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PUCO

THE PUBLIC UTILITIES COMMISSION OF OHIO

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.)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Adjust and Set the	)	Case No. 06-1085-EL-UNC
Annually Adjusted Component)	

**MOTION FOR PROTECTIVE ORDER AND MEMORANDUM IN
SUPPORT OF THE MOTION TO QUASH FILED BY DUKE ENERGY
RETAIL SALES LLC**

Duke Energy Ohio (DE-Ohio) by its counsel and pursuant to Ohio Administrative Code (O.A.C.) Section 4901-1-24(A), respectfully requests that the Public Utilities Commission of Ohio (Commission) issue a Protective Order that Discovery not be had in the cases involving the remand of DE-Ohio's MBSSO as the Supreme Court's remand does not require further discovery, the record evidence gathered during the Commission's previously held full evidentiary hearing should be cited to support its position, and the OCC's discovery requests exceed the bounds of the above-captioned matters for a variety of reasons. In the alternative, DE-Ohio requests an appropriate order limiting discovery to specified terms and conditions and prohibiting inquiry into certain matters.

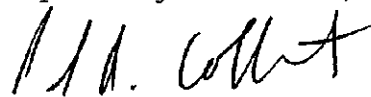
In support of its Motion, DE-Ohio submits its Memorandum in Support in which it also supports Duke Energy Retail Sales' (DERS) Motion to Quash the Subpoenas Duces Tecum, which was filed simultaneously herewith. The Subpoenas are not only inappropriate

because further discovery should be precluded but also outside the scope of these proceedings.

Finally, DE-Ohio objects to OCC's attempt to to consolidate Case No. 06-986-EL-UNC into these proceedings by including it in the caption in its discovery requests without the order of the Attorney Examiner or the Commission. Case No. 06-986-EL-UNC, DE-Ohio's Application to Amend its Market Based Standard Service Offer (MBSSO) Market Price is not a part of these proceedings and has not yet been considered by the Commission. The Commission should not permit OCC to manage the Commission's docket and merge cases without proper Commission approval.

For all of the foregoing reasons as well as those more fully set forth in the accompanying memorandum, DE-Ohio respectfully requests that the Commission issue an appropriate Protective Order regarding Discovery in the above captioned proceedings, quash OCC's Supoenas, and order OCC to use the proper case captions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P.A. Colbert", is written over the typed name.

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

MEMORANDUM IN SUPPORT

The OCC's first and second Requests for Admission, Interrogatories, and Requests for Production of Documents to DE-Ohio and, collaterally, its subpoenas to Duke Energy Retail Sales (DERS), are, according to the OCC, necessary in view of the Ohio Supreme Court's recent ruling in *Ohio Consumers' Counsel v. Public Util. Comm'n.*¹ OCC's view however, misreads the Supreme Court's holding that upheld the Commission and DE-Ohio's MBSSO in every substantive respect.

The Court's remand to the Commission is limited to two procedural issues: (1) the Commission is to support its November Entry on Rehearing approving DE-Ohio's MBSSO with reasoning and existing record evidence,² and (2) the Commission is to Order DE-Ohio to disclose "all agreements entered into on or after January 26, 2004, between [DE-Ohio] and the parties to the matters before the commission."³

¹ 11 Ohio St.3d 300, 2006-Ohio-5789.

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

³ *Ohio Consumers' Counsel v. Pub. Util. Comm'n.*, 111 Ohio St. 3d at 300, 319, 856 N.E.2d at 213, 236 (2006).

I. Additional discovery is improper.

A. The Court's remand does not require additional discovery or hearing.

The Commission has already conducted an exhaustive hearing in Case No. 03-93-EL-ATA *et. al.*, approving DE-Ohio's MBSSO and its various components and the evidentiary record is closed. The Court's remand order requires only that the Commission cite record evidence that it considered in rendering its November 23, 2004, Entry on Rehearing.⁴

The OCC cannot cite to any language in the Court's decision that would require further discovery or the Commission to collect new evidence in these proceedings. The Supreme Court held that "the commission is required to thoroughly explain its conclusion that the modification on rehearing are reasonable and identify the evidence it *considered* to support its findings."⁵ This is not a directive to conduct an entirely new evidentiary hearing. DE-Ohio maintains that there is ample record evidence to support DE-Ohio's MBSSO. Unless and until the Commission determines that there is an evidentiary deficiency, the focus instead, should be on the evidence already introduced.

