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May 21, 2009

**VIA MESSENGER DELIVERY**

Ms. Renee Jenkins  
Chief, Docketing Division  
Public Utilities Commission of Ohio  
180 E. Broad Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215

PUCO

2009 MAY 21 PM 1:35

RECEIVED-DOCKETING DIV

Re: In The Matter of: The Consolidated Duke Energy Ohio, Inc.  
Rate Stabilization Plan Remand and Rider Adjustment Cases  
Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2080-EL-ATA,  
03-2081-EL-AAM, 05-724-EL-UNC, 05-725-EL-UNC,  
06-1068-EL-UNC, 06-1069-EL-UNC & 06-1085-EL-UNC


Dear Ms. Jenkins:

Enclosed please find an original and fifteen copies of Duke Energy Ohio, Inc.'s, Cinergy Corp.'s and Duke Energy Retail Sales, LLC's Notice to the Commission Regarding Action Taken By The Federal Court.

Please accept the original and fourteen copies of this document for filing in the above identified matters. I would appreciate the return of a time stamped copy via the individual who delivers the same to you.

As always, please call me if you have any questions concerning this filing. Thank you.

Very truly yours,



Michael D. Dortch

Enclosures

This is to certify that the images appearing are an  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2009 MAY 21 PM 1:35  
PUCO

In the Matter of the	:	
Consolidated Duke Energy Ohio, Inc.	:	Case Nos. 03-0093-EL-ATA
Rate Stabilization Plan Remand and	:	03-2079-EL-AAM
Rider Adjustment Cases	:	03-2080-EL-AAM
	:	03-2081-EL-ATA
	:	05-0724-EL-UNC
	:	05-0725-EL-UNC
	:	06-1068-EL-UNC
	:	06-1069-EL-UNC
	:	06-1085-EL-UNC

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**DUKE ENERGY – OHIO, INC.'S CINERGY CORP.'S, AND  
DUKE ENERGY RETAIL SALES, LLC'S  
NOTICE TO THE COMMISSION REGARDING  
ACTION BY THE FEDERAL COURT**

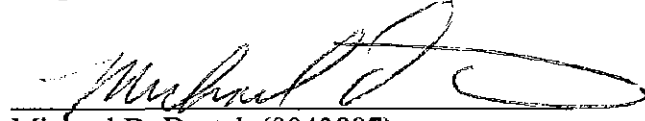
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On March 13, 2009, the Ohio Consumers' Counsel (OCC) filed a motion with this Commission asserting that the Commission should modify a protective order it issued on October 1, 2008, due to certain disclosures in the public record of *Williams et al. v. Duke Energy Ohio* Case No. 1:08-CV-0046, pending in the Southern District of Ohio. On April 9, 2009, Duke Energy-Ohio, Inc., Cinergy Corp., and Duke Energy Retail Sales, LLC, opposed OCC's motion, and represented to the Commission that they would inform the Commission once the inadvertent disclosure of personal identification information had been addressed by the *Williams* Court.

Duke Energy-Ohio, Inc., Cinergy Corp., and Duke Energy Retail Sales, LLC, respectfully wish to report to the Commission that the United States District Court for the Southern District of Ohio has since GRANTED Duke Energy International Inc.'s motion and ordered plaintiff's counsel in that matter to redact customer account information from the court's record. Copies of

Duke Energy International, Inc.'s Motion, and of the Court's Order granting that motion, are attached hereto as exhibits A and B, respectively.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael D. Dortch", written over a horizontal line.

Michael D. Dortch (0043897)

Richard R. Parsons (0082270)

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Attorneys for CINERGY CORP.,  
DUKE ENERGY RETAIL SALES, LLC, and  
DUKE ENERGY-OHIO, INC.

## **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 17<sup>th</sup> day of July 2007.

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Michael D. Dortch

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

<b>ANTHONY WILLIAMS, et al.,</b>	)	<b>Case No. 1:08-CV-00046</b>
	)	
<b>Plaintiffs,</b>	)	<b>Judge Edmund A. Sargus</b>
	)	
<b>vs.</b>	)	<b>Magistrate Judge Mark R. Abel</b>
	)	
<b>DUKE ENERGY INTERNATIONAL, INC.,</b>	)	<b>DEFENDANT'S MOTION TO REDACT</b>
	)	<b>CONFIDENTIAL CUSTOMER ACCOUNT</b>
	)	<b>NUMBERS IN DOCUMENTS FILED</b>
<b>Defendant.</b>	)	<b>WITH THE COURT</b>
	)	

Defendant Duke Energy International, Inc. ("Defendant" or "Duke Energy") respectfully moves this Court pursuant to S.D. Ohio Civ. R. 26.2(a) for an order requiring Plaintiffs' counsel to redact certain confidential customer account numbers that appear on specific pages of Exhibit A in support of Plaintiffs' Motion for a Preliminary Injunction (Doc. 57), which previously was filed with the Court. Although counsel for Plaintiffs previously agreed to redact and re-file redacted versions of these exhibits, they now are unwilling to do so. A Memorandum in Support of this Motion follows, and a proposed Order granting this Motion is attached as Exhibit A for the Court's convenience and will also be electronically mailed to the Court for its consideration and review.

