FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for its Costs of Implementing The Commission's Disconnection Moratorium and to Implement Cost Recovery	)))))))	Case No. 01-3227-GA-UNC Case No. 01-3228-GA-AAM

THE CINCINNATI GAS & ELECTRIC'S MEMORANDUM CONTRA THE OHIO CONSUMERS' COUNSEL'S MOTION TO DENY THE APPLICATIONS, OR IN THE ALTERNATIVE, MOTION FOR ALTERNATIVE TREATMENT

INTRODUCTION:

On December 14, 2001, The Cincinnati Gas & Electric Company (CG&E) filed Applications before the Public Utilities Commission of Ohio (Commission) to defer and recover costs related to the Commission ordered residential gas disconnect moratorium beginning on January 25, 2001. On December 20, 2001, the Ohio Consumers' Counsel filed a Motion opposing CG&E's Applications.

OCC's Motion contains five reasons why the Commission should deny or grant alternative treatment to CG&E's Applications. The first three reasons, that CG&E should seek recovery through its pending gas base rate case, that recovery through the gas cost recovery (GCR) mechanism is improper, and that CG&E's Applications do not meet the standard necessary for the Commission to grant deferrals, each relate to

the denial of CG&E's Applications. The OCC reasoning is flawed in respect to each allegation.

The last two reasons submitted by the OCC relate to its alternative proposals for treatment and recovery of the gas moratorium costs. First, OCC believes that the Commission should verify the proper amount for recovery. CG&E agrees with this point and is prepared to demonstrate, on a customer-by-customer basis, the amount of additional cost attributable to the gas moratorium. Second, OCC suggests that CG&E must demonstrate its assumption of risk. CG&E agrees that it must assume the risk of recovery and believes that it has done so.

DISCUSSION:

I. CG&E properly chose not to include moratorium costs in its gas rate case Application and residential customers are better off if CG&E recovers moratorium costs through a separately tracked mechanism.

CG&E had no way of knowing the amount of gas moratorium costs when it filed its rate case Application with the Commission on July 31, 2001. At that time CG&E filed its rate case Application with a test period of calendar year 2001 and using three months of actual data and nine months of projected data. In Case No. 83-303-GE-COI on January 25, 2001, the Commission ordered its disconnect moratorium effective for a sixty-day period. The disconnect moratorium ended on March 26, 2001.

Due to notification requirements however, the effective end date for the disconnect moratorium was April 19, 2001. Additionally, the first payments of customers who accumulated arrearages due to the

moratorium were not due until the due date after the April billing cycle. For most residential customers that is sometime in May. Because many customers made partial payments and because it is difficult to separate normal arrearages from moratorium arrearages, CG&E did not, and could not, know the amount of incremental cost associated with the disconnect moratorium when it filed its rate case.

CG&E certainly could not know the amount of incremental cost associated with the disconnect moratorium when it issued the required public notices for its rate case on May 23, 2001. It is improper to seek a rate increase for amounts for which there has been no public notice. It is improper to notice amounts for which the applicant has no basis. As CG&E received customer payments and was able to separate the incremental costs associated with the disconnect moratorium, CG&E was able to put together its Application for moratorium cost recovery.

Finally, it would be detrimental to residential customers to recover the moratorium costs through base rates. The disconnect moratorium costs represent an extraordinary one time cost because of the Governor's and Commission's concern regarding the ability of residential customers to pay heating bills. The concern stemmed from a combination of colder than normal weather in November and December of 2000 and high natural gas prices. No disconnect moratorium is in effect for the current winter heating season. Yet, if CG&E recovered incremental moratorium costs through base rates, such rates would remain in effect until CG&E's

next rate case. Under that circumstance, customers would pay more in rates than the amount of costs incurred by CG&E. Further, customers could not receive the net benefit of a credit recognizing customer payments. CG&E's proposal seeks to match recovery with costs so that CG&E's recovery ends when it has recovered its incremental moratorium costs. CG&E would credit any additional revenues to GCR customers to lower the GCR rate. CG&E's proposal would result in no increase for customers for CG&E to recover its incremental moratorium costs, and would in fact result in a GCR rate decrease for residential GCR customers.

