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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
Cinergy Corp., on Behalf of The)
Cincinnati Gas & Electric Company, and)
Duke Energy Holding Corp. for Consent) Case No. 05-732-EL-MER
And Approval of a Change of Control of)
The Cincinnati Gas & Electric Company.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures in Order to Defer Costs Incurred) Case No. 05-733-EL-AAM
In Order to Realize Cost Savings as a Result)
Of the Merger Transaction.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures in Order to Defer Costs Incurred) Case No. 05-974-GA-AAM
In Order to Realize Cost Savings as a Result)
Of the Merger Transaction.)

MOTION FOR LEAVE TO INTERVENE AND
APPLICATION FOR REHEARING OF
WPS ENERGY SERVICES, INC.

Pursuant to Sections 4903.10 and 4902.221, Revised Code, WPS Energy Services, Inc. ("WPS-ESI"), a certified retail electric service ("CRES") provider respectfully moves to intervene in these proceedings for the limited purpose of filing an application for rehearing to the December 21, 2005 Finding and Order. WPS-ESI moves for rehearing on a single issue. Specifically, the restriction in tariff rider RSS which limits the RSS surcredit rider to non-shopping customers only is unreasonable and unlawful. The result of now excluding shopping customers means that they will receive a greater distribution rate increase than non-shopping customers. This tariff restriction is not supported by the Stipulation which listed applying

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merger savings to offset distribution and other rate increases. It is unreasonable and unlawful to deny all customers the benefits of the merger savings, particularly when the savings are being used to offset new, increased distribution rates being authorized contemporaneously with the merger. Further, favoring customers who purchase power from Cincinnati Gas & Electric over customers who purchase power in the open market is anti competitive, detrimental to market development and violates Section 4905.35, Revised Code which prohibits undue discrimination.

WPS-ESI did not previously seek to intervene in these matters because it thought the merger savings would be applied to all customers, both shopping and non-shopping electric customers equally. That appears to be plain meaning of the Staff Report, the Stipulation and Commission's Order. It was not until after the Commission issued its December 21, 2005 Finding and Order that WPS-ESI learned that the attached tariffs, which did not highlight the changed language, limited the RSS surcredit only to non-shopping customers.

WPS-ESI submits that it did not intervene in this proceeding earlier for just cause and its interests were not adequately considered by the Commission in this proceeding.

WHEREFORE, WPS Energy Services, Inc., respectfully requests leave to intervene in this proceeding and respectfully requests that the Commission grant rehearing and order that the Rate Stabilization Surcredit ("RSS rider") be applicable to all shopping and non-shopping electric service customers.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO INTERVENE AND
APPLICATION FOR REHEARING OF
WPS ENERGY SERVICES, INC.

I. INTRODUCTION

The matter at bar concerned a change of control over the Cincinnati Gas & Electric Company ("CG&E") and various accounting modifications associated with such a change. One of the issues that arose was whether some of the administrative savings associated with the merger of Cinergy Corp. with Duke Energy should be shared with the customers of CG&E. CG&E and its merger partner Duke Holding Corp. offered \$15,214,500 divided between gas and electric customers. In accordance with a directive from the Commission, the Staff issued a Staff Report and determined that consistent with the methodology used in other states affected by the

Cinergy / Duke merger: Ohio customers should receive a merger savings of \$35,785,700.

Through out this debate about the proper level of merger savings, including the June 1, 2005 Joint Application, the August 1, 2005 Testimony, and the November 14, 2005 Staff Comments, no suggestion was made that shopping customers, either gas or electric, would be excluded from the savings. Thus, WPS Energy never intervened in this matter, for as a CRES the relative level of merger savings did not affect WPS-ESI or other CRES marketers.

