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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Establishment of Electronic)	
Exchange Standards and Uniform Business)	Case No. 00-813-EL-EDI
Practices for the Electric Utility Industry)	
In the Matter of the following Applications)	
To Establish Alternatives to Minimum)	
Stay Restrictions for Residential and)	
Small Commercial Customers:)	
Monongahela Power Company)	Case No. 01-1817-EL-ATA
Dayton Power and Light Company)	Case No. 01-1938-EL-ATA
The Cincinnati Gas & Electric Company)	Case No. 01-2053-EL-ATA
Columbus Southern Power Company)	Case No. 01-2097-EL-ATA
Ohio Power Company)	Case No. 01-2098-EL-ATA
Ohio Edison Company)	Case No. 01-2677-EL-ATA
Toledo Edison Company)	Case No. 01-2678-EL-ATA
Cleveland Electric Illuminating Company)	Case No. 01-2679-EL-ATA

**REPLY TO
CINCINNATI GAS & ELECTRIC COMPANY'S
MEMORANDUM CONTRA TO THE INDUSTRIAL
ENERGY USERS-OHIO'S MOTION TO INTERVENE**

Samuel C. Randazzo
Kimberly W. Bojko
MCNEES WALLACE & NURICK LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653

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Attorneys for Industrial Energy Users-Ohio

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ENERGY USERS-OHIO'S MOTION TO INTERVENE**

On June 11, 2002, pursuant to the Attorney Examiner's directive on June 7, 2002, the Industrial Energy Users-Ohio ("IEU-OH") filed a Motion to Intervene and Memorandum in Support to participate in the hearing scheduled by the Public Utilities Commission of Ohio ("Commission") for June 18, 2002.¹ On June 14, 2002, the Cincinnati Gas & Electric Company ("CG&E") filed a Memorandum Contra IEU-OH's Motion to Intervene ("CG&E's Memo Contra IEU-OH"), arguing that IEU-OH lacked interest in these proceedings and that IEU-OH was barred from re-litigating this issue.

¹ See Commission's May 16, 2002 Entry on Rehearing at 5.

Pursuant to Rule 4901-1-12, Ohio Administrative Code, IEU-OH hereby replies to CG&E's Memo Contra IEU-OH.

CG&E states that the purpose of the proceedings is limited to residential and small commercial customers; however, CG&E's testimony filed in these proceedings is not so narrow. As stated in IEU-OH's Motion to Intervene, the testimony seems to discuss "broad policy issues [that] reach beyond the purview of residential and small commercial customers and include the interests of all customers." IEU-OH's Motion to Intervene at 2.² Given that CG&E's testimony speaks to these broad policy issues, it is disingenuous for CG&E to now insist that other parties be prohibited from participating in a proceeding that may discuss those policy issues raised by CG&E.³ Nonetheless, to the extent that these broad policy issues affect all customers, IEU-OH does in fact have a direct, real, and substantial interest in these proceedings.

Additionally, CG&E incorrectly assumes that IEU-OH is challenging the minimum stay rule contained in the transition plan stipulation. IEU-OH made no such assertion in its Motion to Intervene. IEU-OH moved to intervene in these proceedings upon the directive of the Attorney Examiner, in order to participate in and protect its interests at the hearing. IEU-OH has been an active participant in these proceedings since the inception of the OSPO Taskforce and would like to continue its participation. It is because of IEU-OH's direct and substantial interest in these proceedings that IEU-OH

² Also, see OCC's Motion to Strike Testimony of Kenneth Gordon at 6-8 (June 12, 2002) ("OCC's Motion to Strike"). Similarly, OCC recognizes that CG&E's testimony discusses broader policy issues, including cost recovery and the reopening of the stipulation submitted in the transition plan proceeding. *Id.* at 7.

³ In fact, CG&E filed a Memorandum Contra to OCC's Motion to Strike asserting that the Commission should permit any testimony or evidence "having any tendency" to be relevant to the proceeding. See CG&E's Memo Contra OCC's Motion to Strike at 2-3 (June 14, 2002). This is exactly why IEU-OH is concerned. CG&E cannot be allowed to put on testimony that discusses broad policy issues that may or may not be within the scope of the hearing, and then argue that IEU-OH does not have standing to intervene because its interests lie outside of the scope of the hearing.

was an active participant in the OSPO Taskforce and was a signatory to the OSPO Stipulation. IEU-OH continues to have an interest in the proceedings, particularly if the outcome involves any modifications to the OSPO Stipulation or the transition plan stipulation referenced by CG&E.

