

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to Modify)
Its Nonresidential Generation Rates to)
Provide for Market-Based Standard Service) Case No. 03-93-EL-ATA
Offer Pricing and to Establish an Alternative)
Competitive-Bid Service Rate Option Sub-)
Sequent to the Market Development Period.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting) Case No. 03-2079-EL-AAM
Procedures for Certain Costs Associated 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 System) Case No. 03-2080-EL-ATA
And to Establish a Capital Investment)
Reliability Rider to be Effective after the)
Market Development Period.)

ENTRY

The attorney examiner finds:

- (1) The applicant, The Cincinnati Gas & Electric Company (CG&E), filed applications in these matters to modify its non-residential generation rates to provide for market-based standard service offer pricing and to establish an alternative competitive-bid process subsequent to the end of the market development period, to permit it to defer costs and investments, and to establish a rider to recover certain capital investments.
- (2) On May 6, 2004, CG&E filed a motion entitled Motion of The Cincinnati Gas & Electric Company for Protective Order (May 6 motion). On May 13, 2004, the attorney examiner granted the May 6 motion.

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- (3) On May 14, 2004, CG&E filed a Notice of The Cincinnati Gas & Electric Company of Supplemental Filing of Documents Under Seal Relating to Motions for Protective Order (May 14 notice). In the May 14 notice, CG&E gives notice of the filing of confidential, trade secret documents relating to its motion for a protective order. However, no explanation of the covered documents or the reason for their requested confidential treatment is provided by CG&E.
- (4) On May 18, 2004, CG&E filed a Second Notice of The Cincinnati Gas & Electric Company of Supplemental Filing of Documents Under Seal Relating to Motion for Protective Order (May 18 notice). In the May 18 notice, CG&E again gives notice of the filing of confidential, trade secret documents relating to its motion for a protective order. Once again, however, no explanation of the covered documents or the reason for their requested confidential treatment is provided by CG&E.
- (5) Rule 4901-1-24, Ohio Administrative Code (O.A.C.), provides that requests for protective orders be accompanied by memoranda setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of authorities relied upon. While the May 6 motion was made in conformity with this rule, the May 14 notice and the May 18 notice were not.
- (6) It appears to the attorney examiner, on the basis of the language in both the May 14 notice and the May 18 notice stating that they are "relating to CG&E's motion for a protective order," that CG&E is attempting to include the documents filed with these later "notices" in the May 6 motion. However, Commission rules do not provide for subsequent addition of supplemental documents to motions for protective orders which were previously made and ruled upon. The attorney examiner will therefore treat the May 14 notice and the May 16 notice as if they were independent motions for protective orders.
- (7) Rule 4901-1-24(D), O.A.C., provides that an attorney examiner may issue a protective order where the information in question is deemed to be sensitive and where non-disclosure of the information is not inconsistent with the purposes of Title 49, Revised Code. The attorney examiner has examined the information filed with the May 14 notice and the May 18 notice.

Although the formal requirements for requesting confidential treatment were not followed, the attorney examiner believes that, since CG&E apparently attempted to include the May 14 notice and May 18 notice documents with the May 6 motion, the arguments in the May 6 motion also apply to these supplemental documents. Therefore, the attorney examiner has determined that these supplemental documents are sensitive information and that their non-disclosure is not inconsistent with the purposes of Title 49, Revised Code. Thus, the attorney examiner finds that protection is warranted. The motion for protective order will therefore be granted with regard to the May 14 notice and the May 18 notice, to the extent that the documents filed under seal with those notices shall be maintained under seal and confidential treatment shall be afforded, for an 18-month period.

- (8) On July 16, 2004, Ohio Partners for Affordable Energy (OPAE) filed a Motion for Protective Order and Waiver of Rule 4901-1-24(F) (motion for a protective order) and a Motion of Ohio Partners for Affordable Energy to Strike Portions of The Cincinnati Gas and Electric Company Reply Brief and Supporting Memorandum (motion to strike).
- (9) In its motion for a protective order, OPAE asserts that the document attached to its motion to strike was prepared for the purpose of settlement and should, therefore, be protected. The attorney examiner has reviewed the document in question and has determined that it is privileged information and that its non-disclosure is not inconsistent with the purposes of Title 49, Revised Code. Thus, the attorney examiner finds that protection is warranted.
- (10) OPAE also requested waiver of Rule 4901-1-24(F), O.A.C., which would terminate the protective order after 18 months. Although OPAE asserts that the information in the subject document will still be confidential in 18 months, it offers no reason why it can not request continued confidential treatment at that time. Therefore, the attorney examiner will not grant waiver of the rule. The motion for protective order will therefore be granted with regard to the document covered by the motion for a protective order, to the extent that the document shall be maintained under seal and confidential treatment shall be afforded, for an 18-month period. OPAE may request continued confidential treatment 45 days prior to

the expiration of this entry, in accordance with Rule 4901-1-24(F), O.A.C.

- (11) OP&E's motion to strike urges that certain portions of CG&E's reply brief be stricken, based on alleged factual misstatements and violations of requirements that settlement discussions remain privileged. The motion will be granted.

It is, therefore,

ORDERED, That CG&E's motions for protective orders, filed on May 14, 2004, and May 18, 2004, be granted to the extent that the documents filed by CG&E under seal with those motions shall be maintained under seal and confidential treatment shall be afforded, for an 18-month period. It is, further,


ORDERED, That OP&E's motion for a protective order be granted to the extent that the document filed by OP&E under seal with that motion shall be maintained under seal and confidential treatment shall be afforded, for an 18-month period. It is, further

ORDERED, That OP&E's motion for waiver of Rule 4901-1-24(F), O.A.C., be denied. It is, further,

ORDERED, That OP&E's motion to strike be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

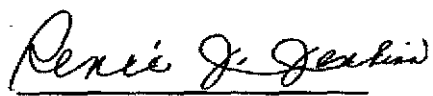
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Jeanne W. Kingery
Attorney Examiner

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Entered in the Journal

SEP 28 2004



Renee J. Jenkins
Secretary