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May 5, 2004

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Senior Counsel

CINERGY.

Public Utilities Commission of Ohio
Docketing Division, 10th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Motion of CG&E to Compel Discovery
Case No. 03-93-EL-ATA

Dear Sir or Madam:

Enclosed please find an original and 12 copies of The Cincinnati Gas & Electric Company's Motion to Compel Discovery for docketing in the above captioned case. Please date-stamp the two extra copies and return them to me in the overnight-mail envelope provided.

Should you have any questions, please call me at (513) 287-3601.

Sincerely,



John J. Finnigan
Senior Counsel

JJF/sew

Enclosure

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FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2004 MAY -6 AM 10:33

In the Matter of the Application)
of the Cincinnati Gas & Electric)
Company to Modify its Non-)
Residential Generation Rates to)
Provide for Market-Based) Case No. 03-93-EL-ATA
Standard Service Offer Pricing)
and to Establish a Pilot)
Alternative Competitively-Bid)
Service Rate Option Subsequent)
to Market Development Period)

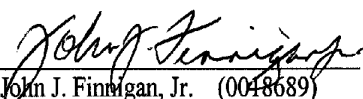
PUCO

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated) Case No. 03-2079-EL-AAM
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)
Procedures for Capital Investment in its) Case No. 03-2081-EL-AAM
Electric Transmission And Distribution) Case No. 03-2080-EL-ATA
System And to Establish a Capital)
Investment Reliability Rider to be)
Effective After the Market Development)
Period)

**MOTION OF
THE CINCINNATI GAS & ELECTRIC COMPANY
TO COMPEL DISCOVERY FROM
DOMINION RETAIL, INC.
WPS ENERGY SERVICES, INC.
MIDAMERICAN ENERGY COMPANY
STRATEGIC ENERGY LLC, INC.
CONSTELLATION POWER SOURCE, INC.
CONSTELLATION NEWENERGY, INC. AND
GREEN MOUNTAIN ENERGY COMPANY
AND REQUEST FOR EXPEDITED RULING**

Pursuant to Ohio Admin. Code § 4901-1-23, The Cincinnati Gas & Electric Company (CG&E) moves the Public Utilities Commission of Ohio (Commission) for an order compelling Dominion Retail, Inc., WPS Energy Services, Inc., MidAmerican Energy Company, Strategic Energy LLC, Inc., Constellation Power Source, Inc., Constellation NewEnergy, Inc. and Green Mountain Energy Company (collectively, Suppliers) to answer interrogatories and document requests propounded by CG&E relating to the price for Competitive Retail Electric Service (CRES) contracts entered into by Suppliers with consumers in Ohio. CG&E agrees to enter into a reasonable confidentiality agreement to preserve the confidential nature of this information. CG&E requests an expedited ruling on this motion pursuant to Ohio Admin. Code § 4901-1-12(C), such that memoranda contra would be due within seven days from the date of service of this motion, and no reply memoranda would be filed. CG&E bases this motion on the pleadings, the attached memorandum of law, and the affidavit of John J. Finnigan, Jr. filed herein.



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MEMORANDUM OF LAW

CG&E seeks a Commission order requiring Suppliers to produce information relating to CRES contracts entered into by Suppliers in Ohio, because the information is highly relevant to the central issues in this case and is not privileged. The CRES contract information requested from Suppliers goes to the issue of what is the relevant market price for CRES service in Ohio. This will enable CG&E to prove how the projected price for its MBSSO service compares to the prices of CRES providers, which goes to the issue of whether CG&E's MBSSO proposals are just and reasonable, and non-predatory. CG&E agrees to enter into a reasonable confidentiality agreement to preserve the confidential nature of such information.

These consolidated cases originated when CG&E filed an application on January 10, 2003 seeking approval of CG&E's proposal to charge market-based rates to its non-residential customers (the "Competitive Market Option"). Under the settlement in CG&E's Electric Transition Plan case, CG&E was permitted to implement market-based rates for non-residential customer classes when switching reached 20% in each class. The switching levels exceeded 20% for each of CG&E's non-residential customer classes by December 2002. The Commission issued an Entry on December 9, 2003 scheduling this case for hearing, and inviting CG&E to file a rate stabilization plan.

CG&E filed its Electric Reliability and Rate Stabilization Plan (ERRSP) on January 26, 2004. In this filing, CG&E notified the Commission that CG&E had elected to terminate the market development period for non-residential consumers, to enable CG&E to implement the Competitive Market Option MBSSO rates beginning January 1, 2005, if the Commission approves this option. The ERRSP provides that the market

development period for all consumers ends as of December 31, 2004, such that CG&E would implement the ERRSP MBSSO rates beginning January 1, 2005, if the Commission approves this option. The hearing on CG&E's MBSSO proposals is scheduled for May 17, 2004.

CG&E sent discovery requests to Suppliers asking for the following information:

Interrogatory No. 10:

Provide a copy of the offers for competitive retail electric service containing each different set of price terms made by (Supplier) to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

Request (for Production of Documents) No. 9

For each contract entered into by (Supplier) to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by (Supplier) during this time period.

A copy of CG&E's discovery requests to each Supplier, and the Suppliers' responses, is attached at Tab 1. The Suppliers objected to these discovery requests on the grounds that the information would be unduly burdensome to produce, beyond the scope of discovery, was already in CG&E's possession, trade secret, and privileged. CG&E will respond below to each objection in turn. In order to resolve this matter and to make it easier for Suppliers to respond, CG&E hereby narrows the time period covered by its request to only seek the information requested for the time period of January 1, 2003 through the present date.

CG&E made a reasonable effort to resolve this dispute without Commission involvement, but to no avail. CG&E's efforts to obtain this information from Suppliers through discovery, and CG&E's efforts to resolve the matter without Commission involvement, are set forth in the Affidavit of John J. Finnigan, Jr. Mr. Finnigan sent a letter to Suppliers explaining the relevancy of this information and requesting that Suppliers produce the information. To date, Suppliers have failed to produce the information in response to these letters. The letters requesting the information, and the Suppliers' responses, are attached at Tab 2.

CG&E will establish below that each of the Suppliers's reasons for not producing the information are meritless.

Relevancy/Beyond the Scope of Discovery

Under Ohio Admin. Code 4901-1-16(B), information is discoverable if it is relevant or reasonably calculated to lead to the discovery of admissible evidence. The definition of "relevant evidence" is:

'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

Ohio R. Evid. 401.

This information is highly relevant. Under R. C. 4928.14(A), CG&E must offer an MBSSO at the end of its market development period for all CRES services necessary to maintain essential electric service, including firm generation service. Pursuant to this statute, the MBSSO must be filed with the Commission under R. C. 4909.18. Two principal issues in this case are whether the Competitive Market Option MBSSO rates

and the ERRSP MBSSO rates are: (1) just and reasonable, pursuant to R. C. 4909.18; (2) non-predatory, pursuant to R. C. 4928.07. CG&E will prove that its MBSSO proposals are just and reasonable, and non-predatory, in part by showing that the rates these MBSSO proposals produce are within the same range of prices that other CRES providers will be able to offer.

CG&E's theory of the case is evident in the direct testimony of CG&E witnesses Dr. Richard G. Stevie and Judah L. Rose, filed on April 15, 2004. Dr. Stevie testified that one possible means of establishing whether CG&E's rate proposals are reasonable was to survey the prices used by other CRES providers for such service, except that other CRES providers do not make such information available. Dr Stevie testified:

Q. HOW IS A MARKET-BASED PRICE MEASURED?

A. * * * A survey of CRES providers' prices could be conducted as a means to set competitive retail electric generation service market-based prices for the electric distribution utility. However, this ignores the fact that most CRES providers will not divulge their cost and pricing structures.

(Direct Testimony of Dr. Richard G. Stevie at 8).

As a result, CG&E established that the Competitive Market Option MBSSO rates complied with law, in part, by proving that these rates were established in the same manner that any CRES provider would set the price for its service. Mr. Rose stated:

Q. PLEASE EXPLAIN THE CMO PROPOSAL.

A. The CMO MBSSO re-creates the price that CRES providers would offer in a competitive market for one-year fixed price service, and makes it the price to compare.

(Direct Testimony of Judah L. Rose at 7).

CG&E established in its pre-filed testimony that the ERRSP MBSSO rates complied with law, in part, by proving that these rates were comparable with rates offered by under the CMO MBSSO, which replicates the prices offered by other CRES providers, and by other electric distribution utilities, some of which have affiliated CRES providers (Direct Testimony of Judah L. Rose at Attachments JLR-37 and JLR-38). Suppliers provide CRES service in Ohio at market-based prices. If CG&E's proposed MBSSO rates are within the same range as Suppliers' prices, this would be relevant to the inquiry into whether CG&E's proposals are just and reasonable and non-predatory. The test for relevancy in the context of discovery is whether the information sought "might shed light upon" the ultimate issue in the case through something other than idle hope. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984). CG&E's request to obtain the Suppliers' prices for 2003-2004 clearly satisfies this test.

Undue Burden

Some of the Suppliers objected to this discovery on the grounds that it would be unduly burdensome for them to comply. Yet none of the Suppliers who raised this objection presented any facts as to why. It is inconceivable that the Suppliers would not have this information in a database that could produce this information through a simple query. The Suppliers would need to access this information on a regular basis to perform customer billing and to respond to customer inquiries regarding bills. As a result, this objection is without merit.

Trade Secret

A party cannot refuse to respond to discovery requests on the grounds that the information sought is trade secret information. This is evident from the plain language of Ohio Admin. Code 4901-1—16(B), which states that “any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.” The rule contains no exception for trade secret information. The proper remedy in this type of situation is for the party producing discovery to seek a protective order, to ensure that the information is not disclosed outside the Commission proceeding. Ohio Admin. Code 4901-1-24(C). Ohio courts facing this issue under Ohio R. Civ. P. 26, on which Ohio Admin. Code 4901-1-16 is based, have ruled that a party cannot refuse discovery on the grounds that the information sought is trade secret information, but rather must obtain a protective order limiting the disclosure of the information to the litigated proceeding. *Montrose Ford, Inc. v. Starn*, 147 Ohio App. 3d 256 (Summit App. 2002); *Alpha Benefits Agency v. Kings Ins. Agency*, 134 Ohio App. 3d 673 (Cuyahoga App. 1999).

Attorney-Client Privilege/Work Product Privilege

The attorney-client privilege applies to “a communication made to the attorney by a client in that relation or the attorney’s advice to a client.” R. C. 2317.02(A). The work product privilege applies to information such as “written statements, private memoranda, and personal recollections prepared or formed by an adverse party’s counsel in the course of his legal duties . . . (which convey) the mental impressions of an attorney.” *Hickman v. Taylor*, 329 U.S. 495, 462 (1947). The Supplier price information sought by CG&E

clearly falls outside these definitions. Furthermore, CG&E requested information on the prices used in actual contracts. Since the Suppliers would have, by necessity, disclosed the price terms to their counterparties in order to reach a meeting of the mind to form a contract, and such disclosure would have waived any possible privilege.

Admissibility/Discoverability of Supplier Price Information Established in Other Rate Stabilization Plan Proceedings

In the FirstEnergy rate stabilization plan case, the Suppliers publicly filed with the Commission information on the prices at which they could supply power into FirstEnergy's service territory. *See* Affidavits of Mark R. Sudbey and Michael D. Smith, attached at Tab 3. Albeit these affidavits did not disclose prices used in the Suppliers' customer contracts, the Suppliers' filing of these affidavits support CG&E's position that this information is relevant and discoverable.

It appears that in DP&L's rate stabilization plan case, the Commission granted a motion to compel discovery in favor of DP&L and against Strategic Energy, LLC and Constellation NewEnergy, Inc. requesting information of the same type CG&E seeks here. DP&L's motion to compel discovery is attached at Tab 4. The hearing examiner did not issue a written entry granting the motion to compel; however, the discussion during the subsequent depositions of Strategic's and Constellation's witnesses, attached at pages 12-13 of Tab 5, and pages 104-105 of Tab 6, indicates that the hearing examiner apparently granted the motion, and that Strategic and Constellation produced the information.

Request for Expedited Ruling

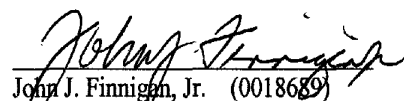
Ohio Admin. Code 4901-1-12(C) provides that a party can request an expedited ruling on a motion. CG&E requests an expedited ruling, and CG&E requests that the Suppliers be permitted to file memoranda contra within the seven-day time period provided by the rule.

CG&E requests expedited ruling because this proceeding is scheduled for hearing on May 17, 2004. An expedited ruling is necessary to allow time for the Suppliers to file memoranda contra, to schedule a hearing on the motion if deemed necessary by the hearing examiners, for the hearing examiners to issue their ruling, for the Suppliers to produce the information, and for CG&E to analyze the information and to incorporate it into witness testimony.

Conclusion

CG&E respectfully requests that the Commission grant its motion to compel discovery requiring Suppliers to produce this information. CG&E is willing to enter into reasonable arrangements to protect the confidential nature of the information, including limiting the persons who would have access to this information to CG&E's attorneys, its outside consultants and CG&E witness Richard G. Stevie, all of whom would sign a confidentiality agreement to use the information only in connection with this proceeding. CG&E also requests an expedited ruling on this motion, as the hearing is scheduled in approximately two weeks, and CG&E will need the information in order to prepare for the hearing and for possible depositions of Suppliers's witnesses.

Respectfully submitted,



John J. Finnigan, Jr. (0018689)

Senior Counsel

Paul A. Colbert (0058582)

Senior Counsel

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E-mail: jfinnigan@cinergy.com

AFFIDAVIT OF JOHN J. FINNIGAN, JR.

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

I, John J. Finnigan, Jr., being first duly cautioned and sworn, state upon my personal knowledge and belief that:

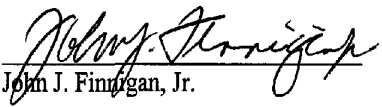
1. I am one of the attorneys representing The Cincinnati Gas & Electric Company (CG&E) in the above-captioned proceedings.

2. At various dates beginning in March 2004, I sent CG&E's first set of interrogatories and requests for production of documents to various parties, including the Suppliers. CG&E's discovery requests required the Suppliers to list the price terms at which they provided Competitive Retail Electric Service in Ohio.

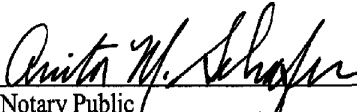
3. The Suppliers did not provide this pricing information, but rather objected on various grounds. True and accurate copies of CG&E's discovery requests to the Suppliers or, to the extent available, the Suppliers' responses to CG&E's discovery requests, are attached at Tab 1.

4. In an effort to resolve this discovery dispute without seeking Commission intervention, I sent letters to the Suppliers' counsel requesting this information. The Suppliers did not produce the requested pricing information in response to my letters. True and accurate copies of my letters and, to the extent available, the Suppliers responses, are attached at Tab 2. To date, none of the suppliers have produced this information.

Further affiant sayeth naught.

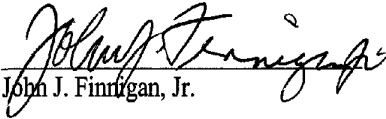

John J. Finnigan, Jr.

Sworn to and subscribed in my presence this 4th day of May, 2004.


Notary Public
ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires Nov. 4, 2004

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of The Cincinnati Gas & Electric Company to Compel Discovery and Request for Expedited Ruling was electronically served on the following parties this 4th day of May, 2004.


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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 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	:	
Procedures for Capital Investment in its	:	Case No. 03-2081-EL-AAM
Electric Transmission and Distribution System	:	Case No. 03-2080-EL-ATA
And to Establish a Capital Investment	:	
Reliability Rider to be Effective after the Market	:	
Development Period.	:	

**RESPONSES OF DOMINION RETAIL, INC.
TO
THE CINCINNATI GAS & ELECTRIC COMPANY'S
FIRST SET OF INTERROGATORIES
AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 4901-1-19 of the Ohio Administrative Code, Dominion Retail, Inc.
("Dominion Retail") hereby provides the following responses to the Cincinnati Gas & Electric
Company's First Set of Interrogatories and Requests for Production of Documents dated March
15, 2004.

INTERROGATORIES

Interrogatory No. 1:

Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery requests for which such person participated in the response.

Response:

Undersigned counsel was responsible for all responses.

Interrogatory No. 2:

Identify each person whom Dominion may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

Response:

Dominion Retail has not yet made a determination as to the persons it may call as witnesses in this matter. Dominion Retail will supplement its answer to this interrogatory when such determination is made.

Interrogatory No. 3:

For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

Response:

Not applicable. See response to Interrogatory No. 2.

Interrogatory No. 4:

For each of the pre-filed testimony, sworn statements, or other testimony identified in response to Interrogatory No. 3 above, please state:

- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;

- b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
- c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- d. the identifying number for the case or proceeding in which the testimony or statement was pre-filed, offered, admitted, or given;
- e. whether the witness was cross-examined; and
- f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

Response:

Not applicable. See response to Interrogatory No. 2.

Interrogatory No. 5:

Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

Response:

Not applicable. See response to Interrogatory No. 2.

Interrogatory No. 6:

If your response to Interrogatory No. 5 above is in the affirmative, please state for each:

- a. the title of each such Article;
- b. the date of each such Article;
- c. the publication of each such Article;
- d. the name, volume, and number of the journal or other compendium where the Article appears.

