

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application )  
of the Cincinnati Gas & Electric )  
Company to Modify its Non- )  
Residential Generation Rates to )  
Provide for Market-Based )  
Standard Service Offer Pricing )  
and to Establish a Pilot )  
Alternative Competitively-Bid )  
Service Rate Option Subsequent )  
to Market Development Period )

Case No. 03-93-EL-ATA

In the Matter of the Application of The )  
Cincinnati Gas & Electric Company for )  
Authority to Modify Current Accounting )  
Procedures for Certain Costs Associated )  
With The Midwest Independent )  
Transmission System Operator )

Case No. 03-2079-EL-AAM

In the Matter of the Application of The )  
Cincinnati Gas & Electric Company for )  
Authority to Modify Current Accounting )  
Procedures for Capital Investment in its )  
Electric Transmission And Distribution )  
System And to Establish a Capital )  
Investment Reliability Rider to be )  
Effective After the Market Development )  
Period )

Case No. 03-2081-EL-AAM  
Case No. 03-2080-EL-ATA

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APPLICATION FOR REHEARING  
BY  
CONSTELLATION POWER SOURCE, INC.

Now comes Constellation Power Source, Inc. ("CSP") pursuant to Section 4903.10, Revised Code and Rule 4901-1-35 of the Ohio Administrative Code petitions this Commission for rehearing of its September 29, 2004 Opinion and Order in the above styled proceeding.

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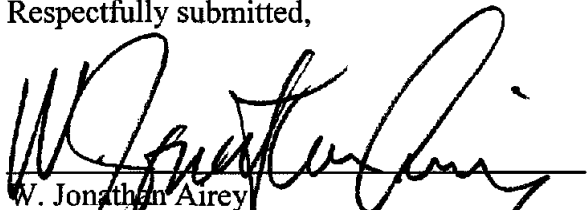
CPS alleges that the Commission's September 29, 2004 Opinion and Order in these matters is unreasonable and unlawful for its failure to follow the statutory requirement for a bid out called for in Section 4928.14(B), Revised Code.

Specifically, the Commission on page 26 of its Opinion and Order erred by approving paragraph 13 of the Stipulation which calls for negotiation and amendment of the RSP if the Commission finds the RSP rates to be above market. If the Commission believes the RSP rates are above market, it must immediately order a bid out as required by Section 4928.14 (B), Revised Code and not engage in negotiations or otherwise set a regulated price for the standard service offer.

The reasons supporting these grounds for rehearing are set forth in the accompanying memorandum in support.

WHEREFORE, CPS respectfully requests that the Commission grant rehearing on this single issue.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

The Commission on page 26 of its Opinion and Order erred by approving paragraph 13 of the Stipulation which calls for negotiation and amendment of the RSP if the Commission finds the RSP rates to be above market. If the Commission believes the RSP rates are above market, it should immediately order a bid out as required by Section 4928.14 (B), Revised Code and not engage in negotiations and price adjustment.

Section 4928.14 (B), Revised Code provides that the electric utilities should conduct a bid out standard service product, which can either be the standard service offer or another market based offer in addition to the standard service offer. The statute further gives the Commission the authority to waive the bid out, if the Commission finds that similar market priced services are available for retail customers. On page 28 of the Opinion and Order, the Commission finds that the RSP plan provides a market based option in part because the Commission, if it believes the RSP is not in line with market prices, can in subsequent years order a bid. The problem with this finding by the Commission is that Paragraph 13 of the Stipulation specifically deprives the Commission of the ability to order a bid out with the RSP as the reserve price as it did in FirstEnergy's rate stabilization case (Case No. 03-2144-EL-ATA).

Paragraph 13 of the Stipulation binds the Commission to a three part process. First, the Commission must determine that the RSP prices may be out of line with market prices. Second, the Commission must order a test bid to confirm this, measured against the price that RSC waiving customers pay CG&E. Finally, if the test bid comes back with lower prices, then CG&E gets a chance to modify the RSP price to compare, based

on the price of the customers who can waive the RSC, in lieu of the Commission accepting the winning bid. (See CG&E Initial Brief at 26).

