

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Approval of an Electric) Case No. 08-0920-EL-SSO
Security Plan.)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend) Case No. 08-0921-EL-AAM
Accounting Methods.)

In the Matter of the Application of Duke)
Energy Ohio for Approval of a Certificate)
of Public Convenience and Necessity to) Case No. 08-0922-EL-UNC
Establish an Unavoidable Capacity)
Charge.)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend its) Case No. 08-0923-EL-ATA
Tariff.)

PUCO

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MOTION FOR A CONTINUANCE AND EXTENSION OF TIME
OR, IN THE ALTERNATIVE,
MOTION TO COMPEL DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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September 19, 2008

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 607,000 residential electricity consumers of Duke Energy-Ohio ("Duke" or "the Company"), moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to continue the hearing and extend the schedule¹ in this case for an additional month. In the alternative, OCC moves to compel Duke to respond to various OCC discovery requests

¹ Ohio Adm. Code 4901-1-13.

so that OCC can continue its case preparation under the extremely compressed timeframe for these cases in which Duke proposes to increase rates.²

The requested 30-day continuance would move the hearing from November 3, 2008 to December 3, 2008. Additionally, the requested 30-day extension on the procedural schedule would require that testimony be due November 17, 2008, that discovery requests would end on November 21, 2008 and that staff testimony be due on November 24, 2008.

Currently, Duke has not responded to a total of 55 discovery requests that are overdue. Just yesterday Duke issued three discovery requests that were over due by 16 days.³ Duke's failure to respond to discovery responses on time in this case is especially serious because of the very short schedule permitted in these cases. For those reasons, in the alternative, the OCC files this motion to compel discovery under Ohio Adm. Code 4901-1-23.

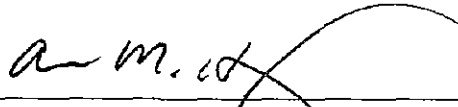
The reasons supporting these motions are set forth in the attached Memorandum in Support. The PUCO should grant a continuance and extension of time in this case or, in the alternative, compel the answers to discovery in the interests of allowing for hearing preparation and protecting the transparency of the state's public process for regulation of electricity rates affecting hundreds of thousands of customers in southern Ohio.

² Ohio Adm. Code 4901-1-12 and 49091-1-23.

³ Responses to OCC Fifth and Sixth Set of Discovery were due September 18 and have not yet been received. See Attachment 1. Requests for Production of Documents Nos. 16, 17 and 22 from OCC's Second set of discovery, which were due on September 2.

Respectfully submitted,

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CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Ann M. Hotz", written over a horizontal line.

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. THE APPLICABLE LAW	3
III. ARGUMENT	4
A. The Commission Should Grant A Continuance of the Hearing and Extension of the Schedule in this Case	4
B. The Commission Should Compel Duke To Respond to Discovery Responses On Time Because Duke Has Repeatedly Failed to Provide Discovery Responses Under the Required Timeline and Has Thereby Interfered in OCC's Ability to Effectively Prepare for Hearing Under the Very Short Timeline the Commission Has Established For This Case.....	7
IV. CONCLUSION.....	8

**BEFORE
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In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge.)	Case No. 08-0922-EL-UNC
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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

OCC files this motion for a continuance of the hearing and an extension of the procedural schedule or, in the alternative, motion to compel in order to meet the unusually short schedule the Commission established in these cases. These cases establish the services electric customers will receive from Duke and rates electric customers must pay Duke for three years beginning January 1, 2009. Duke filed an application for approval of an electric security plan ("ESP") pursuant to R.C. 4928.143 along with other related applications on July 31, 2008.

On August 5, 2008, the Attorney Examiner issued an Entry establishing the schedule, which is very short compared to other cases involving so many complex issues.⁴ In addition the Entry requires that discovery responses be completed and sent to the issuing parties within 10 days of electronic service.⁵ On August 26, 2008 OCC, the Environmental Council, and Partners for Affordable Energy filed a Joint Motion for Continuance of the Hearing, Extensions of Time and Memorandum in Support. On August 29, 2008 Duke filed a Memorandum in Opposition.

