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PUCO

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc., Rate	)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider	)	03-2079-EL-AAM
Adjustment Cases.	)	03-2081-EL-AAM
	)	03-2080-EL-ATA
	)	05-724-EL-UNC
	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC
In the Matter of the Application of	)	
Duke Energy Ohio To Modify Its	)	Case No. 06-986-EL-UNC
Market-Based 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 Lon Mitchell, Chief Financial Officer of Duke Energy Retail Sales, LLC ("DERS," including predecessor organization Cinergy Retail Sales, LLC),<sup>1</sup> an affiliate of Duke Energy Ohio Inc. ("Duke Energy," a party to all the above-captioned cases), a witness possessing knowledge and expertise about the accounting treatment and financial implications(including for financial statements) of agreements entered into

<sup>1</sup> On August 3, 2006, DERS updated its information in Case No. 04-1323-EL-CRS.

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between DERS and customers of Duke Energy, and be able to provide in-depth information regarding these matters.

Lon Mitchell is to appear for oral deposition as on cross-examination on February 23, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time) and attend from day to day until the deposition is completed to provide testimony concerning the accounting treatment and financial implications of the agreements that DERS made with the customers of Duke Energy, and that have a bearing on the outcome of the above captioned cases, including 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 witness should be knowledgeable in the aforementioned matters and the documents that are more fully described below.

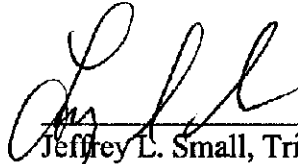
The subpoena should also compel Lon Mitchell to bring with him, for delivery to OCC at 10:00 a.m. on said day and at said place, the following accounting-related information pertaining to transactions pursuant to the agreements that were provided by DERS to OCC under a prior subpoena on January 9, 2007, i) all documents (in all forms, including hard copies of information stored on electronic media) containing accounting records supporting/documenting the transactions between DERS and customers of Duke Energy (including but not limited to invoices, receipts, purchase orders, cancelled checks, bank statements, vouchers, trial balance, financial statements, journal entries, records showing debits and credits for any payments under Option Agreements, and etc.); ii) all documents (in all forms, including hard copies of information stored on electronic media)

including but not limited to accounting policies and procedures establishing separate accounting records by DERS in compliance with R.C. 4928.17 (Corporate Separation Plan); iii) all documents (in all forms, including hard copies of information stored on electronic media) including, but not limited to, accounting policies and procedures and records of transactions for Duke Energy Ohio and DERS in compliance with Ohio Adm. Code 4901:1-20-16 (Corporate Separation) (by way of example only, the cost allocation manual as described in Ohio Adm. Code 4901:1-20-16(F)); iv) all documents (in all forms, including hard copies of information stored on electronic media) pertaining to correspondence related to accounting treatment and/or the interpretations of the accounting entries for the recording in the financial records of DERS transactions resulting from these agreements; v) all documents relating to correspondence to or from an auditor discussing opinions, facts, statements and/or recommendations regarding accounting treatment of the DERS transactions resulting from these agreements; vi) all financial statements including balance sheets and income statements for years 2003, 2004, 2005, and 2006, including any supporting accounting detail, documents or notes to those financial statements and any filings at the Securities and Exchange Commission that include, reference or reflect any supporting accounting detail, documents or notes to those financial statements related to the aforementioned agreements.

The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination. Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

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

Jeffrey L. Small, Trial Attorney

Ann M. Hotz

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Assistant Consumers' Counsel

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Market-Based Standard Service Offer.	)	

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**MEMORANDUM IN SUPPORT**

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The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Lon Mitchell to appear as a witness possessing knowledge and expertise about the accounting treatment and financial implications (including for financial statements) of agreements entered into between DERS and customers of Duke Energy, and be able to provide in-depth information regarding these matters. Lon Mitchell is to appear for oral deposition as on cross-examination on February 23, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time) and attend from day to day until the deposition is completed to provide testimony concerning accounting treatment and financial implications of transactions that resulted from agreements that DERS made with the customers of Duke Energy that have a bearing on the outcome of the above captioned

cases, including 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 witness should be knowledgeable in the aforementioned matters and the documents that are more fully described below.

