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November 10, 1997

Cinergy Corp.  
139 East Fourth Street, Rm 25 AT II  
P.O. Box 960  
Cincinnati, OH 45201-0960  
Tel 513.287.3020  
Fax 513.287.3810  
dmusselman@cinergy.com

DAVID T. MUSSELMAN  
Senior Counsel

Daisy Crockron  
Chief, Docketing Department  
Public Utilities Commission of Ohio  
10<sup>th</sup> Floor  
180 East Broad Street  
Columbus, Ohio 43215-3793

**CINERGY.**

Re: Case No. 97-203-EL-FOR

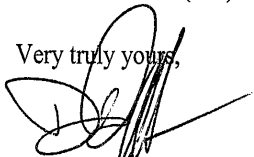
Dear Ms. Crockron:

Enclosed for filing in the above-captioned case is an original and ten (10) copies of CG&E's "Motion for Protective Order for Proprietary and Confidential Information in the Appendix to its 1997 Electric Long-Term Forecast Report". Three (3) unredacted copies of Confidential Information to be filed under seal an attached as Exhibit A.

Please return to us three (3) date-stamped copies of the Motion in the enclosed self-addressed envelope.

Please call me at (513) 287-3020 if you have any questions.

Very truly yours,



David T. Musselman  
Senior Counsel

/drw

Enclosure

RECEIVED - DOCKETING DIV  
97 NOV 12 AM 11:59  
PUCO

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician Anna M. Nijm Date Processed Nov. 13, 1997

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In The Matter Of The 1997 Long-Term       )  
Electric Forecast Report Of The Cincinnati   )  
Gas & Electric Company.                       )  
Case No. 97-203-EL-FOR

RECEIVED-ECOMETICS DIV  
97 NOV 12 AM 11:59  
PUCO

**THE CINCINNATI GAS & ELECTRIC COMPANY'S  
MOTION FOR PROTECTIVE ORDER  
FOR PROPRIETARY AND CONFIDENTIAL INFORMATION  
IN THE APPENDIX  
TO ITS 1997 ELECTRIC LONG-TERM FORECAST REPORT**

The Cincinnati Gas & Electric Company ("CG&E"), a subsidiary of Cinergy Corp. ("Cinergy"), filed its 1997 Integrated Resource Plan ("IRP") with the Public Utility Commission of Ohio on October 31, 1997, satisfying the 1997 Electric Long-Term Forecast Report ("ELTFR") filing requirements for a full report. Certain proprietary and confidential information was developed or acquired and relied upon in preparing the 1997 IRP. Pursuant to OAC 4901-1-24, CG&E seeks an Order determining that this information is proprietary and should be treated as confidential. This Commission should order that this data, filed under seal and attached hereto as Exhibit A, should be maintained at the Commission in a separate file which has restricted access. Finally, the Commission should issue an Order (a proposed draft Order is attached hereto as Exhibit B) governing the access to the data by any other person; specifically, access to the data should be limited to parties agreeing to comply with the Order and prohibiting any person who has access to the data from revealing it to any other person, except as provided in the Order. Further, no access should be granted to potential competitors, including customers with facilities which can co-generate or self-generate. This Motion is supported by

the attached Memorandum in Support and supporting affidavits (Exhibits C to F). A proposed a draft Order is also attached as Exhibit B.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DM', with a horizontal line extending to the right.

---

David T. Musselman, Trial Attorney  
Theodore J. Schneider  
139 E. Fourth Street, 25A  
Cincinnati, Ohio 45202  
(513) 287-3020

Attorneys for The Cincinnati Gas & Electric  
Company

BEFORE

THE PUBLIC UTILITY COMMISSION OF OHIO

In The Matter Of The 1997 Long-Term       )  
Electric Forecast Report Of The Cincinnati    )  
Gas & Electric Company.                        )     Case No. 97-203-EL-FOR

**THE CINCINNATI GAS & ELECTRIC COMPANY'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR PROTECTIVE ORDER  
FOR PROPRIETARY AND CONFIDENTIAL INFORMATION  
IN THE APPENDIX  
TO ITS 1997 ELECTRIC LONG-TERM FORECAST REPORT**

**DISCUSSION**

Certain information on which CG&E relies in developing the IRP is proprietary and confidential. Some of this information is very company-specific and was developed internally, while other information is obtained through subscriptions which require CG&E to keep it confidential. Release of this information to the general public could lead to a competitive disadvantage to the company and its customers. As a result, CG&E is seeking a Protective Order declaring the information as confidential, limiting access to the information to parties to the proceeding who will be bound by the Protective Order, and requiring such parties to provide CG&E with advance notice prior to any use of the data which is inconsistent with the Protective Order. A draft Order is attached as Exhibit B.

