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JOHN J. FINNIGAN, JR.
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VIA OVERNIGHT DELIVERY

CINERGY

June 13, 2002

Ms. Daisy Crockron
Chief, Docketing Division
Public Utilities Commission of Ohio
Docketing Division, 10th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: In the Matter of the Establishment of Electronic Data Exchange Standards
And Uniform Business Practices for the Electric Utility Industry
Case No. 00-813-EL-EDI

Dear Ms. Crockron:

Enclosed please find an original and 13 copies of the Memorandum of The Cincinnati Gas & Electric Company Contra To The Ohio Consumers' Counsel's Motion to Strike Testimony of Kenneth Gordon. Please date-stamp the extra two copies and return them to me in the overnight-mail envelope provided.

Should you have any questions, please call me at (513) 287-3601.

Sincerely,



John J. Finnigan
Attorney for
The Cincinnati Gas & Electric Company

JJF/mak

Enclosure

This is to certify that the images appearing are an
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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of)	
Electronic Data Exchange Standards and)	Case No. 00-813-EL-EDI
Uniform Business Practices for the)	
Electric Utility Industry.)	
In the Matter of the following Applications)	
To Establish Alternatives to Minimum)	
Stay Restrictions for Residential and)	
Small Commercial Customers:)	
Monongahela Power Company)	Case No. 01-1817-EL-ATA
Dayton Power and Light Company)	Case No. 01-1938-EL-ATA
The Cincinnati Gas & Electric Company)	Case No. 01-2053-EL-ATA
Columbus Southern Power Company)	Case No. 01-2097-EL-ATA
Ohio Power Company)	Case No. 01-2098-EL-ATA
Ohio Edison Company)	Case No. 01-2677-EL-ATA
Toledo Edison Company)	Case No. 01-2678-EL-ATA
Cleveland Electric Illuminating Company.)	Case No. 01-2679-EL-ATA

MEMORANDUM OF
THE CINCINNATI GAS & ELECTRIC COMPANY
CONTRA TO
THE OHIO CONSUMERS' COUNSEL'S
MOTION TO STRIKE TESTIMONY OF KENNETH GORDON

The Commission should deny the Ohio Consumers' Counsel's (OCC) motion to strike the testimony of The Cincinnati Gas & Electric Company's (CG&E) witness Dr. Kenneth Gordon because Dr. Gordon's testimony is clearly relevant to this proceeding and therefore is admissible.

The OCC argues that the only evidence that can be presented at this hearing is evidence "regarding the switching and returns of residential and small commercial customers, and the financial impact of such events" (OCC Motion to Strike at p. 5, citing

Entry on Rehearing dated May 16, 2002 at p. 5). The OCC further argues that the Commission should strike Dr. Gordon's testimony because his testimony "does not fall within the limited purpose set out by the Commission for this proceeding" (OCC Motion to Strike at p. 4).

In determining whether to strike Dr. Gordon's testimony, the Commission must apply the Ohio Rules of Evidence. R. C. 4903.22. Under these rules, evidence is admissible if it is relevant. Ohio R. Evid. 402. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Dr. Gordon's testimony is relevant because it makes more probable the fact that CG&E would suffer financial harm without a minimum stay in 2002 than this fact would be without his testimony. The following passage in Dr. Gordon's testimony illustrates how he addresses the financial harm that could befall CG&E in the absence of a minimum stay rule in 2002:

[R]egulatory restrictions on switching (e.g., minimum-stay requirements) are needed in order to prevent the utility and/or its customers from subsidizing customers that would otherwise switch back and forth between standard offer and competitive service in order to take advantage of regulatory-based standard offer prices that are artificially low during peak periods. Moreover, because of the rate freeze, this subsidy would be borne by the standard offer provider, *harming its financial integrity*. To address this problem, the comprehensive settlement set forth minimum stay requirements, which is a reasonable, straightforward, and commonly used way to resolve the problem.

Testimony of Dr. Kenneth Gordon at 8-9 (emphasis added).

Dr. Gordon also explains that financial harm occurs to the EDU regardless of whether the customer's switch back to standard offer service results from an attempt to

“game” the system:

Simply put, an unrestricted hybrid electric restructuring model makes it easy for parties to engage in switching behavior that imposes costs on other participants and/or society generally. From both an economic and a public policy standpoint, this is undesirable regardless of whether the switch results from an individual customer ‘gaming’ the regulatory system, from a supplier ‘releasing’ customers back to the utility, or for any other reason. Regardless of the reason for the switch, rules that reasonably restrict the use of standard offer service are appropriate because, in all cases, *the switch causes financial harm to the utility* and also harms Ohio’s competitive electricity market.

Testimony of Dr. Kenneth Gordon at 9 (emphasis added).

Dr. Gordon further addresses how the financial harm to the EDU would occur in the absence of a minimum stay:

While customers can reasonably switch back to standard offer service, it is reasonable to restrict customers’ ability to switch again (or repeatedly) to competitive service because allowing customers to switch again *places a financial burden on the provider of the standard offer service* given the rate freeze that is in place and also provides distorted price signals to the customer.

Testimony of Dr. Kenneth Gordon at 9-10 (emphasis added).

Dr. Gordon explains that the financial harm to the utility arises from the annualized rates that are frozen during the market development period:

When standard offer prices are averaged, they are likely to be lower than competitive market prices during the summer peak demand period. This creates an incentive for customers to switch, such that this hybrid system of regulated standard offer service and competitive service *would cause financial harm to the utility* and send distorted price signals.

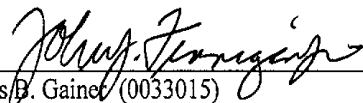
Testimony of Dr. Kenneth Gordon at 10 (emphasis added).

Dr. Gordon discusses "*the financial penalty that (CG&E's) shareholders would experience* if the rules agreed to via stipulation are waived for the summer season" (Testimony of Dr. Kenneth Gordon at 12 (emphasis added)). He further addresses the EDU's "financial risks" at pages 12 and 13 of his testimony.

The foregoing examples are not intended to provide every instance where Dr. Gordon testified about the financial risk that CG&E will incur in the absence of a minimum stay for small commercial and residential customers in 2002. Instead, these are just a few of the many instances where Dr. Gordon addressed this topic in his testimony. Quite clearly, Dr. Gordon's testimony makes more probable the fact that CG&E would suffer financial harm without a minimum stay in 2002 than this fact would be without his testimony. This is the test for admissibility of evidence under Ohio R. Evid. 402. The Commission should deny the OCC's motion to strike Dr. Gordon's testimony because his testimony easily meets the standard for admissibility.

Based on the foregoing, the Commission should deny the OCC's motion to strike testimony of Kenneth Gordon.

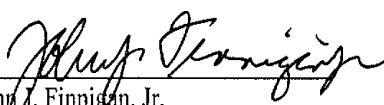
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum of Contra was served on the following either electronically or by first class U.S. mail, postage prepaid, this 13th day of June, 2002.


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