



Office of the Ohio Consumers' Counsel

Janine L. Migden-Ostrander
Consumers' Counsel

February 6, 2007

Ms. Renee Jenkins, Director
Public Utilities Commission of Ohio
180 East Broad Street, 7th Floor
Columbus, Ohio 43215-3793

Re: Failure to Serve Motions, Dated February 2, 2007, in Consolidated Cases
03-93- EL-ATA et al.

Dear Ms. Jenkins:

This letter notifies the Public Utilities Commission of Ohio ("PUCO" or "Commission") and the parties to the consolidated cases that the five motions filed by Duke Energy Ohio, Inc. ("Duke Energy"), Duke Energy Retail Services, LLC ("DERS"), and Cinergy Corp. ("Cinergy", collectively with Duke Energy and DERS, the "Duke-affiliated companies") on February 2, 2007 were not served upon the Office of the Ohio Consumers' Counsel ("OCC"). Certificates of service attached to the pleadings -- motions to intervene by DERS and Cinergy as well as motions *in limine* by Duke Energy, DERS, and Cinergy -- incorrectly state that they were served electronically upon all parties to the consolidated cases as required by the Attorney Examiners' instructions. As a result, the deadline that would otherwise apply to the OCC's responsive pleadings is not in effect and the OCC does not consider, pursuant to Ohio Adm. Code 4901-1-5, that the pleadings are pending for a PUCO ruling.

All five of the pleadings filed on February 2, 2007 contain certificates of service that incorrectly claim that the pleadings were electronically served upon the OCC.¹ An expedited schedule for all pleadings in these proceedings was ordered at the pre-hearing conducted on December 14, 2006.² The service of pleadings electronically was ordered to provide parties wishing to submit responsive pleadings the maximum opportunity to

¹ The OCC has obtained a copy of the e-mail transmission that was sent to parties other than the OCC. The four OCC attorneys who are on the electronic distribution list provided by the Attorney Examiner are conspicuously missing from both of the e-mails (one from the offices of counsel for Cinergy and the other from Duke Energy's paralegal) that are attached to the five motions. Verification of the omission should be readily available to the Attorney Examiners who where both copied on the electronic service. The Duke Energy pleading contains the second certificate of service that its trial attorney has executed during this remand that misstates the action taken by Duke Energy. An earlier certificate, attached to a discovery request propounded to the OCC, was backdated by two days.

² Prehearing Conference, Tr. at 40-41 (December 14, 2006). This instruction was recently repeated. Entry at 3 (February 1, 2007).

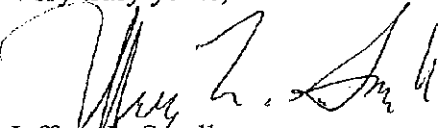
This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Am Date Processed 2/6/07

RECEIVED
2007 FEB -6 PM 4:13
PUCO
Residential Utility Advocate
MARKETING DIV

Ms. Renee Jenkins
February 6, 2007
Page Two

use the short response periods without the lost time involved with mail delivery.³ As a consequence, the failure to serve the pleadings on the OCC prejudices the OCC, the party that the Duke-affiliated companies must have known was most likely to file responsive pleadings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", written over a horizontal line.

Jeffrey L. Small
OCC Trial Counsel

Cc: Persons listed on electronic service list
DERS Counsel (electronic)
Cinergy Counsel (electronic)

³ Prehearing Conference, Tr. at 40-41 (December 14, 2006).