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**VIA HAND DELIVERY**

September 2, 2010

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

RECEIVED

SEP 02 2010

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2010-00146

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of the *Responses of Duke Energy Kentucky, Inc. to Commission Staff's Second Set of Data Requests and Responses of Duke Energy Kentucky, Inc. to Interstate Gas Supply Inc., Southstar Energy Services, LLC. And Vectren Source's Second Set of Data Requests* in the above captioned case.

Please date-stamp the extra two copies of the filing and return to me in the enclosed envelope.

Sincerely,

  
Kristen Cocanougher

cc: Parties of record





RECYCLED PAPER MADE FROM 100% POST CONSUMER CONTENT

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**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**Staff Second Set Data Request**  
**Date Received: August 20, 2010**

**STAFF-DR-02-001**

**REQUEST:**

Refer to Duke Energy Ohio, Inc.'s ("Duke Ohio") Full Requirements Aggregation Service tariff provided in response to Item 1 of the Commission Staff's First Information Request ("Staff's First Request"). Sheet No. 44.9 provides the definition of "Supplier". Describe the Public Utility Commission of Ohio's certification process for the provision of retail natural gas service pursuant to this tariff.

**RESPONSE:**

The Public Utility Commission of Ohio's (PUCO) certification process can be found on the PUCO website at <http://www.puco.ohio.gov/> by selecting "Rules" from the menu on the left side of the page, then selecting the hyperlink "PUCO Rules by Chapter" near the top of the page, then selecting "Chapter 4901:1-27 Minimum Requirements for Competitive Retail Natural Gas Service Certification". The PUCO certification process can also be viewed on the LAWriter Ohio Administrative Code website at <http://codes.ohio.gov/oac/4901%3A1-27>.

Chapter 4901:1-27 of the Ohio Administrative Code requires that any retail natural gas supplier that intends to provide a competitive retail natural gas service in Ohio must obtain a certificate to operate from the PUCO before commencing operations. This chapter on certification provides details on the application process, required application attachments (e.g. technical, managerial, and financial information, affidavits, etc.), application approval/denial, annual regulatory assessment based upon annual report of gross revenue, financial security, certification renewal process, notification of material changes in business, transfer or abandonment of a certificate, and the process for certification suspension, rescission, and conditional rescission.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky  
Case No. 2010-00146  
Staff Second Set Data Request  
Date Received: August 20, 2010**

**STAFF-DR-02-002**

**REQUEST:**

Refer to the response to Item 2 of Staff's First Request. With the understanding that Duke Ohio's program has evolved over time, that Duke Kentucky's size and environment are different, and that any program of Duke Kentucky's would be similar to the Ohio program, explain why Duke Kentucky has not offered a retail choice program to small-volume customers similar to the Duke Ohio program.

**RESPONSE:**

Duke Energy Ohio's retail choice program was introduced on a pilot basis in 1995, and program implementation costs were borne over approximately 360,000 gas customers that Duke Energy Ohio serves. Duke Energy Kentucky's customer base is approximately 90,000. Based on Duke Energy Kentucky's significantly smaller customer base to spread costs over and assuming similar participation levels as seen in Duke Energy Ohio's service territory, we have not pursued a retail choice program in Kentucky. Duke Energy Kentucky is aware of only very limited interest expressed in retail choice by Kentucky consumers. Unfortunately, no call logs are formally kept to capture this type of customer inquiry.

**PERSON RESPONSIBLE:** B. Mitchell Martin





**Duke Energy Kentucky  
Case No. 2010-00146  
Staff Second Set Data Request  
Date Received: August 20, 2010**

**STAFF-DR-02-003**

**REQUEST:**

Refer to the response to Item 3 of Staff's First Request. Clarify whether the \$9.25 and \$8.33 amounts are on a monthly or annual basis.

**RESPONSE:**

The \$9.25 and \$8.33 amounts that interviewees indicated as additional amounts they would be willing to pay to assure a stable price was actually for a typical January bill. The survey question was worded as follows:

Assume your typical January bill is \$160. How much more would you be willing to spend to keep your bill constant for January very close to the \$160 level, instead of allowing it to vary between \$120 and \$210 from year to year?

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky  
Case No. 2010-00146  
Staff Second Set Data Request  
Date Received: August 20, 2010**

**STAFF-DR-02-004**

**REQUEST:**

Refer to Duke Kentucky's response to the initial data request of the Retail Energy Supply Association. Clarify whether Duke Ohio offers Residential Firm Transportation service voluntarily, or if such programs are mandated in Ohio, either by commission order or act of the legislature.

**RESPONSE:**

See Attachment Staff DR-02-004. In 1995 Duke Energy Ohio filed a gas rate case which in response to directive from the Public Utilities Commission of Ohio, addressed residential FT service through a settlement agreement. The program was approved as a pilot in the attached Order. Then, in 2001, the Ohio legislature enacted Revised Code 4929 which legislatively imposed a state policy to facilitate gas customer choice. That code, R.C. 4929.02(11), facilitates additional choices for the supply of natural gas for residential consumers including aggregation. Utilities could then file alternative rate structures whereby commodity sales were separate and consumers could choose an alternative supplier.

**PERSON RESPONSIBLE:** N/A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
Cincinnati Gas & Electric Company for an )  
Increase in Its Rates for Gas Service to All ) Case No. 95-656-GA-AIR  
Jurisdictional Customers. )

SUPPLEMENTAL OPINION AND ORDER

The Commission, coming now to consider the stipulation and recommendation filed March 12, 1997 regarding interruptible transportation balancing services, the stipulation and recommendation filed May 19, 1997 regarding firm transportation tariffs for small commercial and residential customers, and the various comments and pleadings submitted regarding both of the stipulations, hereby issues this supplemental opinion and order.

HISTORY OF THE PROCEEDINGS

The Commission's December 12, 1996 opinion and order in this case directed The Cincinnati Gas & Electric Company (CG&E or company) to, among other things, work with independent marketers and other interested parties to create acceptable interruptible balancing service (IBS) tariffs and submit those tariffs to the Commission for approval. The opinion and order also directed CG&E to submit modified firm transportation (FT) and residential firm transportation (RFT) tariffs which addressed, among other things, open sourcing for marketers, the commercial viability of transportation programs, and potential stranded costs.

I. INTERRUPTIBLE BALANCING SERVICE STIPULATION

On March 12, 1997, after extensive negotiations, CG&E and a number of other intervenors submitted a joint stipulation and recommendation (Attachment 1) that requests Commission approval of various tariffs that are attached to the stipulation in order to satisfy the Commission's directive in the opinion and order. The proposed IBS tariffs (IBS is a new service) include interruptible transportation service (Rate IT), pooling service for interruptible transportation (Rate AS), interruptible daily balancing service (Rate IDBS), interruptible monthly balancing service (Rate IMBS), and gas trading service (Rate GTS). In addition to CG&E, the agreement is signed by the Cincinnati Energy Consumers (CEC), AK Steel Company, GE Aircraft Engines, the Ohio Council of Retail Merchants, Enron Capital & Trade Resources Corp. (Enron), Miami Valley Resources, Inc., and Energy Alliances, Inc. (the signatory parties).<sup>1</sup>

In addition to requesting approval of the tariffs attached to the stipulation, the signatory parties recommend that the IBS tariffs be made available to all customers.

<sup>1</sup> CEC and Enron did not support the proposed "Rate GTS" tariff and reserved the right to file comment regarding that tariff.

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receiving service under Rate IT and for aggregators/pool operators designated by such customers to manage gas supplies on their behalf. The agreement also provides that CG&E shall be held harmless with respect to the applicability of the IBS tariffs and the level of revenue collected under the tariffs. The parties further agree that the level of revenue generated by the IBS tariffs, and the corresponding credit to gas cost recovery (GCR) customers, may not be adjusted retroactively to include any imputed revenues. The stipulation is intended to be dispositive of any balancing service issues raised in the company's 1995 and 1996 GCR cases (Case Nos. 95-218-GA-GCR and 96-218-GA-GCR). Finally, if CG&E or any intervenor reasonably believes that the IDBS or IMBS services are not operating as intended (including imposing undue costs on the company's GCR mechanism), the parties agree to discuss and consider modifications to the appropriate tariffs. Each of the individual tariff proposals is discussed below.

