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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Joint Application of)
Cinergy Corp., on Behalf of the)
Cincinnati Gas & Electric Company, and)
Duke Energy Holding Corp. for Consent) Case No. 05-732-EL-MER
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 Costs Incurred) Case No. 05-733-EL-AAM
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 Costs Incurred) Case No. 05-974-GA-AAM
in Order to Realize Cost Savings as a Result)
of the Merger Transaction.)

**AMERICAN MUNICIPAL POWER-OHIO, INC.'S
REPLY TO APPLICANTS' MEMORANDUM CONTRA
AMERICAN MUNICIPAL POWER-OHIO, INC.'S INTERVENTION REQUEST**

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On August 1, 2005, pursuant to the Commission's and the Hon. Presiding Attorney Examiner's Entries, American Municipal Power-Ohio, Inc. ("AMP-Ohio") provided initial comments to the Commission and requested intervention in this proceeding. The Hon. Presiding Attorney Examiner's August 18, 2005, Entry denied Applicants'¹ motion to strike AMP-Ohio's comments, and did not rule as to AMP-Ohio's intervention. Accordingly, this pleading provides a reply in support of AMP-Ohio's request for intervention in this proceeding.

¹ Cinergy Corp. ("Cinergy"), on behalf of the Cincinnati Gas & Electric Company ("CG&E"), and Duke Energy Holding Corp. ("Duke") are collectively the "Applicants."

The Commission should grant AMP-Ohio's request for intervention and should further consider its comments in determining Applicants' request for change in control. The issues AMP-Ohio has raised relate to matters that have a direct and material impact on Applicants' ability to provide reliable and adequate electric service to *retail* end-users, as well as matters that concern the wholesale, generation, and transmission markets relating to Cinergy's territory. AMP-Ohio will be affected if the Commission grants Applicants' request for change in control. Therefore, AMP-Ohio is entitled to intervene in this proceeding, and the issues it has raised are relevant to the Commission's determination of Applicants' request.

As a foundational matter, Applicants' request that AMP-Ohio be denied intervention (and that its comments be stricken) is a substantively and procedurally inappropriate attempt to limit the Commission's authority and review solely to the issues identified by the Applicants. In its July 7th Entry the Commission found "that, in order to fulfill its statutory-obligation, it is necessary to investigate the proposed transaction more than is possible by merely reviewing the filings by the joint applicants."² "Therefore, [the Commission requested that] *any* interested person may file comments"³ in this proceeding, pursuant to which entitlement AMP-Ohio submitted comments for the Commission's consideration. Further, the Hon. Presiding Attorney Examiner noted in her July 7th Entry that there is no limit to the Commission's invitation for comments on issues for the Commission's consideration.⁴ As discussed below, AMP-Ohio's interests in this proceeding and the issues it has raised are relevant to this proceeding; therefore, Applicants' objection to AMP-Ohio's intervention is an inappropriate attempt to constraint the Commission's review. The Commission should deny Applicants' request.

² See *id.* at ¶7.

³ See *id.* at ¶ 8.

⁴ See *id.* at ¶ 6.

AMP-Ohio has satisfied the Commission's test for intervention in this proceeding, and Applicants' assertions to the contrary are demonstrably incorrect. The thrust of Applicants' memorandum contra AMP-Ohio's intervention is that AMP-Ohio does not have a direct, real, and substantial interest in the issues in this proceeding, because, according to the Applicants, the Commission does not have jurisdiction over AMP-Ohio's interests. The Applicants unsuccessfully raised the same generic relevancy and jurisdictional assertions in their opposition to IEU-Ohio's⁵ intervention request.⁶ The Hon. Presiding Attorney Examiner's July 7, 2005, Entry previously rejected Applicants' arguments, just as the August 18th Entry did implicitly. AMP-Ohio respectfully requests that the Commission do so again.

