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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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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)

**MEMORANDUM IN SUPPORT OF
ALLOWING THE ORAL TESTIMONY OF RONALD R. MCNAMARA
ON CROSS-EXAMINATION**

One of the key issues for the Commission to decide in this case is whether The Cincinnati Gas & Electric Company's ("CGE") Electric Reliability and Rate Stabilization Plan (the "CGE Rate Stabilization Plan") will be compatible with the real world in a restructured electric industry

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after the market development period ends.¹ The Commission must have access to the best facts as to how the restructured electric industry will operate. In the matter at bar it is particularly important to understand what responsibilities, in the event of a default by a load serving entity, to maintain reliability and supply power rests with the MISO, the regional transmission organization, and what responsibilities rests with the distribution utility. Further, the answer to this question appears to be different today in "Day One" when all load serving entities (Utilities and CRES alike) schedule with MISO, but the power is dispatched by CG&E and correspondingly what responsibility for reliability rests with whom on "Day Two" when both scheduling and dispatching rests with the MISO.

To assist the Commission with this largely factual determination, The Ohio Marketers Group (consisting of Constellation NewEnergy, Inc., Constellation Power Source, Inc., MidAmerican Energy Company, Strategic Energy, LLC and WPS Energy Services, Inc.) has subpoenaed and intends to cross-examine Ronald R. McNamara, vice president of Regulatory Affairs and Chief Economist of Midwest Independent Transmission System Operator, Inc. ("MISO"). Mr. McNamara is the officer at MISO who signed the tariff filed at the Federal Energy Regulatory Commission for MISO Day 2 and should be able to answer questions on how that tariff will operate.

The Ohio Marketers Group could have used a knowledgeable employee or hired an outside expert to express via expert testimony who MISO works Day 1 and will work on Day 2; but the most direct route seemed to be to go right to the source and subpoena the official at MISO with the direct responsibility to answer these important questions. MISO is a non profit, quasi governmental agency and cannot be hired to present expert testimony for the Ohio Marketers Group or any other party. Thus, the Ohio Marketers Group has subpoenaed Mr.

¹ See "The Cincinnati Gas & Electric Company's Filing In Response To The Request Of The Public

McNamara and will examine him on cross examination as to factually how the MISO operates today under Day One and will operate under its filed tariff on Day 2. It should be noted that every other party will have an equal chance to cross examine Mr. McNamara in the same fashion as the Ohio Marketers Group.

The Industrial Energy Users-Ohio ("IEU-Ohio") has objected to Mr. McNamara's oral testimony claiming that such testimony should have been pre-filed with the Commission. Contrary to the objections raised by IEU-Ohio, Mr. McNamara's oral testimony will not violate any Commission rules nor will it be prejudicial to any of the participating parties.

First, no Commission rules preclude the oral testimony of a witness as to the facts in a proceeding. The only Commission rule requiring the pre-filing of testimony is Ohio Administrative Code Rule 4901-1-29(A) which only applies to expert testimony. See Rule 4901-1-29(A).² Indeed, governmental employees have often given oral testimony before the Commission on specialized matters. See Case No. 01-1055 (subpoena issued to Office of Licensing and Commercial Standards employee); Case No. 02-2306 (oral testimony by employee of Ohio State Highway Patrol Crime Laboratory); Case No. 99-1240 (oral testimony by Commercial Motor Vehicle Inspection Officer related to radar device possession). Similarly, Mr. McNamara should be allowed to testify as to his personal knowledge of the operation of the MISO Day One and its tariff for Day 2 in his capacity as a quasi-governmental official.³

As Mr. McNamara will not be offering direct testimony, the Ohio Marketers Group intends to cross-examine Mr. McNamara on matters within his personal and professional knowledge. The Ohio Marketers Group has not and could not hire Mr. McNamara to testify and

Utilities Commission Of Ohio To File A Rate Stabilization Plan", filed January 26, 2004.

² Even then, the Commission may allow oral testimony by an expert provided that no undue delay or unjust prejudice will result by the presentation of the testimony. See Rule 4901-1-29(C).

³ Subject to limited exceptions, the Ohio Rules of Evidence allow any person with personal knowledge of the matter to be a witness. See Evid. R. 601 and Evid. R. 602.

for his efforts Mr. McNamara will receive \$16 deposited with the Fiscal Division of the Commission.

Finally, it should be noted that regardless of any arguments that Mr. McNamara is an expert witness, no undue delay or unjust prejudice will result from Mr. McNamara's oral testimony. Under Rule 4901-1-29(C)(2), the Commission has discretion to allow oral testimony of expert witnesses provided the presentation of the testimony does not unduly delay or unjustly prejudice any other party. Given that Mr. McNamara is physically located in Dublin, Ohio and that Commission hearings on this matter are on-going, there will be no delay to the proceedings by the Ohio Marketers Group's cross-examination of Mr. McNamara. Likewise, no unjust prejudice will result because any party can cross-examine Mr. McNamara.

Therefore, Ohio Marketers Group respectfully requests that the Commission allow the oral testimony of Ronald McNamara in his capacity as vice president of Regulatory Affairs and Chief Economist of Midwest Independent Transmission System Operator, Inc. ("MISO"). His factual testimony as an official of a "quasi-governmental" authority is analogous to oral testimony allowed by the Commission in other evidentiary hearings and will ensure that this matter is litigated on a complete record.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing the Ohio Marketers Group's Memorandum In Support Of Allowing The Oral Testimony of Ronald R. McNamara was served via e-mail delivery and/or by first class U.S. mail, postage prepaid, upon the following, this 21st day of May, 2004.

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