Cost of goods sold	2,496,279,290.	-771,807,332.		1,724,471,958.
3	Gross profit	2,695,945,423.	225,752,770.		2,921,698,193.
4	Dividends	1,744,190.			1,744,190.
5	Interest	213,694,168.	-165,227,843.		48,466,325.
6	Gross rents	14,086,704.			14,086,704.
7	Gross royalties				
8	Capital gain net income	31,087,799.		-31,087,799.	NONE
9	Net gain or (loss) from Form 4797	-21,195,831.		12,243,265.	-8,952,566.
10	Other income	634,976,127.	-441,559,235.		193,416,892.
11	Total income	3,570,338,470.	-381,834,308.	-18,844,534.	3,170,459,628.
12	Compensation of officers				
13	Salaries and wages	299,883,768.			299,883,768.
14	Repairs and maintenance	20,514,744.	20,769.		20,535,513.
15	Bad debts	7,468,381.			7,468,381.
16	Rents	83,314,593.	-19,517,885.		63,796,708.
17	Taxes and licenses	316,404,303.	-18,436,084.		297,968,219.
18	Interest	452,351,946.	-164,358,590.		287,993,356.
19	Charitable contributions	4,097,687.			4,097,687.
20	Depreciation	539,245,141.			539,245,141.
21 a	Less depreciation claimed elsewhere				
21 b	Net depreciation	539,245,141.			539,245,141.
22	Depletion				
23	Advertising	1,033,683.			1,033,683.
24	Pension, profit-sharing, etc. plans				
25	Employee benefit programs	210,618,938.			210,618,938.
26	Other deductions	846,612,561.	245,339,159.		1,091,950,720.
27	Total deductions	2,783,714,745.	42,847,379.		2,826,562,124.
28	Taxable income before NOL & Spec. Deductions	786,623,725.	-424,681,687.	-18,844,534.	346,197,504.
29 a	NOL deduction				
29 b	Special deductions	172,706.			172,706.
30	Taxable income	786,451,019.	-424,681,687.	-18,844,534.	346,024,798.

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Consolidated Schedules
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		Cinergy Corp.	Brownsville Power I LLC	Caledonia Power I LLC	Cinergy Centrus Communications, Inc.	Cinergy Centrus, Inc.	Cinergy Energy Solutions, Inc.	Cinergy Engineering, Inc	Cinergy EPCON College Park LLC
		31-1385023	DIVISION	DIVISION	31-1624694	31-1605377	31-1758230	31-1821749	DIVISION
1 a	Gross receipts or sales	-12,900.	613,096.	382,413.					
1 b	Less returns and allowances								
1 c	Balance	-12,900.	613,096.	382,413.					
2	Cost of goods sold	14,010,859.	1,996,055.	2,220,247.	171.			366.	1,530
3	Gross profit	-14,023,839.	-1,384,959.	-1,837,834.	-171.			-366.	-1,530
4	Dividends								
5	Interest	64,875,025.	986,299.	1,846,879.	385.	13,375.		481.	238,897
6	Gross rents								
7	Gross royalties								
8	Capital gain net income			NONE					
9	Net gain or (loss) from Form 4797		-1,187.	-33,432.					
10	Other income	382,294,316.	965.	777.					
11	Total income	442,345,503.	-398,872.	-23,610.	214.	13,375.		115.	237,367
12	Compensation of officers								
13	Salaries and wages								
14	Repairs and maintenance								
15	Bad debts								
16	Rents								
17	Taxes and licenses	-1,290,174.	-570,432.	394,736.	-1,457.	85.		-4,719.	-14,813
18	Interest	70,474,668.		52,476.	7,402.			9,381.	251,483
19	Charitable contributions	88,270.	285.	1,109.					
20	Depreciation	784,984.	18,541,185.	19,004,623.					
21 a	Less depreciation claimed elsewhere								
21 b	Net depreciation	784,984.	18,541,185.	19,004,623.					
22	Depletion								
23	Advertising								
24	Pension, profit-sharing, etc. plans								
25	Employee benefit programs								
26	Other deductions	35,819,125.	110,804.	127,072.				13.	
27	Total deductions	108,862,873.	18,081,842.	19,580,020.	5,945.	85.		4,675.	242,670
28	Taxable income before NOL & Spec. Deductions	336,381,630.	-18,480,714.	-19,603,630.	-5,731.	13,290.		-4,560.	-5,303
29 a	NOL deduction								
29 b	Special deductions								
30	Taxable income	336,381,630.	-18,480,714.	-19,603,630.	-5,731.	13,290.		-4,560.	-5,303

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Consolidated Schedules

1120 Page 1	Cinergy ESCOM LLC	Cinergy e-Supply Network LLC	Cinergy GASCO Solutions LLC	Cinergy Global Chandler Holding Inc.	Cinergy Global Chandler I, Inc.	Cinergy Global Ely, Inc.	Cinergy Global Foote Creek II, Inc.	Cinergy Global Foote Creek IV, Inc.
	DIVISION	DIVISION	DIVISION	31-1738409	31-1738139	31-1637619	31-1697009	31-1732378
1a Gross receipts or sales			503,379.					
1b Less returns and allowances								
1c Balance			503,379.					
2 Cost of goods sold	374.		457,706.					
3 Gross profit	-374.		45,673.					
4 Dividends								
5 Interest	92,844.							
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income			70.					
11 Total income	92,570.		45,743.					
12 Compensation of officers								
13 Salaries and wages								
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	226.	-26,540.	-48,826.					
18 Interest		333,466.	386,394.					
19 Charitable contributions								
20 Depreciation								
21a Less depreciation claimed elsewhere								
21b Net depreciation								
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	218,272.		379,029.					
27 Total deductions	218,498.	306,926.	716,597.					
28 Taxable income before NOL & Spec. Deductions	-125,928.	-306,926.	-671,154.					
29a NOL deduction								
29b Special deductions								
30 Taxable income	-125,928.	-306,926.	-671,154.					

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Consolidated Schedules 1120 Page 1	Cinergy Global Foots Creek, Inc 31-1651477	Cinergy Global Holdings, Inc. 31-1637649	Cinergy Global One, Inc. 31-1698275	Cinergy Global Power, Inc. 31-1573160	Cinergy Global Resources, Inc. 31-1600199	Cinergy Investments, Inc 31-1421199	Cinergy Marketing & Trading, LP 76-0483617	Cinergy One, Inc 31-1751104
1a Gross receipts or sales							48,206,751.	7,842,080
1b Less returns and allowances								
1c Balance							48,206,751.	7,842,080
2 Cost of goods sold				1,812,674.	6,398,646.	1,255,144.	38,910,832.	6,343,579
3 Gross profit				-1,812,674.	-6,398,646.	-1,255,144.	9,295,919.	1,498,501
4 Dividends				1,374,624.				
5 Interest				2,856,735.	8,704,108.	62,829,429.	876,785.	2,478
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income					10,264,435.	29,377,172.	10,165.	306
11 Total income				2,418,685.	12,569,898.	90,951,457.	10,182,869.	1,501,277
12 Compensation of officers						-50,974.		
13 Salaries and wages								
14 Repairs and maintenance							889,893.	
15 Bad debts								
16 Rents				32,869.	-137,667.	390,158.	2,129,843.	184,841
17 Taxes and licenses				4,133,659.	10,831,488.	50,131,230.	1,925,657.	22,949
18 Interest								
19 Charitable contributions							2,132,415.	
20 Depreciation								
21a Less depreciation claimed elsewhere							2,132,415.	
21b Net depreciation								
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions				918,647.	-3,192,866.	58,047.	4,013,333.	489,892
27 Total deductions				5,085,174.	7,500,955.	58,508,461.	11,591,141.	697,291
28 Taxable income before NOL & Spec. Deductions			NONE	-2,666,489.	5,068,943.	32,442,996.	-1,408,272.	803,986
29a NOL deduction								
29b Special deductions								
30 Taxable income			NONE	-2,666,489.	5,068,943.	32,442,996.	-1,408,272.	803,986

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Consolidated Schedules 1120 Page 1	Cinergy Power Generation Services LLC	Cinergy Power Investments, Inc	Cinergy Retail Power General, Inc.	Cinergy Retail Power Limited, Inc.	Cinergy Services Inc.	Cinergy Solutions Holding Company, Inc.	Cinergy Solutions of Philadelphia LLC	Cinergy Solutions of Tuscola, Inc.
	DIVISION	31-1755336	31-1814220	31-1814221	31-1413899	31-1503859	31-1785993	31-1624696
1a Gross receipts or sales	952,739.				582,601,292.		3,419,073.	
1b Less returns and allowances								
1c Balance	952,739.				582,601,292.		3,419,073.	
2 Cost of goods sold	921,014.				4,771,534.	1,080,488.	2,822,253.	-92,206
3 Gross profit	29,725.				577,829,638.	-1,080,488.	596,820.	92,206
4 Dividends					105,860.			
5 Interest	300,589.				1,879,317.	8,128,333.	440,820.	487,243
6 Gross rents						-1.		
7 Gross royalties								
8 Capital gain net income					NONE			
9 Net gain or (loss) from Form 4797								
10 Other income	655,481.				1,419,427.	12,480,771.	707.	552
11 Total income	985,795.				580,933,442.	19,528,615.	1,039,047.	580,001
12 Compensation of officers								
13 Salaries and wages	3,539.				229,080,114.	-1,543,971.		-2,278
14 Repairs and maintenance					4,842,661.			
15 Bad debts								
16 Rents					41,235,383.			
17 Taxes and licenses	285,350.				18,068,399.	104,086.	52,077.	113,465
18 Interest	2,430,063.				684,142.	10,424,243.	377,430.	3,341,022
19 Charitable contributions	1,870.							
20 Depreciation					1,259,068.			
21a Less depreciation claimed elsewhere					1,259,068.			
21b Net depreciation								
22 Depletion					356,628.			
23 Advertising								
24 Pension, profit-sharing, etc. plans					87,036,324.			
25 Employee benefit programs	109,733.				198,619,407.	14,907,667.	59,014.	212,876
26 Other deductions	536,859.				581,090,035.	23,892,128.	488,821.	3,665,083
27 Total deductions	3,249,203.							
28 Taxable income before NOL & Spec. Deductions	-2,263,408.				-156,693.	-4,363,510.	549,526.	-3,085,084
29a NOL deduction								
29b Special deductions								
30 Taxable income	-2,263,408.				-156,693.	-4,363,510.	549,526.	-3,085,084