Applicants themselves raise wholesale marketplace, generation, and transmission issues to support their request and obtain the Commission's approval. With regard to AMP-Ohio's intervention, however, they duplicitously assert that such issues are not relevant to this proceeding and the Commission's review. For example, Applicants' boast in the Application:⁷

- i. that their "combination creates the largest diversified electric and gas operation company in North America" presenting a "larger platform" for opportunistic profit-making operations and activities;⁸
- ii. that these opportunistic activities would derive from 45,000 MW of regulated and unregulated generation⁹ and an expanded region for power sales and transmission service

⁵ Industrial Energy Users-Ohio.

⁶ See Applicants' June 27, 2005, Memorandum Contra.

⁷ See Joint Application (June 1, 2005) (hereinafter "Application").

⁸ See *id.* at 2.

⁹ See *Id.* at 7.

stretching across MISO and PJM;¹⁰ and,

- iii. that the above will impact the wholesale market for electricity¹¹ in Applicants' quest to leverage and maximize profits for their investors.¹²

Having stated the above, and based on the above, Applicants request the Commission to "[e]xercise its *statutory* discretion" and to approve their request.¹³ Clearly, such issues are relevant to this proceeding by Applicants' own account. Therefore, AMP-Ohio is entitled to intervention on such basis alone.

In addition to the foregoing, AMP-Ohio's comments raise issues that inherently impact Applicants' direct ability to provide adequate and reliable service to *retail* end-users in Ohio. The connection between retail reliability and the issues raised by AMP-Ohio should not require elucidation for the Applicants' benefit. Clearly, wholesale, generation, and transmission issues impact retail service reliability and rates. Accordingly, rather than moving to strike AMP-Ohio's comments and opposing its intervention, Applicants should have acknowledged that AMP-Ohio's concerns relate to ensuring reliable and adequate service to both retail and wholesale end-users. Applicants' apparent desire to avoid these issues as part of their change in control request raises significant questions.

As noted in AMP-Ohio's intervention, AMP-Ohio members rely on Cinergy's facilities to receive the transmission of electric power and energy for resale to their retail customers, as well as for through and out service. Cinergy's facilities are used to provide both retail and wholesale service. Clearly, therefore, such use needs to be taken into account in operating and

¹⁰ *See id.* at 9-10.

¹¹ *See id.* at 14, 15, and 19.

¹² *See id.* at 12.

¹³ *See id.* at 19 (emphasis added).

improving Cinergy's facilities, but there is no indication that Cinergy does so. Failure to do so materially compromises service to retail end-users served by CG&E and those served by AMP-Ohio's members. The surest way to ensure such consideration is for AMP-Ohio to obtain a load-ownership share of those facilities, so that it may directly participate in the planning process as a transmission owner. At the very minimum, the Commission has the authority to order the Applicants to take into account the loads of AMP-Ohio members in operating, forecasting, and improving its facilities. Again, Applicants have made no indication on the record or otherwise that they would or are doing so in an adequate, non-discriminatory manner. These issues fall squarely within the Commission's authority under RC § 4905.402(B) to require Applicants to demonstrate that the requested change in control will promote *public* convenience and result in adequate and reliable service for a reasonable rate. Thus, again, AMP-Ohio is entitled to intervene in this proceeding.

AMP-Ohio, on behalf of its members, is a Cinergy and CG&E customer, and the change in control requested by Applicants could adversely impact AMP-Ohio's interest in effectuating reliable retail service by its members, and its members in providing reliable retail service. Additionally, the resolution of issues in this proceeding could adversely affect the transmission, generation, and wholesale markets relating to Cinergy's service territory, and beyond. Inasmuch as this proceeding is considering issues that may directly and indirectly impact the reliable and adequate provision of electric power and energy to AMP-Ohio's members and their retail customers, AMP-Ohio has real, direct, and substantial interests in this proceeding that can only be protected by its participation. Therefore, AMP-Ohio is entitled to intervene in this proceeding, and respectfully requests the Commission to grant it intervention. Further, for the

reasons discussed above, AMP-Ohio respectfully requests the Commission to further consider the issues raised by AMP-Ohio in its initial arguments and this pleading.

Respectfully submitted,



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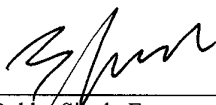
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on August 22, 2005.



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