With respect to the second issue on remand, DE-Ohio has provided OCC with all agreements it requested in discovery, which consists of

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 309, 856 N.E.2d 213, 225 (2006).

⁵ *Id.* (emphasis added).

agreements between DE-Ohio and Parties to the proceedings. The Supreme Court held that the only agreements to be disclosed by DE-Ohio are those OCC “requested” in the original proceeding.⁶ Those have been produced and are with the City of Cincinnati (City) for the convention center naming rights and service agreements with various departments within the City. Because the Commission has held its evidentiary hearing, there is ample record evidence, the Court ordered the Commission to cite previously considered record evidence on remand, and DE-Ohio has complied with the Court’s discovery order on remand, no additional evidentiary hearing or discovery is necessary and the Commission should not permit any.

B. Even if the Court’s remand ordered a new hearing and additional discovery, the particular discovery requested by OCC is irrelevant to the instant proceedings because there is no nexus between the requested information and these cases.

Agreements between non-parties to these proceedings, such as DERS, and other non-parties cannot be relevant to the instant proceedings because the Court held that the relevance of side agreements is limited to one issue only: “whether the commission erred in denying discovery of side agreements requested by OCC *as relevant to the first test of reasonableness*: whether the settlement is a product of serious bargaining among capable, knowledgeable parties.”⁷ It is difficult to

⁶ *Ohio Consumers’ Counsel v. Pub. Util. Comm’n*, 111 Ohio St. 3d at 300, 319, 856 N.E.2d at 213, 236 (2006).

⁷ *Ohio Consumers’ Counsel v. Pub. Util. Comm’n*, 111 Ohio St. 3d 300, 319, 856 N.E.2d 213, 233 (Baldwin 2006) (emphasis added).

see how agreements between DERS, and its customers could be relevant to a test of reasonableness to a settlement signed exclusively by *Parties* to these proceedings. The OCC has not demonstrated that there may be a nexus between the DERS contracts and the Parties to these cases.

Further, DE-Ohio is charging all consumers, residential and non-residential, who take competitive retail electric service from DE-Ohio the appropriate market prices approved by the Commission. No residential or non-residential consumer is subsidizing any other consumers market price. There is simply no evidence that residential consumers have been harmed in any way. OCC's has not made any discovery request that could show the existence of a subsidy.

Indeed, under the current statutory framework DE-Ohio has no opportunity to seek cost recovery for any discount it may provide to any consumer because there is no rate-base rate-of-return regulation for generation service in Ohio. All DE-Ohio can do is ask the Commission to approve a market price.⁸ DE-Ohio's approved MBSSO contains no mechanism that permits cost shifting among customer classes.

Non-residential consumers have long subsidized residential consumers in electric rates and that subsidy remained in DE-Ohio's last generation base rate case in 1991. Those generation rates form the basis of DE-Ohio's MBSSO where they are the entirety of the price to compare excluding the Fuel and Purchased Power tracker, and the by-passable

⁸ Ohio Rev. Code Ann. § 4928.14 (Baldwin 2006).

portions of the System Reliability Tracker and Annually Adjusted Component. Further, in Case No. 99-1658-EL-ETP, the Commission approved Transition Cost recovery that includes a further subsidy of residential consumers by non-residential consumers. Residential consumers pay transition charges only through 2008, while non-residential consumers pay such charges through 2010, including the portion that would have been assigned to residential consumers for that period of time. OCC's argument that residential consumers are overpaying is simply not true. If a new market price is set residential prices will increase. DE-Ohio does not think that is what the representative of residential consumers intends.

In short, absent an affirmative Order by this Commission re-opening the entire MBSSO proceeding, no new evidence can, or should, be submitted and all discovery requests by OCC, whether directed to DE-Ohio or third parties like DERS, should be quashed. Unless the Commission determines to start over and re-litigate DE-Ohio's entire MBSSO, a position DE-Ohio asserts is unlawful and unreasonable, the evidentiary record is closed.