### Interruptible Transportation (Rate IT)

CG&E currently has an IT tariff in place but the company does not separately charge pool operators or IT customers for balancing services. Under the proposed "Rate IT" tariff, customers with a minimum usage of 10,000 CCF per month may enter into a contract with CG&E for interruptible service at a rate of \$0.0544 per CCF, plus an administrative charge of \$595.86 per month. Service will be provided on a "best efforts"<sup>2</sup> basis, subject to interruption to protect the integrity of service provided to residential and general service customers. Under the proposed tariff, CG&E would have the right to flex the commodity rate downward, to no less than \$0.030 per CCF, in order to meet competition from alternative fuels or other sources of gas. Other provisions of the IT tariff include: charges for unauthorized deliveries at the general service rate for failure to comply with a requested interruption; monthly throughput under Rate IMBS will be billed directly to end-use customers while other balancing charges, including "cash out" charges, will be billed to the "pool operator"; pool operators must notify CG&E of required gas quantities at least one day preceding the day transportation nominations are due to the interstate pipelines; human needs, public welfare, and school customers must purchase standby service, or have alternative fuel capability, in order to take service under this rate; IT customers are responsible for installing automatic meter reading equipment; and the primary term of the contract for this service will be a minimum of one year.

### Pooling Service for IT Customers (Rate AS)

The proposed "Rate AS" tariff is designed to provide guidelines for pooling service associated with the IT service. Customers must choose whether they will operate as their own pool operator or choose a pool operator from an approved list of operators that have signed interruptible transportation pooling agreements with CG&E. Pool

<sup>2</sup> "Best efforts" is defined in the tariff as "the right, at any time, to curtail or interrupt the delivery or transportation of gas under this tariff when, in the judgment of the Company, such curtailment or interruption is necessary to enable the Company to maintain deliveries to higher priority customers or respond to any emergency" (Proposed P.U.C.O. Gas No. 18, Sheet No. 51.9, page 3 of 5).

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operators are responsible for responding to operational flow orders, daily or monthly balancing, monthly "cash outs", and payment of any penalty charges (exclusive of penalties associated with an individual customer's failure to interrupt when ordered to do so by the company).

### **Interruptible Daily Balancing Service (Rate IDBS)**

The proposed "Rate IDBS" tariff provides for balancing service to qualifying IT customers and pool operators on days when no "operational flow orders" (OFO)<sup>3</sup> have been issued. On days when OFOs have been issued, pool operators must operate on a "gas-in equals gas-out" basis, with overrun/underrun charges assessed in accordance with the "Charges for Unauthorized Deliveries" provision of the Rate IT tariff. On nonOFO days, a pool operator's failure to balance gas deliveries and usage on CG&E's system would be considered an election by default to purchase balancing service under Rate IDBS. In order to minimize balancing service requirements, pool operators are encouraged to participate in the company's inter-pool imbalance trading opportunities and related electronic bulletin board (EBB) services. Imbalance trades or transfers made through the company's EBB must be completed within four days from the date the trade or transfer applies (subject to fees listed in the Rate GTS tariff). IT pool operators have primary responsibility for balancing aggregated supplies and deliveries on a daily basis. Customers/pool operators taking balancing service under this tariff would be charged on a sliding scale based on the extent of the aggregated overrun/underrun as follows: 0 to 5 percent (overrun/underrun) @ \$0.0350 per Mcf; 5 to 20 percent @ \$0.1750 per Mcf; 20 to 40 percent @ \$0.2150 per Mcf; 40 to 60 percent @ \$0.2900 per Mcf; 60 to 80 percent @ \$0.4950 per Mcf; and greater than 80 percent @ \$1.575 per Mcf. Pool operators will have their end-of-month imbalances "cashed out" to zero imbalance each month.<sup>4</sup>

### **Gas Trading Service (Rate GTS)**

The proposed "Rate GTS" tariff would impose a \$5.00 fee for each transfer of gas supplies from one pool to another, on a specific gas day, pursuant to arrangements made by pool operators to purchase, sell, or trade gas supplies. Transactions under this provision are considered completed when the pool operators on both sides of the transaction key their acceptance into the company's EBB. Any dollar payments, receipts, or exchanges of other consideration between the parties to such transactions are considered outside the scope of the tariff and must be completed between the parties.

<sup>3</sup> OFO is defined as "a directive issued by the company to a pool operator requiring such pool operator to deliver daily gas quantities into the Company's designated receipt points in quantities that match their pool's actual daily measured usage, or in quantities consistent with those requested by the Company" (Proposed P.U.C.O. Gas No. 18, Sheet No. 56, page 1 of 2). OFOs will be issued by the company for operational reasons only, and not for economic reasons.

<sup>4</sup> For purposes of cashing out monthly imbalances, "over-deliveries/under-deliveries" are defined as "monthly deliveries into the Company's city gate stations plus the prior month's carryover volume that exceed/are less than the pool's aggregated customers' metered usage for the month, as adjusted for shrinkage back to the city gate" (Proposed P.U.C.O. Gas No. 18, Sheet No. 56, page 2 of 2).

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### Interruptible Monthly Balancing Service (Rate IMBS)

The proposed "Rate IMBS" tariff provides a "best efforts" interruptible monthly balancing service with only a general obligation to balance daily pool usage with pool deliveries. No daily imbalance charges or penalties would be assessed to pool operators for failure to balance on a daily basis, except on days when OFOs have been issued. Pool operators are required, however, to work with the company in a good faith manner to respond to both formal and informal system management requests, and to strive to maintain relative daily balancing on the system throughout the course of the month. Under the terms of this tariff, the company would have the right to limit or terminate the availability of this service to pool operators that are "guilty of excessive abuse of the system; i.e., engaging in extreme and/or continued violations of the tariff terms and conditions including this general balancing requirement" (Proposed P.U.C.O. Gas No. 18, Sheet No. 58, Page 1 of 3).

For purposes of administering the tariff, the daily and monthly usages of all customers within a pool will be combined into a single daily/monthly pool usage number, which will be matched against the pool operator's total daily/monthly deliveries to its interruptible transportation pool. IT customers who elect this monthly balancing service have three options. Under the first option, throughput over a tolerance level of 5 percent (May through November) to 7 percent (December through April) would be charged at \$0.015 per Mcf. Option 2 provides seasonal tolerance levels of 6 to 8 percent at \$0.020 per Mcf and Option 3 has seasonal tolerance levels of 8 to 10 percent at \$0.025 per Mcf. For purposes of billing, net monthly imbalances would be calculated based on the sum of: actual deliveries; imbalance trades; unauthorized daily or monthly OFO overrun/underrun volumes; imbalance carryover; minus actual metered usage on an aggregated pool basis, as adjusted for unaccounted for losses. The end-of-month cash-out charges for volumes over/under delivered outside of the pool operator's option tolerance levels will be based on the same definitions and criteria described above for IDBS service.

### Enron's Comments

On March 24, 1997 Enron submitted comments supporting the stipulation and requesting modification of one of the proposed tariffs.<sup>5</sup> Enron supports adoption of the tariffs for Rate IT, Rate AS, Rate IDBS, and Rate IMBS as reasonable compromises between the parties to achieve the goal of implementing aggregation of gas customers on the CG&E system. Enron does not support the Rate GTS tariff which allows pool operators to trade gas between pools for a \$5 administrative charge. Enron contends that, because the number of pool operators is so small, it is not reasonable to require that all trade transactions be completed through the company's electronic bulletin board. Enron argues that, for now, trades should be permitted by telephone or fax in order to recognize situations where multiple pools are needed to fill the needs of a deficient

<sup>5</sup> On March 31, 1997, CEC submitted a letter supporting Enron's comments and indicating that it would separately file individual comments of its own.



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pool. Enron claims that the proposed GTS tariff would not permit a three or more party transaction because the company's EBB allows trades to occur between only two pools. Enron is also concerned with the definition of a "transaction" that is subject to the \$5 trading fee. Enron suggests that only one fee should be assessed for transactions that are part of a single posting and acceptance, even if the gas associated with the transaction is delivered over several days. The proposed tariff requires that the \$5 fee be charged for each transaction for each "gas day".