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Consolidated Schedules 1120 Page 1	Cinergy Solutions, Inc. 31-1795353	Cinergy Supply Network, Inc. 31-1812985	Cinergy Technologies, Inc. 31-1734640	Cinergy Technology, Inc. 35-1861260	Cinergy Telecommunications Holding Company, I 31-1480521	Cinergy Transportation LLC 31-1725909	Cinergy Two, Inc 31-1756388	Cinergy UK, Inc. 31-1480522
1a Gross receipts or sales					6,954.			
1b Less returns and allowances								
1c Balance					6,954.			
2 Cost of goods sold	10,866,964.	10,019.	1,140.	7,028.	9,217.			
3 Gross profit	-10,866,964.	-10,019.	-1,140.	-7,028.	-2,263.			
4 Dividends	74,133.							
5 Interest	171,869.	3,387.	6,679,397.	14.	16,686.	251.		
6 Gross rents								
7 Gross royalties								
8 Capital gain net income					21,422,501.			
9 Net gain or (loss) from Form 4797								
10 Other income	1,620,795.	3,463,613.	505,351.					
11 Total income	-8,992,228.	3,456,981.	7,183,608.	-7,011.	21,436,934.	251.		
12 Compensation of officers								
13 Salaries and wages	3,420.							
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	-832,221.	44,399.	-466.	3,861.	-126,178.	671.	85.	85
18 Interest	2,968,092.	1,357,590.	6,610,438.	64,687.	2,486,177.	30.	16.	4,197,470
19 Charitable contributions								
20 Depreciation	3,965.							
21a Less depreciation claimed elsewhere								
21b Net depreciation	3,965.							
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, and health								
25 Employee benefit programs								
26 Other deductions	-9,652,761.	3,413.	48,682,212.	314.	1,972,227.			
27 Total deductions	-1,609,505.	1,405,402.	52,331,184.	68,862.	4,333,226.	701.	101.	4,197,555
28 Taxable income before NOL & Spec. Deductions	-7,382,723.	2,051,579.	-45,147,576.	-76,693.	17,103,708.	-450.	-101.	-4,197,555
29a NOL deduction								
29b Special deductions	59,306.							
30 Taxable income	-7,442,029.	2,051,579.	-45,147,576.	-76,693.	17,103,708.	-450.	-101.	-4,197,555

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Consolidated Schedules

1120 Page 1	Cinergy Ventures LLC DIVISION	Cinergy Wholesale Energy Inc. 31-1742083	Cinergy-Cadence, Inc. 35-1803018	CinTec I LLC DIVISION	CinTec LLC 82-2291487	CPI Allowance Management, LLC 22-3849540	CPI Investments, LLC 51-0414706	CSGP of Southeast Texas LLC DIVISION
1a Gross receipts or sales								
1b Less returns and allowances								
1c Balance								
2 Cost of goods sold	3,047,010.				16,301.			384,697.
3 Gross profit	-3,047,010.				-16,301.			-384,697.
4 Dividends	25,967.							
5 Interest	203,816.	2,410,063.				25,932.	1,573,212.	54,397.
6 Gross rents								
7 Gross royalties								
8 Capital gain net income	NONE							
9 Net gain or (loss) from Form 4797								
10 Other income	2,193.							1,425.
11 Total income	-2,815,034.	2,410,063.			-16,301.	25,932.	1,573,212.	-328,875.
12 Compensation of officers								
13 Salaries and wages						1,745.	6,673.	10,861.
14 Repairs and maintenance								
15 Bad debts								
16 Rents						2,400.	5,341.	
17 Taxes and licenses	-637,969.	-367,396.	-23,052.		745.	469,931.	562.	167,793.
18 Interest	5,578,213.	2,449,244.	327,427.		771,936.	884,709.		2,472,344.
19 Charitable contributions								
20 Depreciation	9,326.							
21a Less depreciation claimed elsewhere								
21b Net depreciation	9,326.							
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	4,207,906.	394,868.		592,779.	277,462.	681.	2,870.	69,883.
27 Total deductions	9,156,577.	2,379,916.	303,575.	592,779.	1,050,143.	1,329,457.	15,446.	2,720,869.
28 Taxable income before NOL & Spec. Deductions	-11,971,611.	30,147.	-303,575.	-592,779.	-1,066,444.	-1,303,525.	1,557,766.	-3,049,744.
29a NOL deduction								
29b Special deductions								
30 Taxable income	-11,971,611.	30,147.	-303,575.	-592,779.	-1,066,444.	-1,303,525.	1,557,766.	-3,049,744.

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Consolidated Schedules
1120 Page 1

		KO Transmission Company	Lansing Grand River Utilities LLC	Lawrenceburg Gas Company	Miami Power Corporation	Cinergy Global Power Table I, Inc.	Syncap II LLC	The Cincinnati Gas & Electric Company	The Union Light, Heat & Power Company
		31-1408986	DIVISION	35-0463130	31-6035703	31-1773727	DIVISION	31-0240030	31-0473080
1a	Gross receipts or sales	1,545,181.		8,158,309.	26,653.			2,315,071,403.	354,542,733
1b	Less returns and allowances								
1c	Balance	1,545,181.		8,158,309.	26,653.			2,315,071,403.	354,542,733
2	Cost of goods sold	618,489.		6,034,081.				1,150,035,260.	271,979,819
3	Gross profit	926,692.		2,124,228.	26,653.			1,165,036,143.	82,562,914
4	Dividends							164,964.	
5	Interest		188,787.	85.				8,259,758.	1,593,291
6	Gross rents							13,990,722.	
7	Gross royalties								
8	Capital gain net income							8,387,575.	NONE
9	Net gain or (loss) from Form 4797			249,930.				-8,486,117.	-966,473
10	Other income	20,638.		-79,926.				128,618,875.	281,343
11	Total income	947,330.	188,787.	2,294,317.	26,653.			1,315,931,320.	83,411,077
12	Compensation of officers								
13	Salaries and wages	366,818.		148,072.	784.			47,363,002.	2,049,306
14	Repairs and maintenance	153.		130,322.				8,966,224.	2,011,394
15	Bad debts			56,628.				7,769,927.	223,038
16	Rents	3,219.		43,855.				21,844,574.	2,764,722
17	Taxes and licenses	37,114.	-4,997.	288,264.	7,293.		665.	205,484,464.	6,526,806
18	Interest	2.	21.	25,826.			17.	94,644,492.	5,044,574
19	Charitable contributions	86.		50.				2,016,121.	28,064
20	Depreciation	106,287.		706,038.	550.			260,812,402.	31,506,020
21a	Less depreciation claimed elsewhere								
21b	Net depreciation	106,287.		706,038.	550.			260,812,402.	31,506,020
22	Depletion								
23	Advertising							86,680.	17,493
24	Pension, profit-sharing, etc. plans								
25	Employee benefit programs	62,775.		461,443.	306.			55,744,343.	4,931,338
26	Other deductions	61,171.		192,304.	389.			306,332,374.	16,692,603
27	Total deductions	637,625.	-3,886.	2,060,001.	9,333.		462.	1,011,264,203.	71,795,345
28	Taxable income before NOL & Spec. Deductions	309,705.	192,773.	233,316.	17,320.		-462.	304,667,117.	11,675,732
29a	NOL deduction							113,400.	
29b	Special deductions								
30	Taxable income	309,705.	192,773.	233,316.	17,320.		-462.	304,553,717.	11,675,732

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Consolidated Schedules 1120 Page 1	Tri-State Improvement Company 31-0477812	Cinergy Solutions - Demand, Inc. 31-1603247	3036343 Nova Scotia Co. DIVISION	Ohio River Valley Propane, LLC DIVISION	CSGP Services LP DIVISION	CSGP Limited LLC DIVISION	CinFuel Resources, Inc. 30-0023971	Cinergy Limited Holdings, LLC DIVISION
1a Gross receipts or sales		14,748,007.		614,987.	13,061,833.			
1b Less returns and allowances								
1c Balance		14,748,007.		614,987.	13,061,833.			
2 Cost of goods sold		16,826,636.	1,883.	619,906.	5,823,405.			
3 Gross profit		-2,078,629.	-1,883.	-4,919.	7,238,428.			
4 Dividends								
5 Interest		1,418,538.		26,409.	861,209.		42,292.	
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797	-18,893.	7,300.						
10 Other income	4,546,890.	-371,723.	10,246.	70.	1,399.	4,877,718.		7,906,866.
11 Total income	4,528,877.	-1,023,914.	8,493.	21,560.	8,101,236.	4,877,718.	42,292.	7,906,866.
12 Compensation of officers								
13 Salaries and wages	5.							
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	351,980.	-465,440.	-399,680.	2,339.	548,875.	693,502.	-18,757.	693,774
18 Interest	-315.	2,645,087.	163,672.	1.	91.		38.	15
19 Charitable contributions								
20 Depreciation	615,189.	55,526.		76,129.				
21a Less depreciation claimed elsewhere								
21b Net depreciation	615,189.	55,526.		76,129.				
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	2,203,403.	-850,786.		21,077.	44,156.		692,947.	
27 Total deductions	3,170,262.	1,376,449.	-176,048.	100,037.	593,062.	693,502.	674,228.	693,789
28 Taxable income before NOL & Spec. Deductions	1,358,615.	-2,400,363.	184,741.	-78,477.	7,508,174.	4,184,216.	-631,936.	7,213,077
28a NOL deduction								
28b Special deductions								
30 Taxable income	1,358,615.	-2,400,363.	184,741.	-78,477.	7,508,174.	4,184,216.	-631,936.	7,213,077

