

A

RECEIVED-COCKETING
2006 DEC 18 PM 12:13
PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio To Modify Its) Case No. 06-986-EL-UNC
Market-Based Standard Service Offer.)

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) Case No. 03-93-EL-ATA
Service Offer Pricing and to 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) Case No. 03-2079-EL-AAM
Procedures for Certain Costs Associated)
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) Case No. 03-2081-EL-AAM
Procedures for Capital Investment in its) Case No. 03-2080-EL-ATA
Electric Transmission and Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be Effective)
After the Market Development Period.)

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

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

**MOTION FOR
SUBPOENA DUCES TECUM**

Now comes the Office of the Ohio Consumers' Counsel ("OCC") and, pursuant to Ohio Adm. Code 4901-1-25, hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena *duces tecum* compelling Duke Energy Retail Sales, LLC ("DERS," including predecessor organization Cinergy Retail Sales, LLC),¹ an affiliate of Duke Energy Ohio Inc. ("Duke Energy," a party to all the above-captioned cases), to provide a witness to appear for oral examination on January 3, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 1:00 p.m. as on cross-examination to provide fact information concerning agreements that were made with the customers of Duke Energy that have a bearing on the outcome of the above captioned cases, including

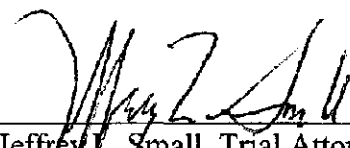
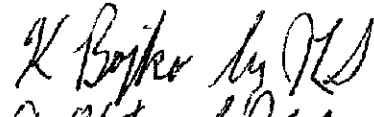

¹ On August 3, 2006, DERS updated its information in Case No. 04-1323-EL-CRS.

the remand from the Ohio Supreme Court on November 22, 2006 in Case Nos. 03-93-EL-ATA et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The witness should be knowledgeable in the aforementioned matters and the documents that are more fully described below.

The subpoena should also compel the witness to bring with him, and provide to OCC at the outset of the examination, i) all documents (all forms, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between DERS and customers of Duke Energy, ii) all documents (all forms, including hard copies of information stored on electronic media) as well as any and all agreements between an affiliate company of DERS and customers of Duke Energy, and iii) all documents (all forms, including hard copies of information stored on electronic media) containing correspondence related to these agreements with (by way of example only) Duke Energy customers, and representatives of companies affiliated with DERS, and iv) all documents (all forms, including hard copies of information stored on electronic media) in the possession and control of DERS pertaining to the aforementioned agreements. The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination. Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL


Jeffrey L. Small, Trial Attorney for Case
Nos. 03-93-EL-ATA, et al. and
Case Nos. 06-1085 and 06-986

Kimberly W. Bojko, Trial Attorney for
Case Nos. 06-1068 and 05-725

Ann M. Hotz, Trial Attorney for
Case Nos. 06-1069 and 05-724
Larry S. Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)
small@occ.state.oh.us
bojko@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV
2005 DEC 18 PM 12:12
PUCO

In the Matter of the Application of)
Duke Energy Ohio To Modify Its)
Market-Based Standard Service Offer.)

Case No. 06-986-EL-UNC

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 Establish a Pilot)
Alternative Competitively-Bid Service Rate)
Option Subsequent to Market Development)
Period.)

Case No. 03-93-EL-ATA

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated)
with The Midwest Independent Transmission)
System Operator.)

Case No. 03-2079-EL-AAM

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for)
Authority to Modify Current Accounting)
Procedures for Capital Investment in its)
Electric Transmission and Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be Effective)
After the Market Development Period.)

Case No. 03-2081-EL-AAM
Case No. 03-2080-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio, Inc. to Modify Its)
Fuel and Economy Purchased)
Power Component of Its Market-Based)
Standard Service Offer.)

Case No. 06-1068-EL-UNC

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)
Standard Service Offer.)