Due to changes in the electric utility environment precipitated by the advent of wholesale competition and consistent with the purposes of Ohio Revised Code Chapter 49, minimizing the amount of information protected from public disclosure, CG&E is seeking an Order which is narrowly drawn to protect its proprietary interests. CG&E recognizes that the Commission Staff

is governed by Rev. Code 4901.16 and will protect the information, but other potential parties to this matter are not so bound. Therefore, with respect to potential competitors and certain customers, each of which may gain a competitive advantage over CG&E and thereby disadvantage both CG&E and its other customers, CG&E is requesting that disclosure to the proprietary information attached hereto be denied. With respect to the Ohio Consumers' Counsel, CG&E will provide this data to the OCC subject to a negotiated Confidentiality Agreement between CG&E and the OCC.

#### **FACTS**

In developing the 1997 Cinergy IRP, CG&E, Cinergy Services Inc. ("Cinergy Services"), and PSI Energy, Inc. ("PSI") (collectively "Cinergy") used certain confidential and proprietary information and data. Some of this data, as described below, is the confidential information of third parties. Some of the data is the confidential information of Cinergy Services, PSI and CG&E.

A part of the data for which CG&E seeks confidential treatment is data supplied by New Energy Associates, L.L.C. ("NewEnergy"). In developing the 1997 Cinergy IRP, NewEnergy's state-of-the-art PROSCREEN II® and PROMOD IV® models were used, subject to a Licensing Agreement among Cinergy Services, PSI, CG&E and NewEnergy. This Licensing Agreement contains confidentiality provisions to protect NewEnergy's data. The Affidavit of Kenneth Eugene Johnson from NewEnergy, attached herein as Exhibit C, supports NewEnergy's confidential treatment of such data. As described in the Affidavit, NewEnergy derives its profit from the licensing of its proprietary model.

In developing the 1997 Cinergy IRP, a forecast of potential market value for sulfur dioxide emission allowances developed by ICF Resources, Inc. ("ICF") was used. Cinergy agreed with ICF to keep such information confidential. The Affidavit of Theodore Breton from ICF, attached herein as Exhibit D, supports ICF Resources, Inc.'s confidential treatment of this data. ICF derives its profit from the sale of these forecasts as described in the Affidavit.

In developing the 1997 Cinergy IRP, we used certain data developed by the Electric Power Research Institute ("EPRI") which EPRI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such information without EPRI's prior written consent. The Affidavit of Alan Gemanis from EPRI, attached herein as Exhibit E, supports EPRI's confidential treatment of this data. EPRI derives its profit from the sale of this data as described in the Affidavit.

In developing the 1997 Cinergy IRP, we used the RDI Outlook for Coal and Fossil Fuels, COALdat PC BASIC, and access to the RDI database system, all of which were developed by Resource Data International, Inc. ("RDI") which RDI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such information without RDI's prior written consent. The Affidavit of Jennifer Greene from RDI, attached herein as Exhibit F, supports RDI's confidential treatment of this data. RDI derives its profit from the sale of this software and data as described in the Affidavit.

In developing the 1997 Cinergy IRP, we used Services (Basic U.S. Economic Service, U.S. Economic Forecast Dataport, Limited Utility Cost Information Service, U.S. Energy Service) and certain data developed by DRI/McGraw-Hill ("DRI") which DRI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such

information without DRI's prior written consent. DRI derives its profit from the sale of these services and data as described in the Affidavit.

The other data for which CG&E seeks confidential treatment are the fuel price forecast, which was developed by Cinergy Services, the 1997 Cinergy compliance supply curve which was developed as a part of the Cinergy IRP, the Cinergy developed Energy Market Forecast ("EMF"), and certain other cost information which is contained in the NewEnergy Confidential Data ("CG&E's Confidential Information"). CG&E's Confidential Information provides actual or potential independent economic value for CG&E and its ratepayers and should be treated as confidential. If fuel suppliers knew Cinergy Services' forecasted fuel prices, by Station, such fuel suppliers would have an advantage in negotiating future fuel prices, to the detriment of CG&E, and its ratepayers. Furthermore, if competitors of CG&E knew of such forecast, they would have an advantage in competing for new business against CG&E. This group of competitors includes brokers, power project developers, and customers with the capability to self-generate or host a co-generation project.