Response:

Not applicable. See response to Interrogatory No. 2.

Interrogatory No. 7:

For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between IEU and the expert.

Response:

Not applicable. See response to Interrogatory No. 2.

Interrogatory No. 8:

Identify all documents or things that IEU may seek to introduce as exhibits in any proceeding in the above-captioned matters.

Response:

Dominion Retail has not yet made a determination as to the documents or things that Dominion Retail may seek to introduce in any proceeding in the above-captioned matter. Dominion Retail will supplement its answer to this interrogatory when such determination is made.

Interrogatory No. 9:

Please provide the following information:

- a. Identify the number of customers and Dominion customers in CG&E's certified territory; and
- b. Identify the amount of load for Dominion customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio, and
- c. Provide the usage data for the last 24 months for each non-residential Dominion customer located in CG&E's service territory including, *[sic]* energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

Response:

- a. Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of

admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Without waiving this objection, Dominion Retail states that the number of customers in CG&E's certified territory, as well as the number of Dominion Retail customers in CG&E's certified territory, is information that is, or should be, within the possession of CG&E.

- b. Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Further, the interrogatory is ambiguous and overly broad, and responding to it would impose an undue burden on Dominion Retail [see Rule 4901-1-24(A), O.A.C.].
- c. Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Further, responding to this interrogatory would impose an undue burden on Dominion Retail [see Rule 4901-1-24(A), O.A.C.].

Interrogatory No. 10:

Provide a copy of the offers for competitive retail electric service containing each different set of price terms made by Dominion to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

Response:

Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Further, responding to this interrogatory would impose an undue burden on Dominion Retail [see Rule 4901-1-24(A), O.A.C.]. Moreover, the information sought is competitively sensitive, trade secret information [see Rule 4901-1-24(A)(7), O.A.C.].

Interrogatory No. 11:

Provide the methodology by which Dominion determines the price that it offers for each competitive retail electric service including:

- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc.; and
- b. Provide one example of each price methodology that results in a sample price offer; and
- c. Explain the characteristics that make a customer eligible for each price; and
- d. Explain why certain customers, if any, would not be eligible for a given price.

Response:

- a. Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Further, responding to this interrogatory would impose an undue burden on Dominion Retail [see Rule 4901-1-24(A), O.A.C.]. Moreover, the information sought is competitively sensitive, trade secret information [see Rule 4901-1-24(A)(7), O.A.C.].
- b. See response to Interrogatory No. 11.a.
- c. See response to Interrogatory No. 11.a.
- d. See response to Interrogatory No. 11.a.

Interrogatory No. 12:

Provide the amount of generating capacity owned by Dominion and its affiliate(s).

Response:

Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Without waiving this objection, Dominion Retail states that information responsive to this request is publicly available at the Dominion Resources, Inc. website, <http://www.dom.com>.

Interrogatory No. 13:

Provide the credit rating from each of the three major rating agencies (S&P, Moody's and Fitch IBCA) of Dominion and its parent company, if any.

Response:

Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Without waiving this objection, Dominion states that the credit ratings of its parent, Dominion Resources, Inc., is publicly available from the identified rating agencies.

Interrogatory No. 14:

Provide the market cap for Dominion and any publicly traded affiliate.

Response:

Objection. This interrogatory requests information that is not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [see Rule 4901-1-16(B), O.A.C.]. Without waiving this objection, Dominion Retail states that information responsive to this request is available at the Dominion Resources, Inc. website, <http://www.dom.com>.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request No. 1:

Any and all documents identified or referenced in response to any of the foregoing interrogatories.

Response:

There are no documents that are not publicly available that are responsive to this request.

Request No. 2:

Any and all documents which contain any information used, reviewed, or referenced in preparing Dominion's responses to any of the foregoing interrogatories.

Response:

There are no documents that are not publicly available that are responsive to this request.

Request No. 3:

Any and all documents which Dominion may introduce as exhibits at any hearing in the above-captioned matters.

Response:

See response to Interrogatory No. 8.

Request No. 4:

Any and all documents relating to the testimony of any of Dominion's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between Dominion and the expert.

Response:

See response to Interrogatory Nos. 4-7.

Request No. 5:

Any and all documents prepared by, for, or on behalf of Dominion relating to the ending of the market development period in Ohio.

Response:

Objection. This request seeks the production of documents that are subject to the attorney-client privilege and which represent attorney work product. Further, the request is overly broad and unduly burdensome. Without waiving these objections, Dominion Retail states that the documents it has filed in the above-captioned proceedings and in PUCO Case No. 03-2144-EL-ATA may be responsive to this request. These documents are publicly available at the PUCO.

Request No. 6:

Any and all documents prepared by, for, or on behalf of Dominion relating to *the current or projected future state of the competitive retail electric market* in Ohio.

Response:

See response to Request No. 5.

Request No. 7:

Any and all documents prepared by, for, or on behalf of Dominion relating to CG&E's Electric Transition Plan.

Response:

Objection. This request seeks the production of documents that are subject to the attorney-client privilege and which represent attorney work product. Further, the request is overly broad and unduly burdensome. Without waiving these objections, Dominion Retail states that the documents it has filed in the above-captioned proceedings may be responsive to this request. These documents are publicly available at the PUCO.

Request No. 8:

Any and all documents prepared by, for, or on behalf of Dominion relating to CG&E's request in its Electric Transition Plan to recover transition revenues.

Response:

There are no documents responsive to this request.

Request No. 9:

For each contract entered into by Dominion to provide competitive retail electric service in Ohio from January 1, 2002 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by Dominion during this time period.

Response:

Objection. This request seeks documents that are not relevant to the subject matter of this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence [*see* Rule 4901-1-16(B), O.A.C.]. Further, responding to this interrogatory would impose an undue burden on Dominion Retail [*see* Rule 4901-1-24(A), O.A.C.]. Moreover, the information sought is competitively sensitive, trade secret information [*see* Rule 4901-1-24(A)(7), O.A.C.].

Request No. 10:

Provide a copy of any business plans submitted to the Board of Directors or any committee thereof [*sic*] of Dominion or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of electricity by Dominion or any affiliates as a competitive electric supplier.

Response:

See response to Request No. 9. Further, this request is also overly broad.

Respectfully submitted,

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Attorneys for Dominion Retail, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the persons listed below by electronic mail, by first class US mail, postage prepaid, or by a combination of these methods, this 31st day of March 2004.

/s/
Barth E. Royer

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**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	)	Case No. 03-93-EL-ATA
Standard 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)	
Procedures for Certain Costs Associated	)	Case No. 03-2079-EL-AAM
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)	
Procedures for Capital Investment in its	)	Case No. 03-2081-EL-AAM
Electric Transmission And Distribution	)	Case No. 03-2080-EL-ATA
System And to Establish a Capital)	
Investment Reliability Rider to be)	
Effective After the Market Development)	
Period)	

**THE CINCINNATI GAS & ELECTRIC COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CONSTELLATION POWER SOURCE, INC.**

Pursuant to Ohio Administrative Code ("OAC") §§4901-1-19 and 4901-1-20, The Cincinnati Gas & Electric Company ("CG&E") requests that Constellation Power Source, Inc. ("CPS") respond fully, in writing, and under oath to the following combined set of

interrogatories and requests for production of documents (collectively, the "Discovery Requests") within ten (10) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

These Discovery Requests are continuing in nature. Therefore, with respect to any of the following interrogatories or requests for production of documents as to which CPS or its counsel acquires additional knowledge or information, CG&E asks that CPS immediately serve on the undersigned further answers fully setting forth any such additional knowledge or information.

When an interrogatory or request for production of documents does not specifically request a particular fact or document, but such fact or document is necessary to make the response comprehensive, complete, or not misleading, such interrogatory or request for production of documents shall be deemed to specifically request that fact(s) or document(s).

The requests for production of documents include, without limitation, all documents that are in the possession, custody, or control of CPS and/or CPS's predecessors, successors, parents, subsidiaries, divisions, officers, directors, employees, agents or representatives, including any and all documents obtained by CPS and/or CPS's representatives, counsel, or agents from any source whatsoever.

For the purposes of these Discovery Requests, unless otherwise stated, the following terms shall have the meanings indicated:

Person is any human being, corporation, association, joint venture, government, governmental agency, public corporation, board, commission, regulatory authority, committee, partnership, group, firm, or any other organization or entity cognizable at law;

You, your, or yours means CPS, CPS's predecessors in interest, successors, parents, divisions, and subsidiaries and any of CPS's agents, representatives, employees, or counsel;

Document is intended to be comprehensive and includes, without limitation, the original and any non-identical copy, regardless of origin or location, of any data, correspondence, internal correspondence, statement, report, record book, record, account book, account, pamphlet, periodical, discovery, letter, memorandum, internal memorandum, telegram, telex, cable, study, stenographic or handwritten note, paper, working paper, facsimile, invoice, bill, voucher, check, statement, chart, graph, drawing, voice recording, tape, microfilm, microfiche, computer disk, floppy disk, tape data sheet, or data processing card or disk, electronic mail, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however stored, produced or reproduced, to which you have or have had access or which location is known to you;

The term *identify* when used with reference to a natural person, means to state: (a) that person's full name, (b) that person's present (or last known) position and business affiliation, (c) that person's present (or last known) residence address and telephone number, and (d) the nature of that person's past and present relationship with you;

The term *identify* when used with reference to an entity other than a natural person, means to state the full name, and present (or last known) address and telephone number of the entity;

The term *identify* when used with reference to a document, including any document relied upon in any answer to any interrogatory or request for production of documents, or that corroborates any such response, means to state: (a) the type of document, (b) its title or

subject matter, (c) the date of the document, (d) the identity of the document's author, sender, and every recipient of the document or of a copy thereof, and (e) the present location and custodian of the document and every known copy thereof. When the document is a written agreement or contract, *identify* also means to state the date such written agreement or contract was entered into and its effective date, the name of each party thereto, the identity of each person who signed such agreement on behalf of each party thereto, the date of termination and the date of every amendment or modification thereto;

Relating to means constituting, defining, containing, mentioning, embodying, reflecting, regarding, referencing, identifying, stating, concerning, referring to, dealing with, generated wholly or partly in response to or because of, or in any way pertaining to.

If any information called for by an interrogatory or request for production of documents is withheld on the basis of a claim of privilege, the nature of the information with respect of which privilege is claimed shall be set forth in answers hereto, together with the type of privilege claimed and a statement of all circumstances upon which plaintiff will rely to support such a claim of privilege. Any documents that are allegedly privileged or otherwise unavailable shall be identified in writing by indicating the following:

- (1) the date of the document;
- (2) the author of the document;
- (3) the recipient(s) of the document;
- (4) the general subject matter of the document;
- (5) the identity of any and all persons to whom the contents of the document have already been revealed;
- (6) the identity of the person or entity now in possession or control of the document; and

(7) the basis upon which the document is being withheld or the reason why it cannot be produced.

CG&E expressly reserves the right to request additional information to determine whether such documents are privileged or otherwise not subject to production.

INTERROGATORIES

1. Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery request for which such person participated in the response.

RESPONSE:

2. Identify each person whom CPS may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE:

-
3. For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE:

4. For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:
- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
 - b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
 - c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
 - d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
 - e. whether the witness was cross-examined; and
 - f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE:

5. Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE:

6. If your response to Interrogatory No. 5 above is in the affirmative, please state for each:
- a. the title of each such Article;
 - b. the date of each such Article;
 - c. the publication of each such Article;
 - d. the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE:

7. For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between CPS and the expert.

RESPONSE:

8. Identify all documents or things that CPS may seek to introduce as exhibits in any proceeding in the above-captioned matters.

RESPONSE:

9. Please provide the following information:
- a. Identify the number of customers and CPS customers in CG&E's certified territory; and
 - b. Identify the amount of load for CPS customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

- c. Provide the usage data for the last 24 months for each non-residential CPS customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE:

- 10. Provide a copy of the offers for competitive retail electric service containing each different set of price terms made by CPS to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE:

11. Provide the methodology by which CPS determines the price that it offers for each competitive retail electric service including:
- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc; and
 - b. Provide one example of each price methodology that results in a sample contract price offer; and
 - c. Explain the characteristics that make a customer eligible for each price; and
 - d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE:

12. Provide the amount of generating capacity owned by CPS and its affiliate(s).

RESPONSE:

13. Provide the credit rating from each of the three major ratings agencies (S&P, Moody's and Fitch IBCA) of CPS and its parent company, if any.

RESPONSE:

14. Provide the market cap for CPS and any publicly traded affiliate.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

CG&E requests that CPS produce the following documents:

1. Any and all documents identified or referenced in response to any of the foregoing interrogatories;
2. Any and all documents which contain any information used, reviewed, or referenced in preparing CPS's responses to any of the foregoing interrogatories;
3. Any and all documents which CPS may introduce as exhibits at any hearing in the above-captioned matters.
4. Any and all documents relating to the testimony of any of CPS's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between CPS and the expert.
5. Any and all documents prepared by, for, or on behalf of CPS relating to the ending of the market development period in Ohio.
6. Any and all documents prepared by, for, or on behalf of CPS relating to *the current or projected future state of the competitive retail electric market* in Ohio.
7. Any and all documents prepared by, for, or on behalf of CPS relating to CG&E's Electric Transition Plan.
8. Any and all documents prepared by, for, or on behalf of CPS relating to CG&E's request in its Electric Transition Plan to recover transition revenues.
9. For each contract entered into by CPS to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by CPS during this time period.
10. Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of CPS or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by CPS or any affiliates as a competitive supplier.

Respectfully submitted,

John J. Finnigan, Jr. (0018689)
The Cincinnati Gas & Electric Company
139 East Fourth Street, 25th Floor Atrium II
P.O. Box 960
Cincinnati, Ohio 45202
(513) 287-3601

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Cincinnati Gas & Electric Company's First Combined Set of Interrogatories and Requests for Production of Documents Directed to CPS was served via E-mail delivery and/or by first class U.S. mail, postage prepaid, upon the following, this _____ day of March, 2004.

John J. Finnigan, Jr.

**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 Service	)	Case No. 03-93-EL-ATA
Offer Pricing And to Establish an 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 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)	

**RESPONSES OF WPS ENERGY SERVICES, INC.
TO THE INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS OF THE CINCINNATI GAS & ELECTRIC COMPANY**

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, WPS Energy Services, Inc. ("WPS-ESI") provides these responses to the following Interrogatories and Request for Production of Documents of the Cincinnati Gas & Electric Company (CG&E).

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APR - 7 2004
LEGAL DEPT
CINERGY CORP.

GENERAL OBJECTIONS

1. WPS-ESI objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests are outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.
2. WPS-ESI objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product, or information that is of a confidential and proprietary nature.
3. WPS-ESI objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek any documents that are on file in Ohio, and thus, are in the public domain and are not required to be produced. Furthermore, any documents that are located in the public domain in other jurisdictions for which the burden of obtaining them is the same for the requesting party as it is for WPS-ESI also need not be produced.
4. WPS-ESI objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the interrogatory or requested document calls for information already in CG&E's possession.
5. All responses of WPS-ESI to the Interrogatories and Requests for the Production of Documents are made subject to and without waiving these objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery requests for which such person participated in the response.

RESPONSE: Ivan Henderson answered the factual discovery requests with legal objections provided by M. Howard Petricoff.

INTERROGATORY NO. 2: Identify each person whom WPS-ESI may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE: WPS-ESI has not determined if it shall call a witness at this time. If WPS-ESI elects to call a witness it shall supplement this response.

INTERROGATORY NO. 3: For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 4: For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:

- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
- b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
- c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
- e. whether the witness was cross-examined; and
- f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 5: Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 6: If your response to Interrogatory No. 5 above is in the affirmative, please state for each:

- a. the title of each such Article;
- b. the date of each such Article;
- c. the publication of each such Article;
- d. the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 7: For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between WPS-ESI and the expert.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 8: Identify all documents or things that WPS-ESI may seek to introduce as exhibits in any proceeding in the above-captioned matter.

RESPONSE: No documents have been selected for introduction into evidence. This response will be supplemented should WPS-ESI elect to introduce a document into the hearing record.

INTERROGATORY NO. 9: Please provide the following information:

a. Identify the number of customers and WPS-ESI customers in CG&E's certified territory; and

RESPONSE: The WPS-ESI hereby raises the General Objections No. 1. , No. 2., No. 3 and No. 4. to this interrogatory. The selection of WPS-ESI as a CRES provider by any particular customer has no relevance to the manner and mode by which CG&E determines to fulfill its utility obligation under Section 4928.14, Revised Code to provide a market-based standard service offer or a competitive bid option to retail customers within its franchised monopoly service area. Further, the names of individual retail customers, the contract terms between a CRES and its customers, particularly price and the length of service, are confidential and protected. The only purpose of such information would be for anti-competitive responses by CG&E towards its competitors or to engage in tortious interference with existing contracts.

Independent of the impropriety and relevance of the requested information, as the holder of the franchised monopoly to provide distribution service in its service area, CG&E already knows the name of each customer supplied by a CRES by virtue of the DSAR needed to set up the service, and because metering is still an exclusive utility service, CG&E knows the exact amount of power each such retail customer purchases each billing cycle from a CRES. Thus CG&E already has the information it is requesting.

b. Identify the amount of load for WPS-ESI customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

RESPONSE: See Objection No. 1., Objection No. 2. and Objection No. 4. also see subsection a) of Interrogatory 9 which are hereby incorporated into this subsection response.

c. Provide the usage data for the last 24 months for each non-residential WPS-ESI customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE: See Objection No. 1, Objection No. 2, and Objection No. 4 as well as the response to the first paragraph Interrogatory 9 subsection a) which are here by incorporated into this response.