On September 4, 2008, OCC filed a Reply and in that reply complained about Duke's failure to meet discovery deadlines.⁶ While the Attorney Examiner later extended the schedule by 14 days, the Attorney Examiner did not extend the discovery deadline.⁷

In the meantime and despite the complexity and far-reaching consequences of Duke's application, Duke has been negotiating at the PUCO's offices with other parties to resolve this case through settlement discussions. These discussions began a mere 28 days after Duke filed its application.

Duke has not provided OCC a single discovery response of the six sets, including 252 interrogatories and 53 requests to produce, on time. One can wonder if the circumstances of this ESP are proving to be a partial replay of the truncated process of Duke's rate stabilization plan that featured various public and private settlements without any support of a representative of all residential consumers and that was reversed by the Supreme Court for the unavailability of certain discovery.⁸

⁴ Entry (August 5, 2008) at 2-3.

⁵ Id at 3.

⁶ OCC Reply (September 4, 2008) at 3-4.

⁷ Entry (September 5, 2008).

⁸ *Ohio Consumers Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300, 2006-Ohio 5789, (November 22, 2006).

Currently, Duke has not responded to 55 discovery requests that are overdue. Just yesterday Duke finally responded to three discovery requests that were overdue by 16 days. Under this very tight hearing schedule it is all the more prejudicial and unfair that Duke would delay OCC's case preparation by not being timely in its responses to OCC's discovery requests. In addition, OCC is diligently pursuing discovery under these circumstances, and is entitled to timely and complete responses to its discovery inquiries.⁹ Duke explained that it has been served with "thousands" of discovery requests and although it has been working very hard at meeting the discovery deadlines, has been unable to meet them.¹⁰

On September 14, 2008 Duke's service territory suffered a very serious windstorm that led to 575,000 customer outages. Due to the work associated with returning power to these customers and other scheduling conflicts, Duke indicated that it would have difficulty meeting discovery deadlines because of the outages.¹¹ Additionally, Duke has canceled the negotiations scheduled for September 17, 2008.

II. THE APPLICABLE LAW

The Commission rules provide for the opportunity in circumstances such as those now faced by the parties for parties to request continuances and extensions of time under Ohio Adm. Code 4901-1-13 **for good cause shown**:

Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the commission, the legal director, the deputy legal director, or an attorney examiner.

⁹ Ohio Adm. Code 4901-1-16.

¹⁰ Telephone conversation of September 16, 2008 with Duke's Counsel

¹¹ Id.

An opportunity to file a motion to compel is necessary to enforce the right to discovery under law and rule for purposes of review and case preparation in matters affecting the utility services of millions of Ohioans. The General Assembly enacted R.C. 4903.082 to “grant[] ample rights of discovery” to all parties. The PUCO promulgated Ohio Adm. Code 4901-1-16(A) to “encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate participation in commission proceedings.”

The Commission established Rule 23(A)(1) to provide that opportunity to compel discovery, with respect to “any failure of a party to answer an interrogatory served under rule 4901-1-19” or “Any failure of a party to produce a document or tangible thing * * * as requested under rule 4901-1-20 of the Administrative Code.”

This Motion to Compel is being filed pursuant to Ohio Adm. Code 4901-1-23(C) because Duke has failed to answer interrogatories and to produce documents in the above-captioned case.

III. ARGUMENT

A. The Commission Should Grant A Continuance of the Hearing and Extension of the Schedule in this Case.

Circumstances have provided good cause for the Commission to grant a continuance and extension of time for 30 days under Ohio Adm. Code 4901-1-13(A). The first circumstance contributing to good cause to grant a continuance and extension is that the Commission, in order to meet the deadlines suggested in S.B. 221, established

unprecedented short timelines for this case.¹² However, the Commission does not have to approve an electric security plan in this case 150 days after Duke filed its application. If under the Commission's perception the utility has not shown that its ESP "including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 (or the market rate option)"¹³ the Commission can reject it and require Duke to file a new application.