The 1997 Cinergy compliance supply curve details the expected marginal cost per ton of sulfur dioxide of compliance with the Clean Air Act Amendments of 1990 on the Cinergy System. Such information clearly has actual and potential independent economic value for CG&E and its customers. If vendors knew the projected cost of compliance on the Cinergy System, they would have an unfair advantage over CG&E with respect to the potential sales or purchases of SO<sub>2</sub> emission allowances, fuel or emission control equipment.

The Cinergy developed EMF details Cinergy's forecast of the future wholesale market price for energy. Such information clearly has actual and potential independent economic value

for CG&E and its customers. If other sellers or purchasers of power knew Cinergy's market forecast, they would have an unfair advantage over CG&E in the market.

Cinergy Services, PSI and CG&E take all reasonable steps in order to protect the CG&E Confidential Information, including, but not limited to, only sharing such information internally on a need to know basis, and not releasing such information outside of the companies without appropriate confidentiality protection.

CG&E derives actual and potential independent economic value from this technical and business information, which is not generally known or readily ascertainable by other persons who could obtain economic value from its disclosure or use. CG&E subjects this information to measures to maintain its secrecy. The Affidavit of Leo P. Denault of Cinergy Services, Inc., supporting the confidential treatment of this data is attached as Exhibit G. Therefore, this technical and business information constitutes a trade secret under Ohio law and is worthy of a protective order by this Commission.

The third parties; NewEnergy, ICF, EPRI, RDI, and DRI derive independent economic value from their respective data above; and they maintain their secrecy by subjecting the respective data to reasonable security measures. Therefore, the third party data specified above constitute trade secrets under Ohio law and are therefore worthy of a protective order by this Commission.

#### **APPLICABLE LAW AND REGULATION**

The Commission and its staff are already prohibited from revealing any information regarded by the utility as confidential. Ohio Revised Code 4901.16 provides:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to



in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or agent in any other capacity under the appointment or employment of the commission.

CG&E is hereby notifying the Staff that the data contained in the Confidential Appendix attached hereto is confidential and must be protected under Revised Code Section 4901.16. The pages of the Confidential Appendix are being filed under seal and are each stamped confidential.

The Commission's Rules of Practice also provide that the Commission, the legal director, the deputy legal director, or the attorney examiner:

may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of title 49 of the revised code.

Ohio Admin. Code § 4901-1-24(D). It is pursuant to this regulation that CG&E is making its motion to govern the access to, and use by other parties in this proceeding.

Ohio Revised Code § 1333.61(D) defines "Trade Secret" as:

information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans... that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The information contained in Exhibit A, filed under seal herewith, meets both prongs of that test.

## CONCLUSION

CG&E's Confidential Information as described above constitutes trade secrets under Ohio law. The third party data described above constitutes trade secrets under Ohio law. With respect to the PUCO Staff, CG&E is seeking to restrict the use of the both the CG&E Confidential Information and the third party data pursuant to Rev. Code 4901.16. With respect to the OCC, CG&E is seeking to restrict the use of the data subject to a negotiated Confidentiality Agreement between CG&E and the OCC. With respect to potential competitors and certain customers, each of which may gain a competitive advantage over CG&E and thereby disadvantage both CG&E and its other customers, CG&E is requesting non-disclosure of the proprietary information attached hereto. CG&E's request for non-disclosure is narrowly drawn and consistent with the purpose of Rev. Code Chapter 49. Therefore, CG&E's Motion for a Protective Order should be granted.

Respectfully submitted,



David T. Musselman, Trial Attorney  
Theodore J. Schneider  
139 E. Fourth Street, 25ATII  
Cincinnati, Ohio 45202  
(513) 287-3020

Attorneys for The Cincinnati Gas & Electric  
Company

## BEFORE

## THE PUBLIC UTILITY COMMISSION OF OHIO

In The Matter Of The 1997 Long-Term       )  
Electric Forecast Report Of The Cincinnati   )  
Gas & Electric Company.                    )     Case No. 97-203-EL-FOR