The proper level of merger savings came before the Commission in the above styled proceeding as part of a Stipulation, which settled on a merger figure in total close to the Staff's recommendation. Electric customers were awarded an additional merger savings of some \$15 million dollars, but within the text of the Stipulation no mention was made that this savings would restrict shopping customers. The fact that shopping customers were barred from the RSS rider was first evidenced only in the December 1st comments of CG&E which contained the preferred tariff sheets. Further, the preferred tariff sheets did not mark the changed or altered language from the existing tariff. Thus, to uncover the restriction to electric shopping customers of the RSS rider credit, one would have to read the tariff sheets in the CG&E Comments, which is an unlikely event in light of the fact that the text of the CG&E Comments did not mention the restriction. Finally, it should be noted that the restriction of the RSS rider credit to non shopping customers only was not mentioned in the Commission's December 21, 2005 Finding and Order, which may evidence the fact that this important point was not fully considered.

Given the low level of visibility the restriction of the RSS surcredit has it is reasonable to assume that non parties, even those who somewhat diligently follow Commission proceedings, would not know of the credit restriction in the RSS surcredit, and thus should be allowed to present the issues with the surcredit on rehearing.

II. WPS ENERGY SERVICES, INC. MEETS THE STATUTORY TEST FOR INTERVENTION AND APPLYING FOR REHEARING

Section 4903.10, Revised Code allows any affected person to make an application for rehearing within 30 days after the entry of any final order upon the Journal of the Commission. However, if a person did not previously enter an appearance in the proceeding, the Commission must first find that the failure to enter such an appearance was due to just cause and that the interests of the applicant were not adequately considered in the proceeding. WPS-ESI submits that these criteria are met.

As explained above, the issue of whether the merger savings credit would only be applied to non-shopping electric customers only surfaced with the filing of a tariff page three weeks before the Finding and Order was signed. WPS-ESI submits that just cause exists for granting intervention here. The issue did not surface with any pleading other than a single tariff sheet filed in December. Further, WPS-ESI's interest were not adequately considered. As a CRES provider, WPS-ESI has an interest in seeing that anti-competitive rates are not approved. Applying a merger savings credit to non-shopping customers, but denying it to shopping customers is truly anti-competitive. Section 4903.221, Revised Code sets forth the criteria that the Commission must consider in ruling upon motions to intervene. WPS-ESI's interest in this proceeding is limited to applying for rehearing so that the RSS rider credit will be applied to both shopping and non-shopping electric customers. Such a position is consistent with the policy of this state and will not unduly prolong or delay the proceedings as other applications for rehearing have been filed. Just cause exists for granting the motion to intervene as WPS-ESI's interests were not adequately considered.

III. THE APPLICATION OF THE RATE STABILIZATION SURCREDIT RIDER TO ELECTRIC NON-SHOPPING CUSTOMERS IS UNREASONABLE AND UNLAWFUL BECAUSE IT IS ANTI-COMPETITIVE

The Commission in its Finding and Order in the above styled proceeding approved three credits. It approved a merger savings credit of \$16,376,500 for electric distribution customers and a merger savings credit of \$4,167,700 for gas service customers. The merger savings credit rider appears to be applicable to both shopping and non-shopping customers of CG&E.

However, there was a third credit approved for electric customers only called the RSS or rate stabilization surcredit of \$15,241,500. The purpose of this RSS credit was listed in the Stipulation paragraph 2.5:

CG&E will credit \$15,241,500 (Rate Stabilization Surcredit, attached as Exhibit C) to customer in mitigation of CG&E's forthcoming electric distribution and other rate increases.

The distribution rate increase referred to in the above quote included Case No. 05-59-EL-AIR, which applies to both shopping and non shopping customers. Thus, while the above description may reasonably exclude gas customers from the RSS merger savings, it will not support excluding electric shopping customers. The result of now excluding shopping customers means that they will receive a greater distribution rate increase than non-shopping customers. This is anti-competitive on its face. Further, it violates both Section 4905.35, Revised Code and the policy of this state as set forth in Section 4928.02, Revised Code. The Commission must grant rehearing on this issue and direct CG&E to flow the rate stabilization surcredit through to all distribution customers including shopping and non-shopping customers.

IV. CONCLUSION

WPS Energy Services, Inc. respectfully urges the Commission to grant it leave to intervene for the purpose of requesting a rehearing of the Joint Applicant's rate stabilization

surcredit rider.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via First Class U.S. Mail, postage prepaid, this 20th day of January, 2006.



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