

develop the record with respect to Duke Energy's rate plan. The PUCO should not be misled by Duke Energy's arguments, and should grant OCC's Motions.

I. SUPPLEMENTAL HISTORY OF RELATED PROCEEDINGS

On December 12, 2006, the OCC filed a Motion to Stay to seek a stay of all rate increases in the riders and trackers that resulted from approval by the Commission in the first four case designations in the caption shown above (collectively, the "*Post-MDP Service Case*"). The stay would protect customers against Duke Energy's proposals for rate increases during the remand of OCC's appeal in the Ohio Supreme Court. The OCC also filed a Motion Regarding Refunds to render all rate increases for the post market development period ("MDP") for Duke Energy, on an ongoing basis, subject to refund (to customers) and subject to appropriate interest charges so that customers would not lose the time value of their money. Duke Energy's Memo Contra also contained a reply to the memoranda contra filed by the OCC in connection with Duke Energy's motions regarding the treatment of the AAC and the SRT.²

On December 14, 2006, a prehearing conference was held at the offices of the PUCO as provided for in the Commission's Entry dated November 29, 2006 ("November Entry"). The November Entry stated:

[A] hearing should be held in the remanded RSP case, in order to obtain the record evidence required by the court. At this time, a

² The Commission's rules do not permit a responsive pleading to a reply. Ohio Adm. Code 4901-1-12. Therefore, the OCC will not present arguments counter to those located in Sections IV and V of Duke Energy's December 15, 2006 pleading. However, OCC notes that its Motion to Stay refrained from using dollar values for the SRT since Duke Energy considers such values confidential. OCC Motions at 6. Nonetheless, in its Memo Contra, Duke Energy uses a figure of \$8.7 million for its "forecasted 2007 SRT price." Memo Contra at 21. This information is under consideration in a pending case, and was filed under seal. *In re SRT Rates*, Case No. 06-1069-EL-UNC, Wathen Testimony (November 1, 2006). Duke Energy should not be permitted to hamstring the OCC with its claims of confidentiality and then opportunistically reveal the information in its own arguments.