**FINDINGS AND ORDER**

1. The Cincinnati Gas & Electric Company ("CG&E") filed its 1997 Integrated Resource Plan on October 31, 1997. A portion of that Report relied upon certain data which it claims is confidential and/or proprietary business information. On November 11, 1997, CG&E filed a Motion for Protective Order. The material for which protection was sought was filed under seal with that Motion. Affidavits in support were attached to the Motion.
2. CG&E is seeking to protect its projected Operation and Maintenance costs, Base Case Fuel Price Forecasts, Acid Rain Compliance Supply Curves, and SO<sub>2</sub> Emission Allowance Prices. The projected Operation and Maintenance costs are developed in-house, and could not be easily developed by any other party. The Base Case Fuel Price is developed in-house, using some subscription materials. The subscription materials are provided to CG&E under a contract which require CG&E to maintain the confidentiality of the data. The Acid Rain Compliance Curves are developed in-house and project the cost of controlling SO<sub>2</sub> emissions from individual units. These costs could not be easily developed by any other person. The SO<sub>2</sub> Emission Allowance Prices are obtained by CG&E from ICF Resources, Inc. under a subscription contract which requires CG&E to maintain confidentiality.
4. CG&E has represented that it is seeking a mutually agreeable Protective Agreement with OCC.

5. CG&E has asked that the materials be maintained as confidential by all members of the Commission Staff under Rev. Code 4901.16 and that the information not be released to any person who is not a party to this proceeding and subject to a protective order.
6. Pursuant to Ohio Administrative Code § 4901-1-24(D), CG&E petitioned for a protective order. Specifically, CG&E asks that the data only be released to persons who individually acknowledge that they are subject to this Protective Order, that use of the data be limited to this proceeding, that the data not be shared with any party or individual not subjected to this Protective Order, that ten (10) days prior to any use which might result in making the data public, CG&E and this Commission be notified in writing to permit each to take steps to enforce this Order, and upon final resolution of this case, that the data be returned to CG&E, unless other acceptable arrangements are made between CG&E and a specific party. In addition, with respect to potential competitors, access to this data be denied.
7. CG&E argues that its interest in the data should be protected because the data is difficult to develop; that each element is a key element in the projected production cost, which production cost is vital competitive information; the revelation of which could place CG&E at a significant competitive disadvantage; that revealing this information could adversely impact its ability to negotiate with suppliers resulting in higher costs to customers, that revealing the information obtained through subscriptions could affect the competitive position of the information providers and could expose CG&E to contractual liability. Such claims are supported by the attached Affidavits.

8. CG&E's request seeks reasonable restrictions on the access to data and dissemination of data, which are narrowly drawn to permit appropriate inquiry into its ELTFR while protecting its competitive position and fulfilling its contractual obligations.

WHEREFORE, it is Ordered:

1. It is Ordered that the material contained in the Confidential Appendix shall be maintained under seal in a separate locked file with a copy of this Order attached. Access to this file shall be limited to PUCO Staff employees with a legitimate need to know this data for the purpose of evaluating CG&E's 1997 ELTFR.
2. It is Ordered that intervenors who are potential competitors be denied access to this data. Non-competing intervenors shall be permitted to obtain this data from CG&E only upon execution of an Acknowledgment of this Order and an Agreement that they will abide by it.
3. Access to the data shall be limited to individuals which have individually executed such an Acknowledgment and Agreement.
4. This data shall not be revealed to or shared with any person who has not executed an Acknowledgment and Agreement.
5. Any party, including the Staff, desiring to make any portion of this data public must notify this Commission and counsel for CG&E in writing received by CG&E, not less than ten days prior to making it public, to permit CG&E to take steps to protect the data. If CG&E makes a timely objection, the data shall not be revealed unless the Commission so orders it.
6. At the conclusion of this proceeding, the data, together with all notes and documents related thereto, shall be returned to CG&E, or shall be destroyed by the person in possession of such data. If destroyed by the person, said person shall verify, in writing that such destruction has occurred.

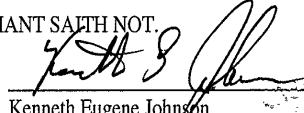
**AFFADAVIT  
OF  
KENNETH EUGENE JOHNSON**

STATE OF GEORGIA           )  
  ) ss:  
COUNTY OF COBB           )

Kenneth Eugene Johnson, being first duly sworn upon his oath, deposes and states:

1. I am employed by New Energy Associates, L.L.C. ("NewEnergy") as Vice President.
2. The information for which confidential treatment is being sought ("Protected Information") is information which NewEnergy treats as proprietary, confidential, and trade secret. Such Protected Information includes data structure, data calculations, source code, diagnostics and reports and other confidential trade secret information as referenced with the attached Confidentiality Disclosure Agreement and is associated with the PROSCREEN II® and PROMOD IV® computer models. CINergy services, Inc., PSI Energy, Inc., and The Cincinnati Gas and Electric Company have used this Protected Information subject to a License Agreement which contains confidentiality provisions similar in all material respects to the Confidentiality Disclosure Agreement attached hereto.
3. The Protected Information was developed by NewEnergy. NewEnergy derives economic benefits therefrom, and NewEnergy takes all reasonable steps to protect the confidentiality of such Protected Information, including but not limited to, only providing such Protected Information to others subject to confidentiality agreements or protective orders.

