

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING

2009 MAR 19 PM 3:16

| | | | |
|--------------------------------------|---|-----------|----------------|
| Consolidated Duke Energy Ohio, Inc., |) | Case Nos. | 03-93-EL-ATA |
| Rate Stabilization Plan Remand and |) | | 03-2079-EL-AAM |
| Rider 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 |

**MOTION FOR EXTENSION OF TIME
TO RESPOND TO THE OFFICE OF THE CONSUMERS' COUNSEL'S
MOTION TO MODIFY PROTECTIVE ORDER
AND
MOTION TO MODIFY AND SET ASIDE THE EXPEDITED TIMEFRAME
ESTABLISHED IN THIS CASE FOR RESPONSES TO FILINGS**

Pursuant to Ohio Administrative Code § 4901-1-13, Duke Energy Ohio, Inc. (DE-Ohio), Cinergy Corp. (Cinergy), and Duke Energy Retail Sales, LLC (DERS) respectfully move the Public Utilities Commission of Ohio (PUCO) for an extension of twenty (20) days in which to file a response to the Office of the Consumers' Counsel's March 13, 2009 Motion to Modify Protective Order. The moving parties also respectfully request that the PUCO modify and set aside its expedited timetable, established in an entry dated February 18, 2004 Entry, for all parties involved in these cases. Movants further request that the standard timetable for motions, memorandum contra, and reply memorandum, as set forth in O.A.C. § 4901-1-12, apply to filings in this case from this point forward. The reasons supporting this Motion are provided in the attached Memorandum in Support.

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 SM Date Processed MAR 19 2009

Respectfully Submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, Ohio 43215
Tel: 614-464-2000
Fax: 614-464-2002
E-mail: mdortch@kravitzllc.com
Attorneys for
DUKE ENERGY OHIO, INC.,
CINERGY CORP., and DUKE ENERGY
RETAIL SALES, LLC

MEMORANDUM IN SUPPORT

**I. MOVANTS REQUEST AN EXTENSION OF TIME IN WHICH TO
RESPOND TO THE OFFICE OF THE CONSUMERS' COUNSEL'S
MOTION TO MODIFY PROTECTIVE ORDER**

On March 13, 2009, the Ohio Consumers' Counsel (OCC) filed a motion with the Public Utilities Commission of Ohio (PUCO) to modify a protective order issued October 1, 2008 by the PUCO. The OCC moved the PUCO to modify the protective order so that materials previously protected be released to the public. In support, OCC states that certain protected materials were released to the public on September 18, 2008, as attachments to Plaintiff's Motion for a Preliminary Injunction in *Williams v. Duke Energy International, Inc.*, Case No. 1:108-CV -00046 (U.S. Dist. Ct., Southern Dist. of Ohio).

Duke Energy Ohio, Inc. (DE-Ohio), Cinergy Corp. (Cinergy) and Duke Energy Retail Sales, LLC (DERS) respectfully request that the PUCO grant them an extension of time to file a response to the OCC's March 13, 2009 Motion to Modify Protective

Order. Under the expedited timetable, any memorandum contra must be filed by March 20, 2009. Pursuant to O.A.C. §4901-1-13(A), DE-Ohio, DERS and Cinergy request a twenty (20) day extension to file a memorandum contra from the date that this Motion is filed.

Movants seek this extension in order to have sufficient time to review the protected materials that the OCC requests be released to the public, and to determine whether any or all of them should take action in the *Williams* matter to further protect these materials. Because of the sensitive nature of the protected materials, and the sheer volume of the materials, Movants request the extension in order to permit them to consider all attachments to Plaintiff's Motion for a Preliminary Injunction in *Williams v. Duke Energy International, Inc.*, Case No. 1:108-CV -00046 (U.S. Dist. Ct., Southern Dist. of Ohio).

II. MOVANTS FURTHER REQUEST THAT THE PUCO MODIFY AND SET ASIDE THE EXPEDITED TIMETABLE ESTABLISHED FOR THE INSTANT CASE

In a February 18, 2004 Entry in these cases, the Attorney examiner Ordered parties to file any memoranda contra any motion filed within the cases within seven (7) days after the service of the motion, and any reply memorandum within three (3) days after the service of a memorandum contra. (Entry, Feb. 18, 2004, at ¶ 5.) Movants respectfully request that the PUCO modify and set aside this expedited timetable for response, for all parties involved in these cases. The Movants submit that the expediency that was once a concern in this case is no longer required. In place of the expedited timetable, Movants request that the standard timetable for responses, as set forth in O.A.C. § 4901-1-12, be restored and apply to all future filings in this case.

III. CONCLUSION

Pursuant to O.A.C. §4901-1-13(A), DE-Ohio, DERS and Cinergy request a twenty (20) day extension in which to respond to OCC's Motion to Modify the Protective Order entered in this case. DE-Ohio, DERS and Cinergy also respectfully request the PUCO modify and set aside the expedited timetable, set forth in the February 18, 2004 Entry in these matters, for all parties. DE-Ohio, DERS and Cinergy request that the standard timetable for motions, memorandum contra, and reply memorandum, as set forth in O.A.C. § 4901-1-12, apply to these cases from this point forward.

Respectfully Submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, Ohio 43215
Tel: 614-464-2000
Fax: 614-464-2002
E-mail: mdortch@kravitzllc.com
Attorneys for
DUKE ENERGY OHIO, INC.,
CINERGY CORP., and DUKE ENERGY
RETAIL SALES, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically upon parties, their counsel, and others through use of the following email addresses this 19th day of March, 2009.

Staff of the PUCO

Anne.Hammerstein@puc.state.oh.us
Stephen.Reilly@puc.state.oh.us
Scott.Farkas@puc.state.oh.us
Thomas.McNamee@puc.state.oh.us
Werner.Margard@puc.state.oh.us

Bailey, Cavalieri

dane.stinson@baileycavalieri.com

Bricker & Eckler, LLP

sbloomfield@bricker.com
TOBrien@bricker.com;

Duke Energy

anita.schafer@duke-energy.com
michael.pahutski@duke-energy.com

First Energy

korkosza@firstenergycorp.com

Eagle Energy

eagleenergy@fuse.net;

IEU-Ohio

dneilsen@mwncmh.com;
jbowser@mwncmh.com;
lmcaster@mwncmh.com;
sam@mwncmh.com;

Ohio Consumers Counsel

bingham@occ.state.oh.us
HOTZ@occ.state.oh.us
SAUER@occ.state.oh.us
SMALL@occ.state.oh.us

BarthRoyer@aol.com;

ricks@ohanet.org;
shawn.leyden@pseg.com
mchristensen@columbuslaw.org;
cmooney2@columbus.rr.com
rsmithla@aol.com
nmorgan@lascinti.org
schwartz@evainc.com
WTPMLC@aol.com
cgoodman@energymarketers.com;

Boehm Kurtz & Lowry, LLP

dboehm@bkllawfirm.com;
mkurtz@bkllawfirm.com;

Duke Energy Retail Services

rocco.d'ascenzo@duke-energy.com

Cognis Corp

tschneider@mgs glaw.com

Strategic Energy

JKubacki@strategicenergy.com



Michael D. Dortch