

5

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code ) Case No. 99-1611-EL-ORD
In the Matter of the Application of STRATEGIC ENERGY L.L.C. for Authority to Operate as a Certified Retail Electric Supplier in the State of Ohio. ) Case No. 00-1758-EL-CRS

REQUEST FOR WAIVER BY STRATEGIC ENERGY L.L.C.

Strategic Energy L.L.C. ("SEL" or "Company") respectfully moves the Public Utilities Commission of Ohio ("Commission") to permit a waiver from the requirement set forth in Ohio Administrative Code ("O.A.C.") Rule 4901:1-21-11(C) which provides with respect to contract administration: "During the market development period or until December 31, 2005, whichever comes last, a CRES provider shall establish residential and small commercial contract terms of not more than 24 consecutive months." The Commission has anticipated the need for waivers and has provided for them pursuant to O.A.C. Rule 4901:1-21-01(C). Absent a waiver of this rule, SEL is unable to offer its best and most economic pricing to benefit consumers. SEL requests that such a waiver be permitted when accomplished pursuant to the language included in the draft contract attached to this Request (and filed under seal) and only to the extent the customer affirmatively acknowledges and waives its right under the above provision.

MEMORANDUM IN SUPPORT

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. Technician B. McCauley Date Processed 10/30/02

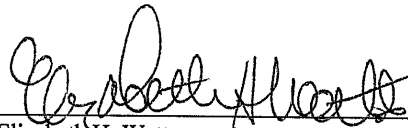
The Commission issued rules by which competitive retail electric service suppliers ("CRES suppliers") are to provide services to commercial and residential consumers. These rules were developed in the above-styled docket and interested parties including SEL participated in the rulemaking process by offering comments upon the draft rules. The final rules, issued by the Commission on June 8, 2000 clearly anticipated that a party might require a waiver from the rules under certain circumstances. The rules provide for such a waiver under O.A.C. Rule 4901:1-21-01(C). SEL submits that it is now faced with circumstances which merit such a waiver. O.A.C. Rule 4901:1-21-03(37) defines a "Small Commercial Customer" as an industrial or commercial customer who uses electricity for nonresidential purposes and consumes less than 700,000 kWh of electricity per year and is not part of a national account involving multiple facilities in one or more states. Many of SEL's customers are "small commercial customers" in that their usage is less than 700,000 kWh, but these customers have demand ranging from 80 kW (at 100% load factor) to 160 kW (50% load factor), etc. Put into context, these customers are in some instances schools, grocery stores, small office buildings, etc. Such customers have greater savvy and better resources at hand to accurately evaluate and select electric suppliers and their services. Thus, the requirement that a CRES provider be limited to two-year contracts during the market development period makes it impossible for SEL to offer a longer term contract which will likely be more economic in today's market and will provide better value in pricing by leveling pricing over the longer period during which customers will achieve greater savings. It is apparent that such a result was not anticipated when the rule was formulated and that the application of a waiver in these limited circumstances will work to the benefit rather than the detriment of the customer.

SEL is mindful that the Commission is very concerned with protecting consumers and with ensuring that consumers are provided with sufficient information to make informed decisions about competitive retail electric service. Indeed the rules themselves, at O.A.C. Rule 4901:1-21-01(A)(2)(c) state that the rules in the chapter are intended to "protect consumers against deceptive, unfair and unconscionable acts and practices in the marketing, solicitation and sale of competitive retail electric service and in the administration of any contract for that service." In response to this concern SEL is submitting a draft contract that it proposes to use in connection with the sale of electricity to those customers who are classified as small commercial customers and which would benefit by contracting for a period exceeding the two year limitation. Paragraph three of that contract specifically sets forth a waiver of the term requirement and further acknowledges to the customer that the term is longer than that which is permitted by the Commission. This explicit and boldly printed information will serve to advise customers defined as "small commercial" of their substantive rights and the waiver thereof.

Additionally, it is important to note that the contract provides, pursuant to the Commissions rules, for termination at the customer's request under circumstances set forth in paragraphs sixteen and twenty-five. The customer will not be locked into a contract which is to its disadvantage. Thus, in addition to the clearly worded and boldly set forth waiver, the customer is entitled to terminate the contract if "there has been a material misrepresentation or breach of warranty, covenant or condition." The customer is well protected under this draft contract and will be in a better position to take advantage of pricing which is levelized over a longer period of time and is therefore more favorable for the customer.

WHEREFORE, SEL respectfully requests the Commission to grant SEL's request for a waiver from the requirements set forth in OAC Rule 4901:1-21-11 (C) which specifies a term of contract for small commercial customers on a case by case basis and that the Commission authorize SEL to contract with small commercial customers as long as the language set forth in the attached draft contract is included in such contract during the market development period or until December 31, 2005, whichever comes last.

Respectfully submitted on behalf of,  
STRATEGIC ENERGY L.L.C.



---

Elizabeth H. Watts  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
(614) 227-2370

**CERTIFICATE OF SERVICE**

Pursuant to Ohio Administrative Code Rule 4901:1-21-01(C), a true and correct copy of  
this Application for Waiver has been served upon the following parties by regular U.S. mail this

27 day of October, 2000:

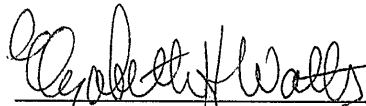
Arthur E. Korkosz, Esq.  
76 South Main Street  
Akron, Ohio 44308  
FirstEnergy Corp.

James G. Gainer, Esq.  
Associate General Counsel  
Cinergy Corp.  
139 East Fourth Street  
P. O. Box 960  
Cincinnati, Ohio 45201  
Cincinnati Gas & Electric Company

Marvin I. Resnik, Esq.  
American Electric Power Svcs. Corp.  
One Riverside Plaza  
P. O. Box 16631  
Columbus, Ohio 43215-6631  
American Electric Power

Gary Jack, Esq.  
Allegheny Power  
1310 Fairmont Avenue  
P. O. Box 1392  
Fairmont, West Virginia 26555-1392  
Monongahela Power

Ohio Consumers' Counsel  
Office of Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215

  
Elizabeth H. Watts