

FILE

15



RECEIVED-DOCKETING DIV

2006 DEC 13 PM 4:12

PUCO

Anita M. Schafer
Senior Paralegal

DUKE ENERGY CORPORATION
139 East Fourth Street
P. O. Box 960
Cincinnati, OH 45202

513.287.3842

513-287-3810 fax

anita.schafer@duke-energy.com

VIA HAND DELIVERY

December 13, 2006

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

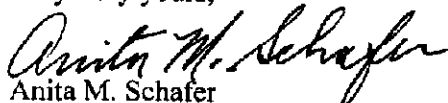
Re: Case No. 03-93-EL-ATA

Dear Docketing Division:

Enclosed please find an original and twelve copies of the Motion for Clarification in the above captioned case. Please note that all parties of record have been served. Please stamp file and return to me the extra two copies of the filing.

Should you have any questions please do not hesitate to call me at 513-287-3842.

Very truly yours,


Anita M. Schafer
Senior Paralegal

Enclosure

cc: All Parties of Record

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 OB Date Processed 12-14-06

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to)
Modify its Non-Residential Generation)
Rates to Provide for Market-Based)
Standard Service Offer Pricing and to) Case No. 03-93-EL-ATA
Establish a Pilot Alternative)
Competitively-Bid Service Rate Option)
Subsequent to Market Development)
Period)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated) Case No. 03-2079-EL-AAM
With The Midwest Independent)
Transmission System Operator)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its) Case No. 03-2081-EL-AAM
Electric Transmission And Distribution) Case No. 03-2080-EL-ATA
System And to Establish a Capital)
Investment Reliability Rider to be)
Effective After the Market Development)
Period)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to)
Modify its Fuel and Economy Purchased)
Power Component of its Market-Based) Case No. 05-725-EL-UNC
Standard Service Offer.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set its)
System Reliability Tracker.) Case No. 06-1069-EL-UNC

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

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 DB Date Processed 12-14-06

DUKE ENERGY OHIO'S MOTION FOR CLARIFICATION

Duke Energy Ohio (DE-Ohio) hereby moves this honorable Public Utilities Commission of Ohio (Commission) to clarify the Attorney Examiner's Entry of November 29, 2006, regarding the nature and scope of the hearing proposed by the Attorney Examiner in the Entry.¹ The Examiner issued this Entry in response to the Ohio Supreme Court's remand of certain portions of the Commission's order approving DE-Ohio's market based standard service offer (MBSSO) in Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, and 03-2080-EL-ATA.² The stated purpose of the proposed hearing is "to obtain the record evidence required by the Court" on remand to the Commission.³ DE-Ohio seeks clarification of the term "obtain" as used by the Attorney Examiner because the Court's order does not require the Commission to obtain *new* evidence. It remanded "this matter to the Commission for further clarification of all modifications made in the first rehearing entry to the order approving the stipulation. On remand, the Commission is required to thoroughly *explain* its *conclusion* that the

¹ *In re DE-Ohio's MBSSO Remand*, Case No. 03-93-EL-ATA *et. al.* (Entry at 3) (November 29, 2006).

² *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 309, 856 N.E.2d 213, 225 (2006)

³ Entry at 3

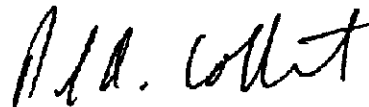
modifications on rehearing are reasonable and [to] *identify the evidence it considered to support its finding.*"⁴

The Court's remand presupposes that there already is evidence of record to support the Commission's decision. It merely requires the Commission to state its reasoning and to cite the record evidence that supports its November 23, 2004, Entry on Rehearing. Initiating a formal hearing process at this point is neither required nor appropriate.

Therefore, DE-Ohio seeks clarification that the hearing proposed by the November 29, 2006, Entry is limited to briefs and/or oral argument of the parties citing record evidence supporting the Commission's November 23, 2004, Entry on Rehearing as required by the Court.

For these and the reasons more fully stated in its Memorandum in Support, DE-Ohio respectfully requests that the Commission grant this Motion.

Respectfully submitted,



Paul A. Colbert , Trial Attorney
Associate General Counsel
Rocco D'Ascenzo, Counsel
Duke Energy Ohio
2500 Atrium II, 139 East Fourth Street
P. O. Box 960
Cincinnati, Ohio 45201-0960
(513) 287-3015

⁴ *Ohio Consumers' Counsel*, 111 Ohio St. 3d at 309, 856 N.E.2d at 225 (emphasis added).

