



(“MidAmerican”) about “nonresidential shopping.”<sup>1</sup> The Commission suggested that the return pricing procedure established in *The Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA *et al.* (“FirstEnergy”) may be appropriate for “returning customers” and provided a comment period to address that suggestion.<sup>2</sup>

Return pricing for residential consumers is not an issue in MidAmerica’s application for rehearing. Therefore, return pricing for residential consumers should not be modified as the result of Commission consideration of further arguments in the above-captioned cases. Additionally, OCC requests the opportunity to file reply comments if another party inappropriately argues for a change to the return pricing for residential customers.

## **II. THE RETURN PRICING ISSUE IS NOT APPLICABLE TO RESIDENTIAL CONSUMERS IN THIS CASE**

Unlike the Stipulation and Recommendation filed in the FirstEnergy case, return pricing for residential consumers was specifically addressed and treated differently than nonresidential consumers in the Stipulation and Recommendation in this case filed on May 19, 2005 (“Stipulation”) under paragraph 4(E).<sup>3</sup> Paragraph 4(D) provides that a **non-**

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<sup>1</sup> Second Entry at 2.

<sup>2</sup> *Id* at 3.

<sup>3</sup>In the FirstEnergy Application and in the Stipulation and Recommendation filed in that case, residential and non-residential consumers were treated similarly. See FirstEnergy Opinion and Order (June 9, 2004) at 7.

**residential consumer** may be subject to special pricing requirements upon return from service by a competitive retail electric supplier. The Stipulation explicitly excludes residential consumers from those requirements at provision under paragraph 4(E):

None of the restrictions or requirements set forth in Paragraph 4(D) of this Stipulation shall apply to residential consumers, other than any applicable tariffed minimum stay or exit fee provisions.\* \* \* Residential consumers returning to CG&E due to the default of their contracting competitive retail electric service provider or upon expiration of their contract shall be served at CG&E's market-based standard service offer rate.<sup>4</sup>

The Stipulation provided the basis for CG&E's post-market development plan and because it was approved in the Commission's September 29, 2004 Opinion and Order. Although the Opinion and Order modified the Stipulation, the provision set forth under paragraph 4(E) was not changed or rescinded.

Likewise, in its November 23, 2004 Entry on Rehearing, the Commission retained the separate treatment for residential consumers that was described under Paragraph 4(E) of the Stipulation. Return pricing was clarified as it applies to "nonresidential shoppers."<sup>5</sup>

The only return pricing matter at issue is that brought forth by MidAmerican regarding "nonresidential shopping."<sup>6</sup> Moreover, CG&E addressed return pricing issues relating only to nonresidential customers in response to MidAmerican's arguments.<sup>7</sup> In the Commission's Second Entry on Rehearing, which provided for this comment period, the Commission again addressed the return pricing provision as it applies to

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<sup>4</sup> Stipulation at 10.

<sup>5</sup> Entry on Rehearing at 19 (November 23, 2004).

<sup>6</sup> MidAmerican Application for Rehearing at 2 (December 21, 2004).

<sup>7</sup> CG&E Memorandum Contra MidAmerican Application for Rehearing at 1 (December 30, 2004).

“nonresidential consumers.”<sup>8</sup> The Second Entry did not address, rescind or modify the return pricing for residential customers as established under Paragraph 4(E) in the Stipulation. For the reasons stated above, the issue of return pricing as discussed in the Commission’s Second Entry does not apply to residential consumers. The provisions regarding return pricing for residential customers should not be modified as the result of Commission consideration of comments by parties. Indeed, the issue of return pricing, having not been raised in the Mid-American Application for Rehearing, is not pending before the Commission under R.C. 4903.10.

### **III. CONCLUSION**

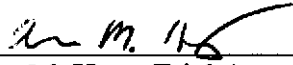
The issue of return pricing that is the subject of these comments does should not apply to residential customers. Under the Stipulation that is the basis of return pricing for residential customers under CG&E’s post-market development plan as well as the Commission’s Order, Entry on Rehearing and Second Entry, residential consumers return to the standard service offer. Although the Stipulation has been repeatedly modified, the provision specifying that residential consumers will be served at CG&E’s standard service offer has survived all subsequent modifications to CG&E’s post-market development plan. Accordingly, the procedure that is established *in response to* additional comments should not change return pricing for residential customers.

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<sup>8</sup> Second Entry at 2-3.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Comments of the Office of the Ohio Consumers' Counsel has been served upon the below-named counsel via first class mail and electronic transmittal this 31st day of January 2005.

  
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