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Ohio Partners for Affordable Energy

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David C. Rinebolt
Executive Director & Counsel

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Deputy Director

July 15, 2004

VIA Overnight Delivery

Ms. Daisy Crockron
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43266-5073

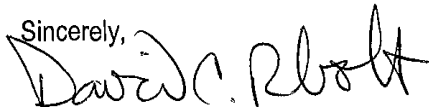
RE: Case No. 03-93-EL-ATA, et.al.

Dear Ms. Crockron:

Enclosed please find an original and 10 copies of a Motion for Protective Order including a two-page document to be filed under seal. Please have the Motion docketed in the above-referenced case. Copies have been served on all parties on the attached certification of service. We do not require a stamped copy.

If you have any questions, please do not hesitate to call. Thank you for your assistance in this matter.

Sincerely,



David C. Rinebolt
Executive Director and Counsel

Enclosure

RECEIVED-DOCKETING DIV
2004 JUL 16 AM 11:03
PUCCO

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV
2004 JUL 16 AM 11:03

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 Sub-)
sequent to the Market Development Period.)

PUCO

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.)

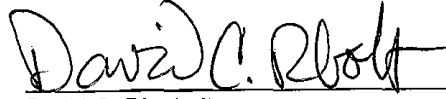
Case No. 03-2081-EL-AAM

Case No. 03-2080-EL-ATA

Motion for Protective Order and Waiver of Rule 4901-1-24(F)

Pursuant to Section 4901-1-24(D), O.A.C., Ohio Partners for Affordable Energy ("OPAE" respectfully requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") grant its Motion for a Protective Order with regard the Attachment A to the Motion to Strike Portions of The Cincinnati Gas & Electric Company's Reply Brief. In addition, OPAE also request a waiver of Rule 4901-1-24(F) to permit permanent confidential treatment of the material. These issues are discussed in the attached Memorandum in Support which is hereby incorporated herein.

Respectfully submitted,

A handwritten signature in black ink that reads "David C. Rinebolt". The signature is written in a cursive style with a horizontal line underneath it.

David C. Rinebolt
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Memorandum in Support

Ohio Partners for Affordable Energy seeks a protective order to protect the confidentiality of and to prohibit the disclosure of a document which is attached to the Motion to Strike filed by OPAE in this case and which was prepared as a settlement offer in the above-referenced case. This attachment has clearly been marked as confidential and is being filed contemporaneously with this Motion, under seal, separate from the remainder of the materials that compromise the Motion to Strike.¹

Under Evid. R. 408, "Evidence of conduct or statements made in compromise negotiations is not admissible." The document in questions was not a part of the discovery process in this case, nor is it evidence that was accepted by the Attorney Examiner as part of the record in this case. The document is a writing prepared for the purpose of settlement. In order to protect the privileged nature of the document and the sanctity of settlement discussions, OPAE is hereby requesting that it be afforded confidential treatment.

Rule 4901-1-24(D), O.A.C. authorizes the Commission to issue an order protecting the confidentiality of information "to the extent that state or federal law prohibits release of the information...and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code." The document in question was prepared for the purpose of settlement discussion and

¹ The offer in questions was jointly submitted by OPAE and Citizens United for Action ("CUFA"). Counsel for OPAE has informed CUFA's counsel of this issue and he is unopposed to making this document available to the Commission confidentially.

is thus privileged under Ohio law. Non-disclosure is consistent with the purpose of Title 49 and the policy of the Commission to encourage full and frank discussions that could lead to settlement. OP&E is essentially alleging in its Motion to Strike that CG&E improperly relied upon this settlement document in making allegations in its Reply Brief. In order to provide the Commission with adequate information to make that determination, the document in question must be made available.

Confidential treatment of this document will not serve to disadvantage any party to this proceeding. CG&E is already in possession of the document, as are two other parties that were involved in discussions relative to low-income and Demand Side Management programs in the CG&E service territory. No other parties have raised issues associated with these matters in their initial or reply briefs. Some have seen earlier versions of this document which was made available during discussions with other parties. Thus, the information is irrelevant or already available to other parties and confidential treatment is not inconsistent with the goals of Title 49. In fact, the opposite is true because treating the document as confidential will reaffirm the policy of the Commission to encourage privileged settlement discussions.

OP&E also requests a waiver of Rule 4901-1-24(F), O.A.C. which would result in rescinding the protective order after eighteen months. OP&E asserts that the information deemed confidential today will remain so in eighteen months given that the document is a settlement offer and remains privileged under Ohio Rules of Evidence.

Wherefore, OP&E respectfully requests that the Commission grant its Motion for a Protective Order pursuant to Section 4901-1-24(D), O.A.C. and its Motion for a waiver of Rule 4901-1-24(F) for the reasons set forth above.

A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

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