The process laid out in Paragraph 13 is prescription for a failed bid. As a practical matter, no marketer or supplier is going to spend the time and resources developing a bid and posting a bond if they cannot be assured that if they offer the lowest price they will not get the load. Further, bidders would be asked to hold their bids for an undetermined amount of time while CG&E “negotiates” a new RSP set of prices which would obviate the bid. This is unreasonable as the cost of holding a bid out indefinitely while the bid price is “shopped” by CG&E in and of itself artificially raises the bid price above market prices.

CPS believes its original position as presented in its Initial Brief (filed jointly with the Ohio Marketers’ Group) calling for a public bid process is in the public’s best interest. Since the Commission has elected to pursue the RSP in the matter at bar, CPS only asks for a limited rehearing for the purpose of modifying the requirements of Paragraph 13 of the Stipulation. The Opinion and Order should be amended to state that if the Commission at any time finds the RSP to be a non market rate, the Commission on its own can call for a bid out to be conducted pursuant to Section 4928.14(B), Revised Code and the rules the Commission has promulgated for competitive bids. The process should be the same as in FirstEnergy, namely that the RSP total generation cost per kWh, including the cost of the customers who have to pay the RSC and any other adjustments the Commission finds to be appropriate, would be the reserve price, and if the bids come in below that reserve price, the bids are accepted and implemented.

As stated in the Joint Initial Brief with the Ohio Marketers Group in this matter, CPS submits that there is no reason that the Commission should not order a bid out now, rather than wait to some undetermined time in the future. As the suppliers' interest in the FirstEnergy auction has demonstrated, there is a substantial likelihood that an auction can bring in generation prices that are lower than the RSP generation rates, thereby providing real and substantial benefits for standard service offer customers. Rather than let testimony entered in this case months ago by CG&E (whose interest is clearly in the adoption of the RSP) determine that the RSP provides a market based generation rate, the Commission has, by statute, the ability to let the real and current energy market determine the appropriate market based rate for standard service offer generation service. Only an auction will provide the Commission with the assurance that it is getting the best generation value for standard service offer customers. At a minimum, if the Commission declines to order an auction at this point, the Commission should amend the Stipulation to provide itself with the clear authority to order an auction in the future, where it is clear that the auction results will be implemented if the results provide better benefits for customers.<sup>1</sup>

The logic of CPS' request is compelling. If the reason the bid is being waived is that the RSP is the market based rate offering, if the Commission later believes the RSP is no longer market based then the statutorily requirement of a bid should be immediately implemented. Such a process is the best way of achieving the clear goal of the General Assembly to have at least one market based option open to all retail customers all the time.

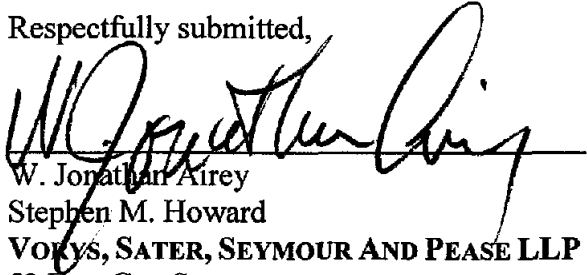
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<sup>1</sup> It may make sense, for instance, for the Commission to determine now that it will hold an auction in the Fall of 2005 for 2006-2008 delivery.

**V. Conclusion**

CPS respectfully requests that the Commission grant rehearing on its single issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Jonathan Airey", is written over a horizontal line.

W. Jonathan Airey

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing of Constellation NewEnergy, Inc., Constellation Power Source, Inc., MidAmerican Energy Company, Strategic Energy LLC, and WPS Energy Services, Inc. was served either by email or regular U.S. mail, postage prepaid, this 29<sup>th</sup> day of October, 2004.

  
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