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to)
Modify its Non-Residential Generation)
Rates to Provide for Market-Based)
Standard Service Offer Pricing and to) Case No. 03-93-EL-ATA
Establish a Pilot Alternative)
Competitively-Bid Service Rate Option)
Subsequent to Market Development)
Period)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated) Case No. 03-2079-EL-AAM
With The Midwest Independent)
Transmission System Operator)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its) Case No. 03-2081-EL-AAM
Electric Transmission And Distribution) Case No. 03-2080-EL-ATA
System And to Establish a Capital)
Investment Reliability Rider to be)
Effective After the Market Development)
Period)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company to)
Modify its Fuel and Economy Purchased) Case No. 05-725-EL-UNC
Power Component of its Market-Based)
Standard Service Offer.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set its) Case No. 06-1069-EL-UNC
System Reliability Tracker.)

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

MEMORANDUM IN SUPPORT

Duke Energy Ohio (DE-Ohio) seeks clarification from the Public Utilities Commission of Ohio (Commission) regarding the parameters of the hearing proposed by the Attorney Examiner in its November 29, 2006, Entry (the Examiner's Entry). DE-Ohio respectfully submits that it is unnecessary--indeed inappropriate—to reargue the case, create more evidence, or do anything other than support the Commission's Entry on Rehearing with record evidence.

The Parties to Case No. 03-93-EL-ATA *et. al.*, have already fully litigated this matter, and the Commission has issued its final order. On appeal, the Ohio Supreme Court affirmed the framework of the Market-Based Standard Service Offer (MBSSO) approved by the Commission. The Court did not throw out any part of the plan and, in fact, specifically rejected nearly every challenge to the plan.

The Court did find that certain modifications in the Commission's Entry on Rehearing were not adequately explained, and remanded the case to the Commission for a thorough explanation—with reference to the evidence of record—of its conclusion that the modifications it made to DE-Ohio's MBSSO on rehearing were reasonable.⁵ Importantly, the Court made no finding that there was an absence of evidence or

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 856 N.E.2d 213 (2006)

insufficient evidence to support the Commission's actions. It merely directed the Commission to better explain the reasonableness of its actions based on the evidence of record before it at the time.

There is ample existing record evidence to support the reasonableness of the Commission's November 23, 2004, Entry on Rehearing and to meet the Court's Manifest Weight of the Evidence standard to uphold the Commission.⁶

This being the case, there is simply no reason to initiate a process under which the parties introduce new evidence into record. At the very least, the principle of judicial economy and efficiency precludes any hearing that amounts to a trial *de novo*. Beyond that, the Ohio Supreme Court found that the MBSSO—as a component of DE-Ohio's Rate Stabilization Plan—was a reasonable structure that is consistent with Ohio's deregulation law and the Commission's authority to implement that law. A hearing process that permits the submission of new or additional evidence would turn the Supreme Court's order on its head. For example, if the Commission goes down this path, DE-Ohio could continue to argue for its original Competitive Market Option and the Stipulation signed by many of the Parties. Such a course could undermine the entire MBSSO framework that the Commission itself pushed for—and the Court emphatically has affirmed in three separate cases. In turn, the Commission could see the objectives that it has

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 303, 856 N.E.2d 213, 220 (2006).

worked so hard to fulfill erode. Those objective are price certainty and stability for consumers, revenue certainty for DE-Ohio, and development of the competitive market. DE-Ohio does not believe (or suggest) that such a result is intended by the Commission. DE-Ohio urges that the hearing process should be strictly limited to the purpose of satisfying the Court's very specific remand order.

To concisely set forth the existing evidence of record necessary for the Commission to comply with its remand order, DE-Ohio suggests that the proposed hearing be limited to briefs submitted by the parties citing the evidentiary support for reasonableness of modifications made by the Commission's November 23, 2004, Entry on Rehearing. If the Commission needs clarification of the evidence presented on brief, DE-Ohio asserts that oral argument should be permitted to address any questions the Commission may have regarding the record evidence. If, at the end of such a process the Commission finds it necessary to collect new evidence on some limited point, only then should it do so. DE-Ohio is confident that there is sufficient record evidence to support the Commission's decision and is ready to assist in the identification of such evidence through the appropriate process of briefing and/or oral argument.

For the reasons discussed above, DE-Ohio requests that the Commission grant this Motion for Clarification and limit the scope of the proceeding proposed by the Attorney Examiner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P.A. Colbert". The signature is written in a cursive, slightly slanted style.

Paul A. Colbert
Associate General Counsel
Rocco D'Ascenzo
Counsel
Duke Energy Ohio
2500 Atrium II
P.O. Box 961
Cincinnati, Ohio 45201-0960
(513) 287-3015

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio Motion for Clarification was served by US Mail or hand delivered on the following parties this 13th day of December 2006.