Because of the complexity of Duke's application and the Commission's obligation to hold a hearing in this case that will provide parties with all the due process requirements under its Rules of Practice,¹⁴ the Commission must provide parties with an opportunity to review, analyze and challenge Duke's application. In order to provide parties with that opportunity the Commission must provide parties with sufficient discovery time and should do so by granting a 30-days continuance for the hearing in this case and a 30-day extension of time of the procedural schedule.

The second circumstance showing good cause is that Duke Energy has indicated that it has been unable to meet discovery deadlines because it has received "thousands" of discovery requests from parties in this case. If Duke has received "thousands" of discovery requests in this case, then that is because in order to properly prepare for the hearing in this case parties must understand and obtain data on the details of multiple highly technical and complex issues.

¹² R.C. 4928.143(C)(1).

¹³ Id.

¹⁴ Especially Ohio Adm. Code 4901-1-16.

In this case Duke is requesting approval of an Integrated Resource Plan (previously the subject of one case on its own¹⁵) that contains multiple assumptions that may or may not be reasonable and appropriate. The application also involves a controversial and new “Save-A-Watt” energy efficiency program and requests approval of a controversial “active management” approach to fuel procurement. Additionally, intervenors have to review and analyze an earnings test, an economic development rider, the prudence and recovery of costs from the advanced metering infrastructure plan, among other programs and riders. In typical rate cases, intervenors would not have to analyze as many complex issues and would have twice the time schedule for discovery.

Accordingly, the Commission should address Duke’s admitted difficulties in meeting the discovery deadlines because it received “thousands” of discovery requests associated with these complex issues and grant OCC’s Motion. The Commission should not prejudice intervenors by denying the additional discovery time through a 30-day continuance of the hearing and an extension of the procedural schedule because under the current schedule Duke has not been able to timely respond to any discovery OCC has issued.

The massive outages in Duke’s service territory is the third circumstance that shows good cause for the Commission to grant a continuance of the hearing and an extension of time of the schedule. According to Duke, the massive outage is one of the reasons why Duke has been unable to meet discovery timelines. In addressing the outages for customers Duke has apparently had to use legal department employees who are responsible for responding to discovery responses. But Duke’s excuse does not address the due process problems that intervenors face when they are not receiving

¹⁵ IRP Rules.

discovery on time during an aggressive hearing schedule or during the delays in responses before the outages.¹⁶ Only the Commission's granting of a continuance and extension can address OCC's and other parties' due process rights. Due to the showing of good cause above, the Commission should grant the continuance and extension under Ohio Adm. Code 4901-1-13.

B. The Commission Should Compel Duke To Respond to Discovery Responses On Time Because Duke Has Repeatedly Failed to Provide Discovery Responses Under the Required Timeline and Has Thereby Interfered in OCC's Ability to Effectively Prepare for Hearing Under the Very Short Timeline the Commission Has Established For This Case.

The Commission established a very short timeline in this case even with the 15-day extension the Commission has granted. This case involves very complex and technical issues that are frequently of the type resolved in multiple dockets over longer periods of time. Duke's application not only requires parties to determine if its proposed increase in the standard service offer generation rate is reasonable but also to determine if proposed mechanisms for recovery of distribution and transmission costs are also reasonable.

Rule 23(C) requires the movant to compel to "exhaust[] all other reasonable means of resolving any differences with the party or person from whom discovery is sought." To date, OCC has repeatedly reminded Duke of the late discovery responses.¹⁷ Additionally, OCC has contacted Duke's Counsel by e-mail and also telephoned requesting timely responses to OCC's discovery.¹⁸ To date Duke has failed to provide OCC a single

¹⁶ OCC notes that Duke was already overdue to respond to some of OCC's discovery requests before the outage occurred on September 14, 2008.

¹⁷ See Attachment 2.

¹⁸ See Affidavit, Attachment 3.

discovery response on time and has made no promises to improve their timeliness, even though OCC told Duke that it would likely file a Motion to Compel.

