



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 ) Case No. 05-732-EL-MER  
Consent 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 ) Case No. 05-733-EL-AAM  
Costs Incurred 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 ) Case No. 05-974-GA-AAM  
Cost Incurred in Order to Realize Cost Savings )  
as a Result of the Merger Transaction. )

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**REPLY COMMENTS  
OF  
THE OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS,  
THE OHIO SCHOOL BOARDS ASSOCIATION, AND  
THE BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS**

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***I. INTRODUCTION***

On August 1, 2005, the Ohio Association of School Business Officials, The Ohio School Boards Association, and The Buckeye Association of School Administrators (collectively, the "Schools") submitted their initial comments in these proceedings in response to the Commission's entries of June 14 and July 7, 2005. Those entries directed interested persons to file comments identifying and discussing issues that the Commission should review in this

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proceeding, and suspended discovery pending review of the comments. However, instead of identifying issues that the Commission should consider, the Joint Applicants filed testimony to support their substantive positions, and their accompanying comments merely summarized their testimony. Joint Applicants' actions place the Schools and other stakeholders at a disadvantage because, without discovery, Joint Applicants' testimony cannot effectively be addressed. Indeed, Joint Applicants' vague and conclusory testimony reinforces the need for the Commission to permit discovery and conduct hearings on the issues identified in the stakeholders' comments filed August 1, 2005. To do otherwise, and approve the application on the basis of Joint Applicants' testimony, would be to permit half a hearing and would be patently unfair to the Schools and other stakeholders who are substantially affected by the proposed merger.

In addition to the issues raised by other stakeholders, the Schools believe it is imperative to permit discovery and hold hearing on the following pivotal issues:

1. The Cost Savings Resulting from the Proposed Merger and the Amount of, and Manner by Which They Are Shared with Consumers, including the Schools.
2. The Loss of Jobs and Tax Revenues in the Cincinnati Metropolitan Area, Including Relocation of Upper Management to North Carolina.
3. The Proposed Transfer to The Cincinnati Gas & Electric Company ("CG&E") of Duke Energy North America ("DENA") Generating Units.

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## ***II. REPLY COMMENTS***

### **A. Even Assuming Joint Applicants Have Properly Estimated Savings Resulting from the Proposed Merger (Which Cannot be Determined Absent Discovery and Hearing), the Proposed Amount of Sharing of Such Savings with Consumers is Insufficient and Does Not Take Into Account the Schools' Special Circumstances.**

Joint Applicants' testimony describes the estimated savings resulting from the proposed merger in vague and conclusory terms, and requires the Commission and interested persons to place faith in the untested estimates likely designed to benefit Joint Applicants' bottom line. An accurate estimate of the gross savings and costs resulting from the merger, and their appropriate allocations to CG&E, cannot be ascertained without discovery and hearing on this issue.

Even assuming that Joint Applicant's estimated costs, savings, and allocations are accurate, the proposed sharing of benefits with CG&E's consumers is insufficient to satisfy the public convenience requirement embodied in Section 4905.402, Ohio Rev. Code. According to the Joint Applicants' testimony, the proposed merger will result in gross merger savings of approximately \$2.1 billion, of which approximately \$780 million have been allocated out of this proceeding as being derived from non-regulatory operations, including competitive generation. See Direct Testimony Thomas J. Flaherty at 5. Joint Applicants then reduced the remaining \$1.3 billion in merger savings by an estimated \$696 million in costs to achieve the merger savings, resulting in estimated net merger savings over a five-year period of approximately \$600 million. Direct Testimony of Gregory C. Ficke at 15. This \$600 million in net merger saving then was allocated among the various Duke Energy Holding Corp. subsidiaries. The cumulative net merger savings allocated to CG&E is \$48.8 million -- \$9.9 million of which is allocated to CG&E's gas

operations and \$38.9 million of which is allocated to CG&E's electric operations. Direct Testimony of Gregory C. Ficke at 16. Of these net merger savings allocated to CG&E's electric operations, Joint Applicants propose to share a gradually increasing percentage of the five-year average net merger savings with consumers, as illustrated in the following Table 1. The result is that of the estimated \$38,900,000 in Joint Applicants' allocation of estimated merger savings from electric operations, customers will receive \$11,670,000, while the company will disproportionately retain the remaining \$27,230,000, or more, if merger saving estimates are understated.

**TABLE 1**

<i>YEAR</i>	<i>PERCENTAGE</i>	<i>SAVINGS*</i>
Year 1	10%	\$778,000
Year 2	20%	\$1,556,000
Year 3	30%	\$2,334,000
Year 4	40%	\$3,112,000
Year 5	50%	\$3,890,000
<b>CUMULATIVE TOTAL</b>		\$11,670,000
* Based upon the five-year average net merger savings of \$ 7,780,000 per year.		

Moreover, Joint Applicants have failed to recognize the special circumstances facing the Schools. In their initial comments, the Schools explained how they rely upon CG&E to deliver the electric power necessary for their classrooms and other facilities to operate, and that the

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overall cost of electricity service is a major operating expense for school districts, many of which are in extreme financial distress. They further explained that schools in general have different and more favorable load and usage characteristics than other commercial electric customers, due to their limited hours of operation on weekdays, and their closings on weekends, holidays and the summer months, particularly during the summer peak months of July and August, and are deserving of special tariffed rate schedules or innovative rate plans, as other Ohio electric utilities have recognized. To implement such rates would go far in meeting the public convenience test established by Section 4905.402, Ohio Revised Code. Yet, Joint Applicants have failed to create a rate schedule. Instead, they propose to treat the Schools no differently than other commercial customers, and require that they participate in what discovery and hearing would show to be an insufficient shared savings plan. The insufficiency of the sharing plan, as it relates to the Schools, becomes abundantly clear when contrasting the savings the Schools will realize from the Joint Applicants' proposals in merger application with the benefits that the merger will provide to upper management of the merged entity. The savings are particularly minute when compared to the compensation of Cinergy's current Chief Executive Officer and future President and CEO of Duke Energy Holding Corp. According to CG&E's 2004 Annual Report filed with the Commission, Cinergy's CEO received over \$33,000,000 in compensation over the past five years. In stark contrast stand the Schools, which will receive only a comparatively miniscule \$85,090 in proposed net savings from CG&E's electric operations over the next five years. See Table 2, below. Public policy demands, and the Schools deserve, better.