Paul A. Colbert

EAGLE ENERGY, LLC
DONALD I. MARSHALL, PRESIDENT
4465 BRIDGETOWN ROAD SUITE 1
CINCINNATI OH 45211-4439
Phone: (513) 251-7283

**SKIDMORE SALES & DISTRIBUTING
COMPANY, INC.**
ROGER LOSEKAMP
9889 CINCINNATI-DAYTON RD.
WEST CHESTER OH 45069-3826
Phone: 513-755-4200
Fax: 513-759-4270

Intervenor

AK STEEL CORPORATION
LEE PUDVAN
1801 CRAWFORD ST.
MIDDLETOWN OH 45043-0001

BOEHM, DAVID ESQ.
BOEHM, KURTZ & LOWRY
36 EAST SEVENTH STREET SUITE 1510
CINCINNATI OH 45202-4454

CITY OF CINCINNATI
JULIA LARITA MCNEIL, ESQ
805 CENTRAL AVE STE 150
CINCINNATI OH 45202-5756

COGNIS CORPORATION

35 E. 7TH STREET SUITE 600
CINCINNATI OH 45202-2446
Phone: (513) 345-8291
Fax: (513) 345-8294

CONSTELLATION NEWENERGY, INC.
TERRY S. HARVILL
1000 TOWN CENTER SUITE 2350
SOUTHFIELD MI 48075
Phone: (248) 936-9004

**CONSTELLATION POWER SOURCE,
INC.**

MICHAEL D SMITH

111 MARKETPLACE, SUITE 500
BALTIMORE MA 21202
Phone: 410-468-3695
Fax: 410-468-3541

PETRICOFF, M.

VORYS, SATER, SEYMOUR &
PEASE

52 EAST GAY STREET P.O. BOX 1008
COLUMBUS OH 43216-1008
Phone: (614) 464-5414
Fax: (614) 719-4904

CONSUMERS' COUNSEL, OFFICE OF

10 WEST BROAD STREET SUITE 1800

COLUMBUS OH 43215

HOTZ, ANN

ATTORNEY AT LAW

OFFICE OF CONSUMERS' COUNSEL 10
W. BROAD STREET, SUITE 1800
COLUMBUS OH 43215

DOMINION RETAIL, INC.

GARY A. JEFFRIES, SENIOR COUNSEL

1201 PITT STREET
PITTSBURGH PA 15221
Phone: (412) 473-4129

ROYER, BARTH

BELL, ROYER & SANDERS CO.,
L.P.A.

33 SOUTH GRANT AVENUE
COLUMBUS OH 43215-3900

FIRSTENERGY SOLUTIONS CORP.

IRENE PREZELJ, MANAGER,
MARKETING

395 GHANT ROAD GHE-408

KORKOSZ, ARTHUR

FIRST ENERGY, SENIOR
ATTORNEY

76 SOUTH MAIN STREET LEGAL DEPT.,
18TH FLOOR

AKRON OH 44333
Phone: (330) 315-6851

AKRON OH 44308-1890

**GREEN MOUNTAIN ENERGY
COMPANY**

JOHN BUI
600 W. 6TH STREET SUITE 900
AUSTIN TX 78701
Phone: (512) 691-6339
Fax: (512) 691-5363

STINSON, DANE ESQ.

BAILEY CAVALIERI LLC
10 W. BROAD ST. SUITE 2100
COLUMBUS OH 43215
Phone: (614) 221-3155
Fax: (614) 221-0479

**INDUSTRIAL ENERGY USERS-OHIO
SAMUEL C. RANDAZZO, GENERAL
COUNSEL**

MCNEES WALLACE & NURICK LLC 21 EAST
STATE STREET 17TH FLOOR
COLUMBUS OH 43215
Phone: (614) 469-8000

NONE

KROGER COMPANY, THE

MR. DENIS GEORGE 1014 VINE STREET-GO7
CINCINNATI OH 45202-1100

**KURTZ, MICHAEL
BOEHM, KURTZ & LOWRY**
36 EAST SEVENTH STREET SUITE 1510
CINCINNATI OH 45202
Phone: (513) 421-2255
Fax: (513) 421-2764

LEGAL AID SOCIETY OF CINCINNATI

215 E. 9TH STREET SUITE 200
CINCINNATI OH 45202-2146

**MORGAN, NOEL
LEGAL AID SOCIETY OF
CINCINNATI**
215 E. NINTH STREET SUITE 200
CINCINNATI OH 45202

**MIDAMERICAN ENERGY COMPANY
BARBARA HAWBAKER, BALANCING &
SETTLEMENT ANALYST**
4299 NW URBANDALE DRIVE
URBANDALE IA 50322
Phone: (515) 242-4230

**PETRICOFF, M.
VORYS, SATER, SEYMOUR &
PEASE**
52 EAST GAY STREET P.O. BOX 1008
COLUMBUS OH 43216-1008
Phone: (614) 464-5414

Fax: (614) 719-4904

**NATIONAL ENERGY MARKETERS
ASSOCIATION**

CRAIG G. GOODMAN, ESQ.

