

FILE

**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 Case.	)	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 PROTECTIVE ORDER REGARDING PORTIONS OF  
DEPOSITION TRANSCRIPTS AND EXHIBITS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Pursuant to Ohio Adm. Code 4901-1-24, the Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") for a protective order regarding certain of the information asserted to be confidential by Duke Energy Ohio, Inc. (Duke Energy Ohio), Duke Energy Retail Sales, LLC ("DERS"), and Cinergy Corp. ("Cinergy"), the Ohio Hospital Association ("OHA") and the Kroger Company ("Kroger") that are parties to the above-captioned cases. As part of discovery in these proceedings, Duke Energy Ohio, DERS, Cinergy, OHA, and Kroger provided information to the OCC (subject to a protective agreements), and they assert that this information constitutes trade secrets under Ohio law and that non-disclosure is not inconsistent with the purposes of R.C. Title 49. In the OCC's

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 78 Date Processed 3-16-07

RECEIVED-DOCKETING  
2007 MAR 15 PM 3:58  
PUCO

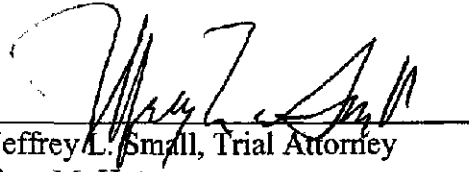
progressive discovery efforts, OCC has taken the deposition of two employees or consultants to the Duke-affiliated companies (Gregory Ficke and James Ziolkowski) and a representative of Kroger (Denis George). Accordingly, the OCC hereby requests that the Commission issue such order as is necessary to protect the marked (i.e. "sealed") portions of the deposition transcripts, and exhibits thereto, that were deemed confidential by the aforementioned parties. The OCC files these documents along with a Notice of Filing of Depositions, subject to the OCC's rights under the protective agreements.

By this motion ("Motion"), the OCC does not concede that the information constitutes trade secrets. However, the OCC acknowledges that it has obtained information pursuant to protective agreements that provides for such information to be treated under a protected status (subject to OCC's right under the protective agreements to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this motion are more fully described 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  
Larry S. Sauer  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 (telephone)

(614) 466-9475 (facsimile)

[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)

[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)

**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.	)	

---

**MEMORANDUM IN SUPPORT**

---

Contemporaneously with the filing of this Motion, a Notice of Filing of Depositions is being filed in this matter. The Public Version of the deposition transcripts and their exhibits are being filed for viewing by the public. The Public Version reflects the redaction of information that was deemed by Duke Energy, DERS, Cinergy, OHA, and Kroger to be confidential during the depositions of Messrs. Ficke, Ziolkowski, and George, pursuant to the protective agreements.

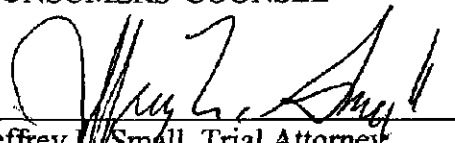
Without conceding that the information gained during the deposition meets the standard for trade secrets and deserves protection from public revelation under R.C. 1333.61(D), the OCC files the instant Motion to protect the information provided by other parties pending such a determination at a later point in time in the event OCC exercises its right to initiate the process for the PUCO to decide if confidential treatment is appropriate. Accordingly, the OCC hereby requests that the Commission issue such

order as is necessary to protect the protected portions of the deposition transcript, and exhibits thereto, that were deemed confidential (together, filed with the OCC's Notice of Filing of Deposition), subject to the OCC's rights under the protective agreements.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion for Protective Order should be granted.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

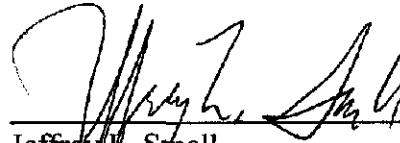


Jeffrey L. Small, Trial Attorney  
Ann M. Hotz  
Larry S. Sauer  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (telephone)  
(614) 466-9475 (facsimile)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Protective Order of the Office of the Ohio Consumers' Counsel was served electronically to the persons listed on the e-mail distribution list provided by the Attorney Examiner (as supplemented) this 15th day of March 2007.



Jeffrey L. Small  
Assistant Consumers' Counsel

paul.colbert@duke-energy.com  
rocco.d'ascenzo@duke-energy.com  
anita.schafer@duke-energy.com  
michael.pahutski@duke-energy.com  
ariane.johnson@duke-energy.com  
mdortch@kravitzllc.com

Scott.Farkas@puc.state.oh.us  
Jeanne.Kingery@puc.state.oh.us

cmooney2@columbus.rr.com  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
sam@mwncmh.com  
dneilsen@mwncmh.com  
lmcaltister@mwncmh.com  
jbowser@mwncmh.com  
drinebolt@aol.com  
WTPMLC@aol.com  
schwartz@evainc.com  
rsmithla@aol.com  
barthroyer@aol.com  
sbloomfield@bricker.com

Thomas.McNamee@puc.state.oh.us  
Werner.Margard@puc.state.oh.us

TOBrien@Bricker.com  
dane.stinson@baileycavalieri.com  
korkosza@firstenergycorp.com  
JKubacki@strategicenergy.com  
mchristensen@columbuslaw.org  
tschneider@mgsclaw.com  
shawn.leyden@pseg.com  
ricks@ohanet.org  
cgoodman@energymarketers.com  
nmorgan@lascinti.org  
eagleenergy@fuse.net  
Stephen.Reilly@puc.state.oh.us  
mhpetricoff@vssp.com