In any case, the discovery propounded by OCC is irrelevant and not likely to lead to the discovery of admissible evidence in these matters. Ohio Administrative Code Section 4901-1-16(B) sets forth the scope of discovery in proceedings before the Commission, providing in relevant part,

“any party to a commission proceeding may obtain discovery of any matter, not privileged, *which is relevant* to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, *if* the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”⁹

DE-Ohio has received two sets of discovery from the OCC, totaling over seventy requests including subparts, regarding issues surrounding the Commission’s approval of DE-Ohio’s MBSSO and purported side agreements.¹⁰ OCC’s discovery requests also include numerous questions surrounding an employment lawsuit filed against DERS and Duke Energy Corporation, the parent company of DE-Ohio by a disgruntled ex-Duke Energy Shared Services employee. These matters are irrelevant to the above captioned cases and not reasonably calculated to lead to the discovery of relevant or admissible evidence.

The original discovery request at issue in DE-Ohio’s MBSSO and the subsequent appeal was for side agreements between DE-Ohio and any Parties to the proceeding. DERS was not, and is not, a party in any of the above captioned proceedings. DERS did not take part in any negotiations or settlement discussions related to any of the above captioned cases. Therefore, any agreements DERS has with DE-Ohio consumers are not the subject of the Supreme Court’s remand, were not discoverable during the initial proceeding, and were not the subject of a discovery request in the

⁹ OHIO ADMIN. CODE ANN. 4901-1-16 (B) (Anderson 2006) (emphasis added).

¹⁰ See Attachment 1 and 2 OCC’s first and second set of Discovery respectively.

initial proceeding. Thus, even if DE-Ohio is required to produce agreements between itself and Parties to the above-captioned matters, the DERS agreements were never at issue.

Put another way, even if the Commission had initially ordered DE-Ohio to answer OCC's request to compel "all agreements entered into on or after January 26, 2004 between CG&E and the parties to the matter before the commission," the DERS agreements would not have been responsive. Hence, any attempt by OCC to discover them now, through requests to DE-Ohio or through subpoenas to DERS, is impermissible and irrelevant.

The agreements between DERS and its customers cannot be relevant to the DE-Ohio MBSSO proceedings unless there is a transaction between DE-Ohio and DERS and DERS is subsidized by DE-Ohio. There is no such transaction. OCC has not alleged such a transaction, and the Commission has not found such a transaction through audit. The Commission retains audit authority to Duke Energy affiliates to the extent there are transactions between DE-Ohio and the applicable affiliate.

As to the remaining discovery requested, the Court seeks record evidence previously "considered" by the Commission, not new evidence submitted to justify the Commission's first Entry on Rehearing.¹¹ It is impossible to see how new discovery could lead to the submission of evidence previously considered. The Commission should not permit

¹¹ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 323, 856 N.E.2d 213, 236 (Baldwin 2006) (emphasis added)

additional discovery in these proceedings, nothing in the Court's remand hints that additional discovery is required.

Because OCC has failed to demonstrate a nexus between its discovery request and the instant proceedings DE-Ohio asks the Commission to quash OCC's Subpoenas and deny its ability to pursue additional discovery.

II. The Commission lacks jurisdiction to issue the requested Subpoenas.

The fact that DERS may have agreements with customers who happen to be DE-Ohio consumers is irrelevant. DERS is a competitive retail electric service provider that is registered with the Commission and is not prohibited from entering into agreements with consumers within DE-Ohio's certified territory. Because DE-Ohio is aware that DERS is not supplying generation service to any load in its service territory it is questionable that the DERS agreements represent competitive retail electric service. If they do not, it is likely they are beyond the Commission's jurisdiction as DERS is an unregulated entity subject to the Commission's jurisdiction for certification and complaint purposes only regarding competitive retail electric service and corporate separation issues.¹²

In fact, it is doubtful that the Commission has jurisdiction to issue a subpoena to DERS for anything other than a corporate separation violation because R.C. 4928.05 divests the Commission of jurisdiction over

¹² Ohio Rev. Code Ann. §§ 4928.16, 4928.18 (Baldwin 2006).

competitive retail electric service, including jurisdiction through 4903.02 and R.C. 4903.03, the statutes that grant the Commission subpoena authority. Only through 4928.18 does the Commission retain subpoena authority over competitive retail electric services and no violation of that section has been alleged.