FURTHER AFFIANT SAITH NOT.

  
Kenneth Eugene Johnson

STATE OF GEORGIA    )  
                                  ) ss:  
COUNTY OF COBB    )

Subscribed and sworn to before me this 24 day of October

  
Notary Public

My Commission Expires: 10/10/99  
My County of Residence: Gwinnett

## NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, dated \_\_\_\_\_, \_\_\_\_\_, is between New Energy Associates, L.L.C. ("NewEnergy") and \_\_\_\_\_ ("Company").

### WITNESSETH:

WHEREAS, certain proprietary, confidential and trade secret information may be communicated Company in connection with the use of NewEnergy's proprietary software PROSCREEN II® and PROMOD IV® in connection with \_\_\_\_\_ (the "Business Purpose") and NewEnergy desires that certain Company keep such information confidential and to protect such information from unauthorized use or disclosure; and

WHEREAS, in consideration of the disclosure of such information to Company, Company is willing to keep such information confidential in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, NewEnergy and Company hereby agree as follows:

1. **Confidentiality.** Company agrees to hold all information communicated to Company relating to or arising in connection with the Business Purpose, whether written or oral (the "Confidential Information"), in strict confidence, not to disclose, distribute or disseminate the Confidential Information, or documents or information derived therefrom, in any way to any third party and not to use the Confidential Information for its own benefit or the benefit of others, except in connection with the Business Purpose as expressly authorized in this Agreement. Company agrees to restrict the access to the Confidential Information to the employee who has a need to know and is identified on Exhibit A. Company represents and warrants that such employee of Company has entered into employment or similar agreements with Company which contain terms no less restrictive than those in this Agreement and which require each such employee to keep confidential the type of information defined in this Agreement as "Confidential Information". Company also represents and warrants that such employee has been shown and has read a copy of this Agreement. Company agrees to promptly notify NewEnergy if such employee of Company identified on Exhibit A ceases to be employed by Company and to specify in such notice the company, if any, with which such employee has accepted employment. Upon the receipt of any such notice, if NewEnergy determines that such company is a competitor of NewEnergy, and if NewEnergy so directs, Company shall provide such new employer of the former employee with written notice that the former employee of Company is in the possession of certain Confidential Information of NewEnergy, provided, however, that Company provide to NewEnergy for its review and approval a copy of such notice before it is delivered by Company. Company also agrees not to copy Confidential Information which

is in documented form. The term "Confidential Information" shall not include information which is (i) publicly known or becomes publicly known through no unauthorized act of Company, (ii) rightfully received from a third party, or (iii) independently developed by Company without use of the Confidential Information so long as such independent development can be clearly documented and verified. This Agreement shall not prevent Company from disclosing Confidential Information which is required to be disclosed pursuant to a requirement of a governmental agency or law of the United States of America, or any governmental or political subdivision thereof, so long as Company provides NewEnergy with prompt written notice of such requirement and takes steps sufficient to allow NewEnergy an opportunity to object to such disclosure.

