

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of the)
Cincinnati Gas & Electric Company to) Case No. 05-725-EL-UNC
Modify Its 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 its) Case No. 06-1069-EL-UNC
System Reliability Tracker.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Adjust and Set its) Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)

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

**MOTION FOR PROTECTIVE ORDER REGARDING PORTIONS OF AN
APPLICATION FOR REHEARING
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"), its affiliates Duke Energy Retail Sales, LLC ("DERS") and Cinergy Corp. ("Cinergy"), and other parties to these cases. As part of discovery in these proceedings, Duke Energy, its affiliates, and other

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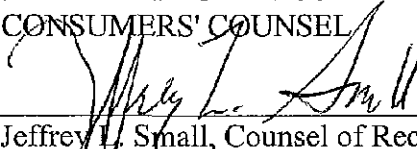
parties have provided information to the OCC (subject to protective agreements) and assert that this information constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49. Some of that information is used in OCC's Application for Rehearing that is filed contemporaneously with the instant Motion for Protection ("Motion").

By this Motion, the OCC does not concede that the information does indeed contain trade secrets. However, the OCC has obtained this information pursuant to protective agreements with parties to these cases that provide for such information to be treated under a protected status (i.e. protected subject to OCC's right under the protective agreements to initiate a process for review regarding 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
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MEMORANDUM IN SUPPORT

Contemporaneously with the filing of this Motion, the OCC is filing an Application for Rehearing in the above-captioned cases. Documents labeled "Public Version Redacted" are being filed for view by the public. The Public Version reflects the redaction of information that may be considered confidential by the parties that provided the information to OCC. The final treatment of some of this information remains in controversy, both because the period for revised redaction of documents (as required by

the Order) has not yet run and because the treatment of the information is a subject of the OCC's Application for Rehearing in Case Nos. 03-93-EL-ATA, et al.¹

Without conceding that the information gained in these proceedings from other parties under claims of confidentiality meet the standard for trade secrets and deserve protection from public revelation under R.C. 1333.61(D), the OCC files the instant Motion under the workings of the PUCO's rules to protect the information provided by these parties pending such a determination at a later point in time. Accordingly, the OCC hereby requests that the Commission issue such order as is necessary to protect the redacted portions of the Application for Rehearing in the above-captioned cases subject to the Commission's entry on rehearing and the OCC's rights under its protective agreements with other parties.

The OCC understands that other parties consider the information redacted in the Application for Rehearing to be confidential and deserving of the status of trade secrets as defined in R.C. 1333.61(D). Such assertions would be based on claims by these parties that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Under the assertions made by parties to protective agreements with the OCC, confidential treatment of the documents and the information that the OCC seeks to use from those documents would be appropriate, subject to the OCC's rights under the protective

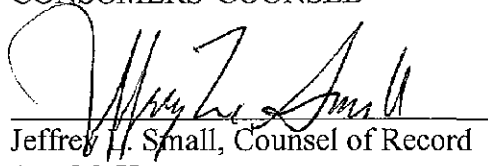
¹ *In re Post-MDP Remand Case*, Case Nos. 03-93-EL-ATA, et al., Order on Remand at 17 (October 24, 2007). Forty-five days were provided for Duke Energy to perform redactions, consistent with the Order on Remand, while parties that submitted documents were instructed to provide new redactions "no later than 60 days after the date of this order on remand." *Id.*

agreements to initiate a review process regarding whether the information qualifies for protection.²

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



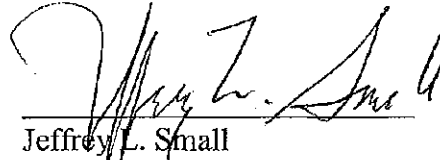
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² For example, the Attorney Examiners granted an oral Motion for Protective Treatment of Confidential Materials at hearing on March 21, 2007. Parties were formally instructed to file the confidential versions of their briefs under seal. Tr. Vol. III at 176-177 (March 21, 2007).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order* by the Office of the Ohio Consumers' Counsel was served electronically, as shown below, this 20th day of December 2007.



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