#### Staff's Comments

On April 7, 1997, the staff of the Commission filed comments regarding the IBS tariffs and the stipulation. The staff's comments expressed opposition to the "Competitive Flexibility" section of the proposed Rate IT tariff. Under this provision, CG&E would be permitted to flex the applicable rate downward, to no less than \$0.030 per CCF, in order to meet competition from competitive sources. The staff's primary concern is with the second part of the provision which states that "[t]he decision to charge a lower rate will be made by the Company based on its interpretation of competitive conditions." The staff argues that this provision of the tariff is at odds with the Commission's statutory responsibility, pursuant to Section 4905.31, Revised Code, to review and approve all special contract arrangements. The staff also contends that allowing CG&E the sole discretion to flex its rates undermines the Commission's long-standing policy of maintaining public disclosure of documents.

#### OCC's Comments

On April 18, 1997, the Office of Consumers' Counsel (OCC) filed comments and a request for hearing regarding the IBS stipulation. Although OCC was a party to the IBS negotiations, it did not sign the agreement. OCC raises several objections to the stipulation. First, OCC argues that the proposed IBS tariffs are not mandatory and, therefore, the potential exists that IT customers could choose not to utilize any balancing service. If IT customers continue to overdeliver their demand, without being subject to balancing charges, OCC contends that GCR customers will continue to subsidize interruptible transportation customers.

OCC also argues that the proposed IBS rates are inadequate to recognize actual costs and make a meaningful contribution to CG&E's interstate pipeline balancing service. OCC requests that the Commission set a hearing on the reasonableness of the proposed rates.

Another point of contention for OCC is Paragraph 3 of the stipulation which provides that CG&E will be held harmless with respect to the applicability of the IBS tariffs and the level of revenue collected under the tariffs. This paragraph also states that the level of revenue generated by the tariffs, and the corresponding credit to GCR customers, may not be adjusted retroactively to include any imputed revenues. OCC argues that GCR customers, rather than CG&E, should be held harmless from the lev

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of revenues generated by the IBS tariffs. OCC also contends that any costs for balancing attributable to special contract customers, using services paid for by GCR customers, should be credited to the GCR.

Finally, OCC objects to the last sentence in Paragraph 3 of the stipulation which indicates that the stipulation is dispositive of any balancing service issues that were raised in the company's 1995 and 1996 GCR cases. OCC claims that, despite CG&E's promise in the 1995 GCR case stipulation to provide a report in the 1996 GCR case on costs incurred by the company to provide balancing services to IT customers, no such report was ever filed. OCC contends that the issue remains of whether the GCR should be credited for balancing costs incurred by CG&E during the 1996 audit period, and that the stipulation does not resolve that issue.

#### Responses of CG&E and CEC

CG&E claims that Enron is apparently unaware of how the proposed electronic board will operate. The company states that the EBB will contain an informational page (free of charge to pool operators) that will list volumes of gas available for sale or purchase on specific gas days. Pool operators (suppliers) may use this information to negotiate trades without CG&E's involvement. CG&E contends that this free informational aspect of the EBB will satisfy Enron's concern with being able to make multi-party arrangements by telephone or fax without charge to pool operators.

CG&E also disagrees with Enron's argument that the \$5 per transaction trading fee is unreasonable. CG&E points out that a pool operator with Rate IMBS customers would be charged only one trading fee for each pool-to-pool transfer as of the last day of the month, but would not be charged a separate fee for each gas day within the month which may have been out of balance. The company contends that the nominal \$5 per transaction trading fee is a reasonable means for pool operators to avoid potentially onerous cash-out amounts.

With respect to the staff's comments, CG&E argues that the staff has confused "competitive flexibility" (which has been a part of the company's IT tariff since 1991) with special contracts that are approved by the Commission pursuant to Section 4905.31, Revised Code. CG&E states that it has used the competitive flexibility provision sparingly in the past, in order to address short-term anomalies caused by temporary price fluctuations in the price of alternate fuels. The company also contends that the ability to flex transportation rates within a range, rather than filing a special contract pursuant to Section 4905.31, Revised Code, is consistent with the Commission's gas transportation guidelines established in Case No. 85-800-GA-COI. *In the Matter of the Commission Ordered Investigation of the Availability of Gas Transportation Service Provided by Ohio Gas Distribution Utilities to End-Use Customers*, Case No. 85-800-GA-CC (November 2, 1995). In that case, the Commission promulgated a rule that stated, "range of rates may be published as part of the tariff. The range shall specify a minimum and a maximum transportation rate. ... Only arrangements which vary from the tariff

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which involve agency gas service or utility brokerage operations shall be filed in accordance with Section 4905.31, Revised Code." (*Id.* at 11). The company claims that the Commission's policy clearly permits the flexing of transportation rates, without making a filing pursuant to Section 4905.31, Revised Code.

CG&E and CEC argue that OCC is incorrect in its contention that Rate IT customers may avoid subscribing to balancing services. Although CG&E claims that the proposed tariff language would require IT customers to subscribe to either daily or monthly balancing, it is willing to include additional language (as set forth in footnote 6 of its reply comments) to ameliorate OCC's concerns. Regarding the applicability of the IBS tariffs to AK Steel, CG&E points out that the charges assessed to AK Steel are controlled by the terms of the special contract, which contract has been approved by the Commission.

Finally, CG&E responds that the "hold harmless" provision of the stipulation was intended to strike an appropriate balance between base rates and GCR rates, since the company would not make a profit from the balancing charges and cash-out provisions of the IBS tariffs. According to CG&E, GCR customers will immediately benefit from the balancing service tariffs, prospectively, based on the company's prior agreement in the 1995 GCR case to credit to the GCR, "the revenue collected from the balancing charges and cash-out provision, when established." *CG&E 1995 GCR Review, Case No. 95-218-GA-GCR* (April 4, 1996), at 22.

### Conclusion for IBS Stipulation

The proposed tariffs offer customers and aggregators several important options including a choice of daily or monthly balancing services, three levels of carryover for operators choosing monthly balancing, and a system of pools to permit aggregation of customers. The monthly balancing service fee provides that all funds received by CG&E for this service will be posted to the GCR account. The proposed tariffs also permit customers to benefit from diversity of use behind the city gate to minimize upstream services. Overall, the tariffs offer a reasonable compromise of the complex issues negotiated by the parties.

We disagree with the comments submitted by Enron and OCC. As pointed out by CG&E, the proposed electronic bulletin board would provide a free informational page to pool operators that will list volumes of gas available for sale or purchase on specific gas days. After viewing this information, marketers would have an opportunity to contact parties offering gas for sale or purchase to arrange transactions without CG&E's involvement. We do not agree with Enron's suggestion that only a single transaction fee should be assessed for trades that may be accomplished over a number of days. The stipulated GTS tariff reasonably imposes the \$5 administrative fee for each transaction "on a specific gas day", thereby preventing pool operators from structuring deals over extended periods of time in order to avoid the administrative charge. We believe the "gas day" concept more reasonably reflects the company's costs for maintaining

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that will be accomplished through the EBB. Accordingly, the "Billing" provision of the Rate GTS tariff should remain as proposed by CG&E.

With respect to OCC's arguments, we believe the proposed tariffs adequately address OCC's concerns. OCC argues that IT customers would not be required to choose either of the balancing services set forth in the proposed tariffs and, therefore, GCR customers would continue to subsidize CG&E's costs in providing balancing services. Contrary to OCC's arguments, the proposed Rate IDBS tariff provides that, "On non-OFO days, a pool operator's failure to balance gas deliveries into the Company's system with the pool's usage, shall constitute an election by default, by the pool operators, to purchase balancing service pursuant to this Rate IDBS, unless the pool operator has elected balancing service under Rate IMBS." (Proposed P.U.C.O. Gas No. 18, Sheet No. 56, Page 1 of 2, emphasis added). Thus, pool operators which do not subscribe to the monthly balancing service, and do not balance their pool's usage, are deemed to have elected by default the daily balancing option.

In order to further clarify the intent of the tariffs, however, we agree with CG&E's proposal (as set forth in footnote 6 of its comments) to include an additional requirement under the Rate IT tariff. Therefore, the first paragraph of the Rate IT tariff should include the following language: "(4) has become a member of a pool under Rate AS and elected either Interruptible Daily Balancing Service under Rate IDBS or Interruptible Monthly Balancing Service under Rate IMBS."

