

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

PUCO

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**THE OHIO CONSUMERS' COUNSEL'S
MEMORANDUM CONTRA
MOTION TO DISMISS OF THE
CINCINNATI GAS & ELECTRIC COMPANY**

The Office of the Ohio Consumers' Counsel ("OCC") on behalf of the residential electric consumers of the Cincinnati Gas & Electric Company ("Company" or "CG&E") and, pursuant to Ohio Admin. Code 4901-1-12(B)(1), files this memorandum contra to CG&E's Motion to Dismiss filed on December 30, 2004 ("CG&E's Motion"). The OCC filed a Second Application

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for Rehearing (“Second AFR”) on December 27, 2004, regarding the Entry on Rehearing issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) on November 23, 2004.

The gravamen of CG&E’s Motion is that OCC filed its Second AFR out of time. CG&E avers that Ohio law provides but 30 days to file an application for rehearing. CG&E informs that the Second AFR was filed 34 days after the journalization of the PUCO’s Entry. That calculation of the timeline of OCC’s filing is essentially the only averment that is correct in CG&E’s Motion.

Given CG&E’s litigious nature, OCC anticipated CG&E’s impulse to file some sort of motion regarding the timing of the Second AFR. We will recount the facts and state the law.

There was a major winter storm in Columbus on December 23, 2004, as CG&E may have noticed from its Columbus offices. The PUCO noticed and closed its offices, including docketing, at noon on that day. The OCC would have filed its Second AFR during the afternoon of December 23rd. OCC was unable to file the Second AFR due to the closing of the PUCO that afternoon.

In this regard, OCC attaches hereto the PUCO’s notice of the closing of its offices. The PUCO’s notice includes the advisory that it will not be possible to file documents after the closing that day. Those are the facts, all of which been glazed over in CG&E’s Motion.

Next there is the law that CG&E, as if in a blizzard of its own making, could not find. CG&E quotes R.C. 4903.10 for the proposition that an application for rehearing must be filed within 30 days. CG&E has missed a few of the finer details of Ohio law. The Ohio General Assembly enacted R.C. 1.14 to be read in *pari materia* with statutory timelines such as the one found in R.C. 4903.10. R.C. 1.14 provides, *inter alia*, that Ohio deadlines will fall on the next

closest day that the affected state agency is open for business when a deadline falls on a day it is closed:

When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act or **before its usual closing time on that day**, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined in this section.

Emphasis added.

Of particular significance here is that R.C. 1.14 provides for deadlines to be the next succeeding day on which the state office is open even when a state office closes “before its usual closing time...” on what otherwise would be the due date. The General Assembly recognized not only that Ohio has holidays and weekends but that Ohio also has unforeseen events such as snowstorms that result in office closings.

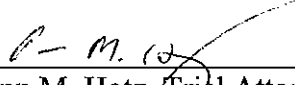
The PUCO also recognized that Ohio law provides for a later filing deadline when the PUCO closes its offices earlier than usual on a business day and when the successive days are a holiday and weekend. In the attached PUCO notice, the PUCO cites to R.C. 1.14 and notes that any document due for filing on December 23rd may be filed on December 27, 2004.¹ OCC complied.

In conclusion, CG&E has understated the facts and misstated the law regarding the filing deadline for an application for rehearing of the PUCO’s Entry on Rehearing of November 23, 2004. Like the snow of a winter day in Ohio, CG&E’s arguments should be brushed aside.

¹ OCC appreciates that the PUCO would provide for the public convenience with its informational notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra of the Office of the Ohio Consumers' Counsel* is being served upon the below-named counsel via first class mail and electronic transmittal this 5th day of January 2004.



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Due to the weather, the offices of the Public Utilities Commission closed at noon on Thursday, December 23, 2004. Pursuant to Section 1.14 of the Ohio Revised Code, any document that was required by law to be filed on December 23, 2004, may be filed on Monday, December 27, 2004, and will be considered timely filed. Section 1.14 provides, in relevant part, that:

When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act or before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined by this section.