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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to Modify)
Its Non-Residential Generation Rates to)
Provide for Market-Based Standard Service) Case No. 03-93-EL-ATA
Offer Pricing and to Establish an Alternative)
Competitively-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.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S MEMORANDUM
CONTRA TO THE APPLICATION FOR REHEARING OF THE
CINCINNATI GAS & ELECTRIC COMPANY**

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David C. Rinebolt
Counsel
Ohio Partners for Affordable Energy
231 West Lima Street
PO Box 1793
Findlay, OH 45839-1793
Tele: 419-425-8860
FAX: 419-425-8862
drinebolt@aol.com

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I. Introduction

On September 29, the Public Utilities Commission of Ohio ("Commission" or "PUCO") issued a Finding and Order in the above-referenced docket. The Finding and Order accepted a stipulation filed by The Cincinnati Gas & Electric Company ("CG&E") and signed by twelve other parties, adding several modifications to the initial stipulation.¹ As noted by the Commission, "[a]lthough not binding on the Commission, the terms of such agreements are accorded substantial weight."²

II. The Commission Finding and Order of September 29, 2004 is Just and Reasonable and in the Public Interest.

The Commission accepted the Stipulation proposed by just over one-half of the parties with a number of modifications. The modifications are as follows:

- (1) Commission approval for all changes in the amount or avoidability of the annual adjustable component ("AAC") of the prices and that such approval will consider cost savings as well as increases;³
- (2) Allowing the AAC to be avoidable for customers shopping in 2005;⁴
- (3) Eliminating the cap on the AAC increase;⁵

¹ Eleven parties did not sign the stipulation and many of them actively opposed significant portions of the agreement. The modifications made by the Commission, in many instances, rectified problems identified by parties opposing the stipulation, including OPAE.

² Finding and Order, Case No. 03-93-EL-ATA, p. 11, quoting *Consumers Counsel v. Pub.Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron V. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978).

³ Id., p. 32.

⁴ Id.

⁵ Id.

- (4) Increasing the percentage of nonresidential shopping customers who may avoid paying the Rate Stabilization Charge ("RSC") from 25 to 50 percent;⁶
- (5) Requiring Commission approval for all cost increases related to the recovery of fuel and economy power purchases;⁷
- (6) Permitting the deferral of certain distribution expenses incurred in 2004 and 2005 with regard to nonresidential customers only;⁸
- (7) Requiring compliance with the stipulation in CG&E's electric transition plan (Case No. 99-1658-EL-ETP, *et al.*) which authorizes the collection of transition charges from residential customers only through 2008 and continuation of the five percent discount on generation charges through 2005;⁹
- (8) Limits the calculation of incremental power cost for nonresidential shopping customers returning to CG&E to the costs incurred only by CG&E, not by its affiliates;¹⁰ and,
- (9) Other miscellaneous changes.

In many regards, these modifications address the issues raised by the non-signatory parties in this case. From OPAE's perspective, short of a binding requirement for a meaningful Competitive Bidding Process ("CBP"), the Commission's modifications reflect all of the issues raised in our Initial and Reply Briefs. The Commission has eliminated the automatic price escalators by requiring Commission review of AAC and fuel and purchases power costs.¹¹ The Commission has opted to include price savings in this

⁶ *Id.*, p. 19.

⁷ *Id.*, p. 17.

⁸ *Id.*, pp. 34-35.

⁹ *Id.*, pp. 36-37.

¹⁰ *Id.*, p. 35.

¹¹ OPAE concedes that only a 6% increase is automatic and that additional increases up to the 8% cap must be justified. Still, with three-quarters of the increase automatic, referring to the provision as an automatic escalator captures the spirit of the provision.

review, providing the appropriate balance from a customer standpoint. And, to equitably balance this revised approach with the need of CG&E shareholders, the Commission has removed any cap on the potential for rate increases. In the final analysis, these modifications will allow the Commission to evaluate CG&Es costs in a manner consistent with existing cost-of-service precedents, as urged by OP&E in its earlier pleadings, thus meeting the just and reasonable standard required for rates established under Chapter 4909, O.R.C. In the absence of a functional market, the Commission has no choice but to use the time-tested surrogate for a market – a cost-of-service based approach -- to price increases for generation.

The Commission has also upheld the law by requiring capped rates for distribution related expenses to be retained for residential customers through 2005. The PUCO clearly saw through the attempt by CG&E to accomplish via deferral what the law expressly prohibits – raising distribution rates during the Market Development Period (“MDP”). OP&E supports this outcome.

Finally, the Commission denied CG&E the authority to arbitrarily extend the collection of regulatory transition charges from residential customers for two additional years. To have permitted this extension would have violated the stipulation in Case No. 99-1658-EL-ETP, *et.al*. The record provided no justification for the additional collection other than to enhance the revenue flowing to CG&E. Rate certainty for a utility should not trump prior agreements. The Commission appropriately rejected the modification to the ETP stipulation.

These key modifications embraced by the Commission correct a number of errors in the stipulation, provide for just and reasonable rates, and are in the public interest.¹²

III. The Proposed Alternative Stipulation of CG&E is Unreasonable and Unlawful and should be Rejected.

In an apparently new procedural twist, CG&E has proposed an alternative stipulation as a component of its Application for Rehearing.¹³ However, to the extent that this alternative stipulation includes provisions already rejected by the Commission, and includes new provisions which directly benefit CG&E without providing any benefit to the ratepayers, it should be rejected.