IV. CONCLUSION

Duke's applications in these cases are complex and of profound significance to the 607,000 Ohio residential consumers that, under Duke's proposal, would pay millions of dollars in rate increases immediately and even more in the next three years. Ohio's laws and rules provide parties, including OCC, with ample opportunity for case preparation. Therefore, the Commission should grant a 30-day continuance of the hearing, moving it from November 3, 2008 to December 3, 2008. Additionally, the Commission should grant a 30-day extension on the procedural schedule that would require that testimony be due November 17, 2008, that discovery requests would end on November 21, 2008 and that staff testimony be due on November 24, 2008.

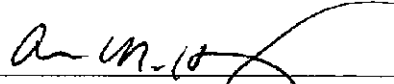
In the alternative, the Commission should order Duke to meet the discovery schedule established by the Commission for each and every response. This order would place Duke under an order to compel¹⁹ so that the Commission can more quickly hereafter impose sanctions.²⁰

¹⁹ Ohio Adm. Code 4901-1-23(F).

²⁰ *Id.*

Respectfully submitted,

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CONSUMERS' COUNSEL



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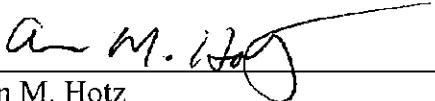
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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Motion for a Continuance and Extension of Time or, in the Alternative, Motion to Compel Discovery* was served via electronic and first class U.S. mail, postage pre-paid, this 19th day of September 2008 to the following persons.



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)	Case No. 08-0923-EL-ATA
)	

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON DUKE-ENERGY OHIO,
FIFTH SET
(DATED SEPTEMBER 8, 2008)**

The Office of the Ohio Consumers' Counsel in the above-captioned proceedings before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Duke-Energy Ohio ("Duke") within 10 days, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic response should be

provided to the extent possible to the Office of the Ohio Consumers' Counsel at the following addresses:

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Additionally, Duke must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph

records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as

documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," or "the identity of," or "identified" means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
- 10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 11. The term "e.g." connotes illustration by example, not limitation.
 - 12. "OCC" means the Office of the Ohio Consumers' Counsel.
 - 13. "ESP" means electric security plan as found under R.C. 4928.143(B).
 - 14. "Duke" or "Company" means Duke Energy Ohio.
 - 15. "RSP" means rate stabilization plan as identified in Case No. 03-93-EL-???
 - 16. "DENA assets" means the OVEC coal plants that were acquired by DE-Ohio as a result of the merger between Cinergy and Duke Energy in 2006.
 - 17. "SAW" means Save-A-Watt.
 - 18. "PPI" means the U.S. Department of Labor's Bureau of Labor Statistics Producer Price Index.
 - 19. "CPI" means the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

205. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

206. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

207. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date

for which the electric utility seeks recovery of any charges in its ESP

Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

208. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a political subdivision, related to:

RESPONSE:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

209. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

210. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date

for which the electric utility seeks recovery of any charges in its ESP
Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

211. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

212. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

RESPONSE:

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

213. Referring to Senate Bill 221, section 4928.02 (A):

- a) How does the company define "adequate and reliable service?"

RESPONSE:

- b) What measurements and standards are used to determine what constitutes adequate and reliable service?

RESPONSE:

- c) What is an acceptable margin of error when it comes to outages and/or momentary power surges?

RESPONSE:

- d) What contingency plans, if any, do you have in place to handle extreme winter weather in Ohio?

RESPONSE:

- e) How can you plan ahead in order to restore winter-weather related outages more quickly? Does the company have plans to hire temporary/ seasonal workers to assist with this process? If so, how many temporary/seasonal workers does the company anticipate it will employ to respond and restore winter-weather related outages in a timely fashion?

RESPONSE:

214. Referring to Senate Bill 221, section 4928.02 (D):

- a) What incentives do you currently offer residential customers to conserve energy?

RESPONSE:

- b) What, if any, future incentives to conserve do you plan to offer to residential customers?

RESPONSE:

- c) Do you have plans to assist the local community action agencies and/or the Ohio Department of Development with home weatherization assistances?

RESPONSE:

- d) What can you do to help weatherization projects be completed more quickly?

RESPONSE:

- e) What incentives can you offer residential customers who are not eligible for assistance programs such as the Home Energy Assistance Program (HEAP), the Percentage of Income Payment Plan (PIPP), and/or Home Weatherization Assistance program (HWAP)?

