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PUCO

IN THE SUPREME COURT OF OHIO

No. 00-519

The Cincinnati Gas and Electric Company,	:	No. <u>00-519</u>
	:	
Appellant,	:	Appeal from the
	:	Public Utilities Commission of
	:	Ohio
v.	:	
	:	Public Utilities Commission of
The Public Utilities Commission of Ohio,	:	Ohio,
	:	Case No. 98-595-GA-COI
	:	
Appellee.	:	

**NOTICE OF APPEAL  
OF  
THE CINCINNATI GAS & ELECTRIC COMPANY**

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**FILED**  
  
MAR 20 2000  
  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

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**Notice of Appeal  
Of  
The Cincinnati Gas & Electric Company**

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Appellant, The Cincinnati Gas & Electric Company (CG&E), hereby gives notice of its appeal, Pursuant to R.C. 4903.11 and 4903.13, to the Supreme Court of Ohio from a Finding and Order of the Public Utilities Commission of Ohio (Commission) entered on December 2, 1999, and the Commission's subsequent Entry on Rehearing entered on January 20, 2000, in the Commission's Case No. 98-595-GA-COI.

For the purpose of filing this appeal, CG&E was and is a party of record in PUCO Case No. 98-595-GA-COI and timely filed its Application for Rehearing of the Commission's December 2, 1999, Finding and Order on December 30, 1999, in accordance with R.C. 4903.10. CG&E's Application for Rehearing was denied with respect to the issues on appeal herein, by Entry on Rehearing entered on January 20, 2000.<sup>1</sup>

CG&E complains and alleges that the Commission's December 2, 1999, Finding and Order and January 20, Entry on Rehearing in Case No. 98-595-GA-COI are unlawful, unjust and unreasonable in the following respects as set forth in CG&E's Application for Rehearing:

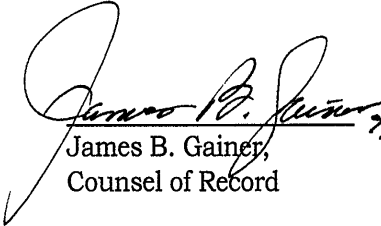
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<sup>1</sup> CG&E filed an Application for Rehearing in this case on February 22, 2000, from the Commission's January 20, 2000, Entry on Rehearing. In the event that the Commission rules on CG&E's February 22, 2000, Application for Rehearing, and CG&E files a subsequent Notice of Appeal, CG&E shall move to consolidate the two cases.

- I. The Commission's Finding and Order is unlawful, unjust and unreasonable in its entirety because the Commission committed an abuse of process by failing to implement proper generally applicable rules pursuant to R.C. 111.15 or failing to afford CG&E a hearing before ordering CG&E to amend its tariffs pursuant to R.C. 4905.26 and 4905.37.
- II. The Commission's Opinion and Order is unlawful, unjust and unreasonable because the Commission lacks the jurisdiction to require CG&E to assume debt of unregulated third parties, gas marketers' receivables, by further requiring CG&E to enter an unregulated business against its business judgement.

Wherefore, CG&E respectfully submits that the Commission's December 2, 1999, Finding and Order and January 20, 2000, Entry on Rehearing in Case No. 98-595-GA-COI are unlawful, unjust and unreasonable and should be reversed. In order to remedy the errors complained of herein the Court should void the Commission's December 2, 1999, Finding and Order and January 20, 2000, Entry on Rehearing in Case No. 98-595-GA-COI and remand to the Commission with instructions that if the Commission decides it is necessary to change CG&E's existing customer choice program that the Commission make such changes through a statutorily authorized procedure limited to matters within the Commission's jurisdiction.

Respectfully submitted,



James B. Gainer,  
Counsel of Record

Counsel for the Appellant  
The Cincinnati Gas & Electric  
Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Stipulation and Recommendation was served by regular U.S. mail, postage prepaid, or hand delivered, upon the following parties of record, this 20<sup>th</sup> day of March, 2000.



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