With this additional clarification, we believe that the recommendations of the auditor in CG&E's 1995 and 1996 GCR cases have been adequately addressed. On a going forward basis, IT customers will be required to choose either daily or monthly balancing service and no subsidization by GCR customers will exist. We agree with CG&E that the "hold harmless" provision of the stipulation strikes an appropriate balance between base rates and GCR rates, since the company would not make a profit from the balancing and cash-out provisions of the IBS tariffs. In the company's next gas base rate proceeding, the application of this provision will be subject to the Commission's review. With respect to AK Steel system costs, we will not disturb the existing AK Steel contract. However, the application of these IBS tariffs, and the costs associated with service to AK Steel are issues that will be subject to review in any future base rate proceedings concerning service to AK Steel. *See*, December 12, 1996 Opinion and Order at 34, footnote 9. We do not believe additional hearings are needed on the IBS tariff given the extensive record developed in this case through presentation of direct testimony and cross-examination of witnesses, and through the comments filed after the IBS stipulation was docketed in this case.

Although the agreement presents a negotiated compromise of contested issues, despite the diversity of interests represented in the negotiations, we agree with the staff that the long-standing Commission policy of requiring special contracts to be filed and approved is an important regulatory principle. In *Cleveland Elec. Illum. Co.*, Case N. 83-1342-EL-ATA et al. (May 8, 1984), at 7, the Commission ruled that a special contr.

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arrangement must be reviewed and approved by the Commission "so as to ensure that it is just and reasonable and to ensure that it will not adversely affect the balance of the company's customers." More recently, we affirmed this policy in *First Energy*, Case No. 96-1211-EL-UNC et al. (January 30, 1997), at 13, wherein we indicated that special contracts filed under Section 4905.31, Revised Code, should be the exception rather than the rule and that such arrangements would be closely scrutinized "to make sure that they comply with the applicable statutes and policies of this Commission." However, CG&E makes a good point regarding the need for quick action to meet short-term competitive response needs. Such flexibility must be accompanied by sufficient Commission review consistent with the requirements of Sections 4905.31, 4905.33, and 4905.35, as well as Section 4929.02, Revised Code. We would consider approval of a specially designed short-term response program which would be tariffed with specific parameters. The Commission has approved similar types of arrangements in other situations where the parameters of a competitive response program were established and individual contracts which directly conform to it are publicly filed with the Docketing Division pursuant to pregranted Commission authorization. See, *Cleveland Electric Illum. Co.*, Case No. 92-1743-EL-AEC (January 7, 1993). The specific provisions of the 85-800 guidelines cited by CG&E were merely broad guidelines and were not intended as an automatic substitute for the filing of specific arrangements under Section 4905.31, Revised Code. In order to accommodate the company's concerns, the provisions in question should be modified consistent with the discussion above. CG&E should work with the Commission staff on the tariffing of a specific short-term competitive response program (with contracts to be filed subject to pregranted authorization) in those limited situations where the filing and Commission approval of a fully-executed contract is not feasible given the duration of the flexing period (e.g. less than six months).

Our review of the IBS stipulation and the attached tariffs indicates that, as modified above, they are in the public interest and represent a reasonable disposition of the issues raised in the opinion and order. CG&E should file revised tariffs consistent with this supplemental opinion and order which shall be reviewed by the Commission's staff prior to final approval by the Commission.

## II. FIRM AND RESIDENTIAL FIRM TRANSPORTATION STIPULATION

On May 19, 1997, a stipulation was submitted (Attachment 2) to resolve the Commission's directive in the December 12, 1996 opinion and order for the company and interested parties to develop revised firm transportation and residential firm transportation (FT/RFT) tariffs. The signatory parties are CG&E, the staff, OCC, the Cincinnati-Hamilton County Community Action Agency, Stand Energy Corporation, and Enron<sup>6</sup>.

The stipulation recommends that the so-called "Customer Choice Tariffs" attached to the agreement be adopted by the Commission and be found to comply with

<sup>6</sup> Enron did not agree to the proposed full requirements aggregation service (FRAS) tariff and filed comments on May 29, 1997 setting forth its concerns with respect to that tariff.

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the Commission's directive regarding the FT/RFT programs. The proposed Customer Choice Tariffs include Rate FT (firm transportation service), Rate RFT (residential firm transportation service), Rate FRAS (full requirements aggregation service), Rider FBS (firm balancing service), Rider GCRT (gas cost recovery transition rider), Rider CCCR (contract commitment recovery rider), and Rider FTDC (firm transportation development cost rider)<sup>7</sup>. Each of these proposed tariff offerings are discussed below.

The stipulation provides that the Customer Choice Tariffs will be available to all customers receiving firm service and to qualified aggregators or pool operators designated by such customers to procure gas supplies on their behalf. The program will be evaluated to determine the appropriate rate of future expansion after 15,000 new customers (excluding customers in a Percentage of Income Payment Plan (PIPP) customer pool) have signed up for the program, or December 15, 1997, whichever occurs sooner, for the express purpose of determining if 200,000 decatherms could be turned back to pipeline companies in April 1998. The company agrees to provide to the staff and other signatory parties an update and report, prior to the evaluation, regarding the company's future capacity requirements and methodologies for continued contract commitment cost recovery (Paragraph 2). CG&E also agrees to work with the staff, OCC, and other interested parties to develop the bidding process for selecting a supplier for the PIPP customer pool, and in addressing other issues regarding PIPP customers (Paragraph 3)<sup>8</sup>.

By February 15, 1999, the company is required to file a report regarding the first year of operations under the Customer Choice Tariffs. The report will include, at a minimum, the number of participating suppliers, by area; the number of customers, by class and area; supplier performance information, measured by imbalances or nondeliveries; throughput of participating customers, by class; customer experience and understanding of the program, based on surveys (along with survey results); the company's internal assessment of program administration and billing performance; the company's internal assessment of capacity assignment and supply-related provisions of the program; complaints received regarding the program; and fees charged and collected in connection with the program (Paragraph 5).

Other terms of the stipulation include an agreement by CG&E to charge the GCR rate to all new residential and small commercial transportation customers who return to system supply sales service during the first year of the program (Paragraph 6)<sup>9</sup>. The signatory parties agree that continuing meetings will be held for at least two years to

<sup>7</sup> By agreement of the parties, the costs to be recovered through Rider FTDC, as well as the accounting and reporting requirements related to such costs, are to be addressed in a formal hearing at the Commission (Paragraph 4). The parties request that resolution of this single issue not delay implementation of the other terms of the stipulation.

<sup>8</sup> Although not specifically mentioned in the stipulation, the PIPP bidding process requires approval of the Commission before requests for proposal are sent out and prior to the selection of the winning bid.

<sup>9</sup> This requirement to charge the GCR rate to residential and small commercial customers returning to sales service during the first year of the program should also apply to such customers who return to service anytime thereafter, unless the Commission directs otherwise.

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address ongoing issues related to the program (Paragraph 7)<sup>10</sup>. The parties further agree to meet to discuss, and consider modifications to, tariffs that any party believes are not operating as intended (Paragraph 8).

The signatory parties recommend that the Commission, concurrent with approval of the stipulation, adopt and approve the tariffs attached to the agreement. The stipulation further provides that it is conditioned upon acceptance in its entirety without alteration or supplementation by the Commission. If the Commission rejects or modifies any portion of the agreement, each party has the right to either file an application for rehearing or to terminate and withdraw the stipulation by filing notice with the Commission. Such notice of termination or withdrawal by any party will cause the stipulation to immediately become null and void (Paragraphs 9 and 10).

#### Firm and Residential Firm Transportation Service (Rate FT and RFT)

Firm transportation (FT) service would be available under this tariff to all nonresidential customers within CG&E's service territory. Customers taking service under this tariff must enter into a "pooling" agreement with a supplier that meets CG&E's requirements for participation in the program. A "pool" would consist of a group of customers with at least 30,000 Mcf of annual throughput served by a single supplier, and such suppliers must have executed a gas supply aggregation/customer pooling agreement with CG&E.