RESPONSE:

- f) How can you encourage and assist residential customers that are income eligible for HEAP, PIPP, and/or HWAP to conserve energy?

RESPONSE:

- g) Does the company currently offer weatherization assistance to residential customers?

RESPONSE:

- h) If the response above to Interrogatory No. 214(g) is affirmative, what different types of programs are available to residential customers, including the company's eligibility criteria?

RESPONSE:

- i) For each type of program identified in 214(h), above, what eligibility criteria must consumers meet?

RESPONSE:

- j) What is the total number of vendors that are available to complete weatherization projects in your service area?

RESPONSE:

- k) During the past three years, what is the total number of residential customers that have applied for weatherization assistance through the company?

RESPONSE:

- l) Referring to the previous question, how many residential customers were determined eligible by the company for weatherization assistance?

RESPONSE:

- m) Referring to the previous question, how many residential customers that were determined eligible for weatherization assistance are presently on a waiting list?

RESPONSE:

- n) What are the company's plans to educate residential customers on time differential pricing?

RESPONSE:

- o) Do you offer time differential pricing to all residential customers, including PIPP customers?

RESPONSE:

- p) How do you plan to communicate, educate and encourage customers to participate in net metering?

RESPONSE:

- q) What is your communication plan for the general public in regards to net metering?

RESPONSE:

- r) What incentives, if any, do you offer to encourage customers to generate power?

RESPONSE:

- s) Would you be willing to provide financial assistance, advice, consulting services, etc, in order to help customers locate and purchase appropriate equipment needed to do their own generation?

RESPONSE:

215. Referring to Senate Bill 221, section 4928.02 (I), what are the company's plans to protect residential consumers against:

- a) Unreasonable sales practices?

RESPONSE:

b) Market deficiencies?

RESPONSE:

c) Market Power?

RESPONSE:

216. Referring to Senate Bill 221, section 4928.02 (L), what is the company's interpretation for "at risk populations"?

RESPONSE:

217. What types of consumer protections will be implemented for "at risk populations" before introducing and implementing "new advanced energy or renewable energy resources"?

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

41. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in the response to OCC Interrogatory No. 1 between the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:
- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
 - b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
 - c) The current proceeding (e.g. support of the electric utility's positions and/or application)
42. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 2 between the electric utility and a consumer, related to:
- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission

services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

43. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 3 between the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1,

2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

44. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 4 between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

45. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 5 between any affiliate of the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:
- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
 - b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
 - c) The current proceeding (e.g. support of the electric utility's positions and/or application)
46. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 6 between any affiliate of the electric utility and a consumer, related to:
- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period

that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

47. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 7 are between any affiliate of the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1,

2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);

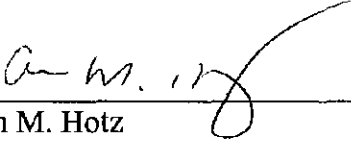
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

48. Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 8 between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Interrogatories and Requests for Production of Documents Propounded Upon Ohio Duke-Energy Ohio, Fifth Set*, was served upon the persons listed below by regular U.S. Mail, postage prepaid, this 8th day of September 2008.


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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan.)	
)	Case No. 08-0920-EL-SSO
)	

In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods.)	
)	Case No. 08-0921-EL-AAM
)	

In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge.)	
)	Case No. 08-0922-EL-UNC
)	

In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariff.)	
)	Case No. 08-0923-EL-ATA
)	

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON DUKE-ENERGY OHIO,
SIXTH SET
(DATED SEPTEMBER 8, 2008)**

The Office of the Ohio Consumers' Counsel in the above-captioned proceedings before the Public Utilities Commission of Ohio submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Duke-Energy Ohio ("Duke") within 10 days, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic response should be

provided to the extent possible to the Office of the Ohio Consumers' Counsel at the following addresses:

