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February 2, 2007

Ms. Renee Jenkins
Chief, Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
13th Floor
Columbus, OH 43215

Subject:

Dear Ms. Jenkins:

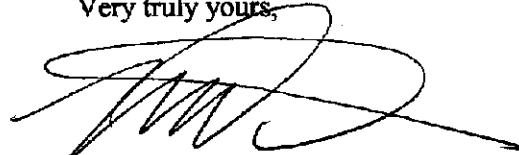
Enclosed please find an original and fifteen copies of the following two documents:

- Cinergy Corp.'s Motion to Intervene and Memorandum in Support, and
- Cinergy Corp.'s Motion in Limine

Please accept the original and fourteen copies of each document for the Commission's files, and return the remaining copy to me via to the individual who delivers the documents to you. You may call me if you have any questions concerning this filing.

As always, your attention is appreciated.

Very truly yours,



Michael D. Dortch

cc: Service List (via electronic service)

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to)
Modify its Non-Residential Generation)
Rates to Provide for Market-Based)
Standard Service 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 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

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set its)
System Reliability Tracker.)

Case No. 06-1069-EL-UNC

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set its)
System Reliability Tracker and Market)
Price.)

Case No. 05-724-EL-UNC

In the Matter of the Application of)
Duke Energy Ohio, Inc. to Modify its) Case No. 06-1068-EL-UNC
Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

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

CINERGY CORP.'S
MOTION TO INTERVENE
FOR THE LIMITED PURPOSE OF ALLOWING IT TO PROTECT
CERTAIN CONFIDENTIAL INFORMATION

Cinergy Corp., by and through its attorneys and pursuant to O.A.C. Section 4901-1-11, respectfully moves this Commission for leave to intervene in this proceeding for the limited purpose of protecting certain confidential information that belongs to Cinergy Corp., including without limitation, a contract between itself and another entity. The basis for this motion is set forth in the attached memorandum in support, which is incorporated by reference herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF CINERGY CORP.'S
MOTION TO INTERVENE
FOR THE LIMITED PURPOSE OF ALLOWING IT TO PROTECT
CERTAIN CONFIDENTIAL INFORMATION

I. INTRODUCTION

Pursuant to O.A.C. Section 4901-1-11, the Public Utility Commission of Ohio should grant Cinergy Corp. ("Cinergy") leave to intervene in this proceeding for the limited purpose of protecting confidential information that belongs to it. Cinergy is otherwise unable to protect its substantial interest in preventing public disclosure and inaccurate description thereof, since its interests are not and cannot be adequately represented by any party to this proceeding.

II. BACKGROUND

On November 22, 2006, the Ohio Supreme Court issued its opinion in the case of *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St. 3d 300, 2006-Ohio-5789. Among other things, the Court remanded cases number 03-0093-EL-ATA, 03-2079-EL-AAM, 03-2080-EL-ATA and 03-2081-EL-AAM to this Commission with instructions that this Commission determine whether so-called "side-agreements" – alleged agreements between The Cincinnati Gas & Electric Company ("CG&E") and certain parties to those cases – impact the determination made by this Commission that the May 19, 2004 stipulation among certain parties to those proceedings was the result of "serious bargaining."

On November 30, 2006, the Attorney Examiner in these cases issued an Entry in which CG&E, now known as Duke Energy-Ohio, Inc. ("DE-Ohio") was Ordered to ". . . disclose to OCC the information requested with regard to side agreements." CG&E properly responded to this Entry on December 7, 2006.

On December 13, 2006, however, OCC abruptly and dramatically expanded the scope of the information it was seeking by requesting the issuance of a subpoena duces tecum for all agreements, and all communications or documents regarding any agreements, between Duke Energy Retail Services, Inc. ("DERS") or any affiliate of DERS and any customer of DE-Ohio.

On December 20, 2006, DERS moved to quash OCC's subpoena and requested the issuance of a protective order. On January 2, 2007, the attorney examiner issued an entry that grants in part, and denies in part, DERS motion to quash. By granting DERS' motion in part and denying it in part, the attorney examiner limited the scope of OCC's subpoena somewhat. Pursuant to the attorney examiner's ruling, OCC is entitled to production of agreements between DERS or DERS affiliates and customers of DE-Ohio who are current or past parties to these proceedings and which are also within the possession, custody or control of DERS.

Cinergy is a party to one contract that meets the first portion of these criteria. Rather than expend resources debating whether the agreement was within the possession, custody or control of DERS, Cinergy has produced the agreement to OCC. However, the agreement is between Cinergy and another party, and Cinergy is entitled to protect the information within that agreement and protect itself from inaccurate description of the agreement and use harmful to Cinergy based on such inaccurate description. Accordingly, Cinergy seeks limited status before this Commission in order to protect this confidential business contract from public disclosure.

III. LAW AND ARGUMENT

A. This Commission's Standard Regarding Intervention

Under O.A.C. Section 4901-1-11(A), upon timely motion, any person must be permitted to intervene in a proceeding upon a showing that:

- (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical

matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Further, O.A.C. 4901-1-11(B) provides the following factors in considering requests to intervene:

(1) The nature of the person's interest; (2) The extent to which the person's interest is represented by existing parties; (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

B. Cinergy should be permitted to intervene to protect its interest in preventing public disclosure of its confidential information.

As described above, any person should be permitted to intervene in a proceeding upon a showing that the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede his or her ability to protect that interest. O.A.C. Section 4901-1-11(A)(2). Cinergy Corp. has a real and substantial interest in this proceeding, as a confidential agreement to which it is a party is being compelled to be produced to the OCC, a public agency which could in turn be compelled to release that information into the public domain. Additionally, OCC has made plain its intent to seek admission of the contract and use it for purposes that may result in harm to Cinergy and its ability to enter transactions beneficial to Cinergy, counterparties, and the community.¹

Despite the status of certain of its affiliates as parties to these proceedings, no other party to this proceeding adequately represents the interests of Cinergy. Neither DERS nor DE-Ohio, for example, have standing to move for a protective order limiting production of Cinergy's property or for a motion in limine holding that the agreement is irrelevant to the issues remanded by the Ohio Supreme Court. Inasmuch as others participating in these proceedings do

¹ *In re DE-Ohio's Remand Case*, 03-93-EL-ATA *et. al.* (Application for Rehearing) (February 1, 2007).

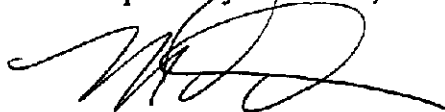
not adequately protect Cinergy's interests, it is inappropriate to compel discovery of its contracts, and perhaps ultimately determine whether the information contained within that contract is entitled to protection, without the participation of Cinergy itself.

Finally, permitting Cinergy to intervene for the sole purpose of protecting its confidential information will not unduly delay the proceeding or unduly prejudice any existing party. Under these circumstances, Cinergy should be permitted to intervene in this proceeding for the limited purpose of protecting its confidential information.

IV. CONCLUSION

For the foregoing reasons, this Commission should GRANT Cinergy's Motion to Intervene for the limited purposes of protecting from disclosure any confidential information or agreements that is the exclusive property of Cinergy.

Respectfully submitted,

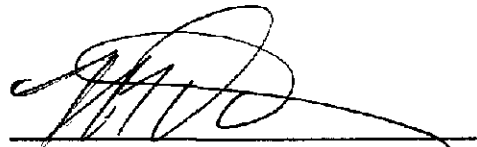


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically on the following parties this 2nd day of February 2007.


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