III. A delay in implementation of DE-Ohio's MBSSO market price or a change to the market price, harms DE-Ohio.

A delay in these proceedings harms DE-Ohio and creates a cause of action by DE-Ohio. DE-Ohio has relied upon the continuation of its market price as ordered by the Commission and approved by the Court and implementation of its market prices in a timely manner. DE-Ohio no longer is permitted to create regulatory assets to defer the income effect of price implementation delays. DE-Ohio is further harmed by adverse changes to its market price ordered by the Commission without an application by DE-Ohio. It is unfair to DE-Ohio, its shareholders, and consumers, to remove all certainty regarding its market prices by treating the Court's remand as if it reversed DE-Ohio's MBSSO. The Court affirmed the Commission and DE-Ohio in every substantive respect. While the procedural remand is important and must be properly addressed, DE-Ohio submits that the Commission should thwart OCC's efforts to relitigate market prices already decided and minimize the harm to all involved.

CONCLUSION:

For the reasons more thoroughly discussed above DE-Ohio asks that the Commission quash the Subpoenas issued to DERS and grant its Motion to deny or limit Discovery.


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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically on the following parties this 20th 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.

ROYER, BARTH

GARY A. JEFFRIES, SENIOR
COUNSEL
1201 PITT STREET
PITTSBURGH PA 15221
Phone: (412) 473-4129

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

AKRON OH 44333
Phone: (330) 315-6851

KORKOSZ, ARTHUR
FIRST ENERGY, SENIOR
ATTORNEY
76 SOUTH MAIN STREET LEGAL
DEPT., 18TH FLOOR
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	MORGAN, NOEL
	LEGAL AID SOCIETY OF
	CINCINNATI
215 E. 9TH STREET SUITE 200	215 E. NINTH STREET SUITE
	200
CINCINNATI OH 45202-2146	CINCINNATI OH 45202

MIDAMERICAN ENERGY COMPANY	PETRICOFF, M.
BARBARA HAWBAKER, BALANCING & SETTLEMENT ANALYST	VORYS, SATER, SEYMOUR & PEASE
4299 NW URBANDALE DRIVE	52 EAST GAY STREET P.O. BOX 1008
URBANDALE IA 50322	COLUMBUS OH 43216-1008
Phone: (515) 242-4230	Phone: (614) 464-5414
	Fax: (614) 719-4904

NATIONAL ENERGY MARKETERS ASSOCIATION	GOODMAN, CRAIG
CRAIG G. GOODMAN, ESQ.	NATIONAL ENERGY MARKETERS ASSOC.
3333 K STREET N.W. SUITE 110	3333 K STREET, N.W. SUITE 110
WASHINGTON DC 20007	WASHINGTON DC 20007
Phone: (202) 333-3288	
Fax: (202) 333-3266	

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

RICHARD L. SITES

155 E. BROAD STREET 15TH FLOOR

COLUMBUS OH 43215-3620

Phone: (614) 221-7614

Fax: (614) 221-7614

*SITES, RICHARD ATTORNEY
AT LAW

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

PETRICOFF, M.

OHIO MARKETER GROUP

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

COLEEN MOONEY

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

PEOPLE WORKING COOPERATIVELY,
INC.

CHRISTENSEN, MARY ATTORNEY AT
LAW

CHRISTENSEN & CHRISTENSEN
401 N. FRONT STREET SUITE 350
COLUMBUS OH 43215
Phone: (614) 221-1832
Fax: (614) 221-2599

LEYDEN, SHAWN ATTORNEY AT LAW
PSEG ENERGY RESOURCES & TRADE
LLC

80 PARK PLAZA, 19TH FLOOR
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

1716 LAWRENCE DRIVE

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

HOWARD, STEPHEN ATTORNEY
AT LAW
VORYS, SATER, SEYMOUR AND
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

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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. To Adjust and Set the	)	Case No. 06-1085-EL-UNC
Annually Adjusted Standard Service Offer.)	