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Consolidated Schedules

1120 Page 1	Cinergy General Holdings, LLC DIVISION	Cinergy Ventures II LLC DIVISION	PSI Energy, Inc. 35-0594457	South Construction Company, Inc. 35-6038829	CinCap IV DIVISION	CinCap V DIVISION	Cinergy Broadband LLC DIVISION	Cinergy Climate Change Investments, LLC 35-2212088
1a Gross receipts or sales			1,753,699,082.		12,258.	-374.		
1b Less returns and allowances								
1c Balance			1,753,699,082.		12,258.	-374.		
2 Cost of goods sold			869,529,849.		277,363.	230,400.	2,757.	
3 Gross profit			884,169,203.		-265,105.	-230,774.	-2,757.	
4 Dividends			42.					
5 Interest			9,718,127.		5,561,484.	10,481,362.	24,686.	
6 Gross rents			138,963.					
7 Gross royalties								
8 Capital gain net income		NONE	1,277,723.					
9 Net gain or (loss) from Form 4797			-11,947,949.					
10 Other income	17,787.		33,824,742.					
11 Total income	17,787.	NONE	916,177,871.		5,316,379.	10,250,588.	21,929.	
12 Compensation of officers								
13 Salaries and wages			24,002,836.					
14 Repairs and maintenance			4,455,998.					
15 Bad debts			-1,178,702.					
16 Rents			17,415,138.					
17 Taxes and licenses	5,983.	-48,269.	88,652,141.		34,125.	14,095.	421.	223
18 Interest	15.	908,792.	94,276,174.		5,046,458.	9,937,020.	133,812.	1,410
19 Charitable contributions			1,966,832.					
20 Depreciation			198,130,865.					
21a Less depreciation claimed elsewhere								
21b Net depreciation			198,130,865.					
22 Depletion								
23 Advertising			572,882.					
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs			62,272,677.					
26 Other deductions			138,068,764.		200,009.	185,114.	4,036,826.	7,782
27 Total deductions	1,998.	860,523.	628,635,599.		5,280,592.	10,136,229.	4,171,059.	9,415
28 Taxable income before NOL & Spec. Deductions	11,789.	-860,523.	287,542,272.		35,787.	144,359.	-4,149,130.	-9,415
29a NOL deduction								
29b Special deductions								
30 Taxable income	11,789.	-860,523.	287,542,272.		35,787.	144,359.	-4,149,130.	-9,415

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Consolidated Schedules 1120 Page 1	Cinergy Solutions of Boca Raton DIVISION	Cinergy Solutions of Cincinnati DIVISION	Cinergy Solutions of Narrows LLC DIVISION	Cinergy Solutions of Rock Hill LLC DIVISION	Cinergy Solutions of St. Bernard LLC 33-1039984	Cinergy Solutions of St. Paul DIVISION	CSOS of Lansing LLC DIVISION	CSOS of Oklahoma LLC DIVISION
1a Gross receipts or sales	3,957,897.	5,040,129.	25,917,065.	15,348,430.	19,444,312.	289,402.		
1b Less returns and allowances								
1c Balance	3,957,897.	5,040,129.	25,917,065.	15,348,430.	19,444,312.	289,402.		
2 Cost of goods sold	1,574,068.	2,518,269.	22,804,367.	14,612,169.	17,128,144.	102,853.	25,957.	63,364
3 Gross profit	2,383,829.	2,521,860.	3,112,698.	736,261.	2,316,168.	186,549.	-25,957.	-63,364
4 Dividends								
5 Interest	74,861.	102,813.	1,014,931.	307,979.	258,602.	148,063.	9,366.	29,089
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income		4,488.	156.		93,709.	1.	3.	3
11 Total income	2,458,710.	2,628,261.	4,127,785.	1,044,240.	2,671,679.	334,613.	-16,588.	-34,272
12 Compensation of officers								
13 Salaries and wages			-137,487.	-45,147.	-41,544.			
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	78,254.	768,931.	224,532.	179,286.	127,784.	34,558.	558.	1,353
18 Interest	24,900.	987,346.	1,272,806.	422,444.	948,856.	396.	367.	6,834
19 Charitable contributions								
20 Depreciation	1,918,231.	3,157,432.	8,730.	24,940.	384,845.			
21a Less depreciation claimed elsewhere								
21b Net depreciation	1,918,231.	3,157,432.	8,730.	24,940.	384,845.			
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc., plans								
25 Employee benefit programs								
26 Other deductions	205,738.	485,925.	1,074,903.	861,546.	29,551.	531,594.	786.	786
27 Total deductions	2,227,123.	5,409,634.	3,442,664.	1,433,068.	1,449,892.	566,548.	1,711.	8,973
28 Taxable income before NOL & Spec Deductions	231,587.	-2,781,273.	1,685,121.	-388,829.	1,221,787.	-231,935.	-18,299.	-43,267
29a NOL deduction								
29b Special deductions								
30 Taxable income	231,587.	-2,781,273.	1,685,121.	-388,829.	1,221,787.	-231,935.	-18,299.	-43,267

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Consolidated Schedules 1120 Page 1	CNOE of Shreveport LLC	Cinergy Capital & Trading, Inc.	Cinergy Retail Sales LLC	Cinergy Solutions of Monmouth, LLC	Cinergy Solutions of San Diego, Inc.	Cinergy Solutions O&M LLC	Cinergy Risk Solutions Ltd.	eVent Resources I LLC
	DIVISION	35-1879271	37-1484230	DIVISION	35-2226032	DIVISION	74-2133751	DIVISION
1a Gross receipts or sales		4,340,415.		10,611,647.	839,090.	441,667.		
1b Less returns and allowances								
1c Balance		4,340,415.		10,611,647.	839,090.	441,667.		
2 Cost of goods sold	52,239.	6,136,458.	25,091.	11,367,093.	58,466.	-327,544.		
3 Gross profit	-52,239.	-1,796,043.	-25,091.	-755,446.	780,534.	769,311.		
4 Dividends								
5 Interest	27,941.	5,951,435.		40,238.	19,847.	15,027.	640.	
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								NONE
9 Net gain or (loss) from Form 4797								NONE
10 Other income	16.	3,112,084.						-1.
11 Total income	-25,182.	7,267,476.	-25,091.	-715,208.	800,381.	784,338.	640.	-1.
12 Compensation of officers								
13 Salaries and wages		-1,672,178.						
14 Repairs and maintenance								
15 Bad debts								
16 Rents								
17 Taxes and licenses	1,517.	-5,159,524.	9.	77,783.		65,720.		
18 Interest	407.	38,078,832.	55.	19,343.	18,178.	2,347.		
19 Charitable contributions								
20 Depreciation				6,220.				
21a Less depreciation claimed elsewhere								
21b Net depreciation				6,220.				
22 Depletion								
23 Advertising								
24 Pension, profit-sharing, etc. plans								
25 Employee benefit programs								
26 Other deductions	4,140.	70,756,879.	45.	17,996.	-174.	264,294.	5,762.	1,000,000
27 Total deductions	6,064.	102,784,203.	109.	121,342.	18,001.	332,361.	5,762.	1,000,000
28 Taxable income before NOL & Spec. Deductions	-31,246.	-95,516,727.	-25,200.	-836,550.	785,380.	451,977.	-5,122.	-1,000,001
29a NOL deduction								
29b Special deductions								
30 Taxable income	-31,246.	-95,516,727.	-25,200.	-836,550.	785,380.	451,977.	-5,122.	-1,000,001

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Consolidated Schedules
1120 Page 1

		Cinergy Solutions Utility, Inc. 37-1496842	CSUP General, LLC DIVISION	Cinergy Mexico Holdings, LP 30-0236167
1a	Gross receipts or sales			
1b	Less returns and allowances			
1c	Balance			
2	Cost of goods sold			
3	Gross profit			
4	Dividends			
5	Interest			
6	Gross rents			
7	Gross royalties			
8	Capital gain net income			
9	Net gain or (loss) from Form 4797			
10	Other income			
11	Total income			
12	Compensation of officers			
13	Salaries and wages			
14	Repairs and maintenance			
15	Bad debts			
16	Rents			
17	Taxes and licenses		-15,000.	
18	Interest			
19	Charitable contributions			
20	Depreciation			
21a	Less depreciation claimed elsewhere			
21b	Net depreciation			
22	Depletion			
23	Advertising			
24	Pension, profit-sharing, etc. plans			
25	Employee benefit programs			
26	Other deductions			
27	Total deductions		-15,000.	
28	Taxable income before NOL & Spec. Deductions		15,000.	
29a	NOL deduction			
29b	Special deductions			
30	Taxable income		15,000.	

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EXHIBIT

Form **1120** Department of the Treasury Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2005 or tax year beginning _____, ending _____
▶ See separate instructions.

OMB No. 1545-0123 **2005**

A Check if: 1 Consolidated return (attach Form 851) [X] 2 Personal holding co. (attach Sch. PH) [ ] 3 Personal service corp. (see instructions) [ ] 4 Schedule M-3 required (attach Sch. M-3) [X]

Use IRS label. Otherwise, print or type.

Name: Cinergy Corp.
Number, street, and room or suite no. If a P.O. box, see instructions.: 139 East Fourth Street
City or town, state, and ZIP code: Cincinnati, OH 45202

B Employer identification number: 31-1385023
C Date incorporated: 06/30/1993
D Total assets (see instructions): $ 16,552,426,134.

E Check if: (1) [ ] Initial return (2) [ ] Final return (3) [ ] Name change (4) [ ] Address change

Income	1a Gross receipts or sales: 5,277,823,691. b Less returns and allowances: c Bal ▶		1c	5,277,823,691.
	2 Cost of goods sold (Schedule A, line 8)		2	2,648,921,416.
	3 Gross profit. Subtract line 2 from line 1c		3	2,628,902,275.
	4 Dividends (Schedule C, line 19)		4	33,347,077.
	5 Interest ... See Statement 13		5	60,667,047.
	6 Gross rents		6	12,642,807.
	7 Gross royalties		7	
	8 Capital gain net income (attach Schedule D (Form 1120))		8	2,735,423.
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		9	-16,540,630.
	10 Other income (see instructions - attach schedule) ... See Statement 21		10	88,719,898.
	11 Total income. Add lines 3 through 10 ▶		11	2,810,473,897.
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)		12	
	13 Salaries and wages (less employment credits)		13	181,330,295.
	14 Repairs and maintenance		14	15,551,487.
	15 Bad debts		15	12,980,779.
	16 Rents		16	22,916,237.
	17 Taxes and licenses ... See Statement 29		17	309,134,423.
	18 Interest		18	293,559,209.
	19 Charitable contributions (see instructions for 10% limitation) ... See Statement 42		19	3,463,572.
	20a Depreciation (attach Form 4562)	20a 436,507,323.		
	b Less depreciation claimed on Schedule A and elsewhere on return	20b	20c	436,507,323.
	21 Depletion		21	
	22 Advertising		22	956,391.
	23 Pension, profit-sharing, etc., plans		23	
	24 Employee benefit programs		24	139,162,102.
	25 Domestic production activities deduction (attach Form 8903)		25	10,880,527.
	26 Other deductions (attach schedule) ... See Statement 51		26	715,451,344.
	27 Total deductions. Add lines 12 through 26 ▶		27	2,141,893,689.
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28	668,580,208.
	29 Less: a Net operating loss deduction (see instructions)	29a		
	b Special deductions (Schedule C, line 20)	29b 27,086,718.	29c	27,086,718.
	30 Taxable income. Subtract line 29c from line 28 (see instructions if Schedule C, line 12, was completed)		30	641,493,490.
	31 Total tax (Schedule J, line 11)		31	131,166,301.
Tax and Payments	32 Payments: a 2004 overpayment credited to 2005	32a		
	b 2005 estimated tax payments	32b 74,000,000.		
	c Less 2005 refund applied for on Form 4466	32c ( )	d Bal ▶ 32d	74,000,000.
	e Tax deposited with Form 7004		32e	65,000,000.
	f Credit from (1) Form 2439 (2) Form 4136 4,106.		32f	4,106. 32g 139,004,106.
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ [ ]		33	
	34 Tax due. If line 32g is smaller than the total of lines 31 and 33, enter amount owed		34	
	35 Overpayment. If line 32g is larger than the total of lines 31 and 33, enter amount overpaid		35	7,837,805.
	36 Enter amount of line 35 you want: Credited to 2006 estimated tax ▶ 7,837,805. Refunded ▶		36	

Sign Here: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Signature of officer: [signature] Date: 12 September 2006 ▶ VP, Corporate Tax
May the IRS discuss this return with the preparer shown below (see instructions)? [ ] Yes [ ] No

Paid Preparer's Use Only: Preparer's signature ▶ Check if self-employed [ ] Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶ EIN Phone no.

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Cinergy Corp. 31-1385023

Form 1120 (2005) Page 2

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	199,972,393.
2	Purchases	2	520,682,381.
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) See Statement B3.	5	2,149,874,238.
6	Total. Add lines 1 through 5	6	2,870,529,012.
7	Inventory at end of year	7	221,607,596.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	2,648,921,416.

9 a Check all methods used for valuing closing inventory:

(i) ☐ Cost

(ii) ☐ Lower of cost or market

(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☒ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

Schedule C Dividends and Special Deductions (see instructions)

		(a) Dividends received	(b) %	(c) Special deductions (a) × (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)	162,000.	70	113,400.
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	Total. Add lines 1 through 8. See instructions for limitation . Stmt. 105.			113,400.
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members and certain FSCs		100	
12	Dividends from controlled foreign corporations (attach Form 8895)	31,733,315.	85	26,973,318.
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12	1,051,959.		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)	288,087.		
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends . Stmt. 105.	111,716.		
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4 ▶	33,347,077.		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ▶			27,086,718.

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: *Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are $500,000 or more.*

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
1		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
2 Total compensation of officers					
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on page 1, line 12					

Cinergy Corp. 31-1385023

Schedule J Tax Computation (see instructions)

1 Check if the corporation is a member of a controlled group. ▶ ☐
Important: Members of a controlled group, see instructions.

2 a If the box on line 1 is checked, enter the corporation's share of the $50,000, $25,000, and $9,925,000 taxable income brackets (in that order):
(1) (2) (3)

b Enter the corporation's share of: (1) Additional 5% tax (not more than $11,750)
(2) Additional 3% tax (not more than $100,000)

3 Income tax. Check if a qualified personal service corporation (see instructions) ▶ ☐		3	224,522,722.
4 Alternative minimum tax (attach Form 4626)		4	NONE
5 Add lines 3 and 4		5	224,522,722.
6a Foreign tax credit (attach Form 1118)	6a		
b Possessions tax credit (attach Form 5735)	6b		
c Credits from: ☐ Form 8834 ☒ Form 8907, line 23	6c	93,356,421.	
d General business credit. Check box(es) and indicate which forms are attached: ☒ Form 3800 ☐ Form(s) (specify) ▶	6d	NONE	
e Credit for prior year minimum tax (attach Form 8827)	6e		
f Bond credits from: ☐ Form 8880 ☐ Form 8912	6f		
7 Total credits. Add lines 6a through 6f		7	93,356,421.
8 Subtract line 7 from line 5		8	131,166,301.
9 Personal holding company tax (attach Schedule PH (Form 1120))		9	
10 Other taxes. Check if from: ☐ Form 4255 ☐ Form 8911 ☐ Form 8697 ☐ Form 8866 ☐ Form 8902 ☐ Other (attach schedule)		10	
11 Total tax. Add lines 8 through 10. Enter here and on page 1, line 31		11	131,166,301.

Schedule K Other Information (see instructions)

	Yes	No
1 Check accounting method: a ☐ Cash b ☒ Accrual c ☐ Other (specify) ▶		
2 See the instructions and enter the: a Business activity code no. ▶ 221100 b Business activity ▶ Comb Utility Servcs c Product or service ▶ Dist of Gas & Elec		
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) See Form 851 If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.	X	
4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
5 At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned ▶		X
6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 5452, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		X
7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation? If "Yes," enter: (a) Percentage owned ▶ and (b) Owner's country ▶		X
c The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached ▶		
8 Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ ☐ If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
9 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ 1,325,027.		
10 Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶		
11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ▶ ☐ If the corporation is filing a consolidated return, the statement required by Temporary Regulations section 1.1502-21T(b)(3) must be attached or the election will not be valid.		
12 Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.) ▶ $		
13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶ $		X

Note: If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

Cinergy Corp. 31-1385023

Note: *The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."*

Schedule L Balance Sheets per Books

	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
Assets				
1 Cash		547,410,520.		395,598,926.
2a Trade notes and accounts receivable	1,286,143,637.		1,712,943,930.	
b Less allowance for bad debts	( )	1,286,143,637.	( )	1,712,943,930.
3 Inventories		199,972,393.		221,607,596.
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)	Stmt 130	385,812,858.		728,320,191.
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)	Stmt 138	650,327,443.		1,021,317,728.
10a Buildings and other depreciable assets	15,057,057,834.		15,755,862,952.	
b Less accumulated depreciation	(5,180,414,181.)	9,876,643,653.	(5,992,749,750.)	9,763,113,202.
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets (attach schedule)	Stmt 141	2,036,006,405.		2,709,524,561.
15 Total assets		14,982,316,909.		16,552,426,134.
Liabilities and Shareholders' Equity				
16 Accounts payable		1,266,981,381.		1,846,161,559.
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach schedule)	Stmt 149	547,760,677.		719,908,817.
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more		5,080,585,153.		5,140,497,612.
21 Other liabilities (attach schedule)	Stmt 163	3,908,249,032.		4,234,534,798.
22 Capital stock: a Preferred stock	62,818,000.		31,743,000.	
b Common stock	1,876,535.	64,694,535.	1,997,073.	33,740,073.
23 Additional paid-in capital		2,500,705,036.		2,861,181,183.
24 Retained earnings - Appropriated (attach schedule)				603,000.
25 Retained earnings - Unappropriated		1,613,341,095.		1,715,799,092.
26 Adjustments to shareholders' equity (attach schedule)				
27 Less cost of treasury stock		( )		( )
28 Total liabilities and shareholders' equity		14,982,316,909.		16,552,426,134.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (see instructions)

1 Net income (loss) per books		7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books			
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize):	
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $ b Charitable contributions $ c Travel and entertainment $		a Depreciation $ b Charitable contributions $	
6 Add lines 1 through 5		9 Add lines 7 and 8	
		10 Income (page 1, line 28) - line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	1,613,341,095.	5 Distributions: a Cash	378,028,677.
2 Net income (loss) per books	477,820,917.	b Stock	
3 Other increases (itemize):		c Property	
See Statement 188	21,518,989.	6 Other decreases (itemize): Stmt 191	18,853,232.
		7 Add lines 5 and 6	396,881,909.
4 Add lines 1, 2, and 3	2,112,681,001.	8 Balance at end of year (line 4 less line 7)	1,715,799,092.

Consolidated Schedules
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		Combined	Combination Elimination	Adjustments	Cinergy Corp.
1 a	Gross receipts or sales	5,912,502,035.	-634,678,344.		5,277,823,691.
1 b	Less returns and allowances				
1 c	Balance	5,912,502,035.	-634,678,344.		5,277,823,691.
2	Cost of goods sold	2,961,116,266.	-312,194,850.		2,648,921,416.
3	Gross profit	2,951,385,769.	-322,483,494.		2,628,902,275.
4	Dividends	33,347,077.			33,347,077.
5	Interest	246,741,393.	-186,074,346.		60,667,047.
6	Gross rents	31,409,274.	-18,766,467.		12,642,807.
7	Gross royalties				
8	Capital gain net income	3,581,909.		-846,486.	2,735,423.
9	Net gain or (loss) from Form 4797	-17,387,116.		846,486.	-16,540,630.
10	Other income	527,678,196.	-438,958,298.		88,719,898.
11	Total income	3,776,756,502.	-966,282,605.		2,810,473,897.
12	Compensation of officers				
13	Salaries and wages	469,009,325.	-267,679,030.		181,330,295.
14	Repairs and maintenance	20,429,022.	-4,878,335.		15,551,687.
15	Bad debts	12,980,779.			12,980,779.
16	Rents	85,885,894.	-62,969,657.		22,916,237.
17	Taxes and licenses	326,139,393.	-17,004,970.		309,134,423.
18	Interest	478,141,743.	-184,582,534.		293,559,209.
19	Charitable contributions	3,393,082.	69,720.		3,463,572.
20 a	Depreciation	436,507,323.			436,507,323.
20 b	Less depreciation claimed elsewhere				
20 c	Net depreciation	436,507,323.			436,507,323.
21	Depletion				
22	Advertising	1,505,553.	-549,162.		956,391.
23	Pension, profit-sharing, etc., plans				
24	Employee benefit programs	212,176,481.	-73,014,379.		139,162,102.
25	Domestic production activities deduction	10,880,527.			10,880,527.
26	Other deductions	683,387,671.	32,063,673.		715,451,344.
27	Total deductions	2,720,438,363.	-578,544,674.		2,141,893,689.
28	Taxable income before NOL & Spec. Deductions	1,056,318,139.	-387,737,931.		668,580,208.
29 a	NOL deduction				
29 b	Special deductions	27,086,718.			27,086,718.
30	Taxable income	1,029,340,742.	-387,737,931.	-109,321.	641,493,490.