The alternative stipulation proposed by CG&E reinstates the automatic escalator provisions of the AAC rejected by the Commission and eliminates consideration of cost savings by the Company.¹⁴ Reinstatement of this provision deviates from the cost-of-service analysis the PUCO is required to conduct under Section 4909.18, O.R.C. and cannot satisfy the requirement that rates be just and reasonable because it forecloses the consideration of both cost increases and decreases. CG&E's argument that the Commission

¹² CG&E specifically includes many of the modifications cited by OP&E in its The Cincinnati Gas & Electric Company Application for Rehearing, Case No. 03-93-EL-ATA, *et. al.*, (September 29, 2004), p. 12, omitting only the automatic price escalators and netting of costs.

¹³ The Commission accepted a similar procedural approach only once. See, *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service. Entry on Rehearing*, Case No. 94-987-GA-AIR, *et. al.*, (June 9, 2004).

¹⁴ CG&E in its alternative proposal suggests that a netting occur within "actual AAC, fuel, emissions allowance and power purchases costs", but that other cost increases or decreases in "unrelated cost categories" be excluded from consideration. The Cincinnati Gas & Electric Company Application for Rehearing, p. 13. The Commission should reserve the right to include all appropriate costs and expenses in this review.

cannot regulate a Market Based Standard Service Offer ("MBSSO") is fundamentally flawed. The MBSSO required by Section 4928.14, O.R.C. is inherently a regulated service and is required to be offered by electric distribution utilities ("EDUs"). The Company is asking permission to include various charges and trackers in the MBSSO. This is no difference than having the Commission annually compute these costs. In the final analysis, it is appropriate for the Commission to consider a netting of savings and costs of all costs; thus, this provision should be rejected.

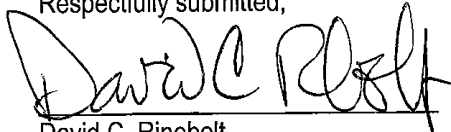
The alternative stipulation also incorporates two entirely new charges, the infrastructure maintenance fund ("IMF") and a system reliability tracker ("SRT"). The Company characterizes the latter as 'transparent' and only hints at the function of the former. Neither charge appears to provide any benefit to ratepayers, though they certainly provide revenue benefits to CG&E over an above the current Commission Finding & Order. To the extent that the initial ruling provides a just and reasonable outcome, these provisions can only benefit CG&E's financial 'stability' without a corresponding benefit to customers and should be rejected.

IV. Conclusion

The Finding and Order in this case continues the process of fleshing out the Rate Stabilization Plan ("RSP") concept, and OPAE recognizes the dilemma faced by the Commission. An effectively competitive market has not evolved. The General Assembly has not acted to modify SB 3. Requiring utilities to submit RSPs to achieve rate certainty for customers, revenue

certainty for the utility and the continued development of the competitive market is an appropriate response to this dilemma. The Commission's Finding and Order in this proceeding meets these requirements, with the exception of requiring a CBP, and is just and reasonable. CG&E's alternative stipulation should be rejected because it seeks to reinstate objectionable provisions of the initial stipulation and adds additional new charges which do not reflect costs caused by ratepayers.

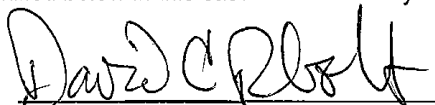
Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: drinebolt@aol.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Ohio Partners for Affordable Energy were served by e-mail and by regular U.S. Mail, postage prepaid, upon the parties of record identified below in this case on this 8th day of November, 2004.



David C. Rinebolt, Esq.

Paul Colbert
Cinergy Corporation
155 East Broad St.
Columbus, OH 43215

Thomas O'Brien
Bricker and Eckler
100 South Third St.
Columbus, OH 43215

David F. Boehm
Boehm, Kurtz & Lowry
36 E. Seventh St., Suite 2110
Cincinnati, OH 45202

Shawn P. Leyden
PSEG Energy Resources &
Trade
80 Park Plaza, 19th Floor
Newark, NJ 07102

Richard Sites
Ohio Hospital Association
155 E. Broad St., 15th Floor
Columbus, OH 43215

Mary W. Christensen
Christensen & Christensen
401 North Front St., Suite 350
Columbus, OH 43215-2499

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad St., 9th Floor
Columbus, OH 43215

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh St., Suite 2110
Cincinnati, OH 45202

W. Jonathan Airey
Vorys, Sater, Seymour & Pease
PO Box 1008
Columbus, OH 43216-1008

Dane Stinson
Bailey Cavaleri
One Columbus
10 W. Broad St., Suite 2100
Columbus, OH 43215

Noel M. Morgan
Legal Aid Society of Cincinnati
215 E. Ninth St., Suite 200
Cincinnati, OH 45202

Jeffrey Small
Ohio Consumers' Counsel
One Columbus
10 W. Broad St., Suite 1800
Columbus, OH 43215

Samuel C. Randazzo
McNees, Wallace & Nurick
21 East State Street
Columbus, OH 43215

M. Howard Petricoff
Vorys, Sater, Seymour & Pease
PO Box 1008
Columbus, OH 43216-1008

Craig G. Goodman
National Energy Marketers
Assoc.
3333 K Street, NW, Suite 110
Washington, DC 20007

Barth E. Royer
Judith B. Sanders
Bell, Royer & Sanders
33 South Grant Ave.
Columbus, OH 43215

Arthur E. Korkosz
FirstEnergy Solutions Corp.
76 South Main St.
Akron, OH 44308

Evelyn R. Robinson
Green Mountain Energy
Company
5450 Frantz Road, Suite 240
Dublin, OH 43016