Residential firm transportation service would be available to all residential customers in CG&E's service territory who enter into an agreement with a qualified supplier who meets CG&E's requirements for participation in the pooling program pursuant to Rate FRAS. Residential customers who are enrolled in the PIPP program will be provided their alternative gas supply service through their own supply pool, as provided by a willing supplier who has been awarded the bid to provide such service.

Customers who take service under either of these tariffs, and who later return to sales service, are responsible for costs related to incremental gas procurement, upstream transportation, and storage costs incurred by CG&E in order to return such customers to sales service<sup>11</sup>. Customers that transfer from one supplier's pool to another pool, or revert to sales service, must pay a \$5.00 switching fee. For one year from the effective date of the tariff, or in the event CG&E's firm transportation program terminates, customers may revert to sales service without incurring the switching fee. During the first year that the switching fee is waived, the company should work with the staff to develop for Commission approval the formula for quantifying the incremental costs and the process for receiving Commission approval.

<sup>10</sup> The Commission retains the authority to review any proposed changes to the program that arise from these discussions prior to their implementation.

<sup>11</sup> Costs related to incremental gas procurement, upstream transportation, and storage, that are incurred by CG&E in returning customers to sales service, are subject to review by the Commission and may automatically be passed on to customers by CG&E.

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In addition to a \$16.21 monthly administrative charge, FT customers would pay declining block rates of \$0.1784 per CCF (100 cubic feet) for the first 1,000 CCF, \$0.1711 per CCF for the next 4,000 CCF, and \$0.1643 per CCF for all additional volumes. RFT customers would be billed a monthly administrative charge of \$5.24 plus \$0.1875 per CCF. Both FT and RFT customers would also be subject to the applicable charges set forth in Rider PIPP, Rider T-O-P (take or pay) transportation, Rider FSTC, Rider GCRT, Rider CCCR, Rider FTDC, and Rider ETR (Ohio excise tax liability rider). The monthly minimum bill under FT or RFT service would consist of the administrative charge and Rider ETR.<sup>12</sup>

CG&E will maintain a list of qualified suppliers from which customers can choose. Customers desiring service under Rates FT or RFT must apply through a chosen supplier at least 5 days prior to their normal monthly meter reading date. A customer who terminates service under these tariffs, and either returns to sales service or changes suppliers, must provide CG&E with 30 days notice. Several other general terms and conditions of these tariffs include the ability of authorized suppliers to access a customer's usage data and make billing inquiries; delivery pressure will be provided at the level currently available at the customer's premises; and, other than residential and small commercial customers, customers taking service under this tariff will not be permitted to return to sales service for at least one year.

FT customers would also be responsible for installing, or paying for CG&E to install, automatic meter reading equipment at the customer's location in order to monitor the customer's daily usage. Customers, at their option, will also be responsible for providing and maintaining telemetering devices<sup>13</sup>.

#### Full Requirements Aggregation Service (Rate FRAS)

The proposed Rate FRAS tariff contains terms and conditions applicable to suppliers delivering gas on a firm basis on behalf of customers receiving service under rate schedules RFT and FT. Suppliers serving RFT and FT customers are permitted to aggregate customers into pools for supply management purposes. Before commencing service, suppliers must meet minimum qualifications established by CG&E and must execute a "Gas Supply Aggregation/Customer Pooling Agreement" with a minimum two year term.

<sup>12</sup> We note that the proposed FT and RFT rate schedules provide for the Net Monthly Bill to be adjusted for changes in interstate pipeline rates. Consistent with approval of the costs associated with incremental gas procurement, the company should work with the staff to develop for Commission approval the manner in which this adjustment is to be calculated and the process for receiving Commission approval of adjustments.

<sup>13</sup> We wish to make clear that any charges for such equipment by CG&E would remain subject to the commission's formal complaint process.



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In order to qualify as a supplier under this program, a prospective participant must possess sufficient financial resources and experience to perform the required responsibilities. Suppliers may be required to provide additional security in the form of a letter of credit, surety bond, or cash deposit. All suppliers will be required to submit current financial statements and references for purposes of permitting CG&E to perform appropriate financial evaluations.

The FRAS tariff also contains a supplier code of conduct that, among other things, requires suppliers to communicate with customers in clear understandable terms, including providing an address and toll-free telephone number, dispute resolution procedures, notice that continuation of the program is subject to the Commission's approval, and a statement that residential and small commercial customers must provide CG&E with 30 days notice before discontinuing service. The code of conduct also requires suppliers to: provide clear written pricing and payment terms; refrain from engaging in fraudulent, deceptive, or misleading communications; to deliver gas in accordance with the supplier's agreement with CG&E; establish and maintain a credit-worthy financial position; provide residential and small commercial customers the right to terminate a contract with the supplier in the event the Commission terminates the program prior to the end of the supply contract; give 30 days notice to CG&E and the customer prior to the end of a supply contract of the supplier's intent to discontinue service to the customer; and, to the maximum extent possible, attempt to resolve disputes with customers in the supplier's pool.

If a supplier fails to deliver gas in accordance with its customers' full service requirements, CG&E may assess the supplier the higher of the fair market value for the period or the highest incremental cost for the period. Failure to deliver gas or comply with other terms of the tariff may result in termination of the supplier's participation in the program, in which case customers would revert to another supplier or to CG&E sales service<sup>14</sup>.

With respect to customer inquiries and dispute resolution, suppliers are required to cooperate with the Commission's Consumer Services Department (CSD) and OCC (for residential customers) to answer inquiries and resolve disputes. The proposed tariff includes a list of procedures suppliers must follow, such as the availability of toll-free access to the supplier, the provision of the CSD's and OCC's (for residential customers) numbers for customer complaints, and the requirement that suppliers respond promptly to all customer complaints<sup>15</sup>.

With respect to the sign-up procedure, participating customers must enter into a written gas supply agreement with a supplier and such agreement must be in confor-

<sup>14</sup> We reiterate our intent to closely monitor marketers' compliance with these tariffs and we reserve the right to enforce tariff provisions applicable to specific marketers that do not remain in compliance with the tariffs.

<sup>15</sup> This tariff should not be construed to limit, in any way, the Commission's ongoing authority to an investigation to address supplier misconduct or noncompliance with these tariffs.

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mance with the supplier's code of conduct. Each participating customer must also execute a customer consent form which will be provided to CG&E no later than 30 days after the supplier has notified the company of the customer's intent to participate in the program.

Under the proposed FRAS tariff, suppliers would have the option of a single bill generated by CG&E (which bill would separately identify the supplier and the gas supply charges) or separate bills sent by CG&E for the delivery charges and by the supplier for the gas supply charges<sup>16</sup>. PIPP customers would be billed only by CG&E, although the supplier awarded the PIPP customer bid would be identified along with the bid gas cost.

Due to the physical configuration of CG&E's system, during the months of December, January, and February, each supplier would be required to deliver, or cause to be delivered, 32 percent of its daily pool requirements through those pipelines connected to the north end of CG&E's gas system (Texas Gas, ANR, Texas Eastern). During the same months, each supplier would be required to deliver 68 percent of its required daily deliveries through pipelines serving the south end of CG&E's gas system (Columbia Gas Transmission, KO Transmission). Suppliers would have the option of either securing their own upstream pipeline capacity to meet their aggregated FT and RFT pool peak day requirements (with CG&E charging for daily balancing between daily delivery and consumption), or of CG&E providing assignment of its current upstream pipeline capacity, including storage, on an interim basis until the summer of 1998. Under this second option, suppliers assigned capacity would be subject to the terms and conditions of the tariffs of those pipeline companies on whose facilities such capacity is assigned.

The proposed FRAS tariff also contains a number of other terms and conditions concerning: the return of capacity and storage inventory in the event the supplier withdraws or is terminated from the program<sup>17</sup>; reassignment of capacity; a daily balancing option (for suppliers that do not elect assignment of CG&E's upstream pipeline capacity); operational flow order procedures; quarterly reconciliation for imbalances between each supplier's deliveries and consumption; and the applicability of CG&E's standard of conduct with respect to marketing affiliates<sup>18</sup>.

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<sup>16</sup> The Commission wishes to make it clear that customers enrolled in the program may not be disconnected by CG&E for nonpayment of a supplier's bill under either of the available billing options. We also note that, with respect to the establishment of new residential customer deposits pursuant to the Commission's rules, such deposits may be based only on the average distribution portion of customer bills, for customers enrolled in the program.