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Consolidated Schedules 1120 Page 1	Cinergy Corp. 31-1385023	Brownsville Power I LLC DIVISION	Caledonia Power I LLC DIVISION	Cinergy Centrus Communications, Inc. 31-1624694	Cinergy Centrus, Inc. 31-1685377	Cinergy Energy Solutions, Inc. 31-1758230	Cinergy Engineering, Inc 31-1521743	Cinergy EPCON College Park LLC DIVISION
1 a Gross receipts or sales	31,826.	1,507,215.	671,931.					
1 b Less returns and allowances								
1 c Balance	31,826.	1,507,215.	671,931.					
2 Cost of goods sold	321,548.	3,225,330.	2,384,151.					
3 Gross profit	-289,722.	-1,718,115.	-1,712,220.					
4 Dividends								
5 Interest	67,205,889.	1,058,249.	1,766,971.	525.	12,336.			
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income	482,494,753.	7,499.	5,165.					
11 Total income	549,410,920.	-652,367.	59,916.	525.	12,336.			
12 Compensation of officers								
13 Salaries and wages	4,897,102.	85,406.	9,850.	945.			194.	
14 Repairs and maintenance	19,155.	328.	169.					
15 Bad debts								
16 Rents	827,508.	1,700.	1,152.					
17 Taxes and licenses	-7,378,297.	397,339.	660,244.	182.	60.		65.	
18 Interest	59,415,181.	7,828,023.	7,800,966.					18,267
19 Charitable contributions	383,020.							
20 a Depreciation	553,738.	16,826,256.	17,975,923.					
20 b Less depreciation claimed elsewhere								
20 c Net depreciation	553,738.	16,826,256.	17,975,923.					
21 Depletion								
22 Advertising								
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs	1,159,975.	113,237.	137,097.	385.			79.	
25 Domestic production activities deduction								
26 Other deductions	123,611,687.	172,684.	170,440.	23.	-9,240.			
27 Total deductions	183,489,069.	25,024,973.	25,863,841.	1,535.	-9,180.		338.	18,267
28 Taxable income before NOL & Spec. Deductions	365,921,851.	-25,677,340.	-25,803,925.	-1,010.	21,516.		-338.	-18,267
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	365,921,851.	-25,677,340.	-25,803,925.	-1,010.	21,516.		-338.	-18,267

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Consolidated Schedules

1120 Page 1	Cinergy e-Supply Network LLC DIVISION	Cinergy GASCO Solutions LLC DIVISION	Cinergy Global Ely, Inc. 31-1637639	Cinergy Global Holdings, Inc. 31-1637643	Cinergy Global Power, Inc. 31-1573140	Cinergy Global Resources, Inc. 31-1600199	Cinergy Investments, Inc 31-1421190	Cinergy Marketing & Trading, LP 76-0483617
1 a Gross receipts or sales		493,302.					-2.	24,876,138
1 b Less returns and allowances								
1 c Balance		493,302.					-2.	24,876,138
2 Cost of goods sold		1,044,770.			669.	17,693.	6,897.	3,888,271
3 Gross profit		-551,468.			-669.	-17,693.	-6,899.	20,987,867
4 Dividends					33,073,361.			
5 Interest	62,132.				2,613,292.	8,386,069.	60,695,762.	1,066,819
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income		20.			-1.	6,479,066.	-12,337,027.	546,038
11 Total income	62,132.	-551,448.			35,685,983.	15,047,442.	48,351,836.	22,601,524
12 Compensation of officers								
13 Salaries and wages		4,873.			-1,344,384.	399,573.	171,571.	17,198,850
14 Repairs and maintenance						2,386.		24,190
15 Bad debts								2,915,051
16 Rents		1,113.			16,660.	60,164.	1,847.	1,891,033
17 Taxes and licenses		185.			20,560.	18,177.	158,104.	2,129,026
18 Interest	213,094.	589,425.			3,505,167.	10,176,653.	97,755,168.	5,342,721
19 Charitable contributions								
20 a Depreciation								246,077
20 b Less depreciation claimed elsewhere								
20 c Net depreciation								246,077
21 Depletion								
22 Advertising								
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs		959.			90,242.	87,837.	1,814.	5,661,543
25 Domestic production activities deduction								
26 Other deductions		464,891.			1,773,744.	1,167,627.	374,769.	16,910,871
27 Total deductions	213,094.	1,061,446.			4,061,989.	11,912,417.	98,463,273.	52,919,370
28 Taxable income before NOL & Spec. Deductions	-150,962.	-1,612,894.			31,623,994.	3,135,025.	-10,111,437.	-30,317,846
29 a NOL deduction								
29 b Special deductions					26,873,318.			
30 Taxable income	-150,962.	-1,612,894.			4,759,997.	3,135,025.	-10,111,437.	-30,317,846

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Consolidated Schedules 1120 Page 1	Cinergy One, Inc [illegible]1104	Cinergy Power Generation Services LLC DIVISION	Cinergy Power Investments, Inc 31-1758336	Cinergy Retail Power General, Inc. 31-1814220	Cinergy Retail Power Limited, Inc. 31-1814221	Cinergy Services Inc. 31-1413899	Cinergy Solutions Holding Company, Inc. 31-1503859	Cinergy Solutions of Philadelphia LLC 31-1785993
1a Gross receipts or sales	3,625,432.	1,705,465.				709,410,114.	-530.	3,005,282.
1b Less returns and allowances								
1c Balance	3,625,432.	1,705,465.				709,410,114.	-530.	3,005,282.
2 Cost of goods sold	1,409,345.	1,080,106.				106,026,234.	1,403.	1,914,625.
3 Gross profit	2,216,087.	625,359.				603,383,880.	-2,013.	1,170,657.
4 Dividends						109,914.		
5 Interest	5,188.	673,598.				1,378,277.	18,331,844.	150,806
6 Gross rents								
7 Gross royalties								
8 Capital gain net income						37,262.		
9 Net gain or (loss) from Form 4797								
10 Other income	199.					1,224,302.	-10,655,179.	489
11 Total income	2,221,394.	1,298,957.				606,133,635.	5,674,652.	1,321,952.
12 Compensation of officers								
13 Salaries and wages	676,370.					253,853,399.	-1,064,924.	394,205.
14 Repairs and maintenance	1,948.					4,878,335.	39,901.	3,811.
15 Bad debts	-10,458.						1,516.	
16 Rents	37,317.	2,893.				34,906,324.	437,254.	28,818.
17 Taxes and licenses	81,935.	23,114.				18,711,675.	-38,278.	63,282.
18 Interest	15,950.	1,892,325.				182,403.	15,554,934.	49,861.
19 Charitable contributions		2,285.						
20a Depreciation						671,597.		2,628
20b Less depreciation claimed elsewhere								
20c Net depreciation						671,597.		2,628
21 Depletion								
22 Advertising	190,280.					549,162.		
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs	243,904.	123,022.				73,014,379.	-1,497,434.	137,406
25 Domestic production activities deduction							162,548.	
26 Other deductions	1,031,193.	6,574.				229,865,516.	1,725,798.	217,017
27 Total deductions	2,268,439.	2,048,213.				626,592,790.	18,321,315.	857,020
28 Taxable income before NOL & Spec. Deductions	-47,045.	-749,256.				-20,459,155.	-12,646,663.	424,924
29a NOL deduction								
29b Special deductions								
30 Taxable income	-47,045.	-749,256.				-20,459,155.	-12,646,663.	424,924

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Consolidated Schedules 1120 Page 1	Cinergy Solutions of Tuscola, Inc. 31-1824696	Cinergy Solutions, Inc. 31-1735353	Cinergy Supply Network, Inc. 31-1582985	Cinergy Technologies, Inc. 31-1734648	Cinergy Technology, Inc. 35-1861260	Cinergy Telecommunications Holding Company, I 31-1480521	Cinergy Transportation LLC 31-1725909	Cinergy Two, Inc 31-1756300
1 a Gross receipts or sales								
1 b Less returns and allowances								
1 c Balance								
2 Cost of goods sold	2,729,857.	5,187,201.						
3 Gross profit	-2,729,857.	-5,187,201.						
4 Dividends								
5 Interest	1.	636,127.		4,431,470.	13.	1,135,129.		
6 Gross rents								
7 Gross royalties								
8 Capital gain net income						1,455,956.		
9 Net gain or (loss) from Form 4797								
10 Other income	3,652.	17,549,315.	3,837,585.	-16,381,497.				
11 Total income	-2,726,204.	12,998,241.	3,837,585.	-11,950,027.	13.	2,591,085.		
12 Compensation of officers								
13 Salaries and wages	-3,704,417.	4,084,888.	11,192.		180.	1,373.		
14 Repairs and maintenance	724,873.	40,559.						
15 Bad debts								
16 Rents	35,388.	650,162.						
17 Taxes and licenses	133,208.	482,011.	300,117.	12,910.	62.	312,972.		60
18 Interest	3,237,537.	10,170,979.	28,826.	4,536,072.	1,245.	1,631,317.		17
19 Charitable contributions								
20 a Depreciation		6,795.						
20 b Less depreciation claimed elsewhere								
20 c Net depreciation		6,795.						
21 Depletion								
22 Advertising								
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs	195,907.	1,999,207.	4,566.		65.	561.		
25 Domestic production activities deduction		399,009.						
26 Other deductions	181,871.	3,014,528.	630.	397.	337.	501,061.		23
27 Total deductions	804,367.	20,908,138.	345,331.	4,549,379.	1,869.	2,447,284.		100
28 Taxable income before NOL & Spec. Deductions	-3,530,571.	-7,909,897.	2,692,254.	-16,499,406.	-1,856.	143,801.		-100
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	-3,530,571.	-7,909,897.	2,692,254.	-16,499,406.	-1,856.	143,801.		-100

