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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Application)
of The Cincinnati Gas & Electric)
Company to Modify its Non-)
Residential Generation Rates to)
Provide for Market-Based) Case No. 03-93-EL-ATA
Standard Service Offer Pricing)
and to Establish a Pilot)
Alternative Competitively-Bid)
Service Rate Option Subsequent)
to Market Development Period)

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

**THE CINCINNATI GAS & ELECTRIC COMPANY'S MEMORANDUM
CONTRA TO OHIO CONSUMERS' COUNSEL'S MOTION TO CONTINUE
AND TO ORDER STAFF INVESTIGATION**

ARGUMENT:

On February 5, 2004, the Ohio Consumers' Counsel sought an expedited discovery process from the Public Utilities Commission of Ohio so that these cases could proceed on the schedule set by the

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Commission.¹ In seeking an expedited discovery process the OCC stated “[g]ranted this motion *will allow the parties a full opportunity to conduct a full investigation* of the important issues involved in this proceeding *by providing adequate time for the parties* to serve initial discovery, as well as any required follow-up discovery.”² CG&E filed a memorandum agreeing to OCC’s request for expedited discovery and the Commission granted the request pursuant to Entry issued February 18, 2004.³ In the same Entry the Commission also amended the schedule for these proceedings to give all parties an additional week to conduct discovery, file testimony, and conduct a hearing by changing the hearing date from April 19, 2004, to April 26, 2004. Now despite OCC’s pleading that an expedited discovery process provides it sufficient time, and despite the additional week granted by the Commission, comes the OCC, Ohio Partners for Affordable Energy, Communities United for Action, The Kroger Company, and the Ohio Energy Group, seeking an extension of ten weeks to prepare to gain the understanding necessary to participate in these proceedings. CG&E opposes OCC’s motion as a transparent attempt to delay a resolution to the issues before the Commission to the continued detriment of the Company.

OCC alleges that it needs additional time because the issues raised in these proceedings are complex, CG&E’s application is vague, and the

¹ OCC’s motion to shorten discovery response time (February 5, 2004).

² *Id.* at 3 (emphasis added).

³ Entry at 4 (February 18, 2004).

timeline for these proceedings is compressed.⁴ OCC's assertions are factually inaccurate and an extension will serve no purpose but to delay the implementation of any order issued by the Commission.

I. These cases have taken longer to process than contemplated by R. C. 4909.18 and the timeline therefore, is not compressed.⁵

The OCC claims that the timeline for these proceedings is compressed.⁶ It is not. CG&E filed its application in these cases pursuant to R. C. 4909.18 and 4928.14, on January 10, 2003.⁷ CG&E held a technical conference explaining its Competitive Market Option application on February 12, 2003. During that technical conference CG&E answered detailed questions about its proposals. Parties, including OCC, Kroger, AK Steel, filed detailed comments on CG&E's application. Thereafter, despite many discussions between CG&E and various parties including OCC, no party served any discovery request upon CG&E regarding the Competitive market Option.

Revised Code Section 4909.18 requires the Commission to "where practicable, issue an appropriate order within six months from the date the application was filed."⁸ Now, more than 14 months later, the OCC wants additional time because of the compressed timeline. The reality is that these cases should have been resolved by July 10, 2003.

⁴ OCC's motion for extension at 4 (March 22, 2004).

⁵ Ohio Rev. Code Ann. § 4909.18 (Baldwin 2004).

⁶ OCC's motion for extension at 4 (March 22, 2004).

⁷ CG&E's Competitive Market Option application, Case No. 03-93-EL-ATA (January 10, 2003).

⁸ Ohio Rev. Code Ann. § 4909.18 (Baldwin 2004).

In an effort to maintain a reliable transmission and distribution system, and to stimulate action in Case No. 03-93-EL-ATA by removing significant cost issues from that case, CG&E, on October 8, 2003, filed applications, in different cases, to seek deferrals for certain transmission costs and revenue requirements associated with capital investment in distribution plant.⁹ The OCC and OEG filed motions to dismiss, which CG&E opposed, but no party sought discovery in those cases and they have been pending before the Commission for almost six months. CG&E did not file a motion to consolidate those cases with its Competitive Market Option case; Case No. 03-93-EL-ATA.

On December 9, 2003, the Commission, *sua sponte* issued an Entry that: (1) Consolidated CG&E's Competitive Market Option Case No. 03-93-EL-ATA with CG&E's deferral and rider Cases No. 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA; (2) requested that CG&E file, in the consolidated docket, a rate stabilization plan by January 26, 2004; and (3) set a procedural schedule for the consolidated cases including a technical conference on February 24, 2004, due dates for testimony, and a hearing to commence on April 19, 2004, since changed to April 26, 2004. Despite the Commission's schedule no party sought discovery from CG&E until OCC on February 11, 2004.