<sup>17</sup> The supplier's right to return capacity under this provision of the tariff, after withdrawing from the program, is acceptable only insofar as this is considered a "pilot" program. We will, however, continue to look at this provision in the future to ensure that suppliers do not have unfettered discretion to return to CG&E capacity that is not needed to meet the company's system requirements, or which would have the effect of increasing the then-weighted average cost of capacity which the company had obtained for its customers.

<sup>18</sup> Standard of Conduct No. 3 refers to "billing and envelope service" as being untariffed as an example of the types of ancillary services that must be priced uniformly by the company for both affiliated and nonaffiliated companies. We wish to make clear that, although these services are currently "untariffed", it does not mean that such services are "deregulated". In addition, Standard of Co:

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Finally, the customer consent form attached to the proposed Rate FRAS tariff would provide suppliers with authority to switch consenting customers to transportation service. The consent form would also authorize the supplier to obtain historic and current gas usage data from CG&E, for suppliers subscribing to the supplier's service. We wish to make clear that, even without this form, CG&E may not preclude individual customers from obtaining historic and current usage data for themselves (i.e., the consent form does not supersede a customer's right to obtain historic billing information pursuant to existing company tariff P.U.C.O. Gas No. 18, Sheet No. 24.5, page 3 of 3). Nor may CG&E limit the ability of duly authorized suppliers (with the customer's consent) to obtain such information on behalf of actual or prospective customers. Accordingly, CG&E should explain its procedures to the staff along with its revised tariffs, to protect against customer "slamming" and to allow marketers to obtain historic data on prospective customers, with proper customer consent.

#### **Firm Balancing Service (Rider FBS)**

This proposed rider would assess a charge to all monthly consumption of the supplier's aggregate FT and RFT services of \$0.181 per Mcf, for suppliers who secure their own upstream pipeline capacity.

#### **Gas Cost Recovery Transition Rider (Rider GCRT)**

This rider would apply to all customers served under Rate FT or RFT who paid gas supply costs through CG&E's GCR mechanism during the 12 month period preceding the date when the customer began receiving FT or RFT service. A surcharge or surcredit of 1.82 cents per 100 cubic feet would be applied during the months of June, July, and August 1997 and will be updated quarterly in accordance with CG&E's GCR filings.

#### **Contract Commitment Cost Recovery Rider (Rider CCCR)**

This rider would impose, on all customers served under Rates RS, GS, FT, and RFT, a surcharge to enable CG&E to fully recover all costs of upstream pipeline contract commitments (and other associated costs) which were incurred by CG&E to supply gas to firm sales service customers who have elected to switch to gas transportation service. The amount of the surcharge would be 0.179 cents per 100 cubic feet for the months of

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No. 11 prohibits the company or its marketing affiliate personnel from communicating to customers, suppliers, or third parties that any advantage would accrue to those entities as a result of dealing with CG&E's marketing affiliate. We direct that the company's marketing scripts, or other educational material provided to the company's customer service personnel, should be provided to the Commission's Consumer Services Department, in advance of active marketing by CG&E's affiliate. The purpose of requiring a review of CG&E's scripts (or other materials used by the company's personnel) is to ensure that the information being disseminated by CG&E is accurate, that the availability of the Commission's educational materials and consumer hotline is included, and that the code of conduct being honored relative to information given out by CG&E about its marketing affiliate.

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June, July, and August 1997, updated quarterly concurrent with CG&E's GCR filings, to reflect the cost of unneeded capacity, net of any costs that the company is able to recover via its mitigation efforts, including, but not limited to capacity release transactions<sup>19</sup>.

#### **Firm Transportation Development Cost Rider (Rider FTDC)**

Under this rider, all customers served under Rates RS, GS, FT, and RFT would be assessed a surcharge of 0.10 cents per 100 cubic feet for system development, informational and educational advertising expenses, program roll out expenses, and incremental regulatory and administrative expenses which CG&E incurs to establish and promote the Customer Choice firm transportation programs. The surcharge would remain in effect until CG&E has recovered all such costs, and would be subject to periodic reconciliation adjustments until such costs are fully recovered. As indicated above, Paragraph 4 of the stipulation provides that the costs to be recovered through this rider, as well as the accounting and reporting requirements related to such costs, will be addressed through a formal hearing at the Commission.

#### **Staff's Comments**

On May 29, 1997, the staff submitted comments regarding the stipulated tariffs and riders. The staff disagrees with the form and costs contained in the proposed Rider FTDC attached to the stipulation. The staff argues that any reconciliation mechanism associated with this rider should contain limitations on the dollar amount subject to recovery. The staff also contends that only nonrecurring implementation costs should be eligible for deferral and that such deferrals should be limited to the first year of the program.

The staff further states that only the incremental costs not already being recovered through rates are permitted to be recovered for new services such as the proposed FT/RFT programs. For example, the staff claims that CG&E has not shown that labor dollars attributable to the program are incremental.

The staff's comments express the view that FT/RFT program is essentially intended to be a pilot program. In support of its position, the staff points to Paragraph 2 of the stipulation, which calls for an evaluation of the program at 15,000 customers or by December 15, 1997, and to Paragraph 5, which requires that a comprehensive report be filed by February 1999 on the program's performance. According to the staff, in addition to the Commission's ongoing jurisdiction, these two points in time allow the Commission to grandfather customers, implement other necessary changes, and establish appropriate performance standards.

<sup>19</sup> We note that the Commission retains authority to review, at any time, the quarterly information submitted by the company before the filed charges go into effect. In reviewing this information, the Commission will maintain ongoing oversight of CG&E's mitigation efforts and the company's success achieving measurable results from mitigation, as well as company's April 1998 opportunity to turn b. pipeline capacity in accordance with the stipulation.

### Enron's Comments

Enron also filed comments on May 29, 1997. Enron urges the Commission to resist attempting to "fine-tune" the agreement because fine-tuning could unravel the consensus reached through long and deliberate discussions between the parties.

In addition to the Rider FTDC issue that is reserved for a formal hearing, Enron disagrees with the billing option portion of the proposed Rate FRAS tariff. Enron argues that customers do not want two separate statements because it would be difficult to compare gas and delivery costs based on different billing periods. Enron also opposes the option of CG&E providing a single bill to customers participating in the program because it would limit the availability of product and pricing options that could be offered by suppliers. Enron claims that CG&E's billing system is designed to charge only GCR rates and would not accommodate options such as bank card charges and airline travel bonus points for residential customers or electronic billing and regional aggregation for business customers. Enron contends that suppliers can provide such services and would do so, except that the proposed FRAS tariff prohibits supplier billing and CG&E's billing system cannot handle the variations required to offer such services.

Instead of the billing options contained in the proposed FRAS tariff, Enron wants to provide the sole bill rendered to its customers. Enron claims that it stands ready to relieve CG&E of the risk of collection of the base rates, and would treat the first dollar received as utility service payment if permitted to do the billing.

Enron also argues that the proposed FRAS tariff would transfer the risk of bad debt for the commodity portion of FT and RFT service from CG&E to suppliers without any corresponding adjustment to base rates. According to Enron, the net result of the proposal is that FT and RFT customers would pay suppliers for the risk of bad debt in commodity prices and also pay CG&E phantom bad debt through base rates. Enron contends that this problem can be rectified by placing the commodity portion of the bad debt risk on the utility, or the bad debt component can be withdrawn from the FT and RFT rates. Enron states that it makes economic sense to have the party that does the billing also have bill collection responsibilities and that it does not object to having the collection responsibility, and the risk of collection.

Finally, Enron argues that, under the FRAS tariff, the responsibility to collect the applicable sales tax is placed on the supplier. According to Enron, the sales tax responsibility would force it to rely on CG&E's billing records in order to remit the appropriate tax revenues to the state of Ohio. Enron claims that, since any error by CG&E in keeping these records could expose suppliers to penalties by the state, the party collecting the bills should also be the party responsible for collecting the appropriate sales taxes.

