

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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) Case No. 03-93-EL-ATA
Offer Pricing and to Establish an Alternative)
Competitive-Bid Service Rate Option Sub-)
sequent to the Market Development Period.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting) Case No. 03-2079-EL-AAM
Procedures for Certain Costs Associated with)
the Midwest Independent Transmission)
System Operator.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its) Case No. 03-2081-EL-AAM
Electric Transmission and Distribution System) Case No. 03-2080-EL-ATA
And to Establish a Capital Investment)
Reliability Rider to be Effective after the)
Market Development Period.)

ENTRY

The Commission finds:

- (1) The applicant, The Cincinnati Gas & Electric Company (CG&E), filed applications in Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, and 03-2080-EL-ATA (RSP case) to modify its nonresidential generation rates to provide for market-based standard service offer pricing and to establish an alternative competitive bid process subsequent to the end of the market development period, to permit it to defer costs and investments, and to establish a rider to recover certain capital investments.
- (2) On September 29, 2004, the Commission issued an opinion and order in these cases, adopting a stipulation, with modifications.
- (3) On November 23, 2004, the Commission issued an entry on rehearing, making certain modifications to its opinion and order.
- (4) On January 20, 2005, Constellation NewEnergy, Inc. (Constellation), filed a request for a declaratory ruling regarding an agreement (CG&E agreement) that CG&E is requiring to be signed by its

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nonresidential customers who desire to purchase their generation service from a competitive retail electric service (CRES) provider. Constellation claims that the CG&E agreement is intimidating and conflicts with the Commission's orders in three ways.

- (5) Constellation complains that the CG&E agreement, being ten pages long, is intimidating to potential shopping customers. CG&E contends that the Commission orders in these cases have required shopping customers either to provide evidence of a contract with a CRES provider or to sign an agreement with CG&E. Thus, CG&E argues that it is appropriate to ask shopping customers to sign the CG&E agreement.

- (6) The Commission finds that it is not unreasonable for CG&E to ask shopping customers to sign an agreement, if those customers do not provide CG&E with evidence of a CRES provider contract. That is, as CG&E points out, what our orders in these cases required. The real question, however, is whether notice from the CRES provider, in the form proposed by Constellation in Attachment A of its request for a declaratory ruling, is sufficient "evidence" of a CRES provider contract. The stipulation signed by most of the parties in these cases, which was approved with some modifications (unconnected to this issue), provides that a shopping customer must provide CG&E with "evidence of the required contract containing all of the terms specified above . . ." The specified terms include that the contract would "satisfy full capacity, energy, and transmission requirements associated with the consumer."¹ The notice proposed by Constellation sets forth precisely those facts, and states that the customer has contracted to receive that service through the end of 2008. Although CG&E states in its memorandum contra that this proposed notice form would not provide it with the necessary information, the Commission does not see that any necessary information is missing. Therefore, the Commission finds that the notice form proposed by Constellation is reasonable and adequate. If, on the other hand, a customer desiring to shop does not have a complying contract with a CRES provider, then it must sign an agreement with CG&E. In that event, an agreement such as the one proposed by CG&E would be acceptable, with modifications. However, the Commission finds that a shorter agreement would be preferable, so as not to unnecessarily deter the development of competition.

¹ A form of public notice which CG&E proposed using was reviewed by the Commission in an entry dated December 15, 2004. That notice included the requirement that an actual copy of an agreement with a CRES provider be supplied to CG&E by a shopping customer. The Commission did not discuss that statement in its entry. CG&E argues that the Commission therefore approved the statement. This is not the case. The Commission did not affirmatively approve CG&E's form of notice. This statement was one of many in the proposed notice that the Commission did not consider.

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- (7) Constellation argues that the CG&E agreement improperly requires shopping customers to agree not to buy firm generation service from CG&E through 2008. Constellation believes that the term "firm generation service" includes provider of last resort (POLR) services. It notes that the Commission specifically stated, in its opinion and order, that CG&E could not require customers to waive POLR service. CG&E points out that the Commission orders in these cases require shopping customers to agree to purchase firm generation service from a CRES provider through 2008.
- (8) The Commission believes that this issue can be resolved by modifying the CG&E agreement to provide that the potential shopper will purchase firm generation service from a CRES provider, rather than the current language stating that it will not purchase electric generation service from CG&E. The agreement may also make it clear that this does not include POLR service.
- (9) Constellation next argues that the rate-stabilized price under the market-based standard service offer should not be used as a "floor" on the incremental price that a shopping customer would pay upon a return to CG&E prior to the end of 2008. CG&E admits that the Commission is currently studying the appropriate methodology for calculating the return price and that it will amend the CG&E agreement to conform to the Commission's ultimate determination. The Commission finds that the CG&E agreement should state that the calculation methodology for the return price is currently being considered by the Commission and is subject to the Commission's determination. Subsequent to the Commission's resolution of the appropriate methodology for calculating the return price for shopping customers, any agreement that CG&E is using may be revised to set forth that determination.
- (10) Finally, Constellation argues that the CG&E agreement should not include an indemnification provision. The Commission agrees. CG&E contends that this clause is designed to recover incremental costs, so that those costs would not be passed on to nonshopping customers. However, this is the purpose for the incremental price that would be applied to returning, nonresidential customers before the end of 2008. No indemnification is necessary or authorized by the Commission.
- (11) CG&E is also concerned about the procedural status of this request by Constellation, arguing that the Commission is not authorized to issue declaratory rulings and has no jurisdiction over contract disputes. The Commission finds that this is merely a question regarding the proper implementation of its orders in these proceedings. Thus it has authority to determine the appropriate resolution of the issues.

It is, therefore,


ORDERED, That the form of notice proposed by Constellation is adequate and reasonable. It is, further,

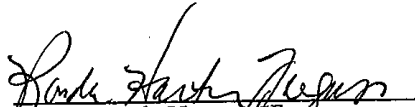
ORDERED, That an agreement, with modifications as required in this entry, may be required from those customers who do not provide either notice in substantially the form proposed by Constellation or, alternatively, a copy of a satisfactory CRES provider contract. It is, further,

ORDERED, That CG&E modify its agreement, as discussed in this entry. It is, further,

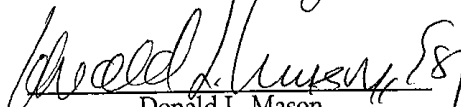
ORDERED, That a copy of this entry be served upon all parties of record.

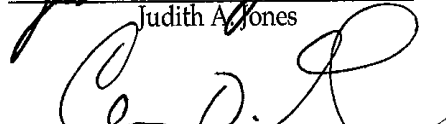
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

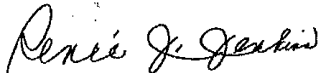
Donald L. Mason

Clarence D. Rogers, Jr.

JWK;geb

Entered in the Journal

FEB 09 2005



Renee J. Jenkins

Renee J. Jenkins
Secretary