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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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 an Alternative Competitively-Bid Service Rate Option Subsequent to the 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

OBJECTIONS OF OHIO PARTNERS FOR AFFORDABLE ENERGY

In accordance with R.C. § 4909.19 and O.A.C. § 4901-1-28, the intervener Ohio Partners for Affordable Energy ("OPAE") presents its objections to the above-referenced Applications of The Cincinnati Gas & Electric Company. Case No. 03-93 was filed by The Cincinnati Gas & Electric Company ("CG&E" or "the Company") on January 10, 2003. Ohio Partners for Affordable Energy ("OPAE") filed a motion to intervene and a motion to dismiss in the docket on March 4, 2003. On December 9, 2003, OPAE's motion to intervene was granted, and the motion to dismiss was denied. Further, the Entry consolidated Case Nos. 03-93,

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03-2079, 03-2080, and 2081, and established a procedural schedule. A subsequent entry, on February 18, 2004 modified the procedural schedule, setting the stage for the filing of objections.

In making these objections, OPAE does not waive any right it may have to conduct cross-examination, introduce exhibits or make motions at any hearings; to file briefs; to seek appropriate orders or relief from the Commission; or otherwise to participate in hearings that the Commission may hold.

I. Introduction

The Ohio General Assembly, with the passage of Amd. S.B. 3, significantly altered the regulatory framework governing the provision of essential electric service. The legislation maintained a traditional cost-of-service approach for pricing distribution service, acknowledged the primacy of the Federal Energy Regulatory Commission ("FERC") in the pricing of transmission service and sought to promote development of a competitive market for generation service which would ultimately be freed of regulatory constraint. While the legislation established a five year transition period, it was cognizant of the fact that matters beyond its control, including the creation of functioning Regional Transmission Organizations (RTOs) under the FERC regulatory umbrella, might delay or prevent the creation of an effectively competitive marketplace for wholesale and retail generation service. Changing the direction of an industry accustomed to monopoly status for over a century in five years was clearly viewed as a daunting task.

The General Assembly in its wisdom, rather than try to anticipate every problem that could arise, vested in the Public Utilities Commission of Ohio ("PUCO" or "the Commission") wide-ranging authority to oversee the evolution of an effectively competitive market for generation services. To that end, the Commission has proceeded to approve one stipulation modifying the outcome of an electric transition plan, and hearings are completed on a second proposal. This is the third proposal to come before the Commission, and a fourth is scheduled.

OPAEC contends that the Commission has acted properly in deferring action on the original application filed in Case No. 03-93 EL-ATA. While the stipulation in the electric transition plan that was the underpinning for that filing did permit CG&E to apply to the Commission for the right to eliminate rate caps for commercial and industrial customers if a 20% shopping threshold was met, it did not obviate the need for the Commission to find that an effectively competitive market for essential generation services had been created, a requirement of Amd. SB 3. No reasonable person can contend that such a market exists today or is likely to exist in the near future. Thus, the Commission is acting properly to extend the period of regulatory control of generation pricing.

The statute is even more explicit regarding the freeze of transmission and distribution rates, requiring that the total of these two rates be capped during the Market Development Period ("MDP").

Deferring costs incurred during the MDP for later collection is inconsistent with this requirement.

Finally, CG&E argues that it must be protected from risk to the extent it is required to serve as the provider of last resort ("POLR"). OPAE notes that CG&Es rates were last set sometime ago. There is no allegation that the mix of generation owned by Cinergy has changed substantially, nor that the capital investments costs associated with that generation or the operation and maintenance costs have increased markedly above what is reflected in previously approved rates. Those costs remain below the prices quoted in the immature wholesale market. The difference between the price paid by consumers and the prices determined by a dysfunctional wholesale market cannot be construed as a risk, especially when the costs paid by consumers are adequate to cover the costs associated with the Company's generation plant and a modest profit.