2. **Return of Confidential Information.** Upon the completion of the Business Purpose or at the request of NewEnergy, Company shall return all copies of the Confidential Information, and all derivatives thereof, to NewEnergy or, at NewEnergy's option and direction, shall certify in writing that all copies of the Confidential Information have been destroyed. Company may return the Confidential Information, or any part thereof, to NewEnergy at any time.
3. **No Warranty.** NewEnergy makes no representation or warranty, express or implied, with respect to the Confidential Information and accepts no responsibility for any expenses, losses, or actions incurred or undertaken by Company as a result of the receipt or use of the Confidential Information.
4. **No Further Rights.** Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as expressly provided herein.
5. **Business Purpose.** The parties acknowledge and agree that the provision of Confidential Information hereunder and any discussions held relating thereto shall not prevent NewEnergy from pursuing similar discussions with third parties or obligate NewEnergy to continue discussions with Company or to take, continue or forego any action relating to the Confidential Information. Any estimates or forecasts provided by NewEnergy to Company shall not constitute commitments.
6. **Injunctive Relief.** Company acknowledges and agrees that the Confidential Information is the confidential, proprietary and trade secret information of NewEnergy and that the unauthorized use or disclosure of the Confidential Information could cause irreparable harm and significant injury to NewEnergy for which NewEnergy would have no adequate remedy at law. Therefore, NewEnergy shall have the right, in addition to any other rights NewEnergy may have at law or in equity, to seek immediate injunctive relief enjoining any breach or potential breach of this Agreement by Company. Company hereby waives the necessity of the posting any form of bond relating to the issuance of injunctive relief.



7. **Media Releases.** No media releases, public announcements or disclosures relating to this Agreement, its subject matter or the Confidential Information shall be issued by Company without the prior written approval of NewEnergy.

8. **Miscellaneous.**

- (b) No delay or omission by NewEnergy to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available at law, in equity or otherwise.
- (b) Any notices required by this Agreement shall be given in hand or sent by first class mail, postage prepaid, to the applicable address set forth below. Either party may from time to time specify as its address for purposes of this Agreement any other address upon giving ten days written notice thereof to the other party.

In the case of NewEnergy:

NewEnergy  
100 Northcreek  
Suite 800  
Atlanta, Georgia 30327  
Attention: Mr. Jesse Davis II  
CEO

In case of Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (c) The parties agree that this Agreement (i) is the complete and exclusive statement between the parties with respect to the protection of the confidentiality of Confidential Information, (ii) supersede all related discussions and other communications between the parties, (iii) may only be modified in writing by authorized representatives of the parties, and (iv) shall be governed by the laws of the State of Texas.

**IN WITNESS WHEREOF**, NewEnergy and Company have each caused this Agreement to be signed and delivered as of the date first set forth above.

**NEW ENERGY ASSOCIATES, L.L.C.**

**“COMPANY”**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

Authorized Employee:

NAME

INITIALS

(For the sole purpose of acknowledging that  
the Employee has read and understands the  
restrictions contained in the Agreement)

1.


\_\_\_\_\_

**AFFIDAVIT  
OF  
THEODORE BRETON**

COMES NOW THEODORE BRETON, being duly sworn, deposes and says:

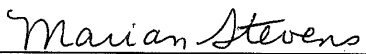
1. My name is Theodore Breton. I am employed by ICF Resources, Incorporated ("ICF") as Vice President.
2. ICF provided certain forecasts of future SO<sub>2</sub> Allowance prices to Cinergy Corp. pursuant to an agreement whereby Cinergy Corp. and its subsidiaries would keep such information confidential.
3. ICF has furnished such information to other entities subject to similar agreements requiring such entities to maintain the confidentiality of such information.
4. To the best of my information, knowledge and belief such data has not been filed, produced, published, or otherwise furnished to third parties without appropriate confidentiality agreements, protective orders, or other appropriate means to protect the confidentiality of such information.
5. ICF derives actual economic value from the providing of such data to various entities, for a fee. In my opinion, such value would be damaged if such information were made available to the public within five (5) years of its development so that such information could be used without compensation to ICF for such information.

FURTHER AFFIANT SAITH NOT.

  
\_\_\_\_\_  
Theodore Breton

STATE OF VA )  
COUNTY OF Fairfax ) SS:

Subscribed and sworn to before me this 22 day of October, 1997.

  
\_\_\_\_\_  
(Marian Stevens) Notary Public

My Commission Expires:  
2-28-01


My County of Residence:  
Fairfax

**AFFIDAVIT  
OF  
ALAN GEMANIS**

COMES NOW ALAN GEMANIS, being duly sworn, deposes and says:

1. My name is Alan Gemanis. I am employed by the Electric Power Research Institute ("EPRI") as Contract Negotiator.
2. EPRI provided certain information and forecasts of future costs of various types of capacity to Cinergy Corp. pursuant to an agreement whereby Cinergy Corp. and its subsidiaries would keep such information confidential.
3. EPRI has furnished such information to other entities subject to similar agreements requiring such entities to maintain the confidentiality of such information.
4. To the best of my information, knowledge and belief such data has not been filed, produced, published, or otherwise furnished to third parties without appropriate confidentiality agreements, protective orders, or other appropriate means to protect the confidentiality of such information.
5. EPRI and its members who provide funding for the development of such information derive actual economic value from the use and protection of such information. In my opinion, such value would be damaged if such information were made available to the public so that such information could be used without compensation to EPRI and its members who provided funds for such research to develop such information.