A

Respectfully submitted,

/s/ James E. Burke

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*Attorneys for Defendant,  
Duke Energy*

## **MEMORANDUM IN SUPPORT**

On September 18, 2008, Plaintiffs filed a Motion for a Preliminary Injunction (Doc. 57) (“Plaintiffs’ Motion”). Duke opposed Plaintiffs’ Motion on October 24, 2008 (Doc. 66). Attached as Exhibit A to Plaintiffs’ Motion were copies of the twenty-two Option Agreements between Cinergy Retail Sales (n/k/a Duke Energy Retail Sales) and certain of its commercial and industrial customers (the “Option Agreements”) (Doc. 57-2 at pp.1-185; Doc. 57-3 at pp. 1-132). These Option Agreements were the focus of this action. Attached to each of the Option Agreements was an “Exhibit C” that listed the applicable customer account numbers for each of the commercial and industrial users (Doc. 57-2 at pp. 15, 31-33, 47, 63, 76, 90, 103, 117, 131, 145, 158, 172, 185; Doc. 57-3 at pp. 17, 31, 44, 58, 73, 89-90, 102, 120-21, 132) (collectively the “Customer Account Numbers”). None of these Customer Account Numbers was redacted.

S.D. Ohio Civ. R. 26.2(a) provides in pertinent part:

Parties shall omit or, where inclusion is necessary, partially redact from court filings, social security numbers, full dates of birth, bank or other financial account numbers, names of minor children or other personal information which might contribute to identity theft.

Under Ohio law, electric distribution utilities, like Duke Energy’s affiliate Duke Energy-Ohio, are obligated to keep customer account numbers confidential. Ohio Administrative Code § 4901:1-10-12(F)(1) provides:

Each EDU [Electric Distribution Utility] shall provide new customers, upon application for service, and existing customers upon request, a written summary of their rights and obligations under this chapter. This summary shall be in clear and understandable language and delivered to customers. Each EDU shall submit the summary or amendments thereto to the chief of the commission’s call center for review at least sixty days prior to mailing the summary to its customers. For purposes of this rule “new customer” means a customer who opens a new account and has not received such a customer rights summary within the preceding year. The summary shall include, but not be limited to, the following:

...(F) Information on privacy rights which shall include:

(1) A statement that the EDU is prohibited from disclosing a customer's account number without the customer's written consent, except for the EDU's consumer credit evaluation, collection, and credit reporting; for a CRES provider's credit collections and reporting; for participants in programs funded by the universal service fund, such as the percentage of income payment plan programs; for governmental aggregation or pursuant to court order;

(2) A statement that the EDU is prohibited from disclosing a customer's social security number without the customer's written consent except for programs funded by the universal service fund; for the EDU's credit evaluation, collection, and credit reporting; for a CRES provider's credit collections and reporting; as ordered by the commission, other governmental agency or pursuant to court order;

Moreover, these Customer Account Numbers are the type of "financial account numbers" that S.D. Ohio Civ. R. 26.2(a) is designed to protect. A person or entity wrongfully in possession of a customer account number can gain access to a substantial amount of information to which they are not entitled. With the customer account number, an unscrupulous person can call and obtain a payment and usage history or change billing addresses and other account information. In an extreme case, a competitor could use the information to switch or cancel service.

Counsel for Duke contacted counsel for Plaintiffs in late March, 2009 requesting that Plaintiffs withdraw the Exhibit to Plaintiffs' Motion consisting of the Option Agreements and re-file the Exhibit with only the Customer Account Numbers redacted. *See* Letter of James E. Burke dated April 1, 2009 attached as Exhibit B. Initially, Plaintiffs' counsel agreed to do so. *See* Email of Randolph H. Freking dated April 2, 2009, attached as Exhibit C. When the agreed redactions had not been made by early May 2009, Defendant's counsel followed up and was advised that Plaintiffs' counsel now is refusing to redact the Customer Account Numbers. *See* Email of Randolph H. Freking dated May 5, 2009, attached as Exhibit D.



Accordingly, Defendant respectfully requests that this Court issue an Order requiring Plaintiffs to withdraw Exhibit A to Plaintiffs' Motion, redact the Customer Account Numbers, and file the redacted Exhibit A with the Court.

Respectfully submitted,

/s/ James E. Burke

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*Attorneys for Defendant,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing DEFENDANT'S MOTION TO REDACT CONFIDENTIAL CUSTOMER ACCOUNT NUMBERS IN DOCUMENTS FILED WITH THE COURT was served upon the following counsel of record via the Court's CM/ECF system this \_\_\_ day of May, 2009:

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/s/ James E. Burke  
James E. Burke

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ANTHONY WILLIAMS, *et al.*, :  
 :  
 Plaintiffs, : Civil Action 1:08-cv-046  
 :  
 v. : Judge Sargus  
 :  
 DUKE ENERGY INTERNATIONAL, : Magistrate Judge Abel  
 INC., :  
 :  
 Defendant.

ORDER

This matter is before the Court pursuant to the motion of Defendant Duke Energy International, Inc. (Doc. 110), for an order requiring plaintiffs' counsel to redact certain confidential customer account numbers which appear on specific pages of Exhibit A to Plaintiffs' Motion for Preliminary Injunction (Doc. 57) previously filed in this Court. Defendant requests that this be done pursuant to S.D. Ohio Civ. R. 26.2(a), which requires the omission or partial redaction of financial account numbers.

For good cause shown, the Motion (Doc. 110) is **GRANTED**. Plaintiffs are hereby **ORDERED** to withdraw Exhibit A to Plaintiffs' Motion for Preliminary Injunction (Doc. 57), redact the Customer Account Numbers on pp. 15, 31-33, 47, 63, 76, 90, 103, 117, 131, 145, 158, 172, and 185 of Doc. 57-2, and pp. 17, 31, 44, 58, 73,

89-90, 102, 120-21, and 132 of Doc. 57-3, and file the redacted Exhibit A with the Court.

Under the provisions of 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P. and Eastern Division Order No. 91-3, pt. F, 5, either party may, within ten (10) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by the District Judge. The motion must specifically designate the order, or part thereof, in question and the basis for any objection thereto. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

s/Mark R. Abel  
United States Magistrate Judge