**TABLE 2**

<b>CEO COMPENSATION*</b>		<b>SCHOOLS' NET SAVINGS<sup>†</sup></b>	
<i>Year</i>	<i>Amount</i>	<i>Year</i>	<i>Amount</i>
2000	\$3,085,649	Year 1	\$5,579
2001	\$4,890,049	Year 2	\$11,359
2002	\$8,495,629	Year 3	\$17,038
2003	\$9,010,207	Year 4	\$22,717
2004	\$7,706,463	Year 5	\$28,397
<b>CUMULATIVE TOTAL</b>	\$33,187,997	<b>CUMULATIVE TOTAL</b>	\$85,090
* Based on CG&E's 2004 Annual Report filed with the Commission		<sup>†</sup> The Schools contributed approximately \$16 million (or .73%) to CG&E's 2004 gross electric revenues of \$2.2 billion. See 2004 Annual Report. The yearly net savings provided the Schools is determined by applying the .73% contribution to the average net annual savings from electric operations identified in Table 1.	

**B. The Public Convenience Requires the Commission to Examine Whether the Proposed Merger Justified the Significant Loss of Jobs and Tax Revenues in the Cincinnati Metropolitan Area.**

The Schools and Joint Applicants identify for consideration the issue regarding Cinergy's continued in-state presence. See Schools Initial Comments; Joint Application, Appendix A. Although Joints Applicants' testimony estimated the cost savings resulting from job losses, they have refused to identify the specific jobs to be lost and where those jobs are located. Instead, they vaguely refer to the system-wide reduction of 1,500 jobs, and specifically identify 574 jobs to be eliminated in the corporate and headquarters divisions amounting to \$41.4 million dollars in savings in Year 1 and \$79.0 million in savings in Year 3. However, Joint Applicants fail to

disclose the proportion of jobs to be eliminated in Ohio. See, e.g., *Direct Testimony of Richard J. Osborne* at 17-18; *Direct Testimony of Thomas J. Flaherty* at 27, 31.

What is known, however, is that corporate headquarters for the merged entity will be located in Charlotte, North Carolina, and that the greater Cincinnati metropolitan area is destined to lose a significant number of high paying jobs and attendant tax revenues if the merger is approved. The loss of another corporate headquarters in the greater Cincinnati area will be a huge blow to the southwestern Ohio. Discovery and hearing are required to address the magnitude of these economic losses to greater Cincinnati and the State of Ohio and whether the proposed merger justifies these significant economic losses. The loss of jobs and tax revenues in southwest Ohio from the proposed merger appears to be of a substantially larger magnitude than the miniscule savings being offered.

**C. Discovery and Hearing Are Required to Ensure that the Costs of the DENA Generation Facilities Are Not Passed Through to Ratepayers.**

Joint Applicants' testimony raises more questions than it resolves surrounding the transfer of the five natural gas combined cycle generating units owned by DENA. What the testimony does disclose is unnerving – that the revenues from dispatch these units do not recover the costs, and that these high cost plants are being transferred to CG&E. *Direct Testimony of Richard J. Osborne* at 15. The testimony does not disclose CG&E's future plans for the plants, particularly when viewing the current uncertainties surrounding deregulation in Ohio, and whether it plans to recover their costs through the System Reliability Tracker or Fuel Cost Component approved in CG&E's rate stabilization plan proceeding (See *In Re CG&E Post Market Development Period Service*, Case No. 03-93-EL-ATA (Entry on Rehearing, November



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10, 2004)), or otherwise include these uneconomic plants in a re-regulated generation fleet to ensure recovery from Ohio's ratepayers, including the financially beleaguered Schools. Discovery and hearing are required on these issues.

***III. RENEWED REQUEST FOR HEARING***

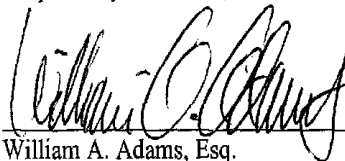
Joint Applicants' testimony demonstrates that in order to determine whether the proposed merger promotes the public convenience, the Commission must make a fact-intensive inquiry – which cannot be accomplished through the submission of comments or written testimony alone, and certainly cannot be based upon only Joint Applicants' testimony. The Joint Application presents complex issues, which only can be tested and resolved through discovery and cross-examination. To accommodate such factual review, the Schools renew their request that the Commission should schedule this matter for hearing at a future date, providing the parties ample opportunity for discovery.

***IV. CONCLUSION***

For the foregoing reasons, the Schools request that the Commission adopt its recommendations, permit discovery and hearing on the issues identified, and require a significant commitment to the Schools as a condition to considering whether this Joint Application will promote the public convenience. Without demonstrable and substantial benefits to Schools, the Joint Application should be denied.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply Comments of The Ohio Association of School Business Officials, The Ohio School Boards Association, and The Buckeye Association of School Administrators was served by regular United States mail, postage prepaid, this 1<sup>st</sup> day of September, 2005 on the persons listed below.

  
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