FURTHER AFFIANT SAITH NOT.



Alan Gemanis

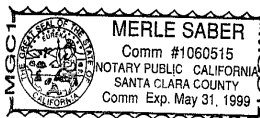
STATE OF CALIFORNIA     )  
  ) SS:  
COUNTY OF SANTA CLARA )

Subscribed and sworn to before me this 22 day of October, 1997.

  
( \_\_\_\_\_ ) Notary Public

My Commission Expires:  
May 31, 1999

My County of Residence:  
San Mateo

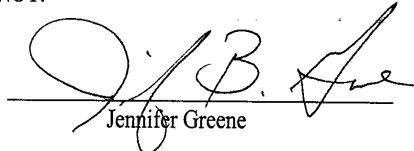


**AFFIDAVIT  
OF  
JENNIFER GREENE**

COMES NOW Jennifer Greene being duly sworn, deposes and says:

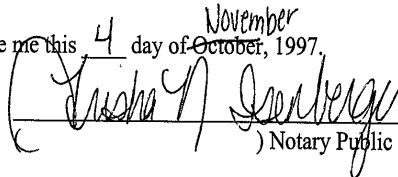
1. My name is Jennifer Greene, I am employed by Resource Data International, Inc. ("RDI") as Vice President.
2. RDI provided <sup>the RDI Outlook for Coal and Fossil Fuels JG</sup> COALdat PC BASIC and access to the RDI Database System, to Cinergy, Inc. [sic: Cinergy Services, Inc.] ("Cinergy") pursuant to an agreement whereby Cinergy and its affiliates would keep such information confidential.
3. RDI has furnished such information to other entities subject to similar agreements requiring such entities to maintain the confidentiality of such information.
4. To the best of my information, knowledge and belief such data has not been filed, produced, published, or otherwise furnished to third parties without appropriate confidentiality agreements, protective orders, or other appropriate means to protect the confidentiality of such information.
5. RDI derives actual economic value from the providing of such data to various entities, for a fee. In my opinion, such value would be damaged if such information were made available to the public within 5 years of its development so that such information could be used without compensation to RDI for such information.

FURTHER AFFIANT SAITH NOT.

  
Jennifer Greene

STATE OF Colorado )  
 ) SS:  
COUNTY OF Boulder )

Subscribed and sworn to before me this 4 day of <sup>November</sup> ~~October~~, 1997.

  
) Notary Public

My Commission Expires:

June 16, 2001

My County of Residence:

Lincoln



**AFFIDAVIT  
OF  
LEO P. DENAULT**

COMES NOW Leo P. Denault, being duly sworn, deposes and says:

1. My name is Leo P. Denault. I am employed by Cinergy Services, Inc. as General Manager. As General Manager for Cinergy Services, Inc. ("Cinergy Services"), I perform the same function for Cinergy Corp.'s subsidiaries PSI Energy, Inc. ("PSI") and The Cincinnati Gas & Electric Company ("CG&E") (collectively "Cinergy").

2. This Affidavit is being filed with the Public Utilities Commission of Ohio ("PUCO" or "Commission") in support of CG&E's Motion for a Protective Order for a Determination that Certain Information Contained in the 1997 Cinergy IRP is Confidential Pursuant to Rev. Code 149.43, Rev. Code 1333.61 - 1333.69 ("Uniform Trade Secrets Act"), Rev. Code 4901.12, Rev. Code 4901.16, and O.A.C. 4901-1-24,

3. In developing the 1997 Cinergy Integrated Resource Plan ("IRP"), Cinergy Services, PSI and CG&E used certain confidential and proprietary information and data. Some of this data, as described below, is the confidential information of third parties. Some of the data is the confidential information of Cinergy Services, PSI and CG&E.

4. A part of the data for which CG&E seeks confidential treatment in the Motion is data supplied by New Energy Associates, L.L.C. ("NewEnergy"). In developing the 1997 Cinergy IRP, we used NewEnergy's state-of-the-art PROSCREEN II® and PROMOD IV® models, subject to a Licensing Agreement among Cinergy Services, PSI, CG&E and NewEnergy. This Licensing Agreement contains confidentiality provisions to protect

NewEnergy's data. The Affidavit of Kenneth Eugene Johnson from NewEnergy, attached to the Petition herein, supports NewEnergy's confidential treatment of such data.