3333 K STREET N.W. SUITE 110

WASHINGTON DC 20007

Phone: (202) 333-3288

Fax: (202) 333-3266

GOODMAN, CRAIG

**NATIONAL ENERGY MARKETERS
ASSOC.**

3333 K STREET, N.W. SUITE 110

WASHINGTON DC 20007

OHIO ENERGY GROUP, INC.

KURTZ, MICHAEL

BOEHM, KURTZ & LOWRY

36 EAST SEVENTH STREET SUITE 1510

CINCINNATI OH 45202

Phone: (513) 421-2255

Fax: (513) 421-2764

OHIO HOSPITAL ASSOCIATION

***SITES, RICHARD ATTORNEY AT
LAW**

RICHARD L. SITES

155 E. BROAD STREET 15TH FLOOR

COLUMBUS OH 43215-3620

Phone: (614) 221-7614

Fax: (614) 221-7614

OHIO HOSPITAL ASSOCIATION

155 EAST BROAD STREET 15TH FLOOR

COLUMBUS OH 43215-3620

Phone: 614-221-7614

Fax: 614-221-4771

OHIO MANUFACTURERS ASSN

33 N. HIGH ST

COLUMBUS OH 43215

OHIO MARKETER GROUP

PETRICOFF, M.

**VORYS, SATER, SEYMOUR &
PEASE**

52 EAST GAY STREET P.O. BOX 1008

COLUMBUS OH 43216-1008

Phone: (614) 464-5414

Fax: (614) 719-4904

OHIO PARTNERS FOR AFFORDABLE ENERGY

DAVID RINEBOLT

337 SOUTH MAIN STREET 4TH FLOOR, SUITE 5, P.O. BOX 1793

FINDLAY OH 45839-1793

Phone: 419-425-8860

Fax: 419-425-8862

RINEBOLT, DAVID

OHIO PARTNERS FOR AFFORDABLE ENERGY

337 SOUTH MAIN STREET 4TH FLOOR, SUITE 5, P.O. BOX 1793

FINDLAY OH 45839-1793

Phone: (419) 425-8860

Fax: 419-425-8862

PEOPLE WORKING COOPERATIVELY, INC.

CHRISTENSEN, MARY ATTORNEY AT LAW

CHRISTENSEN & CHRISTENSEN

401 N. FRONT STREET SUITE 360

COLUMBUS OH 43215

Phone: (614) 221-1832

Fax: (614) 221-2599

PSEG ENERGY RESOURCES & TRADE LLC

LEYDEN, SHAWN ATTORNEY AT LAW

PSEG ENERGY RESOURCES & TRADE LLC

80 PARK PLAZA, 19TH FLOOR

NEWARK NJ 07102

Phone: 973-430-7698

80 PARK PLAZA 19TH FL

NEWARK NJ 07102

Phone: 973-430-7698

STRATEGIC ENERGY, L.L.C.

CARL W. BOYD

TWO GATEWAY CENTER

PITTSBURGH PA 15222

Phone: (412) 644-3120

PETRICOFF, M.

VORYS, SATER, SEYMOUR & PEASE

52 EAST GAY STREET P.O. BOX 1008

COLUMBUS OH 43216-1008

Phone: (614) 464-5414

Fax: (614) 719-4904

WPS ENERGY SERVICES, INC.

DANIEL VERBANAC

HOWARD, STEPHEN ATTORNEY AT LAW

VORYS, SATER, SEYMOUR AND

1716 LAWRENCE DRIVE
DE PERE WI 54115
Phone: (920) 617-6100

PEASE
52 EAST GAY STREET P.O. BOX 1008
COLUMBUS OH 43216-1008
Phone: (614) 464-5401

GRAND ANTIQUE MALL

9701 READING RD.
CINCINNATI OH 45215

**MIDWEST UTILITY CONSULTANTS,
INC.**

PATRICK MAUE
5005 MALLET HILL DRIVE
CINCINNATI OH 45244
Phone: 513-831-2800
Fax: 513-831-0505

**RICHARDS INDUSTRIES VALVE
GROUP**

LEE WOODURFF
3170 WASSON ROAD
CINCINNATI OH 45209
Phone: 513-533-5600
Fax: 513-871-0105