Case No. 05-725-EL-UNC

In the Matter of the Application of)	
Duke Energy Ohio, Inc. to Adjust and Set its)	Case No. 06-1069-EL-UNC
System Reliability Tracker.)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc. to Adjust and Set its)	Case No. 05-724-EL-UNC
System Reliability Tracker Market Price.)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc.)	Case No. 06-1085-EL-UNC
To Adjust and Set the Annually Adjusted)	
Standard Service Offer.)	

MEMORANDUM IN SUPPORT

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command DERS to provide a witness to appear and to submit to oral examination on January 3, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 1:00 p.m. as on cross-examination by the OCC in the above-captioned proceedings.

The above-captioned cases all involve Duke Energy's standard service charges. The agreements entered into by Duke Energy, directly or indirectly using DERS, is expected to be central to the issue of side agreements that is the subject of the Ohio Supreme Court's recent remand of Case Nos. 03-93-EL-ATA, et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The side agreements figured prominently in the Court's recent decision, and were the subject of a November 29, 2006 Entry by the PUCO issued in many of the above-captioned cases. Side agreements also figured prominently in a recent Complaint filed by a former Duke Energy employee John

Deeds.² Mr. Deeds claims that Duke Energy used DERS agreements with customers to circumvent the requirement that Duke Energy properly charge its customers for electric service and that DERS was used as a veil to conceal agreements that were sought in connection with the litigation before the PUCO. A witness knowledgeable about the agreements entered into by DERS will be able to provide in-depth information regarding these matters. The witness's full participation in the examination will facilitate a full and complete development of the cases before the PUCO, including the ultimate record upon which the Commission will base its decision.

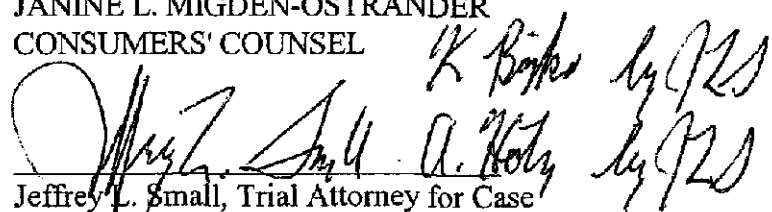
Additionally, the OCC requests the PUCO to command the witness designated by DERS to bring with him/her, for delivery to OCC at the outset at the examination, i) all documents (all forms, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between DERS and customers of Duke Energy, ii) all documents (all forms, including hard copies of information stored on electronic media) as well as any and all agreements between an affiliate company of DERS and customers of Duke Energy, and iii) all documents (all forms, including hard copies of information stored on electronic media) containing correspondence related to these agreements with (by way of example only) Duke Energy customers, and representatives of companies affiliated with DERS, and iv) all documents (all forms, including hard copies of information stored on electronic media) in the possession and control of DERS pertaining to the aforementioned agreements. The period of time covered by the aforementioned materials should begin on December 15, 2003 and

² *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

continue to the date of the examination. This information is central to understanding and addressing the issues related to Duke Energy's proposed standard service charges and the support that has been shown by some parties for Duke Energy's proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

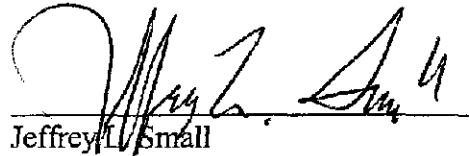
JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL


Jeffrey L. Small, Trial Attorney for Case
Nos. 03-93-EL-ATA, et al. and
Case Nos. 06-1085 and 06-986
Kimberly W. Bojko, Trial Attorney for
Case Nos. 06-1068 and 05-725
Ann M. Hotz, Trial Attorney for
Case Nos. 06-1069 and 05-724
Larry S. Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)
small@occ.state.oh.us
bojko@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Hearing Examiner's electronic service list) the 18th day of December, 2006.

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

Jeffrey L. Small
Assistant Consumers' Counsel