

Before
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	
Approval of its Electric Transition Plan and for)	Case No. 99-1658-EL-ETP
Authorization to Collect Transition Revenues)	
)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	Case No. 99-1659-EL-ATA
Approval of Tariff Changes Required to)	
Implement Retail Electric Competition)	
)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	Case No. 99-1660-EL-ATA
Approval of its New Tariffs)	
)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting)	Case No. 99-1661-EL-AAM
Procedures to Defer Costs Incurred Arising From)	
the Implementation of its Electric Transition Plan)	
)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	
Authority to Modify Current Accounting)	Case No. 99-1662-EL-AAM
Procedures to Defer Transition Costs and)	
Continue to Defer the Unrecovered Balance of)	
Regulatory Assets)	
)	
In the Matter of the Application of)	
The Cincinnati Gas & Electric Company for)	Case No. 99-1663-EL-UNC
Approval to Transfer Its Generating Assets to an)	
Exempt Wholesale Generator)	

**Reply to Memorandum Contra Motion to Disapprove CG&E Tariff Filings for
Non-Compliance With Commission Orders,
Submitted On Behalf Of
The Ohio Council Of Retail Merchants**

I. Procedural History

In the August 31, 2000 Order in the above captioned cases (hereinafter, "Order"),
the Commission provided for a period in which intervenors could informally comment on

the proposed compliance filing of the Cincinnati Gas & Electric Company (hereinafter, "CG&E" or "Company"). The Ohio Council of Retail Merchants (hereinafter, "OCRM") submitted comments to CG&E and the Staff concerning the proposed tariffs. CG&E made some changes in response to the comments of the OCRM and other parties.

On October 20, 2000, CG&E filed proposed tariffs in the above captioned cases. Thereafter, on November 3, 2000, the OCRM filed a Motion to Disapprove Cincinnati Gas & Electric Tariff Filings and Memorandum in Support (citation to Memorandum, hereinafter, as "OCRM Motion"). CG&E filed a Memorandum in Opposition to Motion to Disapprove CG&E Tariff Filings (hereinafter, "CG&E Memo Contra") on November 10, 2000. The OCRM submits this reply memorandum pursuant to Ohio administrative Code Section 4901-1-12(B)(2). As stated in the OCRM Motion, CG&E's proposed tariffs contain defects that should be corrected before tariffs can be approved for the Company.

II. Argument

A. Deletion of "Use of Service" Provision

Unless modified by the Commission, the tariffs should comply with the provisions of the Stipulations dated May 8, 2000, including the provision that CG&E's "Transition Plan Filing, as modified by this Stipulation, shall be approved." *See* Stipulation (May 8, 2000) at 6, ¶1. As stated in the OCRM Motion, provisions that describe "Use of Service" in the customer tariffs have been deleted. *See* OCRM Motion at 3. CG&E confirms that it deleted the provisions. *See* CG&E Memo Contra at 2 ("deleted this provision" and the "deleted portion of the tariff"). The Commission has

not authorized the change and the parties to the Stipulation did not agree to such a change.

As anticipated by the OCRM in its Motion, CG&E relies upon the Commission decision in Brooks v. Toledo Edison Co. (May 8, 1996 Order), PUCO Case No. 94-1987-EL-CSS to justify its departure from the provisions of the Stipulation. *See* CG&E Memo Contra at 2-3. The provision that CG&E deletes was originally submitted to the Commission and supported by CG&E, and was approved by the Commission in this case.¹ The OCRM previously stated its position on this issue – both from a legal and policy standpoint – in its Motion. *See* OCRM Motion at 4-6. The deletion threatens the availability of customer choice for a large number of commercial establishments that consume electricity in multiple tenant situations. CG&E must comply with the Stipulation and the Commission's Order.

B. Minimum Stay Provisions

The Commission's order in the operational support docket states that a minimum stay may only be imposed if a company provides no less than fourteen days of actual notice concerning the stay and that a filed and Commission-approved "come and go" rate must exist. *See In re Operational Support* (July 19, 2000 Order), PUCO Case No. 00-813-EL-EDI at 13. These conditions should be contained in the tariffs. CG&E addresses only the OCRM's position concerning the fourteen day notice:

¹ The FirstEnergy Companies retained their provisions concerning resale of electricity in their proposed tariff submission to the Commission, as provided for under the stipulation in the FirstEnergy transition plan case. The OCRM largely agrees with the position taken by the FirstEnergy on this issue. *See In re*

The Commission's [Operational Support] Order ... does not require electric distribution utilities (EDUs) to send out a 14-day notice. Instead, the Order simply states that the EDU's cannot impose a minimum stay unless they demonstrate that a customer received such a notice. CG&E Memo Contra at 3.

While possibly true, CG&E's position does not conflict with that taken by the OCRM. The provision that must be contained in the tariffs is not that the Company is required to send out the fourteen day notice and provide an alternative to prevent the imposition of the minimum stay, but that these conditions must be met before the Company may impose a minimum stay. The absence of such provisions in the tariffs negates the Commission's actions to mitigate against the impact of the minimum stay provisions.

C. CG&E's "Rider AG" Should Be Rejected

CG&E states that the "OCRMs only argument is a procedural one" concerning CG&E's "come-and-go" tariff provisions. See CG&E Memo Contra at 4. While CG&E has not followed the Commission-mandated procedure for the approval of its come-and-go rate, the OCRM also identified defects in the rider that CG&E proposes. Those defects are mainly that the exclusion of off-peak hours for the determination of Rider AG rates and the thin trading of NYMEX Cinergy futures means that the index is poorly suited to represent market prices for electricity. See OCRM Motion at 7. As stated in CG&E's Memo Contra, "CG&E concedes that the NYMEX Cinergy futures market is somewhat thinly traded." See CG&E Memo Contra at 5. Another method should be

FirstEnergy Transition Plan (October 3, 2000), PUCO Case No. 99-1212-EL-ETP, Memo Contra Objection of Dominion Retail at 6-10 ("Issue Five").

adopted that will more closely track energy prices that Cinergy is likely to face in the market.

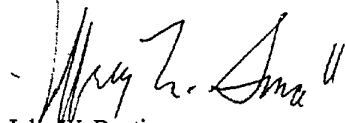
While CG&E has not followed the Commission-mandated procedure for the approval of its come-and-go rate, CG&E's failure to follow proper procedure should not be easily dismissed as an argument against approval of proposed "Rider AG." As stated in the OCRM Motion, utilities should consult with parties as part of the OSPO process and have until March 15, 2001 to "take such actions as necessary to submit a recommendation to the Commission" concerning a "uniform alternative to the minimum stay." See In re Operational Support (August 31, 2000 Entry on Rehearing), PUCO Case No. 00-813-EL-EDI at 7 (emphasis supplied).² CG&E, no doubt, favors its approach as the "uniform alternative" for come-and-go tariffs throughout Ohio. The rider should be more carefully considered before it is imposed upon the customers of CG&E and the customers of all the other investor-owned utilities in Ohio.

III. Conclusion

The Commission should order CG&E to make changes to its tariffs in conformity with the above comments and those contained in the OCRM Motion.

² CG&E suggests that other parties have shown little interest in the proposed come-and-go rate and that they have foregone their opportunity to be involved in the fashioning of such tariffs. See CG&E Memo Contra at 4 (e.g. "intervenor had the opportunity to raise objections"). The OCRM believes that interested parties expect the Commission's order in the operational support docket to be followed, and that they will express their views in later meetings. The OCC has authorized the OCRM to state that the OCC believes that the Company's filing concerning the come-and-go rate is procedurally incorrect, that the OCC continues to believe that minimum stay periods for residential customers is not needed, and that the OCC should be involved in discussions concerning come-and-go rates in the event that the Commission supports the need for minimum stay provisions. The OCC also states that it repeatedly voiced concerns about a come-and-go rate during OSPO discussions and emphasized this very issue in the informal comments OCC served upon CG&E and the Commission Staff on September 27, 2000.

Respectfully submitted,

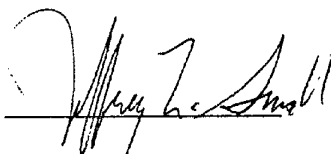
A handwritten signature in dark ink, appearing to read "Jeffrey L. Small". The signature is written in a cursive, flowing style with a prominent "J" and "S".

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Certificate of Service

The above *Reply to Memorandum Contra motion to Disapprove CG&E Tariff Filings for Non-Compliance With Commission Orders* has been transmitted, via e-mail, to counsel for CG&E and the other parties listed on the official e-mail service list that is associated with the above-captioned cases this 17th day of November, 2000.

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.