### CG&E's Response to the Staff and Enron

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CG&E argues that the staff's position, regarding recovery of only incremental costs for the FT/RFT program, is unlawful and violates Commission policy and precedent. The company contends that the proposed FT/RFT program is a "new service" and is, therefore, not subject to the rate increase requirements set forth in Section 4909.18, Revised Code. CG&E claims that, especially where the new service is optional to customers and no existing rate is increased or affected, the new rates need only be reasonable and cost-based. CG&E argues that the staff's position would, in effect, require a single item rate case in which the costs of providing a new service must be incremental to the level of recovery of certain expenses in existing rates. The company asserts that it will demonstrate at hearing that Rider FTDC is reasonable, cost-based, and that it recovers only the incremental costs of providing the new service. CG&E contends that adoption of the staff's position is unfair, unnecessary, and will discourage the offering of new services.

With respect to Enron's comments on billing options, CG&E argues that Enron is simply attempting to "cream skim" public utility customers at the expense of the public utility and its remaining customers. CG&E claims that Enron's offer to be the sole billing agent for its customers fails to recognize other responsibilities that accompany CG&E's obligations as a public utility. For example, the company states that Enron has failed to mention informational requirements on bills, time periods before disconnection, notice requirements, winter reconnection requirements, and PIPP requirements. CG&E contends that Enron would simply return customers to the company after one missed payment, thereby eliminating the financial and debt collection risks that are incumbent upon public utilities.

CG&E further argues that Enron would have the option of billing its customers for whatever services it offers. Regarding the separate billing cycles problem, the company states that suppliers may simply choose to adopt the same billing cycle as CG&E, in order to minimize customer confusion. CG&E also refutes Enron's claim that customers will pay for bad debt expense twice. The company claims that "bad debts" are not recovered dollar for dollar but, rather, a bad debt ratio is incorporated into the company's base rates which ratio may not resemble actual bad debt expense in any given year. Finally, CG&E argues that the proposed tariffs require only that suppliers disperse tax revenues to the appropriate taxing authority. The company contends that suppliers clearly are obligated to remit payments for sales taxes to the state, based on the level of commodity sales that they make, regardless of whether CG&E performs the billing function for such commodity sales.

In its comments, CG&E suggests that the best billing option would be one similar to that adopted by the Commission with respect to the electric interruptible buy-through guidelines. Under the process contemplated by CG&E, the company would make gas purchases on behalf of the customer based on the purchase price agreed to with the customer's designated supplier. Under this approach, the company would bill for both the commodity and distribution portions of the service in the same manner as will be done for PIPP customers who sign up for the program.

### Conclusion for FT/RFT Stipulation

With the modifications discussed herein, and strictly on a pilot basis, we believe that ratepayers and the public interest are benefited by the options provided by the various FT and RFT tariffs. The competitive options that will become available to small commercial and residential customers should ultimately enhance those customers' ability to choose the supplier to best meet their gas energy needs. We note that the FTDC tariff issue has been reserved for a formal hearing by the signatory parties and we will set a hearing date below in accordance with that agreement. Accordingly, we need not address, at this time, the issues raised by the staff with respect to the FTDC tariff. The arguments raised by the staff will be discussed following the hearing on the FTDC tariff. We do, however, expect the company to fully comply with the staff's request for supporting information and documentation of the proposed FTDC costs.

We agree with the staff's comments regarding the experimental or pilot nature of the FT/RFT program. We intend to closely monitor and evaluate the program's progress at the earlier of enrollment of 15,000 customers or December 15, 1997<sup>20</sup>. Also, consistent with the Columbia Choice program and the East Ohio Gas transportation program, we will require an interim evaluation of CG&E's FT/RFT program in the Spring of 1998. By March 31, 1998, CG&E should submit a report which includes a discussion of, at a minimum, the following issues:

- (1) One measure of the program's success is customer understanding and acceptance of the concept of gas choice. Customer understanding should be evaluated based on surveys, company experience, an analysis of company's customer service calls related to customer acceptance, and other relevant information;
- (2) The report should also attempt to gauge how smoothly the program is operating. The report should evaluate questions such as whether marketers were able to get their gas injected into storage and delivered to customers, whether imbalance problems exist, whether reliability problems occurred, and whether there was a need to issue OFOs;
- (3) The report should address the extent of marketer participation;
- (4) The report should also address customer information and dispute resolution, the role of the media in explaining the

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<sup>20</sup> It is our understanding that the 15,000 customers or December 15, 1997 date set forth in Paragraph 2 of the stipulation is relevant only for the purpose of evaluating whether the company's the turn-back pipeline capacity in April 1998. The December 15/15,000 customer review will not be used for limit participation in the customer choice program.

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program, and particular acceptance or problems with respect to different customer classes including residential, low-income, and commercial customers; and

- (5) The report should address opportunities to mitigate costs of the program (particularly with respect to stranded costs) and should describe the company's performance in the area of cost mitigation. The report should provide a narrative discussion and examples of the company's mitigation performance.

The evaluation will include a review of capacity contract commitments and cost recovery. In addition, a more comprehensive review of the program will be undertaken following the February 1999 report that is to be filed by CG&E. In the event that the program is not performing as planned at either of these review periods, we reserve the right to suggest or impose changes to the program in order to protect the interests of participating customers and the overall public interest.

Regarding Enron's comments on the proposed billing options, we agree with CG&E that the options set forth in the proposed Rate FRAS tariff are adequate, at least initially. In the initial pilot phase of the program, we believe that it is more appropriate to limit billing to the two options set forth in the proposed tariffs. We recognize that the East Ohio Gas program permits marketer billing of commercial customers for both commodity and distribution. We intend to review the East Ohio and CG&E billing options during our review of the programs for purposes of determining the appropriateness of all billing options. As pointed out by CG&E, suppliers such as Enron are not precluded under Option 2 from packaging their products in creative ways for the services provided. In order to enhance customer understanding, suppliers may choose to align their billing cycles with CG&E's. In addition, suppliers are clearly responsible for collecting and dispersing sales tax on the commodity portion of the service provided, whether or not CG&E performs the billing function for the suppliers.

Regarding the FTDC tariff issue, in the event a settlement is not reached prior to this date, a hearing will be held beginning at 9:00 a.m. on August 4, 1997 at the offices of the Commission. Direct expert testimony should be filed no later than July 28, 1997.

We also believe it is appropriate to impose a brief moratorium on promotional advertising and customer sign-up by marketers. During the moratorium period, which will expire 45 days after approval of the final tariffs, only public service customer information may be distributed regarding the new gas transportation choice programs. Such information may be distributed only by the company, the Commission, or OCC. In order to provide the best opportunity for a successful pilot program, we direct CG&E to undertake extensive public educational efforts, including the use of both network and cable television advertising. All information, including all advertising for radio, television, print, and direct mail, as well as other forms of information dissemination to be provided by the company, must be submitted for review to the Consumer Service staff of the Commission prior to production. Individual marketers that do not con



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with the moratorium may be subjected by CG&E to delayed start-up or sign-up dates, subject to the Commission's approval. This moratorium in no way affects marketers' advertising and customer sign-up for current transportation programs.

Consistent with the East Ohio Gas and Columbia Gas choice programs, the Commission is approving this program as a pilot, recognizing that modification to the terms of the program may need to be made after reviewing the reports that are required to be filed in March 1998 and February 1999. The Commission reserves the authority to stay program operations for a time sufficient to permit full-scale redevelopment. We intend to review the results of the first heating season of the program contemporaneous with our evaluations of the East Ohio and Columbia programs, and to make modifications to the program based on the experience gained, the company's reports (and responses thereto), and after notice and a hearing are provided to the affected parties.

Finally, the Commission intends to continue its practice of issuing monthly price and terms comparisons so that customers in the pilot program can make informed choices. All marketer participants, as a condition of participation in the program, are required to provide copies of their pro forma contracts to the Commission staff and make price and terms information available to the staff, when requested, in order to aid the staff in preparation of this and related customer information material.

Our review of the stipulation and the attached tariffs (with the noted exceptions) indicates that they are in the public interest and represent a reasonable disposition of the issues raised in the December 12, 1996 opinion and order regarding an FT/RFT program. CG&E should file revised tariffs consistent with this supplemental opinion and order which shall be reviewed by the Commission's staff prior to final approval by the Commission.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 12, 1996, the Commission issued its opinion and order which, among other things, directed CG&E to meet with interested parties to develop acceptable IBS tariffs and firm transportation tariffs for residential and small commercial customers.
- (2) On March 12, 1997, CG&E submitted a stipulation and proposed IBS tariffs and, on May 19, 1997, the company filed a stipulation and proposed tariffs for FT and RFT service.
- (3) With the exceptions and modifications noted herein, the stipulations and attached tariffs are reasonable. Revised tariffs consistent with the discussion herein should be filed and will be reviewed by the staff prior to final approval of the tariffs by the Commission.

