BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., to Cancel Its Spark Spread Interruptible Transportation Rate (Rate SSIT) Pursuant to R.C. 4909.18 or In the Alternative, Suspend Rate SSIT Pursuant to R.C. 4909.16.	))))))	**Case No. 12-0331-GA-ATA**

MOTION FOR INTERVENTION AND COMMENTS IN OPPOSITION TO THE APPLICATION BY THE UNIVERSITY OF CINCINNATI

Pursuant to Section 4903.221, Revised Code and Rule 4901.1-11 of the Ohio Administrative Code, the University of Cincinnati ("UC") moves for leave to intervene in the above-styled proceeding as a full party of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support. UC also simultaneously submits comments in opposition to the Application.

WHEREFORE, UC respectfully requests that the Commission grant this Motion for Leave to Intervene and that UC be made a full party of record, and that the Application be denied.

Respectfully Submitted,

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MEMORANDUM IN SUPPORT OF THE MOTION FOR LEAVE
<u>TO INTERVENE BY THE UNIVERSITY OF CINCINNATI</u>

Rule 4901-1-11 of the Ohio Administrative Code establishes the standard for intervention for proceedings at the Public Utilities Commission of Ohio ("Commission"). Rule 4901-1-11 of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

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> (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors the Commission considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding[1].

The application in the matter at bar seeks to abandon a natural gas transportation service tariff service approved by this Commission more than ten years ago. Specifically, Duke Energy Ohio seeks to remove its Tariff SSIT entitled "spark spread interruptible transportation tariff"[2] primarily on the grounds that one of pricing indices referred to in the tariff is no longer being

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[1] Section 4903.221(B). Revised Code

[2] Application to Cancel Spark Spread Interruptible Transportation Rate p. 1 January 19, 2012

published.[3] Duke also states that there are no customers on Tariff SSIT at this time[4]. In the alternative, Duke asks that Tariff SSIT be suspended.

In general, a spark spread tariff seeks to price natural gas and/ or natural gas transportation based on the difference between the value of natural gas and electric prices. The purpose of a spark spread tariff is to incentivize use of idle capacity in the utility's gas distribution system and encourage efficient use of local, existing electric generation capacity. As noted by the name, the Duke SSIT tariff is for interruptible service only and as such could not impact the quality or quantity of gas transportation service to firm customers, other than to provide additional revenue to Duke which could be applied to fixed costs paid by existing customers.

UC owns and operates commercial sized gas-fired electric generators[5]. The peak use for gas transportation service needed for the UC commercial sized gas fired electric generators usage to operate its commercial electric generators is not coincidental with Duke's distribution system peak which occurs in winter due to its substantial space heating load. By contrast, UC's generation peaks during the second or third quarter of the year.

In January, 2004, The Cincinnati Gas & Electric Company, the predecessor of Duke Energy Ohio, entered into a special Natural Gas Transportation Agreement with the University of Cincinnati for the purpose of transporting gas, the largest use of which is electric generators. The discount from the special contract achieved the same goal as a spark spread tariff and thus UC has not signed up for the Spark Spread tariff in the past. That Natural Gas Transportation

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[3] Id.
[4] Id.
[5] UC operates two 24 MW gas fired turbines at the Main Campus Power Plant.

Agreement is in effect today,[6] but in November Duke sent a notice to UC terminating the Special Transportation Agreement effective May 13, 2012.

Shortly after receiving the Natural Gas Transportation Agreement termination notice in early December of 2011, UC explored Duke Energy Ohio's other interruptible gas rate schedules and inquired about being placed on the Rate SSIT. Duke declined to allow UC to be served under Rate SSIT even though UC meets the "Availability" section of the Rate SSIT as written on the grounds that the Electric Daily index price used in the tariff is no longer published. Within a month of UC's request, Duke filed the Application in the matter at bar seeking Commission approval to cancel Rate the SSIT or, in the alternative, suspending Rate SSIT.

UC has a real and substantial interest in this case. The combination of the unilateral termination of the Special Transportation Agreement by Duke coupled with withdrawal of the Rate SSIT tariff decreases the opportunity of UC to make use of unused capacity in Duke's system and efficiently maximize the use of the gas fired generation capacity. Further, it is an interest not represented by any other party. UC's intervention is being filed prior to the issuance of a procedural schedule so UC's intervention will not delay any established deadlines for intervention, discovery or hearing. Finally, UC's participation will contribute to a just and expeditious resolution of the issues involved in this case.

[6] This contract does not appear to have been filed with the Commission, presumably because it is a contract between a public utility and a state supported institution of higher learning under Section 4905.34, Revised Code.

WHEREFORE, UC respectfully requests that its Motion for Leave to Intervene in this case be granted and that it be given full party status in this case.

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COMMENTS

The Spark Spread Interruptible Transportation Rate Service was proposed some eleven years ago in a general rate case - PUCO Case No. 01-1228-GA-AIR. As part of the Application, CG&E witness William A. Ginn testified that:

> This rate is a new interruptible transportation service rate applicable to commercial gas-fired electric generators where gas is the primary fuel source for combustion gas turbines and combined cycle units. The Facilities Charge component of the rate allows the Company to recover over a reasonable period the incremental costs of facilities constructed to bring service to the customer. The Delivery Charge component of the rate is a flexible charge that attempts to recognize the value of the electricity being generated and sold into the grid and relate that to the cost of gas used to fire the generators. The theory behind the rate is that when the electric margins are small, the gas transportation rate is compressed and when the electric margins widen, the gas transportation rates go up, all in accordance with the formula that is part of the rate.

See Direct Testimony of William A. Ginn, Case No. 01-1228-GA-AIR, July 31, 2001 at pp. 15-16.