In conclusion, the PUCO has the authority to protect consumers by extending the period where rates are stabilized through a regulatory process, thus deferring the move to a fully competitive retail generation market as the marketplace itself continues to evolve to maturity. The lack of competitive options requires this action, per the terms of Amd. SB 3. And, jurisdictional electric utility should retain the opportunity to earn a reasonable rate of return on their investments during this period, not be guaranteed compensation for every nickel and dime it expends.

II. **Competitive Market Option**

CG&E characterizes this option as reflecting the filings in Case Nos. 03-03-EL-ATA, 03-2079-EL-AAM, 02-2081-EL-AAM, and 03-2080-EL-AAM.

However, the proposal itself differs in some respect from those filings.

These objections relate to the proposal as described in the Company filing of January 26, 2004.

a. **The Competitive Market Option Violates Prohibitions Against Increases in Combined Transmission and Distribution Rates**

The CG&E proposal to defer cost associated with capital investments in its transmission and distribution systems during the market development period for recovery in future transmission and base rate cases violates Section 4928.34, O.R.C. and provisions of the Stipulation in Case No. 1658-EL-ETP.

b. **The Proposed Market Based Standard Service Offer Improperly Exposes Customers to Excessive Price Volatility**

CG&E proposes that its Market Based Standard Service Offer will function as the default service for customers that do not choose. As such, default customers will be exposed a generation rate that can be extremely volatile, both because of the forces at work in an immature market and the large number of adjustments CG&E proposes to build into the rate. Moreover, using the MBSSO as the default rate is inconsistent with the Competitive Bidding rules issued by this Commission in Case No. 01-2164-EL-ORD.

c. The Proposal Fails to Include Any Demand Side Approaches to Reducing Consumer Price Volatility

The Competitive Market Option includes no mention of potential demand-side management approaches that have demonstrated track records in reducing price volatility in wholesale and retail markets. The proposal should at a minimum include such successful approaches to minimizing customer exposure to volatile and increased prices.

III. Electric Reliability and Rate Stabilization Option

a. The Proposal Would Illegally Terminate the Transition Period for Residential Customers Prior to the End of the Market Development Period.

Amd. SB 3 prohibits the early termination of the MDP unless one of two situations occur: 20% of the load in a customer class has changed suppliers; or, the Commission finds that there is a competitive market. Neither of these circumstances exists or is projected to occur prior to December 31, 2005. Thus, to terminate the MDP on December 31, 2004 is contrary to law. The operation of this proposal would therefore result in an illegal rate increase as a result of the surcharge proposed by the Company.

b. The Proposal Fails to Specify What Charges Make Up the Provider of Last Resort ("POLR") Charge.

The Proposal requests authority to lever a POLR charge that includes costs such as taxes, fuel, environmental costs, purchased power, transmission congestion, etc. However, the proposal fails to

define how these costs differ from costs currently being recovered in rates. Without such information, there is no way to judge the potential size of these costs.

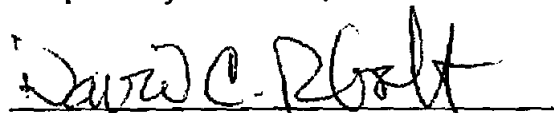
c. The Proposal Violates the Provision of the Stipulation in Case No. 99-1658-EL-ETP Which Eliminates Transition Cost Recovery in 2008.

CG&E proposes to extend collection of regulatory transition costs for an extra two years beyond the date specified in the Stipulation in Case No. 99-1658-EL-ETP.

IV. Conclusion

OPAE believes there is the potential to develop a rate stabilization process that protects consumers, contributes to the evolution of an effectively competitive market and ensures the Company a reasonable opportunity to earn a return on its investment. Neither of these proposals meets those criteria.

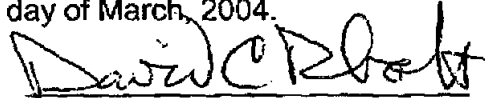
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections of Ohio Partners for Affordable Energy were served by regular U.S. Mail upon the parties of record identified below in this case on this 9th day of March, 2004.



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