

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of)
Duke Energy Ohio To Modify Its)
Market-Based Standard Service Offer.)

Case No. 06-986-EL-UNCO

In the Matter of the Application of)
The Cincinnati Gas & Electric Company)
To Modify its Non-Residential Generation)
Rates to Provide for Market-Based Standard)
Service Offer Pricing and to Establish a Pilot)
Alternative Competitively-Bid Service Rate)
Option Subsequent to Market Development)
Period.)

Case No. 03-93-EL-ATA

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated)
with The Midwest Independent Transmission)
System Operator.)

Case No. 03-2079-EL-AAM

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its)
Electric Transmission and Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be Effective)
After the Market Development Period.)

Case No. 03-2081-EL-AAM
Case No. 03-2080-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio, Inc. to Modify Its)
Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

Case No. 06-1068-EL-UNC

In the Matter of the Application of the)
Cincinnati Gas & Electric Company to)
Modify Its Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

Case No. 05-725-EL-UNC

This is to certify that the images appearing are an
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Technician JB Date Processed 12-14-06

In the Matter of the Application of)
Duke Energy Ohio, Inc. to Adjust and Set its) Case No. 06-1069-EL-UNC
System Reliability Tracker.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Adjust and Set its) Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)

In the Matter of the Application of)
Duke Energy Ohio, Inc.) Case No. 06-1085-EL-UNC
To Adjust and Set the Annually Adjusted)
Standard Service Offer.)

**MOTION FOR
SUBPOENA DUCES TECUM**

Now comes the Office of the Ohio Consumers' Counsel ("OCC") and, pursuant to Ohio Adm. Code 4901-1-25, hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena *duces tecum* compelling Charles R. Whitlock, President of Duke Energy Retail Sales, LLC ("DERS," including predecessor organization Cinergy Retail Sales, LLC),¹ an affiliate of Duke Energy Ohio Inc. ("Duke Energy," a party to all the above-captioned cases), to appear for oral examination on January 3, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 1:00 p.m. as on cross-examination to provide fact information concerning agreements that were made with the customers of Duke Energy that have a bearing on the outcome of the above captioned cases, including

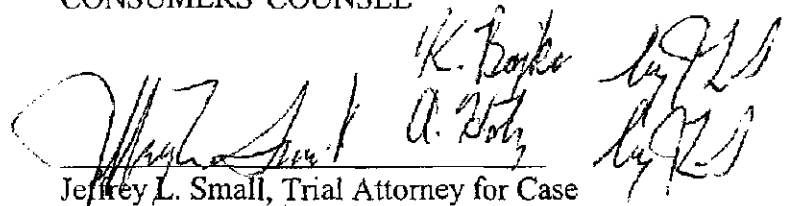
¹ Mr. Whitlock is listed as President in the August 3, 2006 filing by DERS in Case No. 04-1323-EL-CRS that involves PUCO Certificate No. 04-124(1).

the remand from the Ohio Supreme Court on November 22, 2006 in Case Nos. 03-93-EL-ATA et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

The subpoena should also compel the witness to bring with him, and provide to OCC at the outset of the examination, i) any and all agreements between DERS and customers of Duke Energy, ii) any and all agreements between an affiliate company of DERS and customers of Duke Energy, and iii) all documents containing correspondence related to these agreements, including e-mail and other forms of correspondence with, by way of example only, Duke Energy customers, and representatives of companies affiliated with DERS, and iv) all documents in the possession and control of DERS pertaining to the aforementioned agreements. Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jeffrey L. Small, Trial Attorney for Case
Nos. 03-93-EL-ATA, et al. and
Case No. 06-1085

Kimberly W. Bojko, Trial Attorney for
Case Nos. 06-1068 and 05-725

Ann M. Hotz, Trial Attorney for
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio To Modify Its)	Case No. 06-986-EL-UNC
Market-Based Standard Service Offer.)	
In the Matter of the Application of)	
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To Modify its Non-Residential Generation)	
Rates to Provide for Market-Based Standard)	Case No. 03-93-EL-ATA
Service Offer Pricing and to Establish a Pilot)	
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Power Component of Its Market-Based)	
Standard Service Offer.)	
In the Matter of the Application of the)	
Cincinnati Gas & Electric Company to)	
Modify Its Fuel and Economy Purchased)	Case No. 05-725-EL-UNC
Power Component of Its Market-Based)	
Standard Service Offer.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Adjust and Set its)	Case No. 06-1069-EL-UNC
System Reliability Tracker.)	

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Energy Ohio, Inc. to Adjust and Set its)	Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc.)	Case No. 06-1085-EL-UNC
To Adjust and Set the Annually Adjusted)	
Standard Service Offer.)	

MEMORANDUM IN SUPPORT

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Charles R. Whilock, President of DERS, to appear and to submit to oral examination on January 3, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 1:00 p.m. as on cross-examination by the OCC in the above-captioned proceedings.

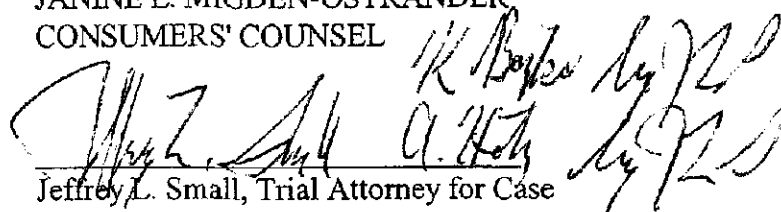
The above-captioned cases all involve Duke Energy's standard service charges. The agreements entered into by Duke Energy, directly or indirectly using DERS, is expected to be central to the issue of side agreements that is the subject of the Ohio Supreme Court's recent remand of Case Nos. 03-93-EL-ATA, et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The side agreements figured prominently in the Court's recent decision, and were the subject of a November 29, 2006 Entry by the PUCO issued in many of the above-captioned cases. Side agreements also figured prominently in a recent Complaint filed by a former Duke Energy employee John

Deeds. Mr. Deeds claims that Duke Energy used DERS agreements with customers to circumvent the requirement that Duke Energy properly charge its customers for electric service and that DERS was used as a veil to conceal agreements that were sought in connection with the litigation before the PUCO. Mr. Witlock is in a position, as President of DERS, to provide in-depth information regarding these matters. His full participation in the examination will facilitate a full and complete development of the case, including the ultimate record upon which the Commission will base its decision

Additionally, the OCC requests the PUCO to command Mr. Whitlock to bring with him, for delivery to OCC at the outset at the examination, i) all documents containing any and all agreements between DERS and customers of Duke Energy, ii) all documents containing any and all agreements between an affiliate company of DERS and customers of Duke Energy, iii) all documents containing correspondence related to these agreements, including e-mail and other forms of correspondence with, by way of example only, Duke Energy customers, and representatives of companies affiliated with DERS, and iv) all documents in the possession and control of DERS pertaining to the aforementioned agreements. This information is central to understanding and addressing the issues related to Duke Energy's proposed standard service charges and the support that has been shown by some parties for Duke Energy's proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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Case No. 06-1085

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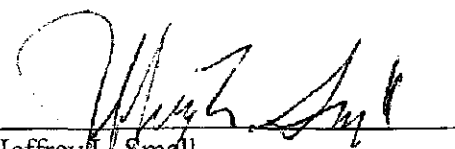
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena Duces Tecum, was served by first class mail, or by hand delivery, to the following parties of record, this the 13th day of December, 2006.



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