INTERROGATORY NO. 10: Provide a copy of the offers for competitive retail electric service each different set of price terms made by WPS-ESI to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph to Interrogatory 9 subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 11: Provide the methodology by which WPS-ESI determines the price that if offers for each competitive retail electric service including:

- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc.; and
- b. Provide one example of each price methodology that results in a sample contract price offer; and
- c. Explain the characteristics that make a customer eligible for each price; and
- d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph in the response to subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 12: Provide the amount of generating capacity owned by WPS-ESI and its affiliate(s).

RESPONSE: See General Objection No. 1. Further this interrogatory is too vague and ill defined to accurately respond to.

INTERROGATORY NO. 13: Provide the credit rating from each of the three major rating agencies (S&P, Moody's and Fitch IBCA) of WPS-ESI and its parent company, if any.

RESPONSE: See General Objection No. 1.

Without waiving the above objection, WPS-ESI's parent is rated A for Senior unsecured debt and A-1 for Commercial paper by Standard + Poors. WPS-ESI's parent is rated A-1 for Senior unsecured debt and P-1 for Commercial paper by Moody's.

INTERROGATORY NO. 14: Please provide the market cap for WPS-ESI and any publicly traded affiliate.

RESPONSE: See General Objection No. 1. Further, this interrogatory is too vague to be answered. In particular WPS-ESI is unclear as to what CG&E means by a "market cap".

REQUEST FOR PRODUCTION OF DOCUMENTS

CG&E requests that WPS-ESI produce the following documents:

REQUEST NO. 1: Any and all documents identified or referenced in response to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time

REQUEST NO. 2: Any and all documents which contain any information used, reviewed, or referenced in preparing WPS-ESI's responses to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time.

REQUEST NO. 3: Any and all exhibits which WPS-ESI may introduce as exhibits at any future hearing in the above-captioned matters.

RESPONSE: Not Applicable at this time.

REQUEST NO. 4: Any and all documents relating to the testimony of any of WPS-ESI's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between WPS-ESI and the expert.

RESPONSE: Not Applicable at this time.

REQUEST NO. 5: Any and all documents prepared by, for, or on behalf of WPS-ESI relating to the ending of the market development period in Ohio.

RESPONSE: General Objections Nos. 1, 2, and 4. WPS-ESI also objects on the basis that the question is too vague to specifically respond to.

Without waiving the above objections WPS-ESI refers CG&E to its filed documents in the DP&L rate stabilization proceeding, Case No. 02-2774-EL-ATA, the FirstEnergy Rate Stabilization proceeding Case No. 03-2144, the comments in the Commission's rule making proceeding for competitive bid out and standard offer Case No. 03-2164-EL-ORD and the FirstEnergy transmission Case No. 03-1966 / 1967/ 1968 -EL-ATA.

REQUEST NO. 6: Any and all documents prepared by, for, or on behalf of WPS-ESI relating to the *current or projected future state of the competitive retail electric market* in Ohio.

RESPONSE: See General Objections No. 1, No. 2. Specifically, WPS-ESI objects to the scope of the question for to answer it would require an examination of every document in WPS-ESI file and an assessment of whether that document express an opinion or contained a fact that relating to the current or future state of competition. No connection exists between WPS-ESI' view of retail electric competition, past, present or future, and CG&E providing market based standard offer service and conducting a competitive bid out. Thus, the documents requested are neither relevant themselves nor will they lead to relevant information.

REQUEST NO. 7: Any and all documents prepared by, for, or on behalf of WPS-ESI relating to CG&E's Electric Transition Plan.

RESPONSE: See General Objections 1, 2, 3 and 4. The case concerning CG&E's transition plan is closed and a final order has been issued. Thus, all documents prepared for the CG&E transition case are irrelevant to the post market development period in general and this proceeding in particular. WPS-ESI's formal comments and objections are part of the public record and were served on CG&E. Thus, further production is not required.

REQUEST NO. 8: Any and all documents prepared by, for, or on behalf of WPS-ESI relating to CG&E's request in its Electric Transition Plan to recover transition revenues.

RESPONSE: See General Objections 1, 2, 3 and 4 as well as the Response to Request No. 7

REQUEST NO. 9: For each contract entered into by WPS-ESI to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by WPS-ESI during this time period.

RESPONSE: See General Objections 1 and 2. Also WPS-ESI incorporates the response to Interrogatory 9 the first paragraph of subpart a) above.

REQUEST NO. 10: Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of WPS-ESI or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by WPS-ESI or any affiliates as a competitive supplier.

RESPONSE: See Objections 1 and 2. There is no information more in need of trade secret protection for a competitive energy company than its business plan. How WPS-ESI plans to offer retail electric service should have no bearing on CG&E's meeting its utility service obligation to provide utility service. It would permit CG&E though to pry into the planned actions of its competitor. Thus, while CG&E would have no legitimate use for the document(s) requested, such documents disclosure to CG&E would have an anti competitive impact on the market. Further, it should be noted that CG&E has asked for the business plan of every competitor and potential competitor in its service area. If CG&E synthesizes the business plans of all its competitors so as to better dominate the power sale market it raises anti trust as well as anti competitive concerns.

As to Objections,



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Attorneys for WPS-ESI Energy, Inc.

AFFIDAVIT

State of Ohio)
County of Cuyahoga) SS:

I, Ivan Henderson, Regional Manager of WPS-ESI Energy Services, Inc., being first duly sworn, declare under oath that the foregoing Responses of WPS-ESI Energy Services, Inc. to the Interrogatories and Requests for Production of Documents of the Cincinnati Gas & Electric Company in Case No. 03-93-EL-ATA are true and accurate to the best of my knowledge and belief.


Ivan Henderson

Sworn and subscribed before me in my presence this 5 day of March, 2004.


Notary Public

KATHLEEN M. KISS
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires May 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses of WPS-ESI Energy Services, Inc. to the Interrogatories and Requests for Production of Documents of Cincinnati Gas & Electric Company, was served via hand delivery, first class U.S. Mail, or electronic mail this 5th day of April, 2004 upon:



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**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 Service	)	Case No. 03-93-EL-ATA
Offer Pricing And to Establish an 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 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)	

**RESPONSES OF MIDAMERICAN ENERGY COMPANY
TO THE INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS OF THE CINCINNATI GAS & ELECTRIC COMPANY**

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, MidAmerican Energy Company ("MEC") provides these responses to the following Interrogatories and Request for Production of Documents of the Cincinnati Gas & Electric Company (CG&E).

GENERAL OBJECTIONS

1. MEC objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests are outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.
2. MEC objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product, or information that is of a confidential and proprietary nature.
3. MEC objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek any documents that are on file in Ohio, and thus, are in the public domain and are not required to be produced. Furthermore, any documents that are located in the public domain in other jurisdictions for which the burden of obtaining them is the same for the requesting party as it is for MEC also need not be produced.
4. MEC objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the interrogatory or requested document calls for information already in CG&E's possession.
5. All responses of MEC to the Interrogatories and Requests for the Production of Documents are made subject to and without waiving these objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery requests for which such person participated in the response.

RESPONSE: Misty Allen answered the factual discovery requests with legal objections provided by M. Howard Petricoff.

INTERROGATORY NO. 2: Identify each person whom MEC may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE: MEC has not determined if it shall call a witness at this time. If MEC elects to call a witness it shall supplement this response.

INTERROGATORY NO. 3: For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony

in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 4: For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:

- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
- b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
- c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
- e. whether the witness was cross-examined; and
- f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 5: Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 6: If your response to Interrogatory No. 5 above is in the affirmative, please state for each:

- a. the title of each such Article;
- b. the date of each such Article;
- c. the publication of each such Article;
- d. the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 7: For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between MEC and the expert.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 8: Identify all documents or things that MEC may seek to introduce as exhibits in any proceeding in the above-captioned matter.

RESPONSE: No documents have been selected for introduction into evidence. This response will be supplemented should MEC elect to introduce a document into the hearing record.

INTERROGATORY NO. 9: Please provide the following information:

a. Identify the number of customers and MEC customers in CG&E's certified territory; and

RESPONSE: The MEC hereby raises the General Objections No. 1. , No. 2., No. 3 and No. 4. to this interrogatory. The selection of MEC as a CRES provider by any particular customer has no relevance to the manner and mode by which CG&E determines to fulfill its utility obligation under Section 4928.14, Revised Code to provide a market-based standard service offer or a competitive bid option to retail customers within its franchised monopoly service area. Further, the names of individual retail customers, the contract terms between a CRES and its customers, particularly price and the length of service, are confidential and protected. The only purpose of such information would be for anti-competitive responses by CG&E towards its competitors or to engage in tortious interference with existing contracts.

Independent of the impropriety and relevance of the requested information, as the holder of the franchised monopoly to provide distribution service in its service area, CG&E already knows the name of each customer supplied by a CRES by virtue of the DSAR needed to set up the service, and because metering is still an exclusive utility service, CG&E knows the exact amount of power each such retail customer purchases each billing cycle from a CRES. Thus CG&E already has the information it is requesting.

b. Identify the amount of load for MEC customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

RESPONSE: See Objection No. 1., Objection No. 2. and Objection No. 4. also see subsection a) of Interrogatory 9 which are hereby incorporated into this subsection response.

c. Provide the usage data for the last 24 months for each non-residential MEC customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE: See Objection No. 1, Objection No. 2, and Objection No. 4 as well as the response to the first paragraph Interrogatory 9 subsection a) which are here by incorporated into this response.

INTERROGATORY NO. 10: Provide a copy of the offers for competitive retail electric service each different set of price terms made by MEC to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph to Interrogatory 9 subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 11: Provide the methodology by which MEC determines the price that it offers for each competitive retail electric service including:

- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc.; and
- b. Provide one example of each price methodology that results in a sample contract price offer; and
- c. Explain the characteristics that make a customer eligible for each price; and
- d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph in the response to subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 12: Provide the amount of generating capacity owned by MEC and its affiliate(s).

RESPONSE: See General Objection No. 1. Further this interrogatory is too vague and ill defined to accurately respond to.

Without waiving the above objections, MEC owns generation facilities in its own name, as well as contracts for both generation and transmission rights.

MidAmerican Energy Company's parent, MidAmerican Energy Holdings Company has approximately 9,000 net MW of generation capacity (owned, contracted and in operation, construction and advanced development).

INTERROGATORY NO. 13: Provide the credit rating from each of the three major rating agencies (S&P, Moody's and Fitch IBCA) of MEC and its parent company, if any.

RESPONSE: See General Objection No. 1.

Without waiving the above objection, MEC's Moody credit rating is A3 and Standard & Poors is A-.

INTERROGATORY NO. 14: Please provide the market cap for MEC and any publicly traded affiliate.

RESPONSE: See General Objection No. 1. Further, this interrogatory is vague to be answered. In particular MEC is unclear as to what CG&E means by a "market cap".

REQUEST FOR PRODUCTION OF DOCUMENTS

CG&E requests that MEC produce the following documents:

REQUEST NO. 1: Any and all documents identified or referenced in response to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time

REQUEST NO. 2: Any and all documents which contain any information used, reviewed, or referenced in preparing MEC's responses to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time.

REQUEST NO. 3: Any and all exhibits which MEC may introduce as exhibits at any future hearing in the above-captioned matters.

RESPONSE: Not Applicable at this time.

REQUEST NO. 4: Any and all documents relating to the testimony of any of MEC's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between MEC and the expert.

RESPONSE: Not Applicable at this time.

REQUEST NO. 5: Any and all documents prepared by, for, or on behalf of MEC relating to the ending of the market development period in Ohio.

RESPONSE: General Objections Nos. 1, 2, and 4. MEC also objects on the basis that the question is too vague to specifically respond to.

Without waiving the above objections MEC refers CG&E to its filed documents in the DP&L rate stabilization proceeding, Case No. 02-2774-EL-ATA, the FirstEnergy Rate Stabilization proceeding Case No. 03-2144, the comments in the Commission's rule making proceeding for competitive bid out and standard offer Case No. 03-2164-EL-ORD and the FirstEnergy transmission Case No. 03-1966 / 1967/ 1968 -EL-ATA.

REQUEST NO. 6: Any and all documents prepared by, for, or on behalf of MEC relating to the *current or projected future state of the competitive retail electric market* in Ohio.

RESPONSE: See General Objections No. 1, No. 2. Specifically, MEC objects to the scope of the question for to answer it would require an examination of every document in MEC file and an assessment of whether that document express an opinion or contained a fact that relating to the current or future state of competition. No connection exists between MEC' view of retail electric competition, past, present or future, and CG&E providing market based standard offer service and conducting a competitive bid out. Thus, the documents requested are neither relevant themselves nor will they lead to relevant information.

REQUEST NO. 7: Any and all documents prepared by, for, or on behalf of MEC relating to CG&E's Electric Transition Plan.

RESPONSE: See General Objections 1, 2, 3 and 4. The case concerning CG&E's transition plan is closed and a final order has been issued. Thus, all documents prepared for the CG&E transition case are irrelevant to the post market development period in general and this proceeding in particular. MEC' formal comments and objections are part of the public record and were served on CG&E. Thus, further production is not required.

REQUEST NO. 8: Any and all documents prepared by, for, or on behalf of MEC relating to CG&E's request in its Electric Transition Plan to recover transition revenues.

RESPONSE: See General Objections 1, 2, 3 and 4 as well as the Response to Request No. 7

REQUEST NO. 9: For each contract entered into by MEC to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by MEC during this time period.

RESPONSE: See General Objections 1 and 2. Also MEC incorporates the response to Interrogatory 9 the first paragraph of subpart a) above.

REQUEST NO. 10: Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of MEC or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by MEC or any affiliates as a competitive supplier.

RESPONSE: See Objections 1 and 2. There is no information more in need of trade secret protection for a competitive energy company than its business plan. How MEC plans to offer retail electric service should have no bearing on CG&E's meeting its utility service obligation to provide utility service. It would permit CG&E though to pry into the planned actions of its competitor. Thus, while CG&E would have no legitimate use for the document(s) requested, such documents disclosure to CG&E would have an anti competitive impact on the market. Further, it should be noted that CG&E has asked for the business plan of every competitor and potential competitor in its service area. If CG&E synthesizes the business plans of all its competitors so as to better dominate the power sale market it raises anti trust as well as anti competitive concerns.

As to Objections,



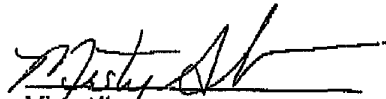
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Attorneys for WPS-ESI Energy, Inc.


AFFIDAVIT

State of Iowa)
County of Polk) SS:

I, Misty Allen, Sr. Regulatory Analyst for MidAmerican Energy Company (MEC), being first duly sworn, declare under oath that the foregoing Responses of MEC to the Interrogatories and Requests for Production of Documents of the Cincinnati Gas & Electric Company in Case No. 03-93-EL-ATA are true and accurate to the best of my knowledge and belief.


Misty Allen

Sworn and subscribed before me in my presence this 5 day of April, 2004.


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses of MEC Energy Services, Inc. to the Interrogatories and Requests for Production of Documents of Cincinnati Gas & Electric Company, was served via hand delivery, first class U.S. Mail, or electronic mail this 5th day of April, 2004 upon:



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**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 Service	)	Case No. 03-93-EL-ATA
Offer Pricing And to Establish an 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 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)	

**RESPONSES OF STRATEGIC ENERGY LLC, INC.
TO THE INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS OF THE CINCINNATI GAS & ELECTRIC COMPANY**

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, Strategic Energy LLC ("SEL") provides these responses to the following Interrogatories and Request for Production of Documents of the Cincinnati Gas & Electric Company (CG&E).

GENERAL OBJECTIONS

1. SEL objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests are outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.
2. SEL objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product, or information that is of a confidential and proprietary nature.
3. SEL objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the requests seek any documents that are on file in Ohio, and thus, are in the public domain and are not required to be produced. Furthermore, any documents that are located in the public domain in other jurisdictions for which the burden of obtaining them is the same for the requesting party as it is for SEL also need not be produced.
4. SEL objects to and declines to respond to each and every Interrogatory or Request for the Production of Documents to the extent the interrogatory or requested document calls for information already in CG&E's possession.
5. All responses of SEL to the Interrogatories and Requests for the Production of Documents are made subject to and without waiving these objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery requests for which such person participated in the response.

RESPONSE: Corey Wilson answered these discovery requests with legal review from M. Howard Petricoff.

INTERROGATORY NO. 2: Identify each person whom SEL may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE: SEL has not determined if it shall call a witness at this time. If SEL elects to call a witness it shall supplement this response.

INTERROGATORY NO. 3: For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony

in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 4: For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:

- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
- b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
- c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
- e. whether the witness was cross-examined; and
- f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE: Not Applicable at this time

INTERROGATORY NO. 5: Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 6: If your response to Interrogatory No. 5 above is in the affirmative, please state for each:

- a. the title of each such Article;
- b. the date of each such Article;
- c. the publication of each such Article;
- d. the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 7: For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between SEL and the expert.

RESPONSE: Not Applicable at this time.