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON DUKE ENERGY OHIO,
FIRST SET FOLLOWING REMAND IN 03-93-EL-ATA, ET AL.
(DATED DECEMBER 7, 2006)**

The Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned proceedings before the Public Utilities Commission of Ohio (hereinafter, "PUCO" or "Commission") submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from Duke Energy Ohio ("DE-Ohio") within 10 days and no later than any shorter period required by the Commission or its authorized representative. An electronic response should be provided to the extent possible to the OCC at the following addresses:

Jeffrey L. Small
Kimberly W. Bojko
Ann M. Hotz
Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
(614) 466-9475 (F)
small@occ.state.oh.us
bojko@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

Additionally, DE-Ohio must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the OCC's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments,

invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from

one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," or "the identity of," or "identified" means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
 - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

- F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
11. The term "e.g." connotes illustration by example, not limitation.
12. "Application" means the pleading that initiated the above-captioned case (Case No. 06-986-EL-UNC).
14. "DE-Ohio" or "Company" means Duke Energy Ohio, including its predecessor organization (the Cincinnati Gas & Electric Company).
15. "CRES" means certified retail electric service.
16. "RSC" means Rate Stabilization Charge.
17. "RTC" means Regulatory Transition Charge.
18. "AAC" means Annually Adjusted Component.
19. "IMF" means Infrastructure Maintenance Fund.
20. "SRT" means System Reliability Tracker.
21. "RTC" means Regulatory Transition Charge.
22. "FPP" means Fuel and Economy Purchased Power.
23. "DE-Ohio's Distribution Rate Case" means PUCO Case Nos. 05-59-EL-AIR and 05-60-EL-AAM.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2004 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

RI1. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in RTC charges, by month, in the event that the RTC rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

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RI2. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in FPP charges, by month, in the event that the FPP rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI3. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in RSC charges, by month, in the event that the RSC rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI4. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in AAC charges, by month, in the event that the AAC rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI5. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in IMF charges, by month, in the event that the IMF rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI6. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in SRT charges, by month, in the event that the SRT rates stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI7. How much more would DE-Ohio and its affiliated companies (i.e. on a consolidated basis) have collected in Insufficient Return Notice charges, by month, in the event that the Insufficient Return Notice Fee stated in DE-Ohio's filed tariffs were actually collected (i.e. in the absence of any agreement, arrangement, rebate, or device -- direct or indirect to DE-Ohio -- that changed the actual net collections from those authorized under DE-Ohio's tariffs) during the period beginning January 2004?

RESPONSE:

\$0.00

RI8. How much of the amounts stated in response to RI1 through RI7, by charge and by month (during the period beginning January 2004), were not collected on a net basis as the result of an agreement, arrangement, rebate, or device (direct or indirect to DE-Ohio) that was filed with and approved by the PUCO?

RESPONSE:

\$0.00

RI9. What rates would have been established by DE-Ohio's original "MBSSO" proposal in PUCO Case No. 03-93-EL-ATA (i.e. filed on or about January 10, 2003), by month, for the period beginning January 2004 had that proposal been approved by the Commission (provide the rates as they would have been adjusted over time, including their components, along with the comparable rates stated in the Company's tariffs)?

RESPONSE:

DE-Ohio has not performed any study to determine the amount of revenues associated with the CMO option.

RI10. What persons (note the definition of "persons") were fully qualified to transact competitive retail electric service with customers served by DE-Ohio, in DE-Ohio's role as a electric distribution utility, during any period starting January 1, 2003 onward (i.e. identify the entities that have fully undergone electronic data interchange, other registration requirements, and any other requirements such that the entity could provide the service).

RESPONSE:

Certified CRES Providers

RI11. In the event that an entity was fully qualified to transact competitive retail electric service with customers served by DE-Ohio (as inquired into by the preceding interrogatory) during only a portion of the period that began on January 1, 2003, what period was that entity fully qualified to transact the service?

