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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 Offer Pricing)
and to Establish a Pilot)
Alternative Competitively-Bid)
Service Rate Option Subsequent)
to Market Development Period)

Case No. 03-93-EL-ATA

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated)
With The Midwest Independent)
Transmission System Operator)

Case No. 03-2079-EL-AAM

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its)
Electric Transmission And Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be)
Effective After the Market Development)
Period)

Case No. 03-2081-EL-AAM
Case No. 03-2080-EL-ATA

**THE CINCINNATI GAS & ELECTRIC COMPANY'S
MEMORANDUM CONTRA THE MOTION OF OHIO PARTNERS FOR
AFFORDABLE ENERGY TO STRIKE PORTIONS OF THE CINCINNATI
GAS & ELECTRIC COMPANY'S REPLY BRIEF**

The Cincinnati Gas & Electric Company objects to Ohio Partners for Affordable Energy's motion to strike. OP&E's motion mischaracterizes the paragraph in question as well as the support for the paragraph. CG&E relied upon the order of the application and Stipulation filed by

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FirstEnergy, the order of the Public Utilities Commission of Ohio in case no. 03-2144-EL-ATA, and OP&E's membership in CG&E's certified territory as the basis for its statements in the paragraph that is the subject of OP&E's motion on page four of CG&E's reply brief. CG&E did not rely upon, nor reveal, the content of settlement discussions between CG&E and OP&E. On the other hand, OP&E has apparently released the substance of those settlement discussions to the Commission through its filing of a settlement memorandum under seal. If the document filed under seal is the settlement document given to CG&E by OP&E during settlement negotiations, it supports the conclusions, based upon the public record, set forth in CG&E's reply brief.

The paragraph that OP&E wishes the Commission to strike reads as follows:

OP&E's only interest is to become the sole administrator of energy efficiency and weatherization contracts. CG&E currently contracts for its energy and weatherization programs through the Cinergy Community Energy Partnership Board (CCEP). OP&E's clients in CG&E's certified territory, the Hamilton and Clermont County Community Action Agencies, belong to CCEP and to CUFA, a signatory to the Stipulation. The Commission should reject OP&E's arguments as simply an attempt to extract from CG&E the ability to control a substantial amount of dollars to the detriment of various energy efficiency and weatherization providers in CG&E's certified territory.¹

¹ CG&E Reply Brief at 4.

OPAE objects to the paragraph on two grounds: (1) that the paragraph allegedly contains factual misrepresentations concerning OPAE's membership; and (2) the paragraph allegedly reveals the content of privileged settlement discussions.² CG&E will respond to each allegation.

The only factual representation alleged by OPAE to contain an inaccuracy is OPAE's membership in CG&E's certified territory. CG&E, in the paragraph at issue, stated that "OPAE's clients in CG&E's certified territory, the Hamilton and Clermont County Community Action Agencies, belong to CCEP and to CUFA, a signatory to the Stipulation." OPAE claims that its members in CG&E's certified territory include, in addition to the Hamilton and Clermont County Community Action Agencies, Adams-Brown Counties Economic Opportunities, Inc., Community Action Partnership of Greater Dayton Area, and Supports to Encourage Low-Income Families.³ OPAE further claims that none are members of Citizens United for Action (CUFA), a signatory to the Stipulation in these cases.⁴

OPAE has not revealed its membership in these cases. In its motion to intervene it did not list a membership.⁵ CG&E, through communications with OPAE is aware that the Hamilton and Clermont County Community Action Agencies are members of OPAE. CG&E, until

² OPAE Motion at 1.

³ *Id.*

⁴ *Id.*

⁵ OPAE motion to intervene (March 4, 2003).

it read OP&E's motion, was unaware of other members in its certified territory. Through similar communications with CUFA, OP&E, and the Hamilton and Clermont County Community Action Agencies, CG&E understood that the Hamilton and Clermont County Community Action Agencies were members of CUFA. After reading OP&E's allegation CG&E asked CUFA to clarify its relationship with the Hamilton and Clermont County Community Action Agencies. CUFA indicates that those agencies are not members of CUFA. The Hamilton and Clermont County Community Action Agencies are however, active members of the Cinergy Community Energy Partnership Board (CCEP). CG&E is unfamiliar with the three other organizations OP&E references and is unaware of any activity by them within CG&E's certified territory.

Regarding the second issue raised by OP&E, that CG&E revealed confidential settlement discussions; OP&E is mistaken. OP&E is apparently offended that CG&E stated that "OP&E's only interest is to become the sole administrator of energy efficiency and weatherization contracts." The basis of the statement is the public record, not settlement discussions, and CG&E stands by the statement.