INTERROGATORY NO. 8: Identify all documents or things that SEL may seek to introduce as exhibits in any proceeding in the above-captioned matter.

RESPONSE: No documents have been selected for introduction into evidence. This response will be supplemented should SEL elect to introduce a document into the hearing record.

INTERROGATORY NO. 9: Please provide the following information:

a. Identify the number of customers and SEL customers in CG&E's certified territory; and

RESPONSE: The respondent hereby raises General Objection No. 1. , No. 2., No. 3 and No. 4. The selection of SEL as a CRES provider by any particular customer has no relevance to the manner and mode CG&E determines to fulfill its obligation under Section 4928.14, Revised Code to provide a market-based standard service offer or a competitive bid option to retail customers within its franchised monopoly service area. Further, the names of individual retail customers, the contract terms between a CRES and its customers, including price and conditions of service, is confidential and protected. In sum, the information sought is not relevant to the matter at bar, nor likely to lead to relevant information.

Independent of the impropriety and relevance of the request, as the holder of the franchised monopoly to provide distribution service in its service area, CG&E already knows the name of each customer supplied by a CRES, and the exact amount of power each such retail customer purchases each billing cycle from a CRES. Thus, CG&E already has the information requested.

b. Identify the amount of load for SEL customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

RESPONSE: See Objection No. 1., Objection No. 2. and Objection No. 4. Also see interrogatory 9 subsection a) the response to which is hereby incorporated into this subsection response.

c. Provide the usage data for the last 24 months for each non-residential SEL customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE: See Objection No. 1, Objection No. 2, and Objection No. 4 as well as the response to the first paragraph in subsection a).

INTERROGATORY NO. 10: Provide a copy of the offers for competitive retail electric service each different set of price terms made by SEL to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph in the response to subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 11: Provide the methodology by which SEL determines the price that it offers for each competitive retail electric service including:

- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc.; and
- b. Provide one example of each price methodology that results in a sample contract price offer; and
- c. Explain the characteristics that make a customer eligible for each price; and
- d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE: See General Objection No. 1., and General Objection No. 2., as well as the first paragraph in the response to interrogatory 9 subsection a) which is hereby incorporated as a response to this subsection.

INTERROGATORY NO. 12: Provide the amount of generating capacity owned by SEL and its affiliate(s).

RESPONSE: Objection No. 1. Further objection, this interrogatory is too vague and ill defined to accurately respond to.

Without waiving the above objections, SEL procures energy in the wholesale market through firm liquidated damages contract to serve its retail end-use customers. SEL is affiliated with Kansas City Power and Light through its parent company Great Plains Energy. Kansas City Power and Light owns and operates approximately 4,100 MW of generation capacity.

INTERROGATORY NO. 13: Provide the credit rating from each of the three major rating agencies (S&P, Moody's and Fitch IBCA) of SEL and its parent company, if any.

RESPONSE: Objection No. 1.

Without waiving the above objection, SEL is not a rated entity. Strategic Energy's parent Great Plains Energy has a senior unsecured debt rating of BBB from Standard & Poors, and a Ba 1 from Moody's.

INTERROGATORY NO. 14: Please provide the market cap for SEL and any publicly traded affiliate.

RESPONSE: Objection No. 1. Further objection, this interrogatory is vague to be answered. In particular SEL is unclear as to what CG&E means by a "market cap". If CG&E means a projected dollar value of SEL's parent capitalization, that number is approximately 2.36 Billion dollars.

REQUEST FOR PRODUCTION OF DOCUMENTS

CG&E requests that SEL produce the following documents:

REQUEST NO. 1: Any and all documents identified or referenced in response to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time

REQUEST NO. 2: Any and all documents which contain any information used, reviewed, or referenced in preparing SEL's responses to any of the foregoing interrogatories;

RESPONSE: Not Applicable at this time.

REQUEST NO. 3: Any and all exhibits which SEL may introduce as exhibits at any future hearing in the above-captioned matters.

RESPONSE: Not Applicable at this time.

REQUEST NO. 4: Any and all documents relating to the testimony of any of SEL's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between SEL and the expert.

RESPONSE: Not Applicable at this time.

REQUEST NO. 5: Any and all documents prepared by, for, or on behalf of SEL relating to the ending of the market development period in Ohio.

RESPONSE: General Objections Nos. 1, 2, and 4. SEL also objects on the basis that the question is too vague to specifically respond to.

Without waiving the above objections SEL refers CG&E to its filed documents in the DP&L rate stabilization proceeding, Case No. 02-2774-EL-ATA, the FirstEnergy Rate Stabilization proceeding Case No. 03-2144, the comments in the Commission's rule making proceeding for competitive bid out and standard offer Case No. 03-2164-EL-ORD and the FirstEnergy transmission Case No. 03-1966 / 1967/ 1968 -EL-ATA.

REQUEST NO. 6: Any and all documents prepared by, for, or on behalf of SEL relating to the *current or projected future state of the competitive retail electric market* in Ohio.

RESPONSE: General Objections No. 1, No. 2. Specifically, SEL objects to the scope of the question for to answer it would require an examination of every document in SEL file and an assessment of whether that document express an opinion or contained a fact that relating to the current or future state of competition. No connection exists between SEL' view of retail electric competition, past, present or future, and CG&E providing market based standard offer service and conducting a competitive bid out. Thus, the documents requested are neither relevant themselves nor will they lead to the discovery of admissible information.

REQUEST NO. 7: Any and all documents prepared by, for, or on behalf of SEL relating to CG&E's Electric Transition Plan.

RESPONSE: See General Objections 1, 2, 3 and 4. The case concerning CG&E's transition plan is closed and a final order has been issued. Thus, all documents prepared for the CG&E transition case are irrelevant to the post market development period in general and this proceeding in particular. SEL' formal comments and objections are part of the public record and were served on CG&E. Thus, further production is not required.

REQUEST NO. 8: Any and all documents prepared by, for, or on behalf of SEL relating to CG&E's request in its Electric Transition Plan to recover transition revenues.

RESPONSE: See General Objections 1, 2, 3 and 4 as well as the Response to Request No. 7

REQUEST NO. 9: For each contract entered into by SEL to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by SEL during this time period.

RESPONSE: See General Objections 1 and 2. Also SEL incorporates the response to Interrogatory 9 the first paragraph of subpart a) above.

REQUEST NO. 10: Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of SEL or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by SEL or any affiliates as a competitive supplier.

RESPONSE: See Objections 1 and 2. There is no information more in need of trade secret protection for a competitive energy company than its business plan. How SEL plans to offer retail electric service should have no bearing on CG&E's meeting its utility service obligation to provide utility service. It would permit CG&E though to pry into the planned actions of its competitor. Thus, while CG&E would have no legitimate use for the document(s) requested, such disclosure to CG&E would have an anti-competitive impact on the market. Further, it should be noted that CG&E has asked for the business plan of every competitor and potential competitor in its service area. If CG&E synthesizes the business plans of all its competitors so as to better dominate the power sale market, it raises anti-trust as well as anti-competitive concerns.

As to Objections,



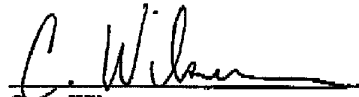
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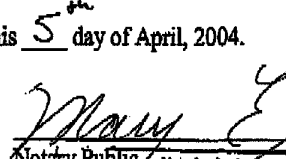
AFFIDAVIT


State of Pennsylvania)
County of Allegheny) SS:

I, Corey Wilson, Manager of Market Development of Strategic Energy, LLC, being first duly sworn, declare under oath that the foregoing Responses of Strategic Energy, LLC to the Interrogatories and Requests for Production of Documents of the Cincinnati Gas & Electric Company in Case No. 03-93-EL-ATA are true and accurate to the best of my knowledge and belief.


Corey Wilson


Sworn and subscribed before me in my presence this 5th day of April, 2004.


Notary Public / Notarial Seal
Mary E. Kovacic, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Nov. 7, 2005
Member, Pennsylvania Association Of Notaries



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses of Strategic Energy Services to the Interrogatories of Cincinnati Gas & Electric Company, via hand delivery, U.S. first class mail, or electronic mail this 5th day of April, 2004 upon:



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Effective After the Market Development)	
Period)	

**GREEN MOUNTAIN ENERGY COMPANY'S RESPONSES TO
THE CINCINNATI GAS & ELECTRIC COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Green Mountain Energy Company ("Green Mountain") hereby responds to the First
Set of Interrogatories and Requests for Production of Documents submitted by the
Cincinnati Gas & Electric Company on March 22, 2004.

GENERAL OBJECTIONS COMMON TO ALL INTERROGATORIES

1. Green Mountain objects to each Interrogatory and Request for Production of Documents to the extent that they call for responses that are beyond the scope of this proceeding and request information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. *See* Ohio Admin. Code Rule 4901-1-16(B).
2. Green Mountain objects to and declines to respond to each Interrogatory and Request for the Production of Documents to the extent that it seeks information that is privileged, including privileged communications between attorney and client, attorney work product, or trial preparation materials. *See* Ohio Admin. Code Rule 4901-1-19(B).
3. Green Mountain objects to and declines to respond to each Interrogatory and Request for the Production of Documents to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code Rules 4901-1-16(B) and 4901-1-24(A).
4. Green Mountain objects to and declines to respond to each Interrogatory and Request for the Production of Documents to the extent that it calls for information that is not within Green Mountain's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code Rules 4901-1-19(C) and 4901-1-20(D). Additionally, Green Mountain objects to and declines to respond to each Interrogatory and Request for Production of Documents that seeks information that is already on file with the Public Utilities Commission of Ohio.

5. Green Mountain's production of any documents does not constitute any admission concerning that document, its content, or the evidentiary sufficiency of the document, including but not limited to authentication, best evidence, relevancy or hearsay.
6. Green Mountain objects to each Interrogatory and Request for Production of Documents to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.
7. Green Mountain objects to the extent that interrogatories seek information that requires complex responses. See Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77 (Montgomery County Ct. C.P. 1971). The function of interrogatories is to pose simple questions relating to a particular subject that may be answered by a brief categorical statement. See Stai v. The Kroger Co., Case No. 82AP-816, 1983 Ohio App. LEXIS 15659 (Ohio Ct. App. June 30, 1985).

Green Mountain's responses to each Interrogatory and Requests for Production of Documents are made subject to, and without waiving, these objections.

INTERROGATORIES

1. Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery request for which such person participated in the response.

RESPONSE: Undersigned counsel for Green Mountain prepared the responses to each of the discovery requests.
2. Identify each person whom GMEC may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the

substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE: Objection. Up until the time that Green Mountain makes the final determination as to who it will call as a witness, the information sought is privileged, confidential, and proprietary, including privileged communications between attorney and client, attorney work product, or trial preparation materials. Without waiving the objections, Green Mountain has not made a final determination as to who it will call as a witness at the hearing in this proceeding.

3. For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 2.

4. For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:
 - a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
 - b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
 - c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
 - d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
 - e. whether the witness was cross-examined; and
 - f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 2.

5. Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 2.

6. If your response to Interrogatory No. 5 above is in the affirmative, please state for each:
- the title of each such Article;
 - the date of each such Article;
 - the publication of each such Article;
 - the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 2.

7. For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between GMEC and the expert.

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 2.

8. Identify all documents or things that GMEC may seek to introduce as exhibits in any proceeding in the above-captioned matters.

RESPONSE: Objection. Up until the time that Green Mountain makes the final determination as to what documents, if any, that it will introduce as exhibits at the hearing in the above-captioned proceeding, the information sought is privileged, confidential, and proprietary, including privileged communications between attorney and client, attorney work product, or trial preparation materials. Without waiving the objections, Green Mountain has not made a final determination as to what documents it will seek to introduce as exhibits at the hearing in the above-captioned proceeding.

9. Please provide the following information:

- Identify the number of customers and GMEC customers in CG&E's certified territory; and

RESPONSE: Objection. The data request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information sought is confidential, proprietary, and a trade secret. In addition, the information is readily available in the Applicants' own records.

- Identify the amount of load for GMEC customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

RESPONSE: Objection. The data request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, the

information sought is confidential, proprietary, and a trade secret.

- c. Provide the usage data for the last 24 months for each non-residential GMEC customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE: Objection. The data request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information sought is confidential, proprietary, and a trade secret. In addition, the information sought is readily available in the Applicants' own records.

10. Provide a copy of the offers for competitive retail electric service containing each different set of price terms made by GMEC to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE: Objection. The interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, the interrogatory seeks information that is publicly available. Without waiving the objections, Green Mountain states that the terms under which it provides electric generation service to customers in the NOPEC and AMPO aggregation groups, which are in the Cleveland Electric Illuminating Company and the Ohio Edison Company service territories, are publicly and readily available as they are set forth in the opt out materials that are sent to the customers in the aggregation groups. And, without waiving the objections, please see the attached information, which is a copy of the most-recent materials provided to customers in the NOPEC and AMPO aggregation groups.

11. Provide the methodology by which GMEC determines the price that it offers for each competitive retail electric service including:
 - a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc; and
 - b. Provide one example of each price methodology that results in a sample contract price offer; and
 - c. Explain the characteristics that make a customer eligible for each price; and
 - d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE: Objection. The data request seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request seeks information that is confidential, proprietary, and a trade secret. Green Mountain also objects to the extent that the interrogatory seeks information that requires complex responses.

12. Provide the amount of generating capacity owned by GMEC and its affiliate(s).

RESPONSE: Objection. The data request seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objections, Green Mountain states that neither it or any of its subsidiaries own any generating capacity.

13. Provide the credit rating from each of the three major ratings agencies (S&P, Moody's and Fitch IBCA) of GMEC and its parent company, if any.

RESPONSE: Objection. The data request seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objections, Green Mountain states that it does not have any publicly traded debt, and therefore thereof, it does not have a corporate credit rating from S&P, Moody's or Fitch IBCA. Also, without waiving the objections, Green Mountain states that it does not have a parent company.

14. Provide the market cap for GMEC and any publicly traded affiliate.

RESPONSE: See Green Mountain's objections and response to Interrogatory No. 13.

REQUESTS FOR PRODUCTION OF DOCUMENTS

CG&E requests that GMEC produce the following documents:

1. Any and all documents identified or referenced in response to any of the foregoing interrogatories;

Response: See Green Mountain's objections and responses to the foregoing interrogatories.

2. Any and all documents which contain any information used, reviewed, or referenced in preparing GMEC's responses to any of the foregoing interrogatories;

Response: See Green Mountain's objections and responses to the foregoing interrogatories.

3. Any and all documents which GMEC may introduce as exhibits at any hearing in the above-captioned matters.

Response: See Green Mountain's objections and response to Interrogatory No. 8.

4. Any and all documents relating to the testimony of any of GMEC's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between GMEC and the expert.

Response: See Green Mountain's objections and response to Interrogatory No. 2.

5. Any and all documents prepared by, for, or on behalf of GMEC relating to the ending of the market development period in Ohio.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is privileged, confidential, and proprietary, including privileged communications between attorney and client, attorney work product, or trial preparation materials.

6. Any and all documents prepared by, for, or on behalf of GMEC relating to *the current or projected future state of the competitive retail electric market* in Ohio.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is confidential and proprietary and a trade secret.

7. Any and all documents prepared by, for, or on behalf of GMEC relating to CG&E's Electric

Transition Plan.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is confidential and proprietary and a trade secret.

8. Any and all documents prepared by, for, or on behalf of GMEC relating to CG&E's request in its Electric Transition Plan to recover transition revenues.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is confidential and proprietary and a trade secret.

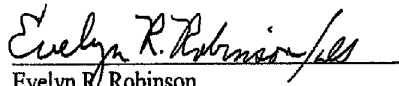
9. For each contract entered into by GMEC to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by GMEC during this time period.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is confidential and proprietary and a trade secret. Without waiving the objections, please see the documents that are referenced in response to Interrogatory No. 10.

10. Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of GMEC or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by GMEC or any affiliates as a competitive supplier.

Response: Objection. The data requests seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the data request is overbroad, vague, and seeks information that is confidential and proprietary and a trade secret.

As to objections,

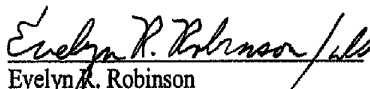

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Attorneys for Green Mountain Energy Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Green Mountain Energy Company's Response to The Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents was served via E-mail delivery and/or by first class U.S. mail, postage prepaid, upon the following, this 1st day of April, 2004.


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**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	)	Case No. 03-93-EL-ATA
Standard 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)	
Procedures for Certain Costs Associated	)	Case No. 03-2079-EL-AAM
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)	
Procedures for Capital Investment in its	)	Case No. 03-2081-EL-AAM
Electric Transmission And Distribution	)	Case No. 03-2080-EL-ATA
System And to Establish a Capital)	
Investment Reliability Rider to be)	
Effective After the Market Development)	
Period)	

**THE CINCINNATI GAS & ELECTRIC COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CONSTELLATION NEWENERGY, INC.**

Pursuant to Ohio Administrative Code ("OAC") §§4901-1-19 and 4901-1-20, The Cincinnati Gas & Electric Company ("CG&E") requests that Constellation NewEnergy, Inc. ("CNE") respond fully, in writing, and under oath to the following combined set of

interrogatories and requests for production of documents (collectively, the "Discovery Requests") within ten (10) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

These Discovery Requests are continuing in nature. Therefore, with respect to any of the following interrogatories or requests for production of documents as to which CNE or its counsel acquires additional knowledge or information, CG&E asks that CNE immediately serve on the undersigned further answers fully setting forth any such additional knowledge or information.