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1120 Page 1	Cinergy UK, Inc. 31-1480522	Cinergy Ventures LLC DIVISION	Cinergy Wholesale Energy Inc. 31-1742083	Cinergy-Cadence, Inc. 35-1803010	CinTec I LLC DIVISION	CinTec LLC 52-2291457	CSGP of Southeast Texas LLC DIVISION	KO Transmission Company 31-1408986
1 a Gross receipts or sales								1,703,812
1 b Less returns and allowances								
1 c Balance								1,703,812
2 Cost of goods sold		551,545.					-210,632.	395,721
3 Gross profit		-551,545.					210,632.	1,308,091
4 Dividends								
5 Interest		472,284.	1,892,325.	5,748.		80,629.	812,668.	
6 Gross rents								
7 Gross royalties								
8 Capital gain net income		-261,590.						
9 Net gain or (loss) from Form 4797								
10 Other income			-192,360.		292,339.	-106,943.	1,270.	25,942
11 Total income		-340,851.	1,699,965.	5,748.	292,339.	-26,314.	1,024,570.	1,334,033
12 Compensation of officers								
13 Salaries and wages		1,333,281.					486,528.	16,521
14 Repairs and maintenance		87,858.					33,557.	30
15 Bad debts								
16 Rents		16,678.					75,339.	3,764
17 Taxes and licenses		129,067.	366,214.	155.		250.	125,375.	28,539
18 Interest	3,873,113.	3,669,118.	1,924,297.	211,315.		494,659.	238,483.	-131
19 Charitable contributions								2
20 a Depreciation		15,982.						109,037
20 b Less depreciation claimed elsewhere								
20 c Net depreciation		15,982.						109,037
21 Depletion								
22 Advertising								
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs		41,093.					1,281,778.	70,285
25 Domestic production activities deduction								
26 Other deductions	-232.	2,727,721.					-1,051,511.	127,527
27 Total deductions	3,872,881.	8,020,795.	2,290,511.	211,470.		494,909.	1,189,549.	355,574
28 Taxable income before NOL & Spec. Deductions	-3,872,881.	-8,361,646.	-590,546.	-205,722.	292,339.	-521,223.	-164,979.	978,459
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	-3,872,881.	-8,361,646.	-590,546.	-205,722.	292,339.	-521,223.	-164,979.	978,459

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		Lansing Grand River Utilities LLC	Miami Power Corporation	The Cincinnati Gas & Electric Company	The Union Light, Heat & Power Company	Tri-State Improvement Company	Cinergy Solutions Demand Inc.	3036243 Nova Scotia Co.	Ohio River Valley Propane, LLC
		DIVISION	31-6035703	31-0240030	31-0473080	31-0677812	31-1603247	DIVISION	DIVISION
1 a	Gross receipts or sales		34,804.	2,705,807,820.	388,126,714.		9,156,659.		249,991
1 b	Less returns and allowances								
1 c	Balance		34,804.	2,705,807,820.	388,126,714.		9,156,659.		249,991
2	Cost of goods sold			1,419,514,108.	303,868,443.		11,843,828.		35,514
3	Gross profit		34,804.	1,286,293,712.	84,258,271.		-2,687,169.		214,477
4	Dividends			163,772.					
5	Interest	11,822.		14,602,947.	2,525,516.	407.	17,334.	9,721.	4,032
6	Gross rents			14,548,069.		115,774.			
7	Gross royalties								
8	Capital gain net income			83,887.	9,986.				
9	Net gain or (loss) from Form 4797			-4,986,777.	-1,830,246.	-156,936.			
10	Other income			87,660,095.	111,995.	3,303,328.	188.		17
11	Total income	11,822.	34,804.	1,398,445,705.	85,075,522.	3,262,573.	-2,669,647.	9,721.	218,526
12	Compensation of officers								
13	Salaries and wages	27.	1,457.	86,801,901.	9,282,902.	24,900.	-42,452.		4,974
14	Repairs and maintenance			8,624,673.	2,132,230.				
15	Bad debts			6,327,649.	4,187,662.				
16	Rents			24,351,782.	3,514,285.	3,677.			1,107
17	Taxes and licenses	2.	24,159.	241,607,835.	6,081,428.	197,124.	460.	249.	7,842
18	Interest	751.	145.	99,353,012.	6,800,901.		1,312,504.	146,651.	59
19	Charitable contributions			2,445,896.	17,146.				
20 a	Depreciation		659.	142,479,090.	20,623,136.	623,252.	33,325.		66,872
20 b	Less depreciation claimed elsewhere								
20 c	Net depreciation		659.	142,479,090.	20,623,136.	623,252.	33,325.		66,872
21	Depletion								
22	Advertising			265,208.	53,088.				
23	Pension, profit-sharing, etc., plans								
24	Employee benefit programs	10.	576.	58,657,413.	5,772,552.	9,838.			10,810
25	Domestic production activities deduction			6,659,206.					
26	Other deductions	17.	152.	14,247,064.	12,916,802.	-27,715.	156,943.	7,660.	25,846
27	Total deductions	807.	27,148.	691,819,829.	71,309,840.	831,876.	1,460,780.	154,560.	117,510
28	Taxable income before NOL & Spec. Deductions	11,015.	7,656.	706,625,876.	13,765,682.	2,431,497.	-4,130,427.	-144,839.	101,016
29 a	NOL deduction								
29 b	Special deductions			113,400.					
30	Taxable income	11,015.	7,656.	706,512,476.	13,765,682.	2,431,497.	-4,130,427.	-144,839.	101,016

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		CSGP Services LP	CSGP Limited LLC	CinFuel Resources, Inc.	Cinergy Limited Holdings, LLC	Cinergy General Holdings, LLC	Cinergy Ventures II LLC	PSI Energy, Inc.	South Construction Company, Inc.
		DIVISION	DIVISION	30-0023971	DIVISION	DIVISION	DIVISION	35-0594457	35-6038029
1 a	Gross receipts or sales	1,208,333.						1,960,490,733.	
1 b	Less returns and allowances								
1 c	Balance	1,208,333.						1,960,490,733.	
2	Cost of goods sold	25,122.						1,005,120,020.	
3	Gross profit	1,183,211.						955,370,713.	
4	Dividends							30.	
5	Interest	1,038,617.		39,674.	1,512,580.	1,514.		17,690,820.	
6	Gross rents							16,745,431.	
7	Gross royalties								
8	Capital gain net income							1,390,314.	
9	Net gain or (loss) from Form 4797							-10,393,104.	
10	Other income	1,101.	1,388,626.	-712,242.	-19,218,829.	-28,585.		25,426,803.	
11	Total income	2,222,929.	1,388,626.	-672,568.	-17,706,149.	-27,071.		1,006,239,007.	
12	Compensation of officers								
13	Salaries and wages	285,052.		373.				60,274,823.	
14	Repairs and maintenance	1,508.						3,672,193.	
15	Bad debts							-440,641.	
16	Rents	64,317.						17,926,544.	
17	Taxes and licenses	8,430.		29.		5,035.		60,567,227.	
18	Interest	-451.		52.	1,490,403.	652.	576,074.	108,660,316.	
19	Charitable contributions							545,503.	
20 a	Depreciation							232,765,945.	
20 b	Less depreciation claimed elsewhere								
20 c	Net depreciation							232,765,945.	
21	Depletion								
22	Advertising							446,109.	
23	Pension, profit-sharing, etc., plans								
24	Employee benefit programs	54,813.		153.				62,558,153.	
25	Domestic production activities deduction			12,944.				3,646,820.	
26	Other deductions	240,559.		20,958.				184,868,750.	
27	Total deductions	654,228.		34,509.	1,490,403.	5,687.	576,074.	734,691,742.	
28	Taxable income before NOL & Spec. Deductions	1,568,701.	1,388,626.	-707,077.	-19,204,552.	-32,758.	-576,074.	271,547,265.	
28 a	NOL deduction								
29 b	Special deductions								
30	Taxable income	1,568,701.	1,388,626.	-707,077.	-19,204,552.	-32,758.	-576,074.	271,547,265.	

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		CinCap IV	CinCap V	Cinergy Broadband LLC	Cinergy Climate Change Investments, LLC	Cinergy Solutions of Boca Raton	Cinergy Solutions of Cincinnati	Cinergy Solutions of Narrows LLC	Cinergy Solutions of Rock Hill LLC
		DIVISION	DIVISION	DIVISION	35-2212089	DIVISION	DIVISION	35-2203630	35-2203631
1 a	Gross receipts or sales	191,894.	57,672.			4,292,878.	4,976,390.	37,392,897.	9,883,994
1 b	Less returns and allowances								
1 c	Balance	191,894.	57,672.			4,292,878.	4,976,390.	37,392,897.	9,883,994
2	Cost of goods sold			502,110.		1,637,671.	2,656,898.	35,481,531.	7,332,013
3	Gross profit	191,894.	57,672.	-502,110.		2,655,207.	2,319,492.	1,911,366.	2,551,981
4	Dividends								
5	Interest	7,190,921.	10,409,804.			184,625.	11,147.	18,381.	109,355
6	Gross rents								
7	Gross royalties								
8	Capital gain net income								
9	Net gain or (loss) from Form 4797								-100,053
10	Other income					737.	944.	809.	344
11	Total income	7,382,815.	10,467,476.	-502,110.		2,840,569.	2,331,583.	1,930,556.	2,561,627
12	Compensation of officers								
13	Salaries and wages			398,672.		-8,436.	78,812.	680,726.	375,766
14	Repairs and maintenance			51,376.		78.	164.	16,448.	6,095
15	Bad debts								
16	Rents			2,246.		3,492.	113,594.	166,586.	69,255
17	Taxes and licenses			77,828.		45,993.	317,628.	233,440.	141,814
18	Interest	6,661,380.	9,862,009.	174,312.	2,745.	48,392.	540,195.	403,960.	177,756
19	Charitable contributions								
20 a	Depreciation					1,428,645.	2,353,629.	48,079.	21,339
20 b	Less depreciation claimed elsewhere								
20 c	Net depreciation					1,428,645.	2,353,629.	48,079.	21,339
21	Depletion								
22	Advertising			1,706.					
23	Pension, profit-sharing, etc., plans								
24	Employee benefit programs			4,233.		79,076.	174,370.	757,203.	169,168
25	Domestic production activities deduction								
26	Other deductions	524,255.	618,944.	5,248,128.	12,615.	235,014.	450,835.	1,408,368.	1,017,218
27	Total deductions	7,185,635.	10,280,953.	5,958,492.	15,360.	1,832,254.	4,029,227.	3,714,812.	1,978,411
28	Taxable income before NOL & Spec. Deductions	197,180.	186,523.	-6,452,618.	-15,360.	1,008,315.	-1,697,644.	-1,784,256.	583,216
29 a	NOL deduction								
29 b	Special deductions								
30	Taxable income	197,180.	186,523.	-6,452,618.	-15,360.	1,008,315.	-1,697,644.	-1,784,256.	583,216