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Additionally, Duke must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines,

notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the

documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," or "the identity of," or "identified" means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
- 10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 11. The term "e.g." connotes illustration by example, not limitation.
 - 12. "OCC" means the Office of the Ohio Consumers' Counsel.
 - 13. "ESP" means electric security plan as found under R.C. 4928.143(B).
 - 14. "Duke" or "Company" means Duke Energy Ohio.
 - 15. "RSP" means rate stabilization plan as identified in Case No. 03-93-EL-???
 - 16. "DENA assets" means the OVEC coal plants that were acquired by DE-Ohio as a result of the merger between Cinergy and Duke Energy in 2006.
 - 17. "SAW" means Save-A-Watt.
 - 18. "PPI" means the U.S. Department of Labor's Bureau of Labor Statistics Producer Price Index.
 - 19. "CPI" means the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

218. In response to OCC's Interrogatory No. 01-008, Duke stated that "the 'dedication of capacity for reliability purposes to retail load' is recognized in the Rider SRA-CD and an adjustment to the base generation charge." Is it not true that the capacity in Rider SRA-CD is the same capacity that is included in the current price to compare?

RESPONSE:

219. What types of consumer protections will be implemented for "at risk populations" before introducing and implementing "new advanced energy or renewable energy resources"?

RESPONSE:

220. If the answer to Interrogatory No. 218 above, is affirmative why is Duke creating the Rider SRA-CD?

RESPONSE:

221. If the answer to Interrogatory No. 218, above, is negative what capacity is included in the current price to compare?

RESPONSE:

222. Is Duke requesting only a 4.8% increase in distribution revenues in case No. 08-709-EL-AIR?

RESPONSE:

223. On what basis is Duke projecting a decrease in 2009 unavoidable capacity charges compared to 2008?

RESPONSE:

224. Will the capacity charges in 2009 include only SRT capacity charges?

RESPONSE:

225. Will the PTC-IA be applied to transmission congestion costs and transmission line losses?

RESPONSE:

226. From what generation sources did Duke purchase the 6,680 MW for the SRT in 2006?

RESPONSE:

227. From what generation sources did Duke purchase the 10,002 MW for the SRT in 2007?

RESPONSE:

228. From what generation sources did Duke purchase the 8,959 MW for the SRT in 2008?

RESPONSE:

229. Did Duke credit the revenues identified in response to OCC Interrogatory No. 01-021 to jurisdictional customers?

RESPONSE:

230. If the answer to Interrogatory 229, above, is affirmative how did Duke credit those revenues to jurisdictional customers?

RESPONSE:

231. If the answer to Interrogatory 229, is negative for what reason did Duke not credit those revenues to jurisdictional customers?

RESPONSE:

232. For each of the entities identified in response to OCC Interrogatory No. 01-040 how much of the \$850,000 per annum in home energy and weatherization contracts does Duke currently have committed?

RESPONSE:

233. Does Duke know who will be the prime contractor it references in its response to OCC Interrogatory No. 01-041?

RESPONSE:

234. How often will Duke issue the "DE-Ohio RFP" referenced in response to OCC Interrogatory No. 01-046?

RESPONSE:

235. What is the identity of each of the assets that Duke requests to transfer to a Genco?

RESPONSE:

236. For each of the assets identified in the response to OCC Interrogatory No. 235 above, what percentage of the asset is depreciated?

RESPONSE:

237. Under Duke's currently approved corporate separation plan, which of Duke's affiliates will share any kind of attorneys with Duke?

RESPONSE:

238. Under Duke's currently approved corporate separation plan, which of Duke's attorneys will be shared with any of Duke's affiliates?

RESPONSE:

239. Under Duke's currently approved corporate separation plan, which fuel, purchased power and emission allowance procurement employees procure for Duke?

RESPONSE:

240. Under Duke's currently approved corporate separation plan, which of Duke's fuel, purchased power and emission allowance procurement employees are shared with any of Duke's affiliates?

RESPONSE:

241. Does Duke intend to create schedules showing the billing and revenue comparisons for each rate schedule under the proposed ESP rates?

RESPONSE:

242. If the answer to Interrogatory No. 241 is affirmative, when does Duke intend to create schedules showing the billing and revenue comparisons for each rate schedule under the proposed ESP rates?