When an interrogatory or request for production of documents does not specifically request a particular fact or document, but such fact or document is necessary to make the response comprehensive, complete, or not misleading, such interrogatory or request for production of documents shall be deemed to specifically request that fact(s) or document(s).

The requests for production of documents include, without limitation, all documents that are in the possession, custody, or control of CNE and/or CNE's predecessors, successors, parents, subsidiaries, divisions, officers, directors, employees, agents or representatives, including any and all documents obtained by CNE and/or CNE's representatives, counsel, or agents from any source whatsoever.

For the purposes of these Discovery Requests, unless otherwise stated, the following terms shall have the meanings indicated:

Person is any human being, corporation, association, joint venture, government, governmental agency, public corporation, board, commission, regulatory authority, committee, partnership, group, firm, or any other organization or entity cognizable at law;

You, your, or yours means CNE, CNE's predecessors in interest, successors, parents, divisions, and subsidiaries and any of CNE's agents, representatives, employees, or counsel;

Document is intended to be comprehensive and includes, without limitation, the original and any non-identical copy, regardless of origin or location, of any data, correspondence, internal correspondence, statement, report, record book, record, account book, account, pamphlet, periodical, discovery, letter, memorandum, internal memorandum, telegram, telex, cable, study, stenographic or handwritten note, paper, working paper, facsimile, invoice, bill, voucher, check, statement, chart, graph, drawing, voice recording, tape, microfilm, microfiche, computer disk, floppy disk, tape data sheet, or data processing card or disk, electronic mail, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however stored, produced or reproduced, to which you have or have had access or which location is known to you;

The term *identify* when used with reference to a natural person, means to state: (a) that person's full name, (b) that person's present (or last known) position and business affiliation, (c) that person's present (or last known) residence address and telephone number, and (d) the nature of that person's past and present relationship with you;

The term *identify* when used with reference to an entity other than a natural person, means to state the full name, and present (or last known) address and telephone number of the entity;

The term *identify* when used with reference to a document, including any document relied upon in any answer to any interrogatory or request for production of documents, or that corroborates any such response, means to state: (a) the type of document, (b) its title or

subject matter, (c) the date of the document, (d) the identity of the document's author, sender, and every recipient of the document or of a copy thereof, and (e) the present location and custodian of the document and every known copy thereof. When the document is a written agreement or contract, *identify* also means to state the date such written agreement or contract was entered into and its effective date, the name of each party thereto, the identity of each person who signed such agreement on behalf of each party thereto, the date of termination and the date of every amendment or modification thereto;

Relating to means constituting, defining, containing, mentioning, embodying, reflecting, regarding, referencing, identifying, stating, concerning, referring to, dealing with, generated wholly or partly in response to or because of, or in any way pertaining to.

If any information called for by an interrogatory or request for production of documents is withheld on the basis of a claim of privilege, the nature of the information with respect of which privilege is claimed shall be set forth in answers hereto, together with the type of privilege claimed and a statement of all circumstances upon which plaintiff will rely to support such a claim of privilege. Any documents that are allegedly privileged or otherwise unavailable shall be identified in writing by indicating the following:

- (1) the date of the document;
- (2) the author of the document;
- (3) the recipient(s) of the document;
- (4) the general subject matter of the document;
- (5) the identity of any and all persons to whom the contents of the document have already been revealed;
- (6) the identity of the person or entity now in possession or control of the document; and

- (7) the basis upon which the document is being withheld or the reason why it cannot be produced.

CG&E expressly reserves the right to request additional information to determine whether such documents are privileged or otherwise not subject to production.

INTERROGATORIES

1. Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these discovery requests, and identify which discovery request for which such person participated in the response.

RESPONSE:

2. Identify each person whom CNE may call to testify in any capacity at the hearing and for each state: (1) the subject matter upon which the witness is expected to testify; (2) the substance of the facts to which each is expected to testify; (3) a summary of the person's qualifications to provide the testimony; (4) and a summary of the basis of each person's testimony.

RESPONSE:

3. For each person identified in response to Interrogatory No. 2 above, please identify any and all pre-filed testimony, sworn statements, or other testimony in any regulatory, judicial, or other proceeding (regardless of whether such testimony or statements were offered or admitted into the record of such proceeding) previously given or provided by the witness.

RESPONSE:

4. For each of the prefiled testimony, sworn statement, or other testimony identified in response to Interrogatory No. 3 above, please state:
- a. the jurisdiction in which the testimony or statement was prefiled, offered, given, or admitted into the record;
 - b. the administrative agency and/or court in which the testimony or statement was prefiled, offered, admitted, or given;
 - c. the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
 - d. the identifying number for the case or proceeding in which the testimony or statement was prefiled, offered, admitted, or given;
 - e. whether the witness was cross-examined; and
 - f. the custodian of the prefiled testimony or statement and the transcript of each proceeding.

RESPONSE:

5. Have any of the individuals identified in response to Interrogatory No. 2 above presented any speeches or written any articles, papers, treatises, books, memoranda or white papers relating to the restructuring of the electric industry; the pricing of electric services; independent transmission entities; economics; retail competition in the electric, gas, or telecommunications industries; the marketing of products or services; electric restructuring stranded cost recovery methodologies; or the ending of any market development period in any state (hereinafter referred to as "Article")?

RESPONSE:

6. If your response to Interrogatory No. 5 above is in the affirmative, please state for each:
- a. the title of each such Article;
 - b. the date of each such Article;
 - c. the publication of each such Article;
 - d. the name, volume, and number of the journal or other compendium where the Article appears.

RESPONSE:

7. For each witness identified in response to Interrogatory No. 2 above who may testify as an expert, please identify all documents relating to the anticipated expert testimony, including, without limitation, all expert reports, statements, and/or notes or other documents, and any correspondence, communications, or other documents exchanged between CNE and the expert.

RESPONSE:

8. Identify all documents or things that CNE may seek to introduce as exhibits in any proceeding in the above-captioned matters.

RESPONSE:

9. Please provide the following information:
- a. Identify the number of customers and CNE customers in CG&E's certified territory; and
 - b. Identify the amount of load for CNE customers with contracts for competitive retail electric service in certified service territories operated by electric distribution utilities other than CG&E in Ohio; and

- c. Provide the usage data for the last 24 months for each non-residential CNE customer located in CG&E's certified territory including, energy usage, peak demand, block pricing, firm or interruptible service, and load factor.

RESPONSE:

- 10. Provide a copy of the offers for competitive retail electric service containing each different set of price terms made by CNE to each potential customer located in Ohio since January 1, 2000. Also identify the dates such offers were effective and the number of customers who accepted such offers.

RESPONSE:

11. Provide the methodology by which CNE determines the price that it offers for each competitive retail electric service including:
- a. The components of each pricing methodology such as the basis for the wholesale cost component, bid ask spread, etc; and
 - b. Provide one example of each price methodology that results in a sample contract price offer; and
 - c. Explain the characteristics that make a customer eligible for each price; and
 - d. Explain why certain customers, if any, would not be eligible for a given price.

RESPONSE:

12. Provide the amount of generating capacity owned by CNE and its affiliate(s).

RESPONSE:

13. Provide the credit rating from each of the three major ratings agencies (S&P, Moody's and Fitch IBCA) of CNE and its parent company, if any.

RESPONSE:

14. Provide the market cap for CNE and any publicly traded affiliate.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

CG&E requests that CNE produce the following documents:

1. Any and all documents identified or referenced in response to any of the foregoing interrogatories;
2. Any and all documents which contain any information used, reviewed, or referenced in preparing CNE's responses to any of the foregoing interrogatories;
3. Any and all documents which CNE may introduce as exhibits at any hearing in the above-captioned matters.
4. Any and all documents relating to the testimony of any of CNE's witnesses and/or expert witnesses including, but not limited to, any and all curricula vitae, reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between CNE and the expert.
5. Any and all documents prepared by, for, or on behalf of CNE relating to the ending of the market development period in Ohio.
6. Any and all documents prepared by, for, or on behalf of CNE relating to *the current or projected future state of the competitive retail electric market* in Ohio.
7. Any and all documents prepared by, for, or on behalf of CNE relating to CG&E's Electric Transition Plan.
8. Any and all documents prepared by, for, or on behalf of CNE relating to CG&E's request in its Electric Transition Plan to recover transition revenues.
9. For each contract entered into by CNE to provide competitive retail electric service in Ohio from January 1, 2001 through the present date, provide a representative copy of each contract containing the different price, terms, and effective dates used by CNE during this time period.
10. Provide a copy of any business plans submitted to the Board of Directors or any committee thereof of CNE or its affiliates during the period January 1, 2000 through the present date that refer, relate to or discuss the sale of retail electricity by CNE or any affiliates as a competitive supplier.

Respectfully submitted,

John J. Finnigan, Jr. (0018689)
The Cincinnati Gas & Electric Company
139 East Fourth Street, 25th Floor Atrium II
P.O. Box 960
Cincinnati, Ohio 45202
(513) 287-3601

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Cincinnati Gas & Electric Company's First Combined Set of Interrogatories and Requests for Production of Documents Directed to CNE was served via E-mail delivery and/or by first class U.S. mail, postage prepaid, upon the following, this ____ day of March, 2004.

John J. Finnigan, Jr.

Finnigan, John

From: Rottinghaus, D J
Sent: Wednesday, April 28, 2004 3:46 PM
To: Butts, Bob; Hartkemeyer, Al; Vaught, Doug
Cc: Steffen, Jack; Finnigan, John; Henning, Jim; Meinke, Kathy
Subject: Change in CG&E Monthly GCR Filing Process

I received a phone call today from Steve Puican of the PUCO Staff regarding the PUCO's recent order in Case No. 03-1384-GA-ORD. In that case rehearing was requested by the gas marketers for, among other things, a lengthening of the period between the monthly EGC filing and the effective date of the EGC. In its initial order, the Commission had stated that the utilities could file their EGC up to one day before the effective date. The marketers insisted that one day did not give them sufficient time to analyze the impact of the change. They requested 14 days between filing and effective dates. The Commission has reluctantly agreed with the 14 days and will be shortly issuing a rehearing order with that decision. I will revise our procedural timetable as I expect the new rule will become effective for the June 2004 GCR filing.

I will put out a more formal memo to all interested parties once we receive the order. Please call me if you have any questions. Thanks!

*Don Rottinghaus
Cinergy Corp.
Rate Department
Mail Drop EA802
Ph. (513) 287-2443
Fax (513) 287-4148
drottinghaus@cinergy.com*

Finnigan, John

From: Colbert, Paul
Sent: Thursday, April 08, 2004 11:44 AM
To: Finnigan, John
Subject: Motion for Protective Order



Main3Legal-#12373
6-v1-Paul_A_...

Attached is the affidavit for the motion for Protective Order. It is in document 123736 in my Venti file.
Thank you,

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Cincinnati, OH 45201-0960
Tel 513.287.3601
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jfinnigan@cinergy.com

JOHN J. FINNIGAN, JR.
Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for WPS Energy Services, Inc.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of WPS Energy Services, Inc. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding WPS Energy Services, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("WPS-ESI Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by WPS-ESI. WPS-ESI responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

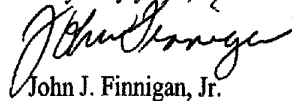
WPS-ESI claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to withhold this

information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which WPS-ESI has entered into contracts in Ohio from January 1, 2003 through the present date.

WPS-ESI also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

JJF/sew

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Cincinnati, OH 45201-0960
Tel 513.287.3601
Fax 513.287.3810
jfinnigan@cinergy.com

JOHN J. FINNIGAN, JR.
Senior Counsel

CINERGY.

VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

Barth E. Royer, Esq.
Judith B. Sanders, Esq.
Bell, Royer & Sanders Co., L.P.A.
33 South Grant Avenue
Columbus, Ohio 43215-3900

Re: Responses of Dominion Retail, Inc. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Royer:

We have the following concerns regarding the Dominion Retail, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Dominion Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Dominion. Dominion responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

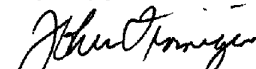
Dominion claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which Dominion has entered into contracts in Ohio from January 1, 2003 through the present date. This information is factual information which has also been communicated with your customers; therefore, it is not privileged.

Dominion also raised an objection that the information requested was confidential trade secret information and/or privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

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JOHN J. FINNIGAN, JR.
Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for Constellation Power Source, Inc.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of Constellation Power Source, Inc. to CG&E's Discovery
Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding Constellation Power Source, Inc., Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Constellation Power Source Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Constellation. Constellation responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

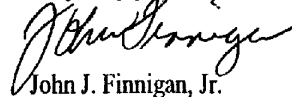
Constellation claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the

information, without providing any basis for this claim, is insufficient grounds to withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which Constellation has entered into contracts in Ohio from January 1, 2003 through the present date.

Constellation also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

JJF/sew

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for MidAmerica Energy Co.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of MidAmerica Energy Co. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding MidAmerica Energy Co. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("MidAmerica Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by MidAmerica. MidAmerica responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

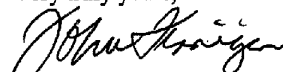
MidAmerica claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which MidAmerica has entered into contracts in Ohio from January 1, 2003 through the present date.

MidAmerica also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

JJF/sew

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for Strategic Energy, LLC
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of Strategic Energy, LLC to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding Strategic Energy, LLC Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Strategic Energy Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Strategic Energy. Strategic Energy responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

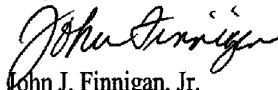
Strategic Energy claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which Strategic Energy has entered into contracts in Ohio from January 1, 2003 through the present date.

Strategic Energy also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

W. Jonathan Airey, Esq.
Counsel for Constellation NewEnergy, Inc.
Vorys, Sater, Seymour and Pease
52 East Gay Street E
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of Constellation NewEnergy, Inc. to CG&E's Discovery
Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Airey:

We have concerns regarding Constellation NewEnergy, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Constellation NewEnergy Responses"), which we have not received from you.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Finnigan, Jr." with a stylized flourish at the end.

John J. Finnigan, Jr.

JJF/sew

CINERGY CORP.
139 E. 4th Street, 29 ATII
Cincinnati, Ohio 45202
Phone: 513.287.2405
Fax: 513.287.4031

Fax

To:	Barth E. Royer, Esq. Judith B. Sanders, Esq.	From:	Sarah Welles for John J. Finnigan, Jr.
Fax:	614-228-0201	Pages:	3
Phone:		Date:	April 6, 2004
Re:	Responses of Dominion Retail, Inc. to CG&E's Discovery Requests Case No. 03-2079 - AAM, et al.	CC:	

☐ Urgent ☐ Per your request ☐ Please Comment ☐ Please Reply ☐ Please Recycle

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JOHN J. FINNIGAN, JR.
Senior Counsel



VIA E-MAIL, FAX (614)228-0201 AND REGULAR MAIL

April 6, 2004

Barth E. Royer, Esq.
Judith B. Sanders, Esq.
Bell, Royer & Sanders Co., L.P.A.
33 South Grant Avenue
Columbus, Ohio 43215-3900

Re: Responses of Dominion Retail, Inc. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Royer:

We have the following concerns regarding the Dominion Retail, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Dominion Discovery Responses"), which we recently received from you.

First, interrogatory nos. 2-8 and document request nos. 3-4 requested information relating to Dominion's witnesses and hearing exhibits. Dominion responded to these discovery requests by stating that this information was unknown at this time. Pursuant to OAC 4901-1-16(D)(1), Dominion is required to supplement its responses relating to the identity of its expert witnesses and the subject matter on which its expert witnesses are expected to testify. Please state whether Dominion is willing to supplement its responses to the discovery requests listed above, and whether Dominion will provide such supplemental responses as of the date that Dominion files its testimony in this proceeding.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Dominion. Dominion responded by stating that the information requested was outside the scope of discovery, was unduly burdensome and was confidential trade secret information.

CG&E submits that this information is relevant because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.


Dominion claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to withhold this information.

Dominion also raised an objection that the information requested was confidential trade secret information. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Document request no. 10 asked for a copy of business plans submitted to the board of directors of Dominion or its affiliates from January 1, 2000 through the present date that refer, relate to or discuss the sale of electricity by Dominion or its affiliates as a competitive electric supplier. Dominion objected to this request on the grounds that it was overly broad, outside the scope of discovery, unduly burdensome and confidential. CG&E submits that these objections are without merit. It would be a simple exercise for Dominion to review the minutes of and documents produced at its board of director meetings from 2000 onward to obtain this information. This information is relevant because the documents could contain information on Dominion's views of the future retail electric market in Ohio and the projected retail price for electric service. CG&E is willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within five days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

*** TX REPORT ***

TRANSMISSION OK

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CINERGY CORP.
139 E. 4th Street, 29 ATII
Cincinnati, Ohio 45202
Phone: 513.287.2405
Fax: 513.287.4031

Fax

To: Barth E. Royer, Esq.
Judith B. Sanders, Esq. From: Sarah Welles for John J. Finnigan, Jr.

Fax: 614-228-0201 Pages: 3

Phone: Date: April 6, 2004

Re: Responses of Dominion Retail, Inc.
to CG&E's Discovery Requests CC:
Case No. 03-2079—AAM, et al.