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Consolidated Schedules 1120 Page 1	Cinergy Solutions of St. Bernard LLC 33-1039904	Cinergy Solutions of St. Paul 13-4031005	CSOS of Lansing LLC DIVISION	CSOS of Oklahoma LLC DIVISION	CSOS of Shreveport LLC DIVISION	Cinergy Capital & Trading, Inc. 35-1870271	Cinergy Retail Sales LLC 37-1484250	Cinergy Solutions of Monsea, LLC DIVISION
1 a Gross receipts or sales	21,945,925.	-149,433.				-2,149,275.	-13,768,812.	25,595,500
1 b Less returns and allowances								
1 c Balance	21,945,925.	-149,433.				-2,149,275.	-13,768,812.	25,595,500
2 Cost of goods sold	16,990,082.		33.		66.	234,062.		24,650,630
3 Gross profit	4,955,843.	-149,433.	-33.		-66.	-2,383,337.	-13,768,812.	944,870
4 Dividends								
5 Interest	10,075.	232,720.	3,719.	41,949.	19,109.	18,987,843.		636,466
6 Gross rents								
7 Gross royalties								
8 Capital gain net income								
9 Net gain or (loss) from Form 4797								
10 Other income	103,189.	-1,763,588.				-43,349,054.		
11 Total income	5,069,098.	-1,680,301.	3,686.	41,949.	19,043.	-26,744,548.	-13,768,812.	1,581,336
12 Compensation of officers								
13 Salaries and wages	655,031.	26,336.	21,849.	6,241.	34,322.	621,766.	79,452.	60,644
14 Repairs and maintenance	10,616.		280.		3,871.	36,822.		
15 Bad debts								
16 Rents	127,660.		3,621.	13.	41,757.	445,364.		
17 Taxes and licenses	139,045.	1,440.	1,675.	449.	2,638.	-557,059.	7,103.	155,046
18 Interest	1,054,044.	12,304.	6,817.	23,768.	815.	38,781,660.	147,549.	826,700
19 Charitable contributions								
20 a Depreciation	708,177.							12,924
20 b Less depreciation claimed elsewhere								
20 c Net depreciation	708,177.							12,924
21 Depletion								
22 Advertising								
23 Pension, profit-sharing, etc., plans								
24 Employee benefit programs	325,707.	2,759.	1,758.	-261.	3,620.	-1,875,466.	30,253.	635,655
25 Domestic production activities deduction								
26 Other deductions	570,144.	9,487.	10,225.	6,276.	52,372.	70,506,870.	123,111.	210,143
27 Total deductions	3,590,424.	52,326.	46,325.	36,486.	139,603.	107,959,165.	387,468.	1,901,112
28 Taxable income before NOL & Spec. Deductions	1,478,674.	-1,732,627.	-42,639.	5,463.	-120,560.	-134,703,713.	-14,156,280.	-319,776
29 a NOL deduction								
29 b Special deductions								
30 Taxable income	1,478,674.	-1,732,627.	-42,639.	5,463.	-120,560.	-134,703,713.	-14,156,280.	-319,776

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		Cinergy Solutions of San Diego, Inc.	Cinergy Solutions O&M LLC	Cinergy Risk Solutions Ltd.	eVent Resources I LLC	Cinergy Solutions Utility, Inc.	CSGP General, LLC	Cinergy Mexico Holdings, LP	Cinergy Solutions of South Charleston LLC
		[illegible]	DIVISION	76-0133751	DIVISION	37-1496042	DIVISION	30-0236167	DIVISION
1 a	Gross receipts or sales	1,083,587.	1,501,847.		906,755.	5,057,538.			2,777,639
1 b	Less returns and allowances								
1 c	Balance	1,083,587.	1,501,847.		906,755.	5,057,538.			2,777,639
2	Cost of goods sold	668,884.	-4,490,943.			2,503,975.			2,567,653
3	Gross profit	1,134,703.	5,992,790.		906,755.	2,553,563.			209,986
4	Dividends								
5	Interest	17,273.	155,030.	123,126.	3.	52,943.			
6	Gross rents								
7	Gross royalties								
8	Capital gain net income				858,094.				
9	Net gain or (loss) from Form 4797								
10	Other income			2,081,250.					675,650
11	Total income	1,151,976.	6,147,820.	2,204,376.	1,764,852.	2,606,506.			885,636
12	Compensation of officers								
13	Salaries and wages	139,337.	1,268,218.			902,937.			-56,422
14	Repairs and maintenance	700.				15,653.			
15	Bad debts								
16	Rents	9,286.				6,192.			
17	Taxes and licenses	16,768.	286,901.			94,145.	1,500.		15,544
18	Interest	15,100.	84,563.			127,212.	40.		70,977
19	Charitable contributions								
20 a	Depreciation	4,014.							30,204
20 b	Less depreciation claimed elsewhere								
20 c	Net depreciation	4,014.							30,204
21	Depletion								
22	Advertising								
23	Pension, profit-sharing, etc., plans								
24	Employee benefit programs	87,725.	1,302,496.			386,049.			78,985
25	Domestic production activities deduction								
26	Other deductions	141,677.	1,532,093.	1,516,945.	1,155,274.	579,420.			25,347
27	Total deductions	414,599.	4,554,273.	1,516,945.	1,155,274.	2,111,608.	1,540.		164,635
28	Taxable income before NOL & Spec. Deductions	737,377.	1,593,547.	687,431.	609,578.	494,898.	-1,540.		721,001
29 a	NOL deduction								
29 b	Special deductions								
30	Taxable income	737,377.	1,593,547.	687,431.	609,578.	494,898.	-1,540.		721,001

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Consolidated Schedules 1120 Page 1		Cinergy Solutions Operating Services of DIVISION
1 a	Gross receipts or sales	
1 b	Less returns and allowances	
1 c	Balance	
2	Cost of goods sold	-256.
3	Gross profit	256.
4	Dividends	
5	Interest	7,769.
6	Gross rents	
7	Gross royalties	
8	Capital gain net income	
9	Net gain or (loss) from Form 4797	
10	Other income	
11	Total income	8,005.
12	Compensation of officers	
13	Salaries and wages	-341,439.
14	Repairs and maintenance	
15	Bad debts	
16	Rents	
17	Taxes and licenses	170.
18	Interest	37,286.
19	Charitable contributions	
20 a	Depreciation	
20 b	Less depreciation claimed elsewhere	
20 c	Net depreciation	
21	Depletion	
22	Advertising	
23	Pension, profit-sharing, etc., plans	
24	Employee benefit programs	916.
25	Domestic production activities deduction	
26	Other deductions	-64.
27	Total deductions	-303,131.
28	Taxable income before NOL & Spec. Deductions	311,136.
29 a	NOL deduction	
29 b	Special deductions	
30	Taxable income	311,136.

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EXHIBIT

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4901:1 UTILITIES
Chapter 4901:1-20 Transition Plan of Electric Utility

OAC Ann. 4901:1-20-16 (Anderson 2006)

4901:1-20-16 Corporate separation.

(A) Purpose and scope Electric utilities are required by section 4928.17 of the Revised Code, to file with the commission an application for approval of a proposed corporate separation plan. The rule provides that all the state's electric utility companies must meet the same standards so a competitive advantage is not gained solely because of corporate affiliation. This rule should create competitive equality, preventing unfair competitive advantage and prohibiting the abuse of market power. Generally, this rule applies to the activities of the regulated utility and its transactions with its affiliates. However, to ensure compliance with this rule, examination of the books and records of other affiliates may be necessary. Compliance with paragraph (G)(4) of this rule shall begin immediately. Compliance with the remainder of this rule shall coincide with the start date of competitive retail electric service, January 1, 2001, unless extended by commission order for an electric utility pursuant to division (C) of section 4928.01 of the Revised Code.

(B) Definitions

(1) "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal merchant function of the electric utility whereby the electric utility provides a competitive service.

(2) "Electric utilities" are as defined in division (A)(11) of section 4928.01 of the Revised Code.

(3) "Fully allocated costs" are the sum of direct costs plus an appropriate share of indirect costs. For purposes of this rule, the term "fully allocated costs" shall have the same meaning as the term "fully loaded embedded costs" as that term appears in division (A)(3) of section 4928.17 of the Revised Code.

(4) "Employees" are all full-time or part-time employees of an electric utility or its affiliates, as well as consultants, independent contractors or any other persons performing various duties or obligations on behalf of or for an electric utility or its affiliate.

(5) "Competitive supplier" means any entity or entities, including aggregators, brokers, and marketers, offering to supply electricity or energy-related goods or services at retail, by sale or otherwise, within the service territory of the electric utility.

(6) "Customer" means any entity that is the ultimate retail consumer of goods and services.

(C) Beginning on the starting date of competitive retail electric service, no electric utility shall supply in this state, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service (or a noncompetitive retail electric service and a product or service other than retail electric service) unless under a commission-approved corporate separation plan.

(D) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall work/function independently of each other.

(E) Electric utilities that structurally separate regulated electric utility business from nonregulated business and that certify to the commission on an annual basis that there is no sharing of employees and that there are no unregulated transactions between the electric utility and the unregulated affiliate, may be granted exemptions from certain audit requirements.

(F) This rule applies to all affiliate transactions and shared services. Transactions made in accordance with rules or regulations approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in this rule. Upon a showing of reasonable grounds for complaint, the electric utility has the burden of proof to demonstrate compliance with approved transactional costing rules or regulations.

(G) Electric utilities are required by section 4928.17 of the Revised Code to file an application for approval of a proposed corporate separation plan. The proposed plans shall include provisions relating to the following:

(1) Structural safeguards

(a) An electric utility shall place a copy of the minutes of each board of directors meeting in the CAM in accordance with paragraph (J) of this rule, where it shall be maintained for a minimum of three five years.

(b) An electric utility may not share employees with any affiliate, if the sharing, in any way, violates paragraph (G)(4) of this rule. An electric utility shall maintain in the CAM a copy of the job description of each shared employee (except for shared consultants and shared independent contractors). The electric utility shall maintain in the CAM a list of the names of and job summaries for shared consultants and shared independent contractors. An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs. An electric utility shall add to the CAM a copy of all transferred employees' previous and new job descriptions.

(c) Electric utilities and their affiliates that provide services to customers within the electric utility's service territory shall function independently of each other and shall not share facilities and services if such sharing in any way violates paragraph (G)(4) of this rule.

(d) During an interim period, an electric utility has the burden of establishing "good cause" for selecting an interim functional separation plan (as opposed to a structural separation). The interim plan shall provide a detailed timeline for progression to full structural separation and shall be subject to periodic commission staff review at the staff's discretion.

(2) Separate accounting Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

(3) Financial arrangements Except as the commission may approve, the financial arrangements of an electric utility are subject to the following restrictions:

(a) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.

(b) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.

(c) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.

(d) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.

(e) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.

(f) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

(4) Code of conduct

(a) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.