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- (4) Pursuant to Paragraph 4 of the FT/RFT stipulation, a hearing will be held beginning August 4, 1997 regarding the FTDC rider.
- (5) The IBS and FT/RFT tariffs discussed herein are new services.

It is, therefore,

ORDERED, That the interruptible balancing service stipulation and recommendation submitted by the signatory parties on March 12, 1997 be adopted, as modified within the text of this order. It is, further,

ORDERED, That the firm transportation stipulation and recommendation submitted by the signatory parties on May 19, 1997 be adopted, as modified within the text of this order. It is, further,

ORDERED, That CG&E file its interim report on the FT/RFT program by no later than March 31, 1998, in accordance with the text of this order. It is, further,

ORDERED, That CG&E file its full report by February 15, 1999, in accordance with Paragraph 5 of the FT/RFT stipulation. It is, further,

ORDERED, That CG&E file revised tariffs for both the IBS and FT/RFT programs, within 7 days of the issuance of this order, consistent with the discussion set forth herein. The revised tariffs will be reviewed by the staff prior to final approval by the Commission. It is, further,

ORDERED, That, in the event a settlement is not reached prior to this date, a hearing shall be scheduled for August 4, 1997, with expert testimony filed by July 28, 1997, with respect to proposed FTDC rider. It is, further,

ORDERED, That nothing in this order constitutes state action for the purpose of antitrust laws. It is, further,

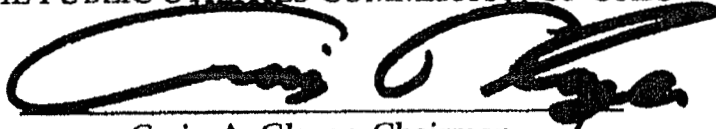
ORDERED, That nothing in this order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

95-656-GA-AIR

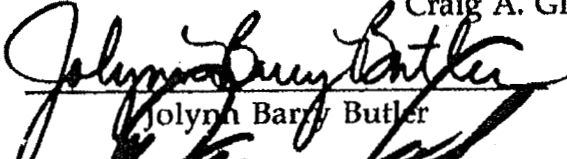
-23-

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

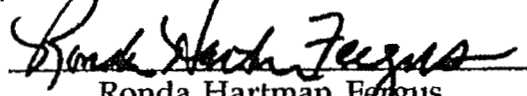
THE PUBLIC UTILITIES COMMISSION OF OHIO



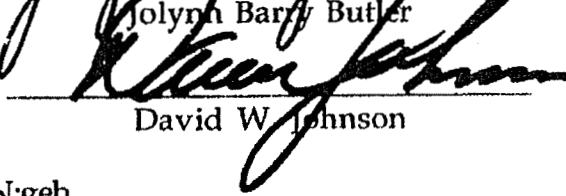
Craig A. Glazer, Chairman



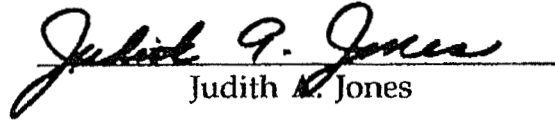
Jolynn Barry Butler



Ronda Hartman Fergus

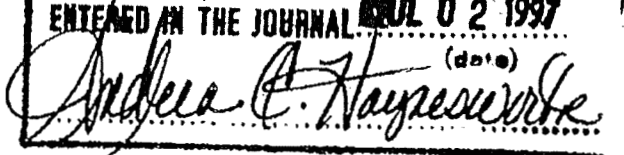


David W. Johnson



Judith A. Jones

DDN;geb

ENTERED IN THE JOURNAL JUL 02 1997  
(date)  


RECEIVED

SEP 02 2010

PUBLIC SERVICE  
COMMISSION

VERIFICATION

State of Ohio


)

County of Hamilton

)

)

The undersigned, Mitch Martin, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Manager, Citygate Operations; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquiry.



\_\_\_\_\_  
Mitch Martin, Affiant

Subscribed and sworn to before me by Mitch Martin on this 30<sup>th</sup> day of August, 2010.



\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



**JULIE M. THOMPSON**  
Notary Public, State of Ohio  
My Commission Expires 11-19-10

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<u>DATA REQUEST</u>	<u>WITNESS</u>	<u>TAB NO.</u>
VETREN/IGS-DR-02-001	B. Mitchell Martin.....	1

**VECTREN/IGS-DR-02-001**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

Refer to page 6 of your testimony (lines 1–3) wherein you indicated that, “...if Duke Energy Kentucky were someday to implement a retail program, the Company would desire that it closely match the program in Ohio...”. Does Duke Energy consider the Ohio Choice Program a successful program, please explain in detail?

- a. Other than the current lack of a Choice program and numerical differences in customers within territories in the Duke Energy Kentucky territory compared to Duke Energy Ohio please explain what differences exist between the two utility territories that support Duke Energy Kentucky’s position that a Choice program should not be implemented in Kentucky?
- b. Given the recent application for certification as a Competitive Retail Natural Gas Supplier to the Public Utilities Commission of Ohio of Duke Energy’s natural gas retail supplier affiliate, does Duke Energy agree that natural gas marketers can provide benefits to customers?
  - i. If no, why does Duke Energy have a natural gas retail supplier affiliate?
  - ii. Are you aware that Duke Energy Retail Sales, LLC’s application for certification included a notification that Duke Energy Retail Sales, LLC intends to serve “Residential” and “Small Commercial” customers in the territories of Columbia Gas of Ohio, Dominion East Ohio, Duke Energy Ohio and Vectren Energy Delivery of Ohio?

**RESPONSE:**

Duke Energy Ohio does consider the Ohio Gas Customer Choice Program a successful program from a participation standpoint. While the program’s participation levels were rather stagnant through 2005, more recent governmental aggregations have pushed participation levels from approximately 30,000 Ohio customers at year-end 2005 to nearly 110,000 Ohio customers today, exclusive of low-income percentage of income

payment plan (PIPP) customers. Duke Energy Ohio customers currently have fifteen competitive natural gas providers to choose from with an array of pricing options. Duke Energy Ohio's Gas Customer Choice Program has only suffered from one major non-delivery default by a supplier.

A successful program from a customer perspective would equate to consumer choice of supplier and pricing options (e.g. market-based, locked-in, etc.). However, Duke Energy Ohio does not equate success to also mean guaranteed savings to customers. Duke Energy Ohio is aware of monthly competitive natural gas prices for residential customers that are at times lower than Duke Energy Ohio's Gas Cost Recovery (GCR) rate and at times higher than Duke Energy Ohio's GCR rate. Duke Ohio is not aware of any study or analysis that shows retail competition has resulted in lower prices for Duke Energy Ohio choice customers overall.

- a. This question misstates Duke Energy Kentucky's position. To clarify, Duke Energy Kentucky's position is not that a Choice program should not be implemented in Kentucky. The Company supports a utility's ability to design and implement a retail customer choice program that is suitable to its system should it choose to do so. Duke Energy Kentucky does not believe a mandatory, state-wide retail natural gas choice program should be implemented in Kentucky. A mandatory, state-wide program would likely be very rigid and would likely impose greater costs upon Kentucky customers as each utility would have to conform its unique operational circumstances to a standard program. If the utility itself decides a retail choice program is in the best interests of the company and its customers, or if a retail choice program is mandated for Kentucky, then the utility should have sufficient flexibility to be able to design such a program and to seek Commission approval.
- b. The existence of a retail marketing affiliate in Ohio is irrelevant to the utility operations in either Ohio or Kentucky. Duke Energy Kentucky agrees that natural gas marketers can provide pricing options to customers other than the utility's direct pass through of actual natural gas costs.
  - i. n/a
  - ii. Duke Energy Kentucky does not monitor, direct or participate in the business decisions of its non-regulated affiliates.

**PERSON RESPONSIBLE:** B. Mitchell Martin