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

Barth E. Royer, Esq.
Judith B. Sanders, Esq.
Bell, Royer & Sanders Co., L.P.A.
33 South Grant Avenue
Columbus, Ohio 43215-3900

Re: Responses of Dominion Retail, Inc. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Royer:

We have the following concerns regarding the Dominion Retail, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Dominion Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Dominion. Dominion responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

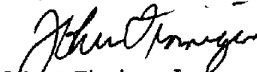
Dominion claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which Dominion has entered into contracts in Ohio from January 1, 2003 through the present date. This information is factual information which has also been communicated with your customers; therefore, it is not privileged.

Dominion also raised an objection that the information requested was confidential trade secret information and/or privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for WPS Energy Services, Inc.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of WPS Energy Services, Inc. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding WPS Energy Services, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("WPS-ESI Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by WPS-ESI. WPS-ESI responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

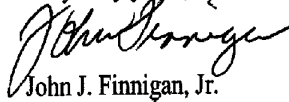
WPS-ESI claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to withhold this

information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which WPS-ESI has entered into contracts in Ohio from January 1, 2003 through the present date.

WPS-ESI also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

JJF/sew

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Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for Strategic Energy, LLC
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of Strategic Energy, LLC to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding Strategic Energy, LLC Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Strategic Energy Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by Strategic Energy. Strategic Energy responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

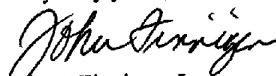
Strategic Energy claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which Strategic Energy has entered into contracts in Ohio from January 1, 2003 through the present date.

Strategic Energy also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,


John J. Finnigan, Jr.

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JOHN J. FINNIGAN, JR.
Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

M. Howard Petricoff
Vorys, Sater, Seymour and Pease
Counsel for MidAmerica Energy Co.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of MidAmerica Energy Co. to CG&E's Discovery Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Petricoff:

We have the following concerns regarding MidAmerica Energy Co. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("MidAmerica Discovery Responses"), which we recently received from you.

Interrogatory nos. 9(b) and (c), 10 and 11 and document request no. 9 requested information on the type of load served in Ohio and the pricing used by MidAmerica. MidAmerica responded by objecting on several grounds.

CG&E submits that this information is relevant and discoverable because the information requested goes to the ultimate issue in this case, that is, whether CG&E's service offerings are market-based. In part, this can be determined by examining whether CG&E's service offerings are comparable to other offers for retail electric service available to customers. This information therefore is highly relevant. Further, we understand that the hearing examiner in the DP&L rate stabilization case ruled that this type of information is discoverable.

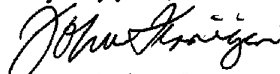
MidAmerica claims it would be unduly burdensome to produce this information. We submit that a bare claim that it would be unduly burdensome to produce the information, without providing any basis for this claim, is insufficient grounds to

withhold this information. Furthermore, to simplify the matter and to make it easier for you to respond, we hereby narrow the scope of the information we are seeking to the following: a list of all the price terms at which MidAmerica has entered into contracts in Ohio from January 1, 2003 through the present date.

MidAmerica also raised an objection that the information requested was confidential trade secret information and/or privileged. This information is factual information which has also been communicated with your customers; therefore, it is not privileged. CG&E would be willing to enter into a confidentiality agreement to preserve the confidential nature of this information.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,



John J. Finnigan, Jr.

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JOHN J. FINNIGAN, JR.
Senior Counsel



VIA E-MAIL AND OVERNIGHT MAIL

April 30, 2004

W. Jonathan Airey, Esq.
Counsel for Constellation NewEnergy, Inc.
Vorys, Sater, Seymour and Pease
52 East Gay Street E
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: Responses of Constellation NewEnergy, Inc. to CG&E's Discovery
Requests
Case No. 03-2079-EL-AAM, *et al.*

Dear Mr. Airey:

We have concerns regarding Constellation NewEnergy, Inc. Responses to the Cincinnati Gas & Electric Company's First Set of Interrogatories and Requests for Production of Documents ("Constellation NewEnergy Responses"), which we have not received from you.

Based on the foregoing, we request that you provide us the information requested within three days from the date of this letter. We are writing this letter in an effort to resolve this dispute short of filing a motion to compel discovery. If we do not receive responsive answers by that date, we will be forced to file a motion to compel. We request that you provide responsive answers so that we are not forced to take this step. Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John J. Finnigan, Jr." with a stylized flourish at the end.

John J. Finnigan, Jr.

JJF/sew

Bell, Royer & Sanders Co., L.P.A.
Attorneys at Law
33 South Grant Avenue
Columbus, Ohio 43215-3927

Langdon D. Bell
Barth E. Royer
Judith B. Sanders

Telephone (614) 228-0704
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TELECOPY TRANSMISSION

TO: John Finnigan FAX NO.: (513) 287-3810
FROM: Barth Royer
RE: Dominion Retail Discovery Responses
DATE: April 14, 2004 TOTAL PAGES: 3

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APR 14 2004

LEGAL DEPT
CINERGY CORP

*Bell, Royer & Sanders Co., L.P.A.**Attorneys at Law**33 South Grant Avenue**Columbus, Ohio 43215-3900**Langdon D. Bell*
lbell33@aol.com*Barth E. Royer*
barthroyer@aol.com*Josiah B. Sanders*
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April 14, 2004

BY TELECOPY AND E-MAIL

John J. Finnigan, Jr.
Cinergy Corp.
139 East Fourth Street
Rm 24 AT II
P.O. Box 960
Cincinnati, Ohio 45201-0960

Re: Dominion Retail Response To
CG&E Discovery Requests

Dear Mr. Finnigan:

This letter responds to your letter of April 6, 2004, wherein you expressed concerns regarding Dominion Retail's responses to CG&E's First Set of Interrogatories and Requests for Production of Documents that I transmitted to you on March 31, 2004.

You first refer to Dominion Retail's responses to Interrogatory Nos. 2-8 and Request for Production Nos. 3-4, all of which relate to Dominion Retail's witnesses and hearing exhibits. As you correctly note, Dominion Retail indicated that it had not yet made a determination as to the person(s) it may call as witnesses and the documents it may introduce as exhibits. However, despite the fact that these responses also expressly indicated that the responses would be supplemented when such determinations were made, you deemed it necessary to admonish Dominion Retail that, by rule, it must supplement these responses. Although I am not sure what portion of the initial responses you did not understand, I will again state that Dominion Retail will supplement its responses when these determinations are made.

You next take issue with Dominion Retail's objection to providing responses to Interrogatory Nos. 9(b), 9(c), and 10, contending that the requested information is relevant to whether CG&E's service offerings are market-based, which you characterize as being the ultimate issue in the case. Even if it were true that this is the ultimate issue in the case, the specific information requested through these interrogatories (such as the amount of load Dominion Retail serves elsewhere in Ohio, the characteristics of the individual loads served in

Bell, Royer & Sanders Co., L.P.A.

Page Two

CG&E's territory, and historical offers to each potential customer in Ohio) plainly would do nothing to advance that inquiry. No purpose would be served by debating the validity of the stated grounds for objection with you further at this time. However, I would point out that all other marketer intervenors in this proceeding have also declined to provide this type of information on similar grounds.

Finally, with respect to Request for Production No. 10, you argue that it would be a "simple exercise" for Dominion Retail to turn over any of its business plans that refer to, relate, or discuss the sale of electricity by Dominion or any of its affiliates as a competitive electric supplier. Although no purpose would be served by debating the validity of Dominion Retail's objections to this request with you at this juncture, I would again note that all other marketer intervenors in the case have also refused to provide such documents.

In summary, Dominion Retail will comply with Rule 4901-1-16(D)(1), OAC, with respect to information relating to its witnesses and exhibits, but the information and documents sought through the other discovery requests identified in your letter will not be provided voluntarily.

Sincerely,



Barth E. Royer

FILE

12

Vorys, Sater, Seymour and Pease LLP

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M. Howard Petricoff
Direct Dial (614) 464-5414
E-Mail: mhpeticoff@vss.com

February 20, 2004

RECEIVED-DOCKETING DIV
2004 FEB 20 PM 1:09
PUCO

Ms. Renee Jenkins
Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215

Re: Case No. 03-2144-EL-ATA
Exhibit Nos. RRI/CPS-3 and 4 of Dr. Roach's Testimony
Affidavits of Mark R. Sudbey and Michael D. Smith

Dear Ms. Jenkins:

On February 6, 2004, I submitted under seal the attached Affidavits to Dr. Roach's testimony on behalf of Constellation Power Source, Inc. and Reliant Resources, Inc. I also filed a Motion for a Protective Order seeking confidential treatment of these attachments.

These attached Affidavits should now be filed as part of the public record in this matter and the Motion for a Protective Order should be withdrawn. Copies of the Affidavits have been provided to all counsel present at this morning's hearing and are being mailed to those parties of record who were not present at this morning's hearing.

Sincerely yours,



M. Howard Petricoff
Attorneys for Constellation Power Source, Inc. and
Reliant Resources, Inc.

MHP/jam

Enclosures

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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Exhibit No. ____ (RRJ/CPS-1)

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Authority to Continue)
And Modify Certain Regulatory Accounting)
Practices and Procedures, for Tariff Approvals)
And to Establish Rates and Other Charges)
Including Regulatory Transition Charges)
Following the Market Development Period)

Case No. 03-2144-EL-ATA

EL-AAM
EL-UNC
PUCCO

2004 FEB -6 PM 4:44

RECEIVED-DOCKETING DIV

DIRECT TESTIMONY OF
CRAIG R. ROACH, Ph.D.

ON BEHALF OF
RELIANT RESOURCES, INC.
AND CONSTELLATION POWER SOURCE

FEBRUARY 6, 2004

BOSTON PACIFIC COMPANY, INC.

Exhibit No. ____ (RRI/CPS-3)

AFFIDAVIT OF MARK SUDBEY

CONFIDENTIAL / NOT AVAILABLE FOR PUBLIC DISSEMINATION

BOSTON PACIFIC COMPANY, INC.

FROM :

FAX NO. :

Feb. 06 2004 01:22PM P1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio
Edison Company, The Cleveland Electric
Illuminating Company and The Toledo
Edison Company for Authority to Continue
And Modify Certain Regulatory Accounting
Practices and Procedures, for Tariff Approvals
And to Establish Rates and Other Charges,
Including Regulatory Transition Charges,
Following the Market Development Period.)

Case No. 03-2144-EL-ATA

State of CT §
County of Fairfield § *Newton*

AFFIDAVIT OF MARK R. SUDBEY

1. My name is Mark R. Sudbey and my business address is 1000 Main Street, Houston, Texas 77002. I am Vice President of Origination of the New York, Mid-West, and Southeast region for Reliant Energy Wholesale Service Company, L.L.C., the wholesale subsidiary of Reliant Resources, Inc., which is an intervenor in this proceeding initiated by the above-styled utilities of FirstEnergy Corp. (collectively, "FirstEnergy"). For convenience, I refer to Reliant Resources, Inc. and its subsidiaries collectively as "Reliant".

2. This affidavit is intended to respond to the Commission's December 9, 2003, entry in this proceeding requesting certain price and quantity information from parties intending to provide generation service to market participants.

CONFIDENTIAL

3. The approach my colleagues and I took in answering this request was to calculate the average \$/MWh price at which FirstEnergy is offering to provide power as implied by the Rate Stabilization Plan during the period 2006-08 ("RSP"). Specifically, we sought to determine a load-weighted average "target generation price" across all three FirstEnergy utilities in this proceeding by their primary rate classes. By "target generation price", I mean the implied target price that FirstEnergy is receiving for generation, which would serve for an "apples-to-apples" reference price for Reliant's power. Thus, our calculations included: (1) the generation charge, often referred to as "little g"; (2) the Rate Stabilization Charge ("RSC"); (3) tariff transmission charge; and (4) bypassable ancillary services charges.

4. Our estimate of the target generation price implied by the RSP was approximately \$61.40/MWh. Based on our current view of the forward markets, we believe today that we could provide approximately 1,300 MW of power, on an apples-to-apples basis, at a price below the target generation price of \$61.40/MWh from 2006 through 2008. This comparison contemplates similar adjustments for fuel costs as contained in the RSP, providing power on a load-following basis, and volumetric risk of POLR service.

5. I know of nothing today that would undermine or contradict the estimate or beliefs stated above. Due to the number and distant nature of the externalities upon which those beliefs are based, however, the contents of Paragraph 5 does not constitute an offer whose acceptance would create a legal obligation.

CONFIDENTIAL

6. Under certain circumstances, Reliant could provide more than 1,300 MW of supply from assets it now owns to FirstEnergy territory in 2006-08 at prices below FirstEnergy's RSP-implied price. For example, Reliant owns 344 MW of peaking generation located in the utility service territory of Ameren Corporation subsidiaries ("Ameren"). When Ameren joins MISO, which it has indicated it would do, and MISO Day 2 occurs (presently scheduled for December 1, 2004), then that capacity would be available to provide peaking power to FirstEnergy territory as a MISO network supplier. Further, Reliant owns another approximately 1,300 MW located in the service territory of Duquesne Light Company ("Duquesne"). If Duquesne joins the PJM RTO, as it has expressed its intention to do beginning in January 2005, Reliant would be able to serve from those units with an incremental "wheeling" charge at a price that, inclusive with that wheeling charge, I believe would still be competitive with the RSP-implied price. Finally, a robust hourly MISO market with a liquid PJM interface could expand our ability to serve load up to the summer MW rating of all of our unhedged PJM assets.

7. Reliant is currently a member of the Midwest Independent System Operator ("MISO") and as such currently meets the financial security requirements of MISO. Reliant intends continue to meet the financial security requirements of MISO during all of the Rate Stabilization Period, including any increases in financial security that may be necessary when MISO assumes the responsibility for balancing scheduled deliveries and actual demand for each source and sink. Since MISO, when it assumes the task of balancing through a real-time market, will be the entity that on a daily basis would supply generation should a load serving entity supply less than its customers demand,

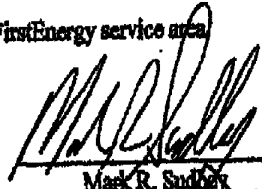
CONFIDENTIAL

FROM :

FAX NO. :

Feb. 05 2004 01:24PM P4

maintaining the financial security limits of MISO should be sufficient to address the risk
of balancing deliveries and demand in the FirstEnergy service area


Mark R. Sudley

Sworn and subscribed before me in my presence this 6th day of Feb, 2004.


Notary Public

My Commission Exp
July 31, 2008



CONFIDENTIAL

Exhibit No. ____ (RRI/CPS-4)

AFFIDAVIT OF MICHAEL SMITH

CONFIDENTIAL / NOT AVAILABLE FOR PUBLIC DISSEMINATION

BOSTON PACIFIC COMPANY, INC.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Authority to Continue) Case No. 03-2144-EL-ATA
And Modify Certain Regulatory Accounting)
Practices and Procedures, for Tariff Approvals)
And to Establish Rates and Other Charges,)
Including Regulatory Transition Charges,)
Following the Market Development Period.)

State of Ohio §
§
County of Franklin §

AFFIDAVIT OF MICHAEL D. SMITH

1. My name is Michael D. Smith and my business address is 111 Market Place, Suite 500, Baltimore, MD 21202. I am a Vice President of Origination for Constellation Power Source, Inc. ("CPS"), the wholesale energy marketing subsidiary of Constellation Energy Group, Inc. CPS is an intervenor in this proceeding. In my capacity at CPS, I am responsible for state and federal regulatory affairs involving the Midwest region, including issues involving the Midwest Independent Transmission System Operator ("MISO") and the State of Ohio. I have firsthand knowledge of the information set forth herein.

2. This affidavit is intended to respond to the Commission's December 9, 2003, entry in this proceeding requesting certain price and quantity information from parties intending to provide wholesale generation service to retail customers in the FirstEnergy service territory after 2005.

CONFIDENTIAL

3. In order to develop this affidavit, CPS considered Anthony Alexander's statement in prepared testimony that the average generation-only price (i.e., excluding transmission and ancillary services) across all the FirstEnergy service territories and rate classes was approximately 4.6 ¢/kWh, or \$46/MWh. (Testimony of Anthony J. Alexander, at 16.) We assumed that this would be the average generation-only price across all FirstEnergy service territories and rate classes for the period of the proposed Rate Stabilization Plan (2006-2008) (the "Plan").

4. Based on our current view of the forward energy markets, we believe today that we could profitably sell to FirstEnergy, on a wholesale, load following basis under a bilateral contract with industry standard terms and conditions, approximately 2000 MW of electricity at a price below \$46/MWh, excluding network transmission and ancillary services, for the duration of the Plan.

5. The precise methods by which CPS might source the supply described in Paragraph 4 are confidential and proprietary business information and trade secrets of CPS. Without mitigating or limiting the preceding statement, in general, while CPS has no generation assets in the FirstEnergy service territory, CPS markets the generation of its affiliates, which have approximately 550 MW of generation in AEP, 650 MW in Ameren and 6000 MW in PJM, some or all of which CPS could potentially call upon to serve the load set forth in Paragraph 4, particularly given the FERC's recent elimination of regional through and out rates. CPS might potentially also rely upon a combination of bilateral contracts with other suppliers and system supply to serve such load.

6. The conclusions reached in this Affidavit are not dependent on a MISO Day 2 market being in existence; however, should a MISO Day 2 energy market, with the

determination of locational marginal pricing, be implemented prior to January 1, 2006, CPS could potentially sell FirstEnergy significantly more than 2000 MW of load at less than \$46/MWh.