(b) On or after the effective date of this rule, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail

electric competitors transacting business in its service territory, unless otherwise directed by the customer. This paragraph does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.

(c) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services) that is not contemporaneously and in the same form and manner available to a nonaffiliated competitor of retail electric service.

(d) Electric utilities shall treat as confidential all information obtained from a competitive supplier of retail electric service, both affiliated and nonaffiliated, and shall not release such information unless a competitive supplier provides authorization to do so, or unless the information was or thereafter becomes available to the public other than as a result of disclosure by the electric utilities.

(e) The electric utility shall not tie (nor allow an affiliate to tie) or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.

(f) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.

(g) The electric utility, upon request from a customer, shall provide a complete list of all suppliers operating on the system, but shall not endorse any suppliers nor indicate that any supplier will receive preference because of an affiliate relationship.

(h) The electric utility shall ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power. Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated supplier. All electric utilities shall, at a minimum, provide information in their transition filings so as to enable the commission to determine whether they have met their burden of proof to satisfy this paragraph as it relates to joint advertising between the electric utility and an affiliate, joint marketing activities between the electric utility and an affiliate, and the use of the name and logo of the electric utility.

(i) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following: (i) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services;

(ii) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation;

(iii) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates preference over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service;

(iv) The electric utility shall strictly follow all tariff provisions;

(v) Except to the extent allowed by state law, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any state regulated monopoly service; and

(vi) Violations of this rule shall be enforced and subject to the disciplinary actions described in divisions (C) and (D) of section 4928.18 of the Revised Code.

(j) Shared representatives or shared employees of the electric utility and affiliated competitive supplier shall clearly disclose upon whose behalf their representations to the public are being made.

(k) Notwithstanding paragraph (G)(4) of this rule, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability. The electric utility shall maintain a log of all such actions that do not comply with paragraph (G)(4) of this rule, which log shall be subject to review by the commission.

(5) Complaint procedure The electric utility shall establish a complaint procedure for the issues concerning compliance with this rule. All complaints, whether written or verbal, shall be referred to the general counsel of the utility or

their designee. The legal counsel shall orally acknowledge the complaint within five working days of its receipt. The legal counsel shall prepare a written statement of the complaint that shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The legal counsel for the electric utility shall inform the complainant that the complainant has the right to submit a written characterization of the complaint and the facts supporting it for entry into the CAM. If the complainant desires to submit such a written characterization, the legal counsel for the electric utility shall include that characterization in the CAM. The legal counsel shall communicate the results of the preliminary investigation to the complainant in writing within thirty days after the complaint was received, including a description of any course of action that was taken. The legal counsel for the electric utility shall inform the complainant that the complainant has the right to submit a response to the results of the preliminary investigation and/or action taken by the electric utility for entry into the CAM. If the complainant desires to submit such a written response, the legal counsel for the electric utility shall include that response in the CAM. The legal counsel shall keep a file in the CAM, in accordance with paragraph (J) of this rule, of all such complaint statements for a period of not less than five years. This complaint procedure shall not in any way limit the rights of a party to file a complaint with the commission.

(H) Additional transition plan content requirements for a corporate separation plan

(1) A description and timeline of all planned education and training, throughout the holding company structure, to ensure that electric utility and affiliate employees know and can implement the policies and procedures of this rule.

(2) A copy of a policy statement to be signed by electric utility and affiliate employees who have access to any nonpublic electric utility information, which indicates that they are aware of, have read, and will follow all policies and procedures regarding limitation on the use of nonpublic electric utility information. The statement will include a provision stating that failure to observe these limitations will result in appropriate disciplinary action.

(3) A description of the internal compliance monitoring procedures and the methods for corrective action for compliance with this rule.

(4) A detailed description outlining how the electric utility and its affiliates will comply with this rule, except paragraph (K) of this rule. The format shall list the rule and then provide the description. For example: Corporate separation paragraph (G)(1)(b) of this rule - an electric utility may not share employees with any affiliate, if the sharing, in any way violates paragraph (G)(4) of this rule.

- Detailed description of compliance.

(5) Each electric utility shall make available for commission staff review the initial CAM, the contents of which are set forth in paragraph (J) of this rule.

(6) A detailed listing of the electric utility's electric services and the electric utility's transmission and distribution affiliates' electric services.

(I) Access to books and records

(1) The commission staff has the authority to examine books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code.

(2) The commission staff may investigate such electric utility and/or affiliate operations and the interrelationship of those operations at the commission staff's discretion. In addition, the employees and officers of the electric utility and its affiliates shall be made available for informational interviews, at a mutually agreed time and place, as required by the commission staff to ensure proper separations are being followed.

(3) If such employees, officers, books, and records cannot be reasonably made available to the commission staff in the state of Ohio, then upon request of the commission staff, the appropriate electric utility or affiliate shall reimburse the commission for reasonable travel expenses incurred.

(J) Cost allocation manual

(1) Each electric utility's affiliate, which provides products and/or services to the electric utility and/or receives products and/or services from the electric utility, shall maintain information in the CAM, documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations.

(2) The CAM will be maintained by the electric utility.

(3) The CAM is intended to ensure the commission that no cross-subsidization is occurring between the electric utility and its affiliates.

(4) The CAM will include:

(a) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved;

(b) A description of all assets, services, and products provided to and from the electric utility and its affiliates;

(c) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates;

(d) Information on employees who have either transferred from the electric utility to an affiliate or are shared between the electric utility and an affiliate and shall be consistent with paragraph (G)(1)(b) of this rule.

(e) A log of all complaints brought to the utility regarding this rule; and

(f) Board of director minutes.

(5) The method for charging costs and transferring assets shall be based on fully allocated costs.

(6) The costs should be traceable to the books of the applicable corporate entity.

(7) The electric utility and affiliates shall maintain all underlying affiliate transaction information for a minimum of five years.

(8) Following approval of a corporate separation plan, an electric utility shall send to the director of the utilities department of the commission (or their designee) every six months a summary of any changes in the CAM.

(9) The electric utility shall designate an employee who will act as a contact for the commission staff, when seeking data regarding affiliate transactions, personnel transfers, and the sharing of employees. The electric utility shall update the commission of changes in the contact.

(K) Commission staff audits

(1) The commission staff will perform an audit of the CAM in order to ensure compliance with this rule.

(2) In order to facilitate meaningful data collection, the initial engagement shall cover the first twelve months after the starting date of competitive retail electric service.

(3) Audits will be at the commission staff's discretion, but will attempt to follow a biennial schedule, unless otherwise ordered by the commission.

(4) During an interim functional separation period, additional audits may be required and an external auditor selected and managed by the commission may conduct the audit.

History

Eff 3-10-00; 10-23-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4928.06

Rule amplifies: RC 4928.17, 4928.18, 4928.31(A)(2), 3928.34(A)(8)

R.C. 119.032 review dates: 08/02/2004 and 11/30/2008

CONFIDENTIAL PROPRIETARY
TRADE SECRET

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Settlement Agreement

This Settlement Agreement is between The Cincinnati Gas & Electric Company ("CG&E"), and the City of Cincinnati ("City") (collectively the "Parties"), effective this 14th day of June 2004. It is the intent of this Settlement Agreement to bind the Parties to the terms and conditions set forth herein.

1. The Parties, for good consideration, agree to amend the three existing Electricity Agreements dated February 5, 2004 by and between CG&E on the one hand, and the City for City Facilities, and the City on behalf of the Metropolitan Sewer District of Greater Cincinnati, Hamilton County, Ohio, and the City on behalf of the Greater Cincinnati Water Works, on the other hand (collectively "Electricity Agreements"), by including in such Electricity Agreements the following:

   > The "aggregate generation rate" referenced in Paragraph 1.1 and in Exhibit 1 shall be amended in Exhibit 1 to define the term as "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 Public Utilities Commission of Ohio."

2. CG&E will provide the City one million dollars ($1,000,000.00) in total consideration for the above amendments to the Electricity Agreements. The City shall determine, and provide notice to CG&E, in advance of payment, the proportion of the total consideration to be paid under each Electricity Agreement, and the terms and timing of payment. No payment of consideration shall occur before January 1, 2005.

3. This Settlement Agreement does not affect the rates or terms and conditions of public utility service provided by CG&E to the City, any division of the City, or any utility account managed by the City.

4. This Settlement Agreement is expressly conditioned upon City Council's approval of the amendments to the Electricity Agreements, and any other approval if required, by June 30, 2004, and the City's withdrawal from PUCO Case No. 03-93-EL-ATA within three business days of the approval by City Council and any other required approval of any of the amendments to the Electricity Agreements.

5. The Parties recognize that in a settlement, both Parties have granted concessions to the other and that if the Parties were to litigate the issues that they have now settled, their positions would be different. In the spirit of compromise and to ensure a complete resolution, it is important that the Parties uphold this Settlement Agreement. Therefore, this Settlement Agreement is expressly conditioned upon CG&E and the City not formally advocating a position in any forum in opposition to the issues resolved in the Stipulation and

PENGAD-Bayonne N.J.
EXHIBIT
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CONFIDENTIAL PROPRIETARY
TRADE SECRET

Recommendation filed in Case No. 03-93-EL-ATA, as that Stipulation and Recommendation is adopted and approved by the Public Utilities Commission of Ohio. The Parties also agree that the City will have the same rights as signatories to the Stipulation and Recommendation.

6. This Settlement Agreement terminates at the end of the day, December 31, 2008, or as follows:

   i. The Commission, in Case No. 03-93-EL-ATA or a related case necessary to carry out the terms and conditions of the Stipulation and Recommendation filed in that case, issues an order unacceptable to CG&E.

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

   iii. The failure of the City to satisfy the conditions set forth in paragraphs 4 and 5 above.

7. Before termination of the Settlement Agreement as provided in paragraphs 6 (i), (ii) and (iii) above, the Parties agree to use best efforts to fulfill the intent of this Settlement Agreement, by negotiating amendments to the Settlement Agreement that provide the Parties with substantially the same economic benefit for substantially the same consideration as contained in the original Settlement Agreement.

8. 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 City:

   Julia Larita McNeil Esq.
   City Solicitor
   City of Cincinnati
   Room 214
   801 Plum Street, Room 122
   Cincinnati, OH 45202

   and

   Daniel J. Schlueter Esq.
   Legal Affairs Administrator
   Greater Cincinnati Water Works
   4747 Spring Grove Avenue
   Cincinnati, OH 45232

   To CG&E: