

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application )  
of Cinergy Corp., on Behalf of the )  
Cincinnati Gas & Electric Company )  
and Deer 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 )  
Cincinnati Gas & Electric Company for )  
Authority to Modify Current Accounting ) Case No. 05-733-EL-AAM  
Procedures in Order to Defer Costs )  
Incurred In Order to Realize Cost )  
Savings as a Result of the Merger )  
Transaction )

MOTION TO INTERVENE AND  
MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

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June 10, 2005

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**MOTION TO INTERVENE A  
OF INDUSTRIAL ENERGY USERS-OHIO**

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The Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, for leave to intervene in the above-captioned matter with the full powers and rights granted, by the Commission specifically, by statute, or by the provisions of the Ohio Administrative Code, to intervening parties.

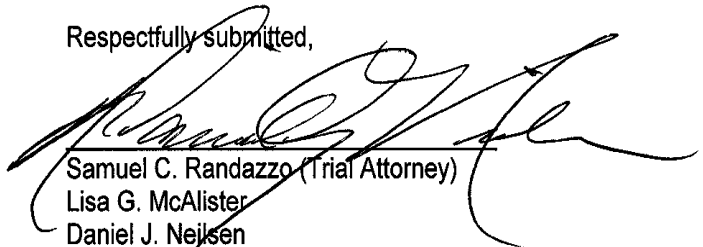
On June 1, 2005, Cinergy Corp., on behalf of The Cincinnati Gas & Electric Company ("CG&E") and Deer Holding Corp. filed a Joint Application requesting consent and approval of a change of control of CG&E as well as a request from CG&E for authority to modify current accounting procedures in order to defer the costs incurred in order to realize cost savings as a result of the merger transaction. As demonstrated

(C18324:)

further in the Memorandum in Support attached hereto and incorporated herein, IEU-Ohio has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest.

IEU-Ohio believes that its participation in these proceedings will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings. The interests of IEU-Ohio will not be adequately represented by other parties to the proceedings and, as such, IEU-Ohio is entitled to intervene in these proceedings with the full powers and rights granted, by the Commission specifically, by statute and by the provisions of the Ohio Administrative Code, to intervening parties.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

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In support of this Motion to Intervene, IEU-Ohio states that it is an association of ultimate customers. A current listing of IEU-Ohio member companies is available on IEU-Ohio's website at [http://www.ieu-ohio.org/public/about\\_ieu-ohio/members](http://www.ieu-ohio.org/public/about_ieu-ohio/members). IEU-Ohio's members purchase substantial amounts of electric and related services from CG&E, which is a public utility subject to the jurisdiction of the Commission.

IEU-Ohio's members work together to address matters that affect the availability and price of utility services. Additionally, IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices. To this end, IEU-Ohio has worked and will continue to work to produce legislative, regulatory, and market outcomes that are consistent with the state policy contained in Section 4928.02, Revised Code.

IEU-Ohio members have been and continue to be active participants in state and federal regulatory proceedings concerning Ohio's electric utilities, including the proceeding regarding CG&E's electric transition plan ("ETP"), and subsequently, its RSP. In fact, IEU-Ohio was a signatory party to the Stipulation and Recommendation in CG&E's ETP proceeding ("ETP Stipulation")<sup>1</sup> and its rate stabilization plan proceeding ("RSP Stipulation"), approved by the Commission on August 31, 2000 and November 23, 2004, respectively.<sup>2</sup>

A portion of IEU-Ohio's member companies are served by CG&E and may be affected by the change of control of CG&E as well as the deferral of costs that CG&E requests. Additionally, the resolution of these issues may affect Ohio's larger effort to restructure its laws regulating the electric industry. Therefore, IEU-Ohio has a real and substantial interest in these proceedings that may directly or indirectly impact the provision of electric service to IEU-Ohio members' manufacturing facilities. Specifically, IEU-Ohio's direct interest in these proceedings is the result of the effect that the proceedings shall have upon the price, adequacy, and reliability of the electric supply and related services within Ohio, including the areas presently served by CG&E. IEU-Ohio is aware that the Commission will be addressing certain matters regarding the Joint Applicants' Application in its next signing and discussion session scheduled for June 14, 2005, which includes consideration of suspending the Application and approval of a comment schedule. Pending the Commission's decision regarding these

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<sup>1</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator*, Opinion and Order, Case No. 99-1658-EL-ETP et. al (August 31, 2000).

<sup>2</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company to Modify its Nonresidential Generation Rates to Provide for Market Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Entry on Rehearing, Case No. 03-93-EL-ATA et al., (November 23, 2004).

and any other issues set for the Commission's consideration, IEU-Ohio believes that the suggested procedural schedule is too aggressive given the nature of this proceeding and the many other proceedings that CG&E has initiated concurrent with this Application.<sup>3</sup> IEU-Ohio suggests that inasmuch as CG&E has requested the Commission solicit comments from interested parties regarding the Joint Applicants' list of Proposed Issues set out in Appendix A to its Application, the Proposed Issues should be expanded upon to include the following modifications and additions:

Quality of Customer Service: Joint Applicants should demonstrate that those entities subject to the jurisdiction of this Commission will put in place procedures designed to proactively identify actions that can be taken to improve reliability and the quality of service in Ohio and establish mechanisms to monitor and enforce performance.

System Reliability: Joint Applicants should demonstrate that the transaction will cost-effectively improve reliability.

Effect on Retail Competition: Joint Applicants should describe the anticipated effects of the proposed transaction upon retail competition, including customer switching levels, in both the competitive retail electric service and gas aggregation markets and demonstrate that the transaction will advance Ohio's state policies. Additionally, any authority that CG&E holds that would permit CG&E to divest generation assets or transfer generation assets should be evaluated from the perspective of such authority being used to reduce Ohio's ability to take actions designed to promote reasonable prices and reliable service.

Effect on Economic Development and Retention: Joint Applicants should describe specific commitments and the means by which such commitments may be enforced to advance Ohio's economic development and retention efforts.

Transmission Plan and State/Federal Conflicts: Ohio's electric restructuring legislation requires the Commission to review and approve CG&E's transmission plan and it is not clear if this requirement has been satisfied. It is also unclear how merchant generating plants and other facilities that will be subject to the

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<sup>3</sup> See in the Matter of the Application of the Cincinnati Gas & Electric Company to Adjust and Set its System Reliability Tracker Market Price, Case No. 05-724-EL-UNC, Application of CG&E (June 1, 2005); In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Fuel, Economy Purchased Power Component of its Market-Based Standard Service Offer, Case No. 05-725-EL-UNC, Application (June 1, 2005), and In the Matter of the Transmission Rates Contained in the Rate Schedules of the Cincinnati Gas & Electric Company and Related Matters, Case Nos. 05-727-EL-UNC and 05-728-EL-AAM, Application (June 1, 2005).

ownership or control of the merged firms will be subject to the oversight of a regional transmission organization, the extent to which the merged firm may have market power in energy, capacity or ancillary service markets, the extent to which market pricing authority presently held should be terminated or subjected to conditions, the extent to which federal legislation designed to prevent and remedy holding company abuse will remain in effect and the extent to which the merged entities will have the ability to create or interpose legal barriers to actions that Ohio might otherwise take in the public interest.

Cost Savings Resulting from the Merger: Joint Applicants should demonstrate what cost savings and efficiencies are expected as a result of the transaction, where those savings or efficiencies will be generated, the time period used to measure the anticipated savings or efficiencies, how those cost savings or efficiencies will be allocated among various entities involved in the transaction, and to what degree (and in what fashion) cost savings or efficiencies resulting from the merger will benefit electric and gas customers of The Cincinnati Gas & Electric Company within Ohio. Joint Applicants should also identify how such savings or efficiencies should be reflected in CG&E's pending proposals to increase rates and charges applicable to its Ohio customers.

In-State Presence: Joint Applicants should explain their plans for maintaining the Ohio presence of the corporate entities regulated by this Commission and propose conditions and enforcement mechanisms to ensure such plans match actual experience.

Affiliate Transactions: Joint Applicants should describe in detail the affiliate transaction agreements which they seek approval and the means by which such transactions shall be subject to the jurisdiction of the Commission.

Thus, while IEU-Ohio appreciates the opportunity to comment on the Proposed Issues suggested by the Joint Applicants, IEU-Ohio urges the Commission to expand upon the scope of the Proposed Issues as demonstrated above.<sup>4</sup>

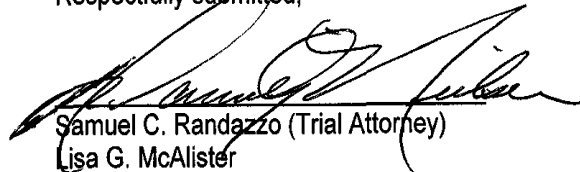
For the aforementioned reasons, IEU-Ohio has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceedings that will only be protected by its participation in these proceedings. Therefore, IEU-Ohio hereby requests that the Commission grant its intervention with the full powers and rights

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<sup>4</sup> IEU-Ohio also notes that its issues with regard to the Joint Applicants' Application is not limited to the procedural schedule or Proposed Issues as discussed herein, but only points these issues out inasmuch as they appear to be the subject of the Commission's June 14, 2005 combined discussion and signing session.

granted, by the Commission specifically, by statute and by the provisions of the Ohio Administrative Code, to intervening parties.

Respectfully submitted,



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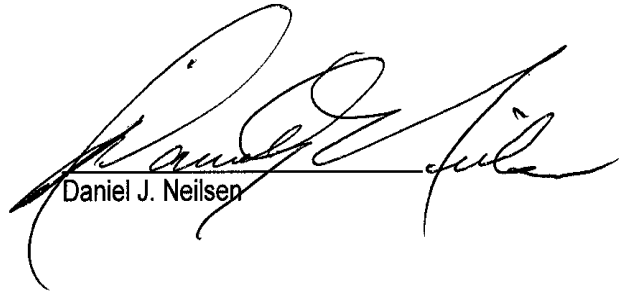
June 10, 2005

Attorneys for Industrial Energy Users-Ohio



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion to Intervene*, and *Memorandum in Support of Industrial Energy Users-Ohio* were served upon the following parties of record this 10<sup>th</sup> day of June 2005, via first class mail, postage prepaid.



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