In that proceeding, the Staff, in its January 18, 2002 Staff Report of Investigation at pages 45-46, recommended that the formula approach of the delivery price be complemented with a text description of how the price is determined. The description, according to the Staff, should be provided in the vernacular that would allow a customer to better make an evaluation of the value of the service and its potential consequences for delivery price. The Staff went on to analyze whether the company's distribution system could safely accommodate gas-fired generating facilities. Based on its investigation, the Staff believed that the company would employ appropriate safeguards to protect system reliability and service quality, and would perform the analyses necessary to safely offer SSIT service. The Commission ultimately approved Rate SSIT effective on June 12, 2002.

The currently effective Rate SSIT provides the terms of its availability as follows:

A. Availability

Interruptible local delivery service for natural gas to be used in commercial gas-fired electric generators and available to any customer who: (1) signs a contract with the Company for service under this Rate SSIT; (2) arranges for the delivery of gas into the Company's system for customer's sole use at one point of delivery where distribution mains are adjacent to the premise to be served; and (3) utilizes natural gas transported under this tariff as its primary fuel source in a combustion gas turbine unit(s) or combined cycle unit(s) for the purpose of generating electricity. Service under this tariff will be provided by displacement and on a best efforts basis. The Company reserves the right to decline requests to initiate or continue service hereunder whenever, in the Company's sole judgment, rendering service will be detrimental to the operation of the Company's system or impair its ability to supply gas to customers receiving service under the provisions of Rate RS, Rate GS, Rate RFT, Rate FT, Rate DGS, Rate IT, or other special contract arrangements. This tariff schedule shall preclude the Company from entering into special arrangements with Commission approval, which are designed to meet unique circumstances.

The service provided hereunder will be interruptible local gas delivery service provided on a best efforts basis from the Company's city gate receipt points to the outlet side of a customer's meter. The Company, to ensure its inability to reliably supply gas to customers receiving service under the provisions of Rate RS, Rate GS, Rate RFT, Rate FT, Rate DGS, and Rate IT, as well as under interruptible special contract arrangements, shall have the right for operational reasons to designate the city gate receipt points where the customer is required to delivery into the Company's system.

In order to receive service under this tariff, Customer must have in place throughout the term of this agreement a gas storage / balancing service agreement with an upstream supplier under which that supplier will balance customer's hourly and daily usage with deliveries into the Company's system. The Company will install at Customer's expense metering equipment that will allow it to monitor customer's hourly and daily usage.

UC, in light of the unilateral withdrawal of its Special Natural Gas Transportation Agreement, by Duke contacted Duke and requested service under Rate SSIT. UC when making the request went through all of the criteria in the SSIT tariff. Specifically, the gas to be delivered would be solely for UC's sole use and delivered to one point of delivery just as it does today under the Special Natural Gas Transportation Agreement. In that regard, the distribution mains serving UC's main campus are adjacent to the power plant to be served so no new facilities will have to be built. Further, UC will utilize gas transported under the SITT Tariff in the same manner it is now receiving gas transportation service under the soon to be terminated Special Natural Gas Transportation Agreement which like the SITT Tariff is pegged to hourly demand. Similarly, UC currently has the other qualification items listed in the SITT Tariff. UC currently has in place a gas storage / balancing service agreement with an upstream supplier under which the supplier will balance the customer's hourly and daily usage with deliveries into the Company's system. UC today has installed today metering equipment which allows Duke to monitor UC's hourly and daily usage. In sum, UC meets all of the criteria of Rate SSIT and service to UC under Rate SSIT will require no new facilities or equipment to be built by either Duke or UC.

UC does not contest the fact that Duke as of January 1, 2012 is no longer in the Midwest Independent System Operator regional transmission organization, or that Mega Watt Daily does not publish an "Into Cinergy" price[7]. Duke however does now belong to the PJM Interconnection regional transmission organization which has a liquid, real time and day a head market where MWh are priced based on the actual sales price between willing buyers and willing

[7] January 19, 2011 Application p. 3

sellers. Duke does not dispute that adequate replacements exist for Mega Watt Daily pricing, rather, a careful reading of the January 19, 2011 Application indicates that Duke's concern is that the formula will not produce a rate that will provide it with suitable compensation. So Duke is only willing to continue having a spark spread service if it can be priced as part of a general base rate case[8].

UC does not object to establishing a fair price for the spark spread service, or continuing with a special contract for UC's interruptible, off peak gas transportation for its electric generation. UC does however object to both cancelling its Special Natural Gas Transportation Agreement and the Rate SSIT, for by doing both Duke has eliminated all avenues of incentivizing efficient distribution and generation capacity in its service area. Removing both the Special Natural Gas Transportation contract and Rate SSIT, leaves only regular IT service for natural gas transportation needs of electric generation customers. The IT rate in effect today is more than double the transportation rate under the UC's Special Natural Gas Transportation Agreement or what would be Rate SSIT if Megawatt Daily's Into Cinergy rate was merely replaced with the PJM day ahead market price for the Duke Energy Ohio zone. Assuming that UC transported the same amount of gas for electric generation it did last year, but did so under the IT rate rather the Special Natural Gas Transportation Agreement, UC will pay Duke roughly one million dollars ($1,000,000) more per year.

WHEREFORE, UC requests that the Commission grant its intervention, and deny Duke's request to either cancel or suspend Rate SSIT. Further, the Commission should direct Duke to work with the Staff of the Commission and UC to devise a suitable replacement for Mega Watt

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[8] Id at p. 3

Daily as a power price index and make such other refinements as may be necessary to Rate SSIT so that Rate SSIT achieves the goal of a spark spread tariff by making efficient use of both excess distribution capacity held by Duke and generation capacity held by UC and those similarly situated.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons by electronic mail this 13th day of February, 2012:

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