II. Recovery through CG&E's GCR mechanism is proper.

The Commission has clear statutory authority to allow gas disconnect moratorium cost recovery through a tracker. Ohio Rev. Code Ann. § 4929.11 (Baldwin 2002). Revised Code Section 4929.11 states that "[n]othing in the Revised Code prohibits, and the public utilities commission may allow, any automatic adjustment mechanism or device in a natural gas company's rate schedule that allows a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs. *Id.* That is precisely what CG&E is requesting the Commission permit in these cases.

The GCR mechanism is an appropriate and convenient device to use in this instance. The Commission has often set up separate cost

recovery mechanisms. The GCR and EFC are traditional cost recovery riders but there are others. CG&E's tariffs contain at least eight Commission approved riders to allow for cost recovery of specific items including excise tax, summer air conditioning service, PIPP, and main extensions.

Similarly, the Commission has used the GCR as a mechanism to allow for the recovery or refund of specific items. For example, in a recent Columbia Gas of Ohio (Columbia) GCR proceeding the Commission approved a stipulation, of which OCC was a signatory, which allows Columbia to recover transition costs through its GCR. CG&E's proposal, while very different than Columbia's, represents business as usual concerning the ability to isolate and recover specified costs through a newly created rider or an existing mechanism such as the GCR.

CG&E chose its GCR as an appropriate cost recovery mechanism because it believes that it may recover its incremental moratorium costs through an offset against revenues raised through management of its gas assets. Although not a gas purchase cost, the Commission has traditionally treated gas asset management revenues within GCR cases. Such cases have involved Dominion East Ohio, Columbia, Dayton Power & Light Company, and Vectren. The Commission should deny OCC's Motion and allow CG&E to use the GCR as an appropriate cost recovery tool.

III. CG&E's request for an accounting deferral meets the Commission's standard for granting such a deferral.

The standard set by the Commission to approve the creation of a deferral and therefore, a regulatory asset, on behalf of any public utility is a combination of Financial Accounting Standards Board (FASB) 71, the financial impact on the utility and whether the utility will exceed its authorized rate of return, any other applicable FASB or Commission ordered accounting procedure pursuant to its authority under R. C. 4905.13. *In re The Commission's Investigation into FASB Statement 106,* Case No. 92-1751-AU-COI (Finding and Order) (February 25, 1993). The Commission established the standard expressly for deferrals related to FASB Statement 106 but consistently applies that standard elsewhere. The standard advocated by the OCC in its Motion is incorrect.

The OCC found the standard of "urgent financial need" in Case No. 93-392-GE-AAM, the case in which CG&E requested, and the Commission granted, approval of FASB Statement 106 deferrals. OCC's Motion at 5. In that case CG&E alleged that the failure of the Commission to grant it FASB Statement 106 deferrals would result in "a severe, detrimental impact on the Company's financial position." CG&E made that allegation to comply with the Commission's Case No. 92-1751-AU-COI standard that there be a financial impact on it.

In this instance, CG&E meets the Commission's standard. If the Commission fails to grant the requested deferrals to CG&E, then CG&E will have to write off its costs associated with the Commission's

disconnect moratorium. The write off would occur because CG&E could not comply with FASB Statement 71 and demonstrate that "(a) it is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for ratemaking purposes; and (b) based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs." *In re The Commission's Investigation into FASB Statement 106*, Case No. 92-1751-AU-COI (Finding and Order at ¶ 7) (February 25, 1993). Because CG&E meets the Commission's standard to establish a deferral CG&E respectfully requests that the Commission deny OCC's Motion and grant CG&E its deferral of incremental gas moratorium costs.