RESPONSE:

243. Under Duke's advanced metering infrastructure plan how many residential customers will receive meters that are capable of providing time of use rates?

RESPONSE:

244. Under Duke's ESP does Duke intend to offer residential customers who will have meters capable of providing time of use rates a time of use schedule that will include a critical peak pricing?

RESPONSE:

245. If the answer to Interrogatory No. 244 above why does Duke not plan to offer residential customers a time of use rate schedule that includes a critical peak pricing?

RESPONSE:

246. What kind of home electronics equipment is highly sensitive to voltage fluctuations?

RESPONSE:

247. What is the current amount being recover from residential customers for base generation or what the Company refers to in their application as "PTC-BG"?

RESPONSE:

248. To which part(ies)y did Duke sell the 9,780,980 MWs?

RESPONSE:

249. For each of the part(ies)y listed in response to Interrogatory No. 248, what was the average price per MWs that the part(ies)y paid Duke?

RESPONSE:

250. What percentage of the 9,780,980 MWhs were sold on peak?

RESPONSE:

251. What was the average price per MWh that Duke received for the MWhs it sold on peak in the wholesale market?

RESPONSE:

252. What was the average price per MWh that Duke received for the MWhs it sold off peak in the wholesale market?

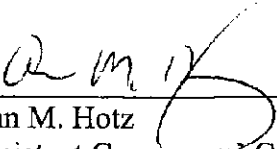
RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

49. Please provide all workpapers supporting the Company's ESP filing, including electronic spreadsheets with formulas intact.
50. Please provide the return on equity that was earned during calendar year 2007 and the 12 months ending June 30, 2008 by publicly traded companies that face comparable business and financial risks as the electric utility, if such returns were computed and used by the Company for purpose of the test of excessive earnings. Provide and describe all assumptions, all data, and all computations, including electronic spreadsheets with formulas intact.
51. Please provide a copy of all other analyses prepared by or on behalf of the Company for the purpose of the test of excessive earnings. Describe the purpose of each such analysis and the conclusions relied on by the Company. In addition, provide and describe all assumptions, all data, all computations, including electronic spreadsheets with formulas intact, and a copy of all source documents relied on.
52. Please provide all back-up information, workpapers and assumptions to support the projected RSP prices of \$5.79 in 2009, \$6.13 in 2010, and \$6.41 in 2011.
53. Please provide documentation that demonstrates the average price Duke received for the 9,780,980 MWh it sold into the market.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Interrogatories and Requests for Production of Documents Propounded Upon Ohio Duke-Energy Ohio, Sixth Set*, was served upon the persons listed below by regular U.S. Mail, postage prepaid, this 8th day of September 2008.



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Assistant Consumers' Counsel

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rocco.dascenzo@duke-energy.com
paul.colbert@duke-energy.com

From: ANN HOTZ
To: Schafer, Anita; Schafer, Anita; Schafer, Anita
Date: 8/26/2008 8:54:56 AM
Subject: Responses to FirstSet of Discovery-Due yesterday.

Anita, The responses to the first set of discovery were due yesterday. Please let us know where you are with these and if you have any done please forward them. Will you please send the responses to Mary Edwards who forwarded the Discovery to you? Thanks. Ann

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From: ANN HOTZ
To: Schafer, Anita; Schafer, Anita; Schafer, Anita
Date: 8/27/2008 9:05:49 AM
Subject: Responses to Interrogatories

Anita, My team keeps asking me for the responses to Interrogatories and since this case is on such a short time line we need to get them soon. Will you please send what you have to Mary Edwards. If you already have please disregard. Thanks. Ann

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From: ANN HOTZ
To: Schafer, Anita; Schafer, Anita; Schafer, Anita
Date: 9/2/2008 9:15:34 AM
Subject: Responses to three sets of discovery

Anita, We are due responses to our first three sets of discovery. I understand that you did not know that the return time was 10 days instead of 20 and that you were trying to get the discovery out on Friday. When do you think we will get responses? Thanks. Ann

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From: ANN HOTZ
To: Schafer, Anita; Schafer, Anita; Schafer, Anita
Date: 9/8/2008 11:46:38 AM
Subject: Outstanding Discovery