OCC previously took the deposition of DERS President, Charles Whitlock. However, Mr. Whitlock was relatively new to the position, and he was unable to respond to questions about the accounting treatment and financial implications of transactions that resulted from agreements that DERS made with customers of Duke Energy. Therefore, OCC is seeking to depose a witness with knowledge and expertise on these matters.

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.<sup>2</sup> Mr. Deeds claims that Duke Energy used DERS Option 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. Lon Mitchell should have

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<sup>2</sup> *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

knowledge and expertise about the accounting and financial aspects of agreements entered into by DERS with customers of Duke Energy and be able to provide in-depth information regarding these matters. Lon Mitchell's participation in the examination will facilitate a full and complete development of the cases before the PUCO, including the ultimate record upon which the Commission will base its decision.

Additionally, the subpoena should also compel Lon Mitchell to bring with him, for delivery to OCC at 10:00 a.m. on said day and at said place, the following accounting-related information pertaining to transactions pursuant to the agreements that were provided by DERS to OCC under a prior subpoena on January 9, 2007, i) all documents (in all forms, including hard copies of information stored on electronic media) containing accounting records supporting/documenting the transactions between DERS and customers of Duke Energy (including but not limited to invoices, receipts, purchase orders, cancelled checks, bank statements, vouchers, trial balance, financial statements, journal entries, records showing debits and credits for any payments under Option Agreements, and etc.); ii) all documents (in all forms, including hard copies of information stored on electronic media) including but not limited to accounting policies and procedures establishing separate accounting records by DERS in compliance with R.C. 4928.17 (Corporate Separation Plan); iii) all documents (in all forms, including hard copies of information stored on electronic media) including, but not limited to, accounting policies and procedures and records of transactions for Duke Energy Ohio and DERS in compliance with Ohio Adm. Code 4901:1-20-16 (Corporate Separation) (by way of example only, the cost allocation manual as described in Ohio Adm. Code 4901:1-20-16(F)); iv) all documents (in all forms, including hard copies of information stored on

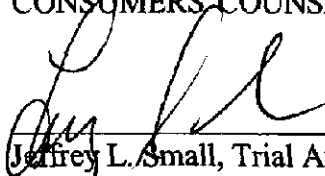
electronic media) pertaining to correspondence related to accounting treatment and/or the interpretations of the accounting entries for the recording in the financial records of DERS transactions resulting from these agreements; v) all documents relating to correspondence to or from an auditor discussing opinions, facts, statements and/or recommendations regarding accounting treatment of the DERS transactions resulting from these agreements; vi) all financial statements including balance sheets and income statements for years 2003, 2004, 2005, and 2006, including any supporting accounting detail, documents or notes to those financial statements and any filings at the Securities and Exchange Commission that include, reference or reflect any supporting accounting detail, documents or notes to those financial statements related to the aforementioned agreements.

The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination. Grounds for this Motion are set forth in the accompanying Memorandum in Support. 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



Jeffrey L. Small, Trial Attorney  
Ann M. Hotz  
Larry S. Sauer  
Assistant Consumers' Counsel

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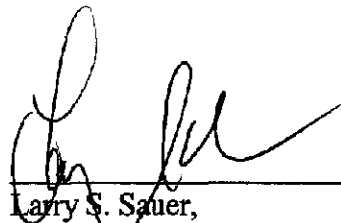
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Hearing Examiner's electronic service list) the 16th day of February, 2007.

A handwritten signature in black ink, appearing to read "Larry S. Sauer", is written over a horizontal line.

Larry S. Sauer,  
Assistant Consumers' Counsel