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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval for Their Transition Plans and for Authorization To Collect Transition Revenues.)	Case No. 99-1212-EL-ETP
	)	Case No. 99-1213-EL-ATA
	)	Case No. 99-1214-EL-AAM
In the Matter of the Application of The Cincinnati Gas & Electric Company For Approval of its Electric Transition Plan Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval To Transfer its Generating Assets to an Exempt Wholesale Generator.	)	Case No. 99-1658-EL-ETP
	)	Case No. 99-1659-EL-ATA
	)	Case No. 99-1660-EL-ATA
	)	Case No. 99-1661-EL-AAM
	)	Case No. 99-1662-EL-AAM
	)	Case No. 99-1663-EL-UNC
In the Matter of the Application of the Dayton Power & Light Company for Approval of its Transition Plan, for The Opportunity to Receive Transition Revenues, for Approval to Change Accounting Methods, and Approval to Amend its Tariff.	)	Case No. 99-1687-EL-ETP
	)	Case No. 99-1688-EL-AAM
	)	Case No. 99-1689-EL-ATA
In the Matter of the Applications of Columbus Southern Power Company And Ohio Power Company for Approval Of Their Electric Transition Plans and For Receipt of Transition Revenues.	)	Case No. 99-1729-EL-ETP
	)	Case No. 99-1730-EL-ETP
In the Matter of the Application of Monongahela Power Company dba Allegheny Power for Approval of an Electric Transition Plan)	Case No. 00-02-EL-ETP

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**THE CINCINNATI GAS & ELECTRIC COMPANY'S MEMORANDUM CONTRA
THE MOTION OF COALITION FOR CHOICE IN ELECTRICITY
FOR
COMPLIANCE TARIFF FILING, SERVICE, REVIEW, AND COMMENT
PROCEDURES**

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INTRODUCTION:

The Motion of the Coalition for Choice in Electricity (CCE) is well meaning but unreasonable and moot due to current Staff practice to consult with parties as Staff reviews proposed tariffs. CCE's Motion may also set a dangerous precedent by causing additional cost to all parties and implementation delay due to additional unnecessary negotiation.

The Cincinnati Gas & Electric Company (CG&E) opposes CCE's Motion to formalize the tariff filing process by requiring CG&E to supply intervenors with copies of proposed tariffs and workpapers, and allowing formal intervenor review and comment over a two week period. CG&E will gladly give a copy of proposed tariffs to any party that requests such a copy. Similarly, CG&E will review the comments of any party that makes such comments available to CG&E. But, as is the traditional and standard method of operation for creating tariffs to comply with Commission orders, CG&E will rely on its discussions with Staff and the Commission's judgement to produce tariffs in compliance with the Commission's order.

ARGUMENT:

- I. **The existing practice does not harm intervenors because remedies are available to all parties and non-parties through rehearing, pursuant to R. C. 4903.10, or through complaint pursuant to R. C. 4905.26.**

CCE believes that its proposed process "is necessary to ensure the likelihood that the tariffs implemented accurately reflect the various

statutory provisions, Commission rules, and stipulated agreements....”
CCE Motion at 4. Each such requirement will be part of the Commission’s order in these cases. CG&E believes that the Commission, with the help of Staff, is capable of determining whether the filed tariffs are in compliance with the Commission’s order. However, if the intervenors believe that some portion of the tariff is unlawful, unreasonable or otherwise out of compliance, the intervenors have remedies available to them.

Any intervenor that is a party to the case may file for rehearing of the Commission’s order approving the tariffs within thirty days after the issuance of the Commission’s order. Ohio Rev. Code Ann. § 4903.10 (Baldwin 2000). This remedy affords each intervenor the opportunity to contest the Commission’s order on factual or legal bases.

Additionally, any person that believe that CG&E’s tariffs are not in compliance with statutes, the Commission’s orders or rules, may file a complaint at any time. Ohio Rev. Code Ann. § 4905.26 (Baldwin 2000). This remedy affords any person, not simply intervenors, the ability to contest CG&E’s tariffs as long as such person can demonstrate “reasonable grounds for complaint.” *Id.* Because the Staff is capable of assuring tariff compliance with Commission orders and the intervenors have remedies if the tariffs are in non-compliance, the Commission should deny CCE’s motion.

II. CCE's proposed process would cause additional costs for the public and all parties and would cause needless delay regarding implementation of electric restructuring because it would cause the parties to engage in a second set of negotiations after reaching agreement on all issues.

One of the benefits to the public, and a major reason why the Commission and the Court encourage Stipulations, is to reduce the cost of litigation and avoid unnecessary delay. *In re DP&L*, Case No. 91-414-EL-AIR (Opinion and Order at 20-21) (1992). CCE's proposal is in direct conflict with the goals adopted by the Commission. *Id.*

If the Commission adopts CCE's process a second set of negotiations among the parties will ensue regarding the tariff language. These cases will require the filing of hundreds of pages of tariffs. CG&E, pursuant to Commission rule, filed a set of proposed tariffs as UNB-1. CG&E Exhibit 23. CG&E asserts that the CCE had an opportunity to comment on CG&E's filed tariffs and, after months of negotiation, CCE and its members agreed to Stipulations settling all issues in these cases. CCE should not have a second opportunity to negotiate and litigate these cases.

If the Commission grants CCE's motion, it is likely that disagreements will arise causing a negotiation among all of the parties. CG&E negotiated its Stipulations over a six-month period. The effort strained CG&E's resources, Staff's resources and the resources of other parties. That settlement process proved worthwhile because it settled all

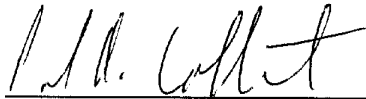
issues in the cases and avoided litigation that promised even more expense and effort by all parties.

Similarly, the Stipulations have allowed CG&E to get on with the business of electric restructuring implementation. In order to implement electric restructuring by January 1, 2001, CG&E must marshal a massive effort to institute the operational systems necessary to allow an interface between the Certified Supplier, customer and CG&E. If CG&E must divert resources to a second round of negotiation and possible litigation, particularly since issues previously agreed to may change, a delay to electric restructuring implementation may result.

CONCLUSION:

CG&E is willing to provide parties with a copy of its proposed tariffs if parties so request. CG&E is also willing to review CCE's comments to CG&E's proposed tariffs. Traditionally, the Staff solicits the comments of intervenors and CG&E has no reason to believe that Staff will not do so in these cases. Because CCE's proposal may cause additional cost and delay in these cases without prejudice to CCE because of the remedies available to it, CG&E respectfully requests the honorable Commission to deny CCE's Motion.


Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was served on all parties of record by electronic mail and by regular, first class U.S. mail, postage prepaid, this 12th day of July, 2000.



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