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Duke Energy.

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Michael J. Pahutski
Assistant General Counsel

513-287-1309

March 7, 2007

Mr. Jeff L. Small
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215-3485

Re: Case No. 03-93-EL-ATA *et. al.*

Dear Jeff:

At 5:27 pm on March 5, 2007, the Office of the Ohio Consumers' Counsel (OCC) sent by e-mail, a number of documents that comprise protected materials pursuant to a protective agreement signed by Duke Energy Retail Sales (DERS) and OCC. Such materials also remain protected pursuant to the orders of the Attorney Examiners in the above referenced cases made orally and on the record during the deposition of Mr. Deeds on February 8, 2007. The protected materials were sent to Parties in the above captioned proceedings that have not signed protective agreements with DERS and were not entitled to receive the protected materials. At 7:42 pm, OCC sent another e-mail indicating that the distribution was inadvertent and requested that Parties without protective agreements delete the attachments containing the protective materials.

This letter is a formal notification by DERS to OCC that OCC is in material breach of the protective agreement signed by DERS and OCC, as well as the Attorney Examiner's order of February 8, 2007. DERS reserves its legal rights, pursuant to the protective agreement and the Commission's authority, to pursue a remedy for the breach. It is of no consequence whether the breach of duty was inadvertent or intentional, it remains a breach.

Specifically, OCC materially breached: (1) Its protective agreements by its failure to give DERS notice of a use of protected materials not contemplated in the agreements; (2) OCC's failure to give DERS an opportunity to protect its materials through a court or administrative agency of competent jurisdiction; and (3) By its failure to abide by the orders of the Attorney Examiners to maintain certain portions of the Deed's deposition, and documents associated therewith, as confidential.

Please contact me if you have any questions concerning this matter.

Very truly yours,

Michael J. Pahutski

Michael J. Pahutski

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Technician ____ Date Processed 3-8-07