7. This Affidavit is intended to demonstrate to the Commission, at its specific request, the level of generation pricing that may be available to FirstEnergy's customers should the Commission reject the Plan and solicit competitive wholesale bids for all or part of the FirstEnergy load obligation. In this regard, it is CPS' informed belief that the \$46/MWh generation only price implied by the Plan is greater than the price at which merchant energy suppliers such as CPS would be willing to provide the same service in a competitively bid environment.

8. This Affidavit does not constitute an offer whose acceptance would create a legal obligation on the part of CPS to the Commission, FirstEnergy or any other party to sell electric energy at any price. The information in this Affidavit is based on CPS' assessment of the relevant energy markets as they exist today as well as information that has been made available in this docket regarding the electric load served by FirstEnergy, which assessment is subject to change based upon, among other things, changes in energy market conditions and further due diligence. Any sale of electricity to FirstEnergy by CPS at any price would be conditioned upon, among other things, the negotiation and execution of a mutually acceptable power supply agreement.

9. The Commission also requested intervenors to address certain credit issues. CPS is currently a member of MISO. If CPS were to sell full requirements electricity service to FirstEnergy during the period after the MISO Day 2 energy markets are functional, CPS would meet the credit requirements of MISO to schedule power into the FirstEnergy

operating companies' service territories. CPS would also expect to negotiate mutually acceptable credit requirements in any resulting bilateral agreements.

FURTHER AFFIANT SAYETH NAUGHT


Michael D. Smith

Sworn and subscribed before me in my presence this 6th day of February, 2004.


Notary Public



MARTHA L. MITCHELL
Notary Public, State of Ohio
My Commission Expires
8-13-08

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**THE DAYTON POWER AND LIGHT COMPANY'S EXPEDITED
MOTION TO COMPEL DISCOVERY OF STRATEGIC ENERGY, LLC
AND CONSTELLATION NEWENERGY, INC.**

Athan A. Vinolus (0040174)
THE DAYTON POWER AND LIGHT
COMPANY
1065 Woodman Drive
Dayton, Ohio 45432
Telephone: (937) 259-7348
Telecopier: (937) 259-7178
E-Mail: athan.vinolus@dplinc.com

Charles J. Faruki (0010417)
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Paul L. Horstman (0010452)
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Pursuant to Ohio Admin. Code § 4901-1-23, The Dayton Power & Light Company ("DP&L") requests that the Public Utilities Commission of Ohio ("Commission") issue an order compelling Strategic Energy LLC ("Strategic Energy") and Constellation NewEnergy, Inc. ("Constellation NewEnergy") to answer certain interrogatories and produce documents in response to DP&L's relevant and proper discovery requests. The interrogatories and document requests at issue are attached as Exhibit 1. The responses of Constellation NewEnergy and Strategic Energy to DP&L's discovery requests are attached as Exhibit 2.

As the information sought is highly relevant and Constellation NewEnergy and Strategic Energy's refusals to respond to DP&L's requests are improper, this Commission should grant DP&L's motion to compel and order the production of all relevant and responsive discovery by Constellation NewEnergy and Strategic Energy.

In accordance with the requirements of Ohio Admin. Code § 4901-1-23, DP&L has made a good faith effort to resolve this matter without Commission involvement. Attached as Exhibit 3 and Exhibit 4 respectively are the sworn affidavits of DP&L's counsel Jeffrey S. Sharkey, an associate at the law firm of Faruki Ireland & Cox P.L.L., and Paul L. Horstman, a partner at the law firm of Faruki Ireland & Cox P.L.L., which detail the numerous attempts by DP&L to resolve this issue without Commission intervention.

Further, as the hearing for the above-captioned case is scheduled to begin in less than two weeks and DP&L requires time to review and analyze the requested discovery, DP&L asks the Commission to decide this motion on an expedited basis. Both Strategic Energy and Constellation NewEnergy object to the issuance of a ruling on this motion without the opportunity to file a memoranda. Pursuant to Ohio Admin. Code § 4901-1-12(c), unless

otherwise ordered, Strategic Energy and Constellation NewEnergy have seven days after the service of this motion to file memoranda contra.

Respectfully submitted,

Athan A. Vinolus (plh)

Athan A. Vinolus (0040174)
THE DAYTON POWER AND LIGHT
COMPANY
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Attorneys for
The Dayton Power and Light Company

**MEMORANDUM IN SUPPORT OF THE DAYTON POWER AND LIGHT
COMPANY'S MOTION TO COMPEL DISCOVERY OF STRATEGIC
ENERGY, LLC AND CONSTELLATION NEWENERGY, INC.**

I. INTRODUCTION

DP&L asks the Commission to issue an order compelling Strategic Energy LLC ("Strategic Energy") to answer responsively to interrogatories Nos. 1 and 2, and all related subparts, and to produce all documents responsive to DP&L's request for production of documents No. 1 of The Dayton Power And Light Company's Second Set Of Interrogatories And Second Set Of Requests For Production Of Documents To Strategic Energy, LLC. Further, DP&L asks the Commission to issue an order compelling Constellation NewEnergy, Inc. ("Constellation NewEnergy") to answer responsively to interrogatories Nos. 3 and 4, and all related subparts, and to produce all documents responsive to DP&L's request for production of documents No. 4 of The Dayton Power And Light Company's Second Set Of Interrogatories And Second Set Of Requests For Production Of Documents To Constellation NewEnergy, Inc.

The discovery requests at issue concern whether Constellation NewEnergy or Strategic Energy is a party to any contract or agreement that obligates it to provide generation service within the East Central Reliability Council ("ECAR") region. Constellation NewEnergy and Strategic Energy unjustifiably refuse to produce this information and related documents based on objections that the information is irrelevant and "confidential and proprietary information of an extremely sensitive nature," the release of which will adversely affect[] their competitive position."

These objections, however, are without merit. The information sought by DP&L is not only highly relevant but, under the Ohio Revised Code, this information is necessary for evaluating whether DP&L's shopping credit meets its statutory obligation of encouraging the

development of effective competition in the retail generation supply market. Further, Constellation NewEnergy and Strategic Energy's objection that the release of the information will materially affect their competitive position is groundless and should be rejected by the Commission. In the event the Commission finds any merit to this objection, redacting the customer names from the documents, while supplying the location, customer class and customer load profile with the redacted document, or, in the alternative, producing the contracts subject to a protective order will meet the concerns of Constellation NewEnergy and Strategic Energy.

II. THE DISCOVERY SOUGHT BY DP&L IS HIGHLY RELEVANT UNDER OHIO REV. CODE § 4928.37 AND UNDER OHIO REV. CODE § 4928.40

Constellation NewEnergy and Strategic Energy refuse to respond to DP&L's valid discovery requests based, in part, on the excuse that the information requested is irrelevant. Under the broad and permissive rules of discovery, this objection is meritless. Ohio Admin. Code § 4901-1-16 provides that the broad scope of discovery "is to encourage the prompt and expeditious use of pre-hearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings." Further, "a party to a Commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding." *Id.* The information sought does not have to be admissible, but need only appear reasonably calculated to lead to the discovery of admissible evidence. *Id.*

The discovery sought by DP&L is highly relevant for two reasons:

- 1) the information is highly relevant to evaluating whether DP&L's consumer shopping credit meets the market development goal set forth in Ohio Rev. Code § 4928.37(A)(1)(b); and
- 2) under Ohio Rev. Code § 4928.40(A), this information is required to evaluate the appropriateness of the proposed market development transition charges, including shopping credits.

Section 4928.37(A)(1)(b) provides, among other things, that a market development transition charge "shall be structured to provide shopping incentives to customers." Thus the shopping incentive, which appears on as a credit on the consumer's electric bill, must be "sufficient to encourage the development of effective competition in the supply of retail electric generation service." Id. DP&L's discovery request meets the goal of ensuring that its shopping credit is sufficient to encourage the development of electric competition by comparing DP&L's shopping credit to competitive generation supply contracts entered into by Constellation NewEnergy and Strategic Energy in the East Central Area Reliability Council ("ECAR") region, a region with a similar customer profile to the region at issue in this case.

Further, Ohio Rev. Code § 4928.40(A) requires that when setting the level of an effective shopping credit rate,¹ generation supply information from comparable markets must be considered. Section 4928.40(A), in relevant part, provides that the Commission shall consider several factors when evaluating a shopping credit, including "the relevant market price for the delivered supply of electricity to customers in that customer class." Ohio Rev. Code § 4928.40(A). Accordingly, the use of comparable market price information, such as the ECAR agreements at issue, is not only relevant but, under Ohio Rev. Code § 4928.40, a factor that must be considered when evaluating the appropriateness of DP&L's shopping credit.

As both Ohio Rev. Code § 4928.37 and Ohio Rev. Code § 4928.40 establish that the discovery sought is highly relevant and necessary to accurately evaluate the effectiveness of DP&L's shopping credit, DP&L's expedited motion to compel Constellation NewEnergy and Strategic Energy to respond to DP&L's discovery requests should be granted.

¹ Ohio Rev. Code § 4928.37(A)(1)(b) provides that the term transition charge includes consideration of a structured shopping credit.

III. **PRODUCTION OF THE DISCOVERY SOUGHT WILL NOT MATERIALLY OR ADVERSELY AFFECT CONSTELLATION NEWENERGY OR STRATEGIC ENERGY**

In addition to their groundless relevancy objection, Constellation NewEnergy and Strategic Energy object to DP&L's discovery requests alleging that the information sought is "confidential and proprietary information of an extremely sensitive nature which cannot be disclosed without materially and adversely affecting" them. DP&L is then directed to "[p]ublicly available information [] contained in the Annual Report to the PUCO which was submitted to the Commission's Fiscal Division on April 29, 2003."²

Constellation NewEnergy and Strategic Energy's objection based on an unfounded and unsubstantiated allegation that the release of the requested information will "materially and adversely affect" their competitive position is without merit and should be rejected. The information DP&L seeks relates only to contracts currently in effect. DP&L has not requested information regarding contracts in negotiation, which may arguably present some difficulty. Constellation NewEnergy and Strategic Energy's refusal to produce highly relevant information based on an unsubstantiated allegation that producing the information will "materially and adversely" affect their interests is nothing more than an attempt to ignore DP&L's valid discovery request. Accordingly, the Commission should reject this meritless objection and compel Constellation NewEnergy and Strategic Energy to comply with DP&L's discovery requests.

² Constellation NewEnergy and Strategic Energy's suggestion that DP&L comb public records for publicly available information disregards the purpose of discovery. The purpose of discovery is to reveal relevant information hidden behind closed doors.

In the alternative, if this Commission finds that the information could conceivably risk some competitive injury, which it does not, then the Commission should order Constellation NewEnergy and Strategic Energy to redact the customer names on the requested contracts and produce the redacted contract along with information regarding the location, customer class, and load profile of the customer or produce the contracts subject to a protective order. Once the customer name is redacted or a protective order entered, any risk of competitive injury will be completely eliminated and Constellation NewEnergy and Strategic Energy can fully comply with DP&L's discovery requests.

Finally, any argument by either Constellation NewEnergy or Strategic Energy that the information DP&L seeks is publicly available in forward market and market pricing information misses the point and should be rejected.

Both Constellation NewEnergy and Strategic Energy objected to the March 31, 2003 Staff Recommendations, based in part, that the Staff recommended shopping credit was insufficient to produce and induce competition. Specifically, Constellation NewEnergy argued that "[i]f the market development period is to be extended, the new shopping credit should include both the RTC and CTC." Constellation NewEnergy, Inc.'s objections to DP&L's Applications and Responses to Staff Recommendation, p. 2. Constellation NewEnergy further argued that "the staff unreasonably and unlawfully failed to provide support for why its recommended shopping credit level for commercial and industrial customers is sufficient to achieve a 20% switching level." *Id.* Strategic Energy argued, that "[t]he staff proposal fails to set the shopping credit at the equivalent of the legacy rate minus all generation costs." Strategic Energy, LLC's Objections to DP&L's Applications and Responses to the Staff Recommendation,

p. 2. Neither party offered evidentiary support for their argument that the shopping credits as recommended is insufficient.

DP&L's discovery requests will meet Constellation NewEnergy and Strategic Energy's concerns regarding the sufficiency of the proposed shopping credit. Using information from customer contracts entered into by Constellation NewEnergy and Strategic Energy, intervenors in this matter that appear to be interested in entering this market, DP&L and the Staff will be able to verify whether Constellation NewEnergy and Strategic Energy can compete in this market at the prices DP&L suggests. Rather than resorting to non specific forward market and market pricing information, the information DP&L requests will provide specific, verifiable, and realistic market information to evaluate the sufficiency of the proposed shopping credit.

IV. CONCLUSION

For the reasons stated above, DP&L respectfully asks the Commission to grant its Expedited Motion to Compel Discovery of Strategic Energy and Constellation NewEnergy.

CERTIFICATE OF SERVICE

I certify that a copy of The Dayton Power and Light Company's Expedited Motion to Compel Discovery of Strategic Energy, LLC and Constellation NewEnergy, Inc. has been served via regular U.S. mail, postage prepaid upon the following counsel of record, this ____ day of May, 2003:

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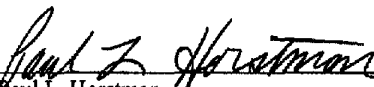
W. Jonathan Airey, Esq.
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Paul L. Horstman

120161.1

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension :
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain :
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**THE DAYTON POWER AND LIGHT COMPANY'S SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO CONSTELLATION NEWENERGY, INC.**

Pursuant to Ohio Admin. Code §§ 4901-1-19 and 4901-1-20, The Dayton Power and Light Company ("DP&L") requests that Constellation NewEnergy, Inc. ("Constellation NewEnergy") respond to the following interrogatories and requests for production by May 2, 2003.

DEFINITIONS AND INSTRUCTIONS

1. DP&L incorporates the definitions and instructions from The Dayton Power and Light Company's First Set of Interrogatories to Intervenors.
2. "Objections" means Constellation NewEnergy, Inc.'s Objections to DP&L's Applications and Responses to the Staff Recommendation, filed April 16, 2003.

INTERROGATORIES

Interrogatory No. 1: With respect to Constellation NewEnergy's statement that "the Staff unreasonably and unlawfully recommended that the market development period be extended beyond December 31, 2003," Objections, p. 1, please answer or produce the following:

- a. state the factual and legal basis for this objection;

RESPONSE:

- b. identify each witness who will present testimony at the hearing regarding the subject matter of this objection;

RESPONSE:

- c. identify and produce all writings relied upon by Constellation NewEnergy to support this objection; and

RESPONSE:

- d. identify and produce all writings Constellation NewEnergy will introduce into evidence at the hearing to support this objection.

RESPONSE:

Interrogatory No. 2: With respect to Constellation NewEnergy's statement that "the Staff unreasonably and unlawfully failed to provide support for why its recommended shopping credit level for commercial and industrial customers is sufficient to achieve a 20% switching level," Objections, p. 2, please answer or produce the following:

- a. state the factual and legal basis for this objection;

RESPONSE:

- b. identify each witness who will present testimony at the hearing regarding the subject matter of this objection;

RESPONSE:

- c. identify and produce all writings relied upon by Constellation NewEnergy to support this objection; and

RESPONSE:

- d. identify and produce all writings Constellation NewEnergy will introduce into evidence at the hearing to support this objection.

RESPONSE:

Interrogatory No. 3 Is Constellation NewEnergy a party to any contract or agreement in which Constellation NewEnergy has agreed to or is obligated to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005?

RESPONSE:

Interrogatory No. 4: If the answer to the preceding Interrogatory is affirmative, then please answer the following for each such contract or agreement:

- a. identify the customer or customers that are parties to the contract;

RESPONSE:

- b. identify the customer class to which that customer would belong;

RESPONSE:

- c. identify the time period covered by the contract;

RESPONSE:

- d. identify where the customer is located;

RESPONSE:

- e. identify the price, or if different prices apply, the prices for generation service; and

RESPONSE:

- f. identify any services in addition to providing generation that Constellation
NewEnergy is obligated to provide to its customers under that contract.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.: 1. All writings relating to or relied upon by Constellation NewEnergy when preparing its objections.

RESPONSE:

REQUEST FOR PRODUCTION NO.: 2. Provide all writings relating to Constellation NewEnergy's response to Interrogatory No. 1.

RESPONSE:

REQUEST FOR PRODUCTION NO.: 3. Provide all writings relating to Constellation NewEnergy's response to Interrogatory No. 2.

RESPONSE:

REQUEST FOR PRODUCTION NO.: 4.

Produce a copy of all contracts or agreements in which Constellation NewEnergy has agreed to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005.

RESPONSE:

Respectfully submitted,

s/Athan A. Vinolus/by Jeffrey S. Sharkey

Athan A. Vinolus (0040174)

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CERTIFICATE OF SERVICE

I certify that a copy of The Dayton Power And Light Company's Second Set of Interrogatories And Second Set of Requests for Production of Documents to Constellation NewEnergy, Inc. has been served via e-mail, upon the following counsel of record, this 22nd day of April, 2003:

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s/Jeffrey S. Sharkey
Jeffrey S. Sharkey

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension :
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain :
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**THE DAYTON POWER AND LIGHT COMPANY'S SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO STRATEGIC ENERGY, LLC**

Pursuant to Ohio Admin. Code §§ 4901-1-19 and 4901-1-20, The Dayton Power and Light Company ("DP&L") requests that Strategic Energy, LLC ("Strategic Energy") respond to the following interrogatories and requests for production by May 2, 2003.