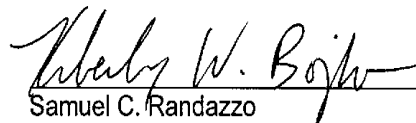
Furthermore, as noted in OCC's reply to CG&E, CG&E improperly applies the legal principal of *res judicata* in this proceeding.⁴ To support its argument, CG&E states that "[t]he doctrine of *res judicata* prohibits the IEU from **raising this minimum stay issue** before the Commission a second time." CG&E Memo Contra IEU-OH at 7 (emphasis added). However, IEU-OH did not raise the minimum stay issue in its Motion to Intervene. Additionally, IEU-OH did not request that the proceeding be re-opened and that a hearing be held on this issue. To the contrary, the OSPO proceeding has been on-going and the instant hearing established to discuss the minimum stay issue was initiated by the Commission upon the utilities' requests. See Commission's May 16, 2002 Entry on Rehearing at 5. Clearly, *res judicata* does not apply in this instance.

For the foregoing reasons and as demonstrated in IEU-OH's Motion to Intervene and Memorandum in Support, IEU-OH has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. IEU-OH believes that its participation in these proceedings will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings. The interest of IEU-OH will not be adequately represented by other parties to the proceedings and, as such, IEU-OH is entitled to intervene in

⁴ See OCC's Reply to CG&E's Memorandum Contra (June 12, 2002).

these proceedings with the full powers and rights granted, by the Commission specifically, by statute and by the provisions of the Ohio Administrative Code, to intervening parties.

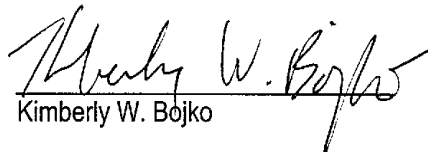
Respectfully submitted,



Samuel C. Randazzo
Kimberly W. Bojko
MCNEES WALLACE & NURICK LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply to Cincinnati Gas & Electric Company's Memorandum Contra to the Industrial Energy Users-Ohio's Motion to Intervene* was served upon the following parties of record this 17th day of June 2002, via first class mail, postage prepaid, or hand-delivered. I also certify that a copy of the foregoing document was served on all other OSPO participants by sending a copy of the document to the OSPO ListServe server by electronically transmitting the document to ospo@pucolists.state.oh.us this 17th day of June 2002.


Kimberly W. Bojko

James W. Burk
Ohio Edison Company
76 South High Street
Akron, OH 44308

Marvin Resnik
American Electric Power
Service Corporation
1 Riverside Plaza
Columbus, OH 43215

Gary A. Jack
Allegheny Power
1310 Fairmont Avenue
Fairmont, WV 26554

Edward Rizer
Dayton Power & Light Company
1065 Woodman Dr.
Dayton, OH 45401

Janine L. Migden
Hahn Loeser & Parks
1050 Fifth Third Center
21 East State Street
Columbus, OH 43215

Paul Dwyer
Exelon Energy
2600 Monroe Blvd.
Norristown, PA 19403

David Rinebolt
Ohio Partners for Affordable
Energy
P.O. Box 1793
Findlay, OH 45839-1793

Jeffrey Small
Ohio Consumers' Counsel
10 West Broad Street
18th Floor
Columbus, OH 43215-3485

John Finnigan, Jr.
Michael J. Pahutski
Cinergy Corp.
139 East 4th Street
P.O. Box 960
Cincinnati, OH 45201

James Gainer
Vice President & General
Counsel Regulated Businesses
Cincinnati Gas & Electric Co.
139 Fourth Street, Room 25 ATII

Paul Colbert
Attorney at Law
Cincinnati Gas & Electric Co.
155 East Broad Street, 21st Floor
Columbus, OH 43215

John Smart
Ohio Consumers' Counsel
10 W. Broad Street,
18th Floor
Columbus, OH 43215

M. Howard Petricoff
Vorys, Sater, Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008

Sally W. Bloomfield
Bricker & Eckler
100 South Third Street
Columbus, OH 43215

Gregory K. Lawrence
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, DC 20005

Wanda M. Schiller
Strategic Energy LTS.
Two Gateway Center
Pittsburgh, PA 15222-1458

Ivan L. Henderson
Assistant Director of Law,
City of Cleveland
601 Lakeside Ave. E.
Room 106
Cleveland, OH 44114-1077

Craig G. Goodman
National Energy Marketers Association
3333 K Street, NW, Suite 425
Washington, DC 20007

Larry Friedeman
Columbia Energy
136 N. Summitt Street
Industry Square, Suite 211
Toledo, OH 43604

Jason S. Gifford
GreenMountain.com Company
55 GreenMountain Drive
South Burlington, VT 05403