IV. CG&E is requesting the proper amount of deferral and recovery.

CG&E agrees with the OCC that CG&E should recover only those costs that are the result of the Commission's disconnect moratorium. CG&E detailed its calculation of such costs in paragraph seven of its Application. The Commission has the audit authority to confirm CG&E's calculation.

CG&E avers that the disconnect moratorium is a unique event that has never been taken into account in CG&E's rates. Therefore, there are no base rate revenues to net against the disconnect moratorium costs. However, customers accrue arrearages for reasons other than the

disconnect moratorium. CG&E's calculation of moratorium costs does not include revenues related to those anticipated arrearages, only the incremental costs directly related to the moratorium have been included.

CG&E also believes that it is appropriate to track payments against such arrearages until April 30, 2002. A twelve month payment plan was the longest payment plan that CG&E offered customers at the time of the disconnect moratorium. Any customers that operate under an approved plan will have completed their payment obligation by April 30, 2002.

As previously discussed there are other reasons that customers accumulate an arrearage. It is appropriate that the extraordinary event of the disconnect moratorium end at some point in time so that payments of customers accrue toward the ordinary arrearages accounted for in rates. CG&E believes that if it has not received payment by April 30, 2002 for arrearages that resulted from the disconnect moratorium then it is unlikely to ever receive payment. Therefore, CG&E asserts that it is proper for the Commission to approve CG&E's Application and reject OCC's alternative approach regarding calculation of the gas moratorium costs.

V. CG&E is assuming all of the risk regarding moratorium cost recovery.

The OCC is correct that when the Commission issues an order that approves a division of revenue between the company and customers it often looks to see that the company assumes some portion of risk if it is to retain a greater than normal portion of revenues. In this instance

there is no clear precedent regarding the amount of revenues that CG&E should retain. The Commission, in prior cases, has approved retention of gas asset management revenues by a public utility of as much as 100% and as little as 15%.

In this instance, CG&E has followed the Commission's requested process. CG&E has met with the Commission and with OCC to keep both agencies aware of possible gas asset management revenues. CG&E has assumed the risk of guaranteeing GCR customers gas asset management revenues equivalent to the revenues that such customers have been credited over the most recent twelve-month period. There is no guarantee that CG&E will realize any incremental gas asset management revenues. Indeed, the amount of gas asset revenues that CG&E has realized on behalf of GCR customers has been in decline in recent years due to CG&E's efficient management of its transportation and commodity contracts.

CG&E is also assuming the risk that it can increase gas asset management revenues in amounts sufficient to recover the gas moratorium costs. CG&E is not asking for a rate increase from any customer but is depending on its ability to operate in a competitive market to gain revenues to avoid the need for any increase.

CG&E is also assuming the full amount of the risk of a failure regarding such gas asset management. If the arrangement fails and CG&E incurs costs beyond reasonable costs necessary to secure gas

transportation and supply, it is unlikely that the Commission will permit cost recovery, and CG&E has not sought such an assurance of recovery.

Residential customers are assuming no risk in this endeavor. Residential customers made no contribution toward Operation Thaw as Cinergy Corp. did. Residential gas customers are not being asked for an increase in rates to pay for the gas moratorium costs. Instead, residential customers are being asked to allow CG&E to recover the gas moratorium costs through new value created by CG&E.

CG&E's Application requires CG&E to assume more risk than any other natural gas company in the state and benefit GCR customers more than any other gas asset management revenue proposal of an Ohio natural gas company. CG&E believes that its proposal is fair to all concerned and asks that the Commission approve its Application.

CONCLUSION:

For the reasons stated above CG&E respectfully requests that the Commission approve its Applications and reject OCC's Motion to Deny or modify the Application.

Respectfully submitted,

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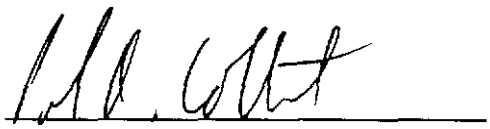
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the following either electronically or by first class U.S. mail, postage prepaid, upon the following, this 4th day of January, 2002.



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