RESPONSE:

List start date for each CRES

RI12. Referring to agreements involving the sale of electricity or potential sale of electricity between DE-Ohio and entities not affiliated with DE-Ohio as well as to agreements involving the sale of electricity or potential sale of electricity between affiliates of DE-Ohio (including holding companies, subsidiaries, and other companies within the Duke corporate structure) and entities not affiliated with DE-Ohio, please answer the following interrogatories with respect to agreements that were entered into on or after January 1, 2003:

A. What is the identity of the persons who are the parties to the agreements (i.e. identify each and every person who is a party to an agreement, noting the definition of “identify” stated above)?

RESPONSE:

All FPP consumers of DE-Ohio.

- B. What is the identity of each agreement, and what is the identity of each document containing each agreement (i.e. identify each agreement and the documents that contained each agreement)?

RESPONSE:

DE-Ohio does not classify the hundreds of thousands of agreements.

- C. For each and every agreement identified in response to RI12-B, what is the purpose of each agreement (i.e. describe the essential terms of the agreement)?

RESPONSE:

See response to B

- D. For each and every agreement identified in response to RI12-B, what date was the agreement entered into for each person who entered into the agreement?

RESPONSE:

See response to B

- E. For each person identified in response RI12 - A and for each and every agreement identified in response to RI12-B, what is the identity of the individual persons (i.e. identify each natural person) whose name appears on the agreement as a signature, what is the identity of the persons on whose behalf the agreements were entered, and what was the title of responsibility for each person whose name appears on the agreement?

RESPONSE:

See response to B

- E. For each and every agreement identified in response to RI12 – B, what is the identity of the repositories (i.e. identify the place) where documents containing the agreements are held (both documents containing original signatures and copies of the agreements, stating whether the signatures are original), and what is the identity of all persons who control or maintain such repositories (i.e. identify the persons)?

RESPONSE:

See response to B

REQUESTS FOR PRODUCTION OF DOCUMENTS

RP1. Please provide copies of all agreements between DE-Ohio and persons who are not affiliated with DE-Ohio that contain provisions regarding RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee. This request asks for final agreements, and does not seek information regarding offers to compromise a disputed matter or documents used in compromise negotiations.

None

RP2. Please provide copies of all agreements between persons affiliated with DE-Ohio and persons who are not affiliated with DE-Ohio that contain provisions regarding RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee. This request asks for final agreements, and does not seek information regarding offers to compromise a disputed matter or documents used in compromise negotiations.

Object

RP3. Please provide copies of all agreements between DE-Ohio and persons who are affiliated with DE-Ohio that contain provisions regarding RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee. This request asks for final agreements, and does not seek information regarding offers to compromise a disputed matter or documents used in compromise negotiations.

None

RP4. Please provide copies of all agreements, for the period beginning January 1, 2003 onward, between DE-Ohio and persons who are not affiliated with DE-Ohio that state rates (i.e. rates other than those set in DE-Ohio's Distribution Rate Case, noting the definitions above) or determine a method for setting rates for electric service (whether actual or potential rates).

None

RP5. Please provide copies of all agreements, for the period beginning January 1, 2003 onward, between persons affiliated with DE-Ohio and persons who are not affiliated with DE-Ohio that state rates (i.e. rates other than those set in DE-Ohio's Distribution Rate Case) or determine a method for setting rates for electric service (whether actual or potential rates).

None

RP6. Please provide copies of all agreements, for the period beginning January 1, 2003 and afterward, between DE-Ohio and persons who are affiliated with DE-Ohio that deal with rates (i.e. rates other than those set in DE-Ohio's Distribution Rate Case, whether actual or potential rates) or determine a method for setting rates (whether actual or potential rates) charged for electric service.

None

RP7. Please provide copies of all agreements, for the period beginning January 1, 2003 onward, between DE-Ohio and persons who were at any time parties to PUCO Case No. 03-93-EL-ATA and the cases consolidated with that case.

None

RP8. Please provide copies of all documents (see definition above, which includes e-mails) transmitted by DE-Ohio to, or received from, persons who are not affiliated with DE-Ohio that contain references to the RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee.