The public record indicates that OP&E agreed to sign the FirstEnergy rate stabilization plan stipulation.⁶ The FirstEnergy stipulation expressly makes OP&E the exclusive administrator of energy assistance and weatherization funding during the rate stabilization

⁶ *In re FirstEnergy RSP*, Case No. 03-2144-EL-ATA (Stipulation at 9) (February 11, 2004).

period in the FirstEnergy certified territories.⁷ The record in these cases indicate that CG&E agreed to fund energy assistance and weatherization programs through a demand side management rider with program content to be determined by the CCEP in conjunction with Staff and cost recovery by application to the Commission.⁸ OPAE is the only intervener providing services to low income consumers in CG&E's certified territory not to sign the Stipulation. Unlike FirstEnergy's settlement, OPAE will not be the administrator of energy assistance and weatherization programs in CG&E's certified territory.

⁷ *Id.* at 6.

⁸ Stipulation at 18.

CONCLUSION:

The public record supports the substance of the paragraph that OPAE seeks to strike. CG&E believes that OPAE was, and remains, motivated by its desire to gain sole control of energy efficiency and weatherization money. CG&E therefore, asserts the accuracy of its reply brief, excepting the fact that Hamilton and Clermont County Community Action Agencies are not members of CUFA.

Respectfully submitted,



Paul A. Colbert (0058582)

Trial Attorney

John J. Finnigan, Jr. (0018689)

Michael J. Pahutski (0108705)

THE CINCINNATI GAS & ELECTRIC
COMPANY

25th Floor Atrium II Building

139 East Fourth Street


P. O. Box 960

Cincinnati, Ohio 45201-0960

(513) 287-3015

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Cincinnati Gas & Electric Company's Memorandum Contra was electronically served on the following parties this 29th day of July 2004.



Paul A. Colbert

Theodore J. Schneider, Esq.
Murdock, Goldenberg, Schneider & Groh
Counsel for Cognis Corporation
700 Walnut Street, Suite 400
Cincinnati, Ohio 45202
tschneider@mgsjlaw.com

Sally W. Bloomfield, Esq.
Thomas J. O'Brien
Counsel for Ohio Manufacturers' Association
and City of Cincinnati
Brickler & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215
sbloomfield@bricker.com

Samuel C. Randazzo, Esq.
Lisa Gatchell, Esq.
McNees, Wallace & Nurick
Counsel for Industrial Energy Users-Ohio
21 East State Street, 17th Floor
Columbus, Ohio 43215
srandazzo@mwncmh.com
lgatchell@mwncmh.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour & Pease
Counsel for MidAmerica Energy Co.,
WPS Energy Services, Inc.
Strategic Energy, LLC and
Constellation Power Source, Inc.
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vssp.com
smhoward@vssp.com

Richard L. Sites, Esq.
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Michael L. Kurtz
Boehm, Kurtz & Lowry
Attorneys for The Kroger Co,
AK Steel Corporation,
and The Ohio Energy Group
2110 CBLD Center
36 East Seventh Street
Cincinnati, Ohio 45202
mkurtzlaw@aol.com

Barth E. Royer
Judith B. Sanders
Counsel for Dominion Retail, Inc.
Bell, Royer & Sanders Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3900
BarthRoyer@aol.com

Larry S. Sauer, Esq.
Jeffrey L. Small, Esq.
Ann M. Holz, Esq.
Office of Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
sauer@occ.state.oh.us
small@occ.state.oh.us
holz@occ.state.oh.us

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

Craig G. Goodman
National Energy Marketers Association.
3333 K Street, N.W., Suite 110
Washington, DC 20007
cgoodman@energymarketers.com

Arthur E. Korkosz
First Energy Solutions Counsel
76 South Main Street
Legal Dept., 18th Floor
Akron, Ohio 44308-1890
KorkoszA@FirstEnergyCorp.com

David F. Boehm, Esq.
Counsel for AK Steel Corp.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 2110
Cincinnati, Ohio 45202
dboehmlaw@aol.com

David C. Rinebolt
Ohio Partners for Affordable Energy
337 S. Main Street, 4th Floor, Suite 5
P.O. Box 1793
Findlay, Ohio 45839-1793
drinebolt@aol.com

William A. Adams, Esq.
Dane Stinson, Esq.
Bailey Cavalieri LLC
Counsel for Green Mountain Energy Co.
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
William.Adams@BaileyCavalieri.com
Dane.Stinson@BaileyCavalieri.com

Shawn P. Leyden
Vice President and General Counsel
PSEG Energy Resources & Trade LLC
80 Park Plaza, 19th Floor
Newark, NJ 07102
Shawn.Leyden@pseg.com

Mary W. Christensen
Christensen, Christensen & Devillers
Attorney for People Working Cooperatively
401 North Front Street
Suite 350
Columbus, Ohio 43215-2249
MCristensen@Columbuslaw.org

Noel M. Morgan, Esq.
Counsel for Communities United for Action
Legal Aid Society of Cincinnati
215 East Ninth Street
Suite 200
Cincinnati, Ohio 45202
nmorgan@lascinti.org

Thomas McNamee
Werner Margard, III
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Tom.mcnamee@puc.state.oh.us
Werner.margard@puc.state.oh.us