Anita, We are still waiting for 3 requests to produce in the first set of discovery. 20-30 responses from the second set are over-due and the 3rd set is due today. Thanks. Ann

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From: ANN HOTZ
To: Colbert, Paul
Date: 9/11/2008 9:21:19 AM
Subject: Discovery that is late

Paul, Thank-you for your phone call yesterday in response to my telephone call to you yesterday. Currently, you owe us answers to Interrogatories 76, 88, 89, 95 and 125 and Requests to Produce 15, 16, 17, 18, 19, 20, 21, and 22 from the second set. Those were all due on September 2 and are overdue by 9 days. Additionally, you owe us Interrogatories 143, 161, 162, 163, 164, 165, 167, 169

from the third set that were also due on September 2 and are also overdue by 9 days. From the 4th set you owe us 4 discovery responses that were due on September 8th and are now overdue by 3 days. We did not receive the rest of the 4th set responses until yesterday and they were overdue by 2 days. So far I do not think we have recieved any responses on time. If we do not receive the outstanding responses soon, we will file a Motion to Compel. The case is on such a short time line we need responses as soon as possible. Ann

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan.)	
)	Case No. 08-0920-EL-SSO
)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods.)	
)	Case No. 08-0921-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge.)	
)	Case No. 08-0922-EL-UNC
)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariff.)	
)	Case No. 08-0923-EL-ATA
)	

AFFIDAVIT OF ANN M. HOTZ

I, Ann M. Hotz, counsel for the Office of the Ohio Consumers' Counsel, being first duly sworn, deposes and says:

1. On August 26, 2008, OCC contacted Duke Paralegal, Anita Schafer, by e-mail (attached hereto as Exhibit 1) notifying her that the first set of OCC discovery responses were over due by one day.
2. On August 27, 2008, OCC contacted Duke Paralegal, Anita Schafer, by e-mail (attached hereto as Exhibit 2) asking her to forward to OCC whatever responses Duke had done from the first set to OCC because the case is on such a short time line.
3. On September 2, 2008, OCC contacted Duke Paralegal, Anita Schafer, by e-mail (attached hereto as Exhibit 3) asking her when OCC would get responses to our first three sets of discovery that were overdue.

4. On September 8, 2008, OCC contacted Duke Paralegal, Anita Schafer, by e-mail (attached hereto as Exhibit 4), identifying the number of discovery responses that were due or overdue.
5. On September 10, 2008, OCC left a voice mail for Duke Counsel of Record Paul Colbert complaining about the number of discovery responses that were late. On the same day Mr. Colbert returned a phone call leaving a voice mail stating that Duke was late only a few data responses.
6. On September 11, 2008, OCC e-mailed Duke Counsel of Record identifying each and every data request that had not been received and by how many days they were late.(attached hereto as Exhibit 5.) OCC also indicated that it may file a Motion to Compel based upon the outstanding discovery responses.
7. On September 11, 2008, at the end of negotiations, when asked, OCC Counsel affirmed to Duke Counsel of Record that OCC was not participating in the negotiations but was observing them and also continued to discuss outstanding discovery responses. Duke Counsel of Record again denied that Duke had many outstanding discovery responses, although Duke still had 15 discovery responses overdue.
8. On September 16, 2008, OCC called Duke Counsel of Record for further explanation regarding an objection that Duke had to a discovery response because OCC was planning to file a motion to compel based upon, Duke's objection and based upon outstanding discovery. Duke Counsel of Record asked OCC not to file a motion to compel due to the difficulties Duke was having restoring customers to power due to the wind storm.

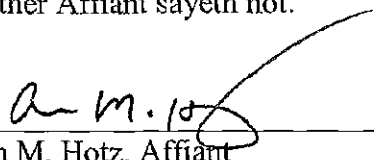
STATE OF OHIO

COUNTY OF FRANKLIN

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and stated the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth not.


Ann M. Hotz, Affiant

Subscribed and sworn to before me this _____ day of September, 2008.


Notary Public

Mary V. Edwards
Notary Public, State of Ohio
My Commission Expires 03-20-2013

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