5. In developing the 1997 Cinergy IRP, we used a forecast of potential market value for sulfur dioxide emission allowances developed by ICF Resources, Inc. We agreed with ICF Resources, Inc. to keep such information confidential. The Affidavit of Theodore Breton from ICF, attached to the Motion herein, supports ICF Resources, Inc.'s confidential treatment of this data.

6. In developing the 1997 Cinergy IRP, we used certain data developed by the Electric Power Research Institute ("EPRI") which EPRI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such information without EPRI's prior written consent. The Affidavit of Alan Gemanis from EPRI, attached to the Motion herein, supports EPRI's confidential treatment of this data.

7. In developing the 1997 Cinergy IRP, we used the RDI Outlook for Coal and Fossil Fuels, COALdat PC BASIC, and certain data developed by Resource Data International, Inc. ("RDI") which RDI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such information without RDI's prior written consent. The Affidavit of Jennifer Greene from RDI, attached to the Motion herein, supports RDI's confidential treatment of this data.

8. In developing the 1997 Cinergy IRP, we used Services (Basic U.S. Economic Service, U.S. Economic Forecast Dataport, Limited Utility Cost Information Service, U.S. Energy Service) and certain data developed by DRI/McGraw-Hill ("DRI") which DRI considers to be confidential and proprietary. Cinergy agreed not to publish or make available to others such information without DRI's prior written consent.



9. The other data for which CG&E seeks confidential treatment in the Motion are the fuel price forecast, which was developed by Cinergy Services, the 1997 Cinergy compliance supply curve which was developed as a part of the Cinergy IRP, the Cinergy developed Energy Market Forecast ("EMF"), and certain other cost information which is contained in the NewEnergy Confidential Data ("CG&E's Confidential Information"). CG&E's Confidential Information provides actual or potential independent economic value for CG&E and its ratepayers and should be treated as confidential. If fuel suppliers knew Cinergy Services' forecasted fuel prices, by Station, such fuel suppliers would have an advantage in negotiating future fuel prices, to the detriment of PSI, CG&E, and their ratepayers. Furthermore, if actual or potential competitors of PSI and CG&E knew of such forecast, they would have an advantage in competing for new business against PSI and CG&E. This group of potential competitors includes existing utility customers who could self-generate or co-generate, since they would have an advantage in price negotiations to the detriment of customers remaining on the CG&E system.

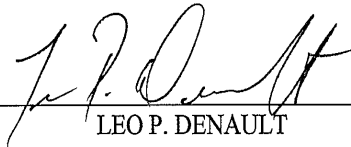
10. The 1997 Cinergy compliance supply curve details the expected marginal cost per ton of sulfur dioxide of compliance with the Clean Air Act Amendments of 1990 on the Cinergy System. Such information clearly has actual and potential independent economic value for PSI, CG&E and their customers. If vendors knew the projected cost of compliance on the Cinergy System, they would have an unfair advantage over PSI and CG&E with respect to the potential sales or purchases of SO<sub>2</sub> emission allowances, fuel or emission control equipment.

11. The Cinergy developed EMF details Cinergy's forecast of the future wholesale market price for energy. Such information clearly has actual and potential independent economic value for PSI, CG&E and their customers. If other sellers or purchasers of power knew

Cinergy's market forecast, they would have an unfair advantage over PSI and CG&E in the market.

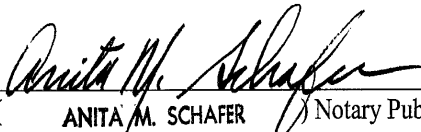
12. Cinergy Services, PSI and CG&E take all reasonable steps in order to protect the CG&E Confidential Information, including, but not limited to, only sharing such information internally on a need to know basis, and not releasing such information outside of the companies without appropriate confidentiality protection.

FURTHER AFFIANT SAITH NOT.

  
LEO P. DENAULT

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

Subscribed and sworn to before me this 10<sup>th</sup> day of November, 1997.

  
( ANITA M. SCHAFER ) Notary Public  
Notary Public, State of Ohio  
My Commission Expires Oct. 24, 1999

My Commission Expires:  
ANITA M. SCHAFER  
Notary Public, State of Ohio  
My Commission Expires Oct. 24, 1999  
My County of Residence:  
HAMILTON