DEFINITIONS AND INSTRUCTIONS

1. DP&L incorporates the definitions and instructions from The Dayton Power and Light Company's First Set of Interrogatories to Intervenor.
2. "Objections" means Strategic Energy, LLC's Objections to DP&L's Applications and Responses to the Staff Recommendation, filed April 16, 2003.

INTERROGATORIES

Interrogatory No. 1: Is Strategic Energy a party to any contract or agreement in which Strategic Energy has agreed to or is obligated to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005?

RESPONSE:

Interrogatory No. 2: If the answer to the preceding Interrogatory is affirmative, then please answer the following for each such contract or agreement:

- a. identify the customer or customers that are parties to the contract;

RESPONSE:

- b. identify the customer class to which that customer would belong;

RESPONSE:

- c. identify the time period covered by the contract;

RESPONSE:

- d. identify where the customer is located;

RESPONSE:

- e. identify the price, or if different prices apply, the prices for generation service; and

RESPONSE:

- f. identify any services in addition to providing generation that Strategic Energy is obligated to provide to its customers under that contract.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.: 1. Produce a copy of all contracts or agreements in which Strategic Energy has agreed to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005.

RESPONSE:

Respectfully submitted,

s/Athan A. Vinolus/by Jeffrey S. Sharkey

Athan A. Vinolus (0040174)

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s/Jeffrey S. Sharkey

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CERTIFICATE OF SERVICE

I certify that a copy of The Dayton Power And Light Company's Second Set of Interrogatories And Second Set of Requests for Production of Documents to Strategic Energy, LLC has been served via e-mail, upon the following counsel of record, this 22nd day of April, 2003:

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Attorney for Dominion Retail, Inc.

s/Jeffrey S. Sharkey
Jeffrey S. Sharkey

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**CONSTELLATION NEWENERGY, INC.'S RESPONSES TO
THE DAYTON POWER AND LIGHT COMPANY'S SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Ohio Admin. Code §§ 4901-1-19 and 4901-1-20, Constellation NewEnergy, Inc. ("Constellation NewEnergy") responds to the following interrogatories and requests for production of documents propounded by The Dayton Power and Light Company ("DP&L")

DEFINITIONS AND INSTRUCTIONS

1. DP&L incorporates the definitions and instructions from The Dayton Power and Light Company's First Set of Interrogatories to Intervenors.
2. "Objections" means Constellation NewEnergy, Inc.'s Objections to DP&L's Applications and Responses to the Staff Recommendation, filed April 16, 2003.

INTERROGATORIES

Interrogatory No. 1: With respect to Constellation NewEnergy's statement that "the Staff unreasonably and unlawfully recommended that the market development period be extended beyond December 31, 2003," Objections, p. 1, please answer or produce the following:

- a. state the factual and legal basis for this objection;

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Supplemental Response to DP&L Interrogatory No. 1a, First Set.

- b. identify each witness who will present testimony at the hearing regarding the subject matter of this objection;

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Supplemental Response to DP&L Interrogatory No. 1b, First Set.

- c. Identify and produce all writings relied upon by Constellation NewEnergy to support this objection; and

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Response to DP&L Interrogatory No. 1c, First Set.

- d. identify and produce all writings Constellation NewEnergy will introduce into evidence at the hearing to support this objection.

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Response to DP&L Interrogatory No. 1d, First Set.

Interrogatory No. 2: With respect to Constellation NewEnergy's statement that "the Staff unreasonably and unlawfully failed to provide support for why its recommended shopping credit level for commercial and industrial customers is sufficient to achieve a 20% switching level," Objections, p. 2, please answer or produce the following:

a. state the factual and legal basis for this objection;

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Response to Interrogatory No. 3a, First Set.

b. identify each witness who will present testimony at the hearing regarding the subject matter of this objection;

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Supplemental Response to Interrogatory No. 1b, First Set.

c. identify and produce all writings relied upon by Constellation NewEnergy to support this objection; and

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Response to Interrogatory No. 3c, First Set.

d. identify and produce all writings Constellation NewEnergy will introduce into evidence at the hearing to support this objection.

RESPONSE: Objection. This interrogatory was asked and answered earlier. See Response to Interrogatory No. 3d, First Set.

Interrogatory No. 3 Is Constellation NewEnergy a party to any contract or agreement in which Constellation NewEnergy has agreed to or is obligated to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005?

RESPONSE: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving such objection, yes.

Interrogatory No. 4: If the answer to the preceding Interrogatory is affirmative, then please answer the following for each such contract or agreement:

a. identify the customer or customers that are parties to the contract;

RESPONSE: Objection. This interrogatory and its subparts are not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory and its subparts seek confidential and proprietary information of an extremely sensitive nature which cannot be disclosed without materially and adversely affecting Constellation NewEnergy's competitive position. Publicly available information is contained in the Annual Report to the PUCO which was submitted to the Commission's Fiscal Division on April 29, 2003.

b. identify the customer class to which that customer would belong;

RESPONSE: See Response to Interrogatory No. 4a above.

c. identify the time period covered by the contract;

RESPONSE: See Response to Interrogatory No. 4a above.

d. identify where the customer is located;

RESPONSE: See Response to Interrogatory No. 4a above.

e. identify the price, or if different prices apply, the prices for generation service; and

RESPONSE: See Response to Interrogatory No. 4a above.

f. identify any services in addition to providing generation that Constellation NewEnergy is obligated to provide to its customers under that contract.

RESPONSE: See Response to Interrogatory No. 4a above.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.: 1. All writings relating to or relied upon by Constellation NewEnergy when preparing its objections.

RESPONSE: Objection. This request for production of documents was already asked and answered earlier. See Response to Interrogatory No. 1c, First Set.

REQUEST FOR PRODUCTION NO.: 2. Provide all writings relating to Constellation NewEnergy's response to Interrogatory No. 1.

RESPONSE: Objection. This request for production of documents was asked and answered earlier. See Response to Interrogatory No. 1c, First Set.

REQUEST FOR PRODUCTION NO.: 3. Provide all writings relating to
Constellation NewEnergy's response to Interrogatory No. 2.

RESPONSE: Objection. This request for production of documents was asked and
answered earlier. See Response to Interrogatory No. 3, First Set.

REQUEST FOR PRODUCTION NO.: 4. Produce a copy of all contracts or
agreements in which Constellation NewEnergy has agreed to provide generation service within
the East Central Area Reliability Council region during the years 2003, 2004 or 2005.

RESPONSE: Objection. This request seeks documents which are not reasonably
calculated to lead to the discovery of admissible evidence. Further, this request for
production of documents seeks confidential and proprietary information of an extremely
sensitive nature which cannot be disclosed without materially and adversely affecting
Constellation NewEnergy's competitive position.

As to Objections,

W. Jonathan Airey (0017437)
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Constellation NewEnergy, Inc. Responses to The Dayton Power And Light Company's Second Set of Interrogatories And Second Set of Requests for Production of Documents has been served via e-mail, upon the following counsel of record, this 2nd day of May, 2003:

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Dayton, OH 45402

W. Jonathan Airey

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension :
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for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain :
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**STRATEGIC ENERGY, LLC'S RESPONSES TO
THE DAYTON POWER AND LIGHT COMPANY'S
SECOND SET OF INTERROGATORIES AND SECOND SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Ohio Admin. Code §§ 4901-1-19 and 4901-1-20, Strategic Energy, LLC ("Strategic Energy") responds to the following interrogatories and requests for production of documents propounded by The Dayton Power and Light Company ("DP&L").

DEFINITIONS AND INSTRUCTIONS

1. DP&L incorporates the definitions and instructions from The Dayton Power and Light Company's First Set of Interrogatories to Intervenors.
2. "Objections" means Strategic Energy, LLC's Objections to DP&L's Applications and Responses to the Staff Recommendation, filed April 16, 2003.

INTERROGATORIES

Interrogatory No. 1: Is Strategic Energy a party to any contract or agreement in which Strategic Energy has agreed to or is obligated to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005?

RESPONSE: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving such objection, yes.

Interrogatory No. 2: If the answer to the preceding Interrogatory is affirmative, then please answer the following for each such contract or agreement:

- a. identify the customer or customers that are parties to the contract;

RESPONSE: Objection. This interrogatory and its subparts are not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory and its subparts seek confidential and proprietary information of an extremely sensitive nature which cannot be disclosed without materially and adversely affecting Strategic Energy's competitive position. Without waiving such objections, Strategic Energy will provide the following non-proprietary information: the total number of customers served within the East Central Area Reliability Council region currently approximates 2,249 and the total MWHs sold to such customers currently approximates 3,811,435.

- b. identify the customer class to which that customer would belong;

RESPONSE: See response to interrogatory no. 2a.

- c. identify the time period covered by the contract;

RESPONSE: See response to interrogatory no. 2a.

d. identify where the customer is located;

RESPONSE: See response to interrogatory no. 2a.

e. identify the price, or if different prices apply, the prices for generation service; and

RESPONSE: See response to interrogatory no. 2a.

f. identify any services in addition to providing generation that Strategic Energy is obligated to provide to its customers under that contract.

RESPONSE: See response to interrogatory no. 2a.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.: 1. Produce a copy of all contracts or agreements in which Strategic Energy has agreed to provide generation service within the East Central Area Reliability Council region during the years 2003, 2004 or 2005.

RESPONSE: Objection. This request seeks documents which are not reasonably calculated to lead to the discovery of admissible evidence. Further, this request for production of documents seeks confidential and proprietary information of an extremely sensitive nature which cannot be disclosed without materially and adversely affecting Strategic Energy's competitive position.

As to objections:

Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5401
(614) 464-6350 (Fax)

Attorneys for Strategic Energy, LLC

CERTIFICATE OF SERVICE

I certify that a copy of Strategic Energy LLC's Responses to The Dayton Power And Light Company's Second Set of Interrogatories And Second Set of Requests for Production of Documents has been served via e-mail, upon the following counsel of record, this 2nd day of May, 2003:

M. Howard Petricoff, Esq.
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Attorneys for The Kroger Company

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Athan A. Vinolus (0040174)
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

Charles J. Faruki (0010417)
Paul L. Horstman (0010452)
Jeffrey S. Sharkey (0067892)
Faruki Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 45402

Stephen M. Howard

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension :
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain :
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**AFFIDAVIT OF JEFFREY S. SHARKEY IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S EXPEDITED MOTION TO COMPEL DISCOVERY OF
STRATEGIC ENERGY, LLC AND CONSTELLATION NEWENERGY, INC.**

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

Jeffrey S. Sharkey, being duly cautioned and sworn upon oath states:

1. My name is Jeffrey S. Sharkey, and I am an associate at Faruki Ireland &
Cox P.L.L. I am one of the attorneys representing Applicant The Dayton Power and Light
Company ("DP&L") in this matter.

2. On April 22, 2003, DP&L served via electronic mail The Dayton Power
And Light Company's Second Set Of Interrogatories And Second Set Of Requests For Production
Of Documents To Strategic Energy, LLC ("Strategic Energy") and The Dayton Power And Light
Company's Second Set Of Interrogatories And Second Set Of Requests For Production Of

Documents To Constellation NewEnergy, Inc. ("Constellation NewEnergy"). Copies of those discovery requests are attached at Exhibits 1 and 2 respectively.

3. On May 2, 2003, DP&L was served with Strategic Energy and Constellation NewEnergy's responses to DP&L's Second Set of Interrogatories and Second Set of Requests for Production of Documents. Copies of those discovery responses are attached at Exhibits 3 and 4 respectively.

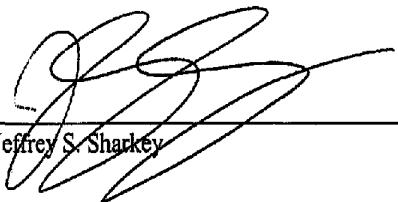
4. On May 6, 2003, I contacted Jon Airey, counsel for Constellation NewEnergy to discuss whether an accommodation could be reached regarding DP&L Interrogatory Nos. 3 and 4, and DP&L Request for Production of Documents No. 4, to which Constellation NewEnergy had refused to respond. Mr. Airey stated that he would have to discuss the matter with his client.

5. Also on May 6, 2003, I contacted Steve Howard, counsel for Strategic Energy to discuss whether an accommodated could be reached regarding DP&L Interrogatory Nos. 1 and 2, and DP&L Request for Production of Documents No. 1, to which Strategic Energy had refused to respond. Mr. Howard stated that he would have to discuss the matter with his client.

6. Between May 6, 2003 and May 8, 2003, I had several conversations with Messrs. Airey and Howard. In those conversations, to protect the identity of Constellation NewEnergy and Strategic Energy's customers, I proposed that either (a) customer contracts be produced but with the customer name redacted; or (b) that they prepare for DP&L a chart with the following information: Price, customer location, and customer class.

7. On May 9, 2003, I sent an e-mail to Messrs. Airey and Howard, a copy of which is attached at Exhibit 5, in which I again requested that they produce the information listed in the preceding paragraph.

8. On May 9, 2003, Mr. Airey called me and stated that Constellation NewEnergy would not agree to produce the information requested in my May 9, 2003 e-mail.



Jeffrey S. Sharkey

Sworn to me and subscribed in my presence by the said Jeffrey S. Sharkey this 12th day of May, 2003.



Notary Public

SUZANNE SCHEINER-ALBL
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

120512.1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Continuation : CASE NO. 02-2779-EL-ATA
of the Rate Freeze and Extension :
of the Market Development Period :
for The Dayton Power and :
Light Company :

In the Matter of the Application of The : CASE NO. 02-2879-EL-AAM
Dayton Power and Light Company for Certain :
Accounting Authority Pursuant to Section :
4905.13, Ohio Revised Code.

**AFFIDAVIT OF PAUL L. HORSTMAN IN SUPPORT OF THE DAYTON POWER AND
LIGHT COMPANY'S EXPEDITED MOTION TO COMPEL DISCOVERY OF
STRATEGIC ENERGY, LLC AND CONSTELLATION NEWENERGY, INC.**

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

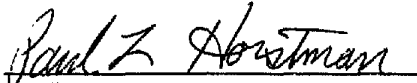
Paul L. Horstman, being duly cautioned and sworn upon oath states:

1. My name is Paul L. Horstman, and I am a partner at Faruki Ireland & Cox P.L.L. I am one of the attorneys representing Applicant The Dayton Power and Light Company ("DP&L") in this matter.

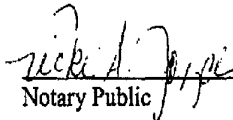
2. On April 22, 2003, DP&L served via electronic mail The Dayton Power and Light Company's Second Set of Interrogatories and Second Set of Requests for Production of Documents to Strategic Energy, LLC ("Strategic Energy") and The Dayton Power and Light Company's Second Set of Interrogatories and Second Set of Requests for Production of Documents to Constellation NewEnergy, Inc. ("Constellation NewEnergy"). Copies of those discovery requests are attached as Exhibits 1 and 2 respectively.

3. On May 2, 2003, DP&L was served with Strategic Energy and Constellation NewEnergy's responses to DP&L's Second Set of Interrogatories and Second Set of Requests for Production of Documents. Copies of those discovery responses are attached as Exhibits 3 and 4 respectively.

4. On May 12, 2003, Steve Howard, counsel for Strategic Energy, informed me that Strategic Energy refused: (a) to produce the customer contracts with the customer name redacted; or (b) to prepare a chart for DP&L with the following information: price, customer location, and customer class. Mr. Howard stated that Strategic Energy would consider producing customer class and customer location information only. I explained to Mr. Howard that the pricing information was necessary and it should not be withheld from DP&L. Mr. Howard reiterated Strategic Energy's refusal to supply DP&L with the requested pricing information.


Paul L. Horstman

Sworn to me and subscribed in my presence by the said Paul L. Horstman this 14th
day of May, 2003.


Notary Public

VICKI A. JOYCE, Notary Public
in and for the State of Ohio
My Commission Expires Nov. 2, 2004

120516.1

Scheiner-Albl, Suzanne

From: Seabold, Teri
Sent: Friday, May 09, 2003 3:25 PM
To: Jon Airey (wjair@vssp.com); Steve Howard (smhoward@vssp.com)
Cc: Horstman, Paul L.; Athan Vinolus (athan.vinolus@dpinc.com); Scheiner-Albl, Suzanne; Sharkey, Jeffrey S.
Subject: From Jeff Sharkey -- DP&LMDP - Discovery Requests

Dear Jon and Steve,

This e-mail is to follow up on the series of communications we have had regarding DP&L's discovery requests. In light of the imminent hearing date, we need to know ASAP whether or not you will agree to provide us with, at a minimum, a chart for your client's customers within ECAR, which chart would contain the following information: (1) contract price; (2) location of customer (we will be satisfied if you identify which utility's service territory the customer is located in); and (3) customer class. If we do not hear back from you by noon on Monday, May 12, 2003 that you will provide us such information, then we are going to file a motion to compel.

I will not be in the office next week, so please direct any communications you have regarding this matter to Paul Horstman, whose e-mail address is above and who can be reached at telephone number (937) 227-3711.

Very truly yours,

Jeffrey S. Sharkey

Jeffrey S. Sharkey
Faruki Ireland & Cox P.L.L.
937-227-3747
jsharkey@ficlaw.com