CG&E has answered all discovery in a timely manner as approved by the Commission in its February 18, 2004, Entry. The OCC complains

⁹ CG&E's deferral and rider applications, Cases No. 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA (October 8, 2003).

however that it has not received all information because it has not entered into a confidentiality agreement with CG&E.¹⁰ After extensive discussions with OCC and an assistant attorney general, CG&E, the OCC and the assistant attorney general agreed in principle upon the content of a confidentiality agreement. CG&E presented OCC with a draft confidentiality agreement containing the concepts agreed upon two weeks ago. Despite repeated requests to discuss and finalize the agreement with OCC counsel; OCC has refused to discuss the matter further with CG&E. CG&E is ready to sign the confidentiality agreement at any time. Further, OCC has not received responses to only three interrogatories issued by OEG. It has received responses to all of its questions in these cases.

The only reason that parties have to feel the timeline in these cases is compressed is due to their own failure to seek information in a timely manner or perhaps, their failure to prepare for the upcoming hearing. All parties have had ample time to prepare for all contingencies in these cases. CG&E should not be harmed for the failure of the OCC and other parties to properly prepare.

¹⁰ OCC's motion for extension at 7 (March 22, 2004).

II. CG&E's application is not unique, complex or vague.

The OCC complains that it needs additional time because the concepts embedded in CG&E's application are complex, difficult for OCC to understand and vague.¹¹ Yet these are the same concepts that OCC, and all parties have been working with since the beginning of competitive retail electric service. Fundamentally, these cases consist of two settlement offers, the CMO and ERRSP. As previously discussed, all parties have had fourteen months to consider the CMO MBSSO and almost seven months to consider the deferral and rider requests that are part of both proposals. Further, the ERRSP is similar to the settlement agreed upon by OCC with DP&L and the option currently being litigated with FirstEnergy. The ERRSP structure with capped rates is certainly a structure with which OCC is familiar.

OCC signed a stipulation with a similar structure in the Dayton Power and Light rate stabilization plan case and recently litigated a similar structure in the FirstEnergy case. It is disingenuous to claim that CG&E's proposal is too complex to understand or vague under such circumstances.

¹¹ *Id.* at 5 (March 22, 2004).

III. Staff testimony is appropriate in these cases and R. C. 4909.19 is no applicable to these cases, thus there is no requirement for a Staff Report of Investigation.¹²

The sole basis for a Staff Report relied upon by the OCC is R. C. 4909.19 and it is inapplicable to these cases. The OCC reaches R. C. 4909.19 because it applies in the event of an application for a traditional rate increase pursuant to R. C. 4909.18.¹³ Even if OCC were correct, CG&E's applications are not for an increase but are for new services, an MBSSO, but OCC is incorrect and therefore, there is no circumstance under which a Staff Report of Investigation is required for these cases.¹⁴

Revised Code Section 4928.14 does require CG&E to file its application to establish an MBSSO pursuant to R. C. 4909.18.¹⁵ Revised Code Section 4928.05 however, expressly states that "a competitive retail electric service supplied by and electric utility...*shall not be subject to supervision and regulation by...the Public Utilities Commission under Chapters 4901. to 4909., 4933., 4935., and 4963.* of the Revised Code.¹⁶ While there are some limited exceptions, R. C. 4909.19, the section that requires a Staff Report, is not among them.¹⁷

Further, there is no question that MBSSO is a competitive retail electric service to which R. C. 4928.05 is applicable.¹⁸ An MBSSO is an

¹² Ohio Rev. Code Ann. 4928.05 (Baldwin 2004).

¹³ OCC's motion for extension at 8 (March 22, 2004).

¹⁴ Ohio Rev. Code Ann. §§ 4909.18, 4928.05 (Baldwin 2004).

¹⁵ Ohio Rev. Code Ann. § 4928.14 (Baldwin 2004).

¹⁶ Ohio Rev. Code Ann. § 4928.05 (Baldwin 2004) (emphasis added).

¹⁷ *Id.*

¹⁸ Ohio Rev. Code Ann. § 4928.14 (Baldwin 2004).

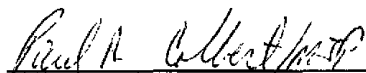
"offer of all competitive retail electric services...."¹⁹ Under these circumstances Staff testimony is the appropriate expression of Staff's position in these cases. A Staff Report serves no purpose other than to further delay these proceedings while Staff prepares its report. As previously discussed, such a delay, unless otherwise agreed upon by CG&E, serves only to harm CG&E by depriving it of the benefit of the transition plan stipulation approved by the Commission in Case No. 99-1658-EL-ETP.

CONCLUSION:

The movants are experienced knowledgeable parties that have had significant time to prepare their case. CG&E's transition plan stipulation offered it the opportunity to end the market development period for non-residential consumers when each consumer class reached 20% switching. Contrary to OCC's assertion there was never a promise that competitive retail electric markets would result in lower prices, only economically efficient pricing. Continued delay deprives CG&E of the transition plan stipulation approved by the Commission to charge market prices. After fourteen months there should be no further delay. CG&E respectfully requests the Commission deny the Motion for Extension.

¹⁹ *Id.* (emphasis added).

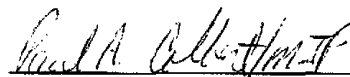
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Memo Contra has been served on the following parties electronically or by first class, U.S. mail, postage prepaid this 26th day of March, 2004.



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