None

RP9. Please provide copies of all documents (see definition above, which includes e-mails) transmitted by persons affiliated with DE-Ohio to, or received from, persons who are not affiliated with DE-Ohio that contain references to the RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee.

Object

RP10. Please provide copies of all documents (see definition above, which includes e-mails) transmitted by DE-Ohio to, or received from, persons who are affiliated with DE-Ohio that contain references to the RTC, FPP, RSC, AAC, IMF, SRT charges or the Insufficient Return Notice Fee.

None

RP11. Please provide copies of all documents filed with the PUCO that relate to the Commission approval(s) referenced in RI8.

None

RP12. Please provide copies of all documents containing the agreements that are referenced in OCC Interrogatories RI12, including all documents for which OCC is seeking identification in RI12.

None or Object

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Interrogatories and Requests for Production of Documents Propounded Upon The Duke Energy, First Set Following Remand*, was served by regular U.S. Mail (also electronically upon DE-Ohio), this 7th day of December 2006.

Jeffrey L. Small
Kimberly W. Bojko
Ann M. Hotz
Assistant Consumers' Counsel

PARTIES OF RECORD

Duane Luckey
Senior Deputy Attorney General
Public Utilities Commission
180 East Broad Street, 9th Floor
Columbus, OH 43215

Paul A. Colbert
Duke Energy Ohio, Inc.
139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960

David Rinebolt
231 West Lima Street
P.O. Box 1793
Findlay, Oh 45839-1793

Michael Kurtz,
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, Oh 45202

David Boehm
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, Oh 45202-4454

Samuel C. Randazzo
Daniel Neilsen
McNees Wallace & Nuick
21 East State Street, 17th Floor
Columbus, OH 43215

Sally Bloomfield
Elizabeth Watts
Bricker & Eckler
100 South Third St.
Columbus, OH 43215

Thomas O'Brien
Bricker & Eckler
100 South Third St.
Columbus, OH 43215

Richard Sites
155 East Broad St., 15th Fl.
Columbus, OH 43215

First Energy Solutions Corp.
Arthur E. Korkosz
76 South Main Street
Akron, OH 44308

Mary W. Christensen
401 North Front Street, Suite 350
Columbus, OH 43215-2499

W. Jonathan Airey
Howard Petricoff
Benita Kahn
Vorys, Sater, Seymour & Pease
P.O. Box 1008
Columbus, OH 43216-1008

Shawn P. Leyden
PSEG Energy Resources & Trader 80
Park Plaza, 19th Floor
Newark, NJ 07102

Noel M. Morgan
Legal Aid Society of Greater Columbus
215 East Ninth Street, Suite 200
Cincinnati, OH 45202

Craig G. Goodman
National Energy Marketers Assoc.
3333 K Street NW, Suite 110
Washington, DC 20007

Dane Stinson
Bailey Cavalieri, LLC
One Columbus
10 W. Broad St., Suite 2100
Columbus, OH 43215

Barth E. Royer
Bell, Royer & Sanders Co., LPA
33 South Grant Ave.
Columbus, OH 43215

Theodore J. Schneider
Murdock, Goldenberg, Schneider & Groh
700 Walnut St., Ste. 400
Cincinnati, OH 45202

Craig I. Smith
Formica Corporation
2824 Coventry Rd.
Cleveland, OH 44120

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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.)	

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
REQUESTS FOR ADMISSION, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON DUKE ENERGY OHIO,
SECOND SET FOLLOWING REMAND IN 03-93-EL-ATA, ET AL.
(DATED DECEMBER 14, 2006)**

The Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned proceedings before the Public Utilities Commission of Ohio (hereinafter, "PUCO" or "Commission") submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from Duke Energy Ohio ("DE-Ohio") within 10 days and no later than any shorter period required by the Commission or its authorized representative. An electronic response should be provided to the extent possible to the OCC at the following addresses:

Jeffrey L. Small
Kimberly W. Bojko
Ann M. Hotz
Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
(614) 466-9475 (F)
small@occ.state.oh.us
bojko@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

Additionally, DE-Ohio must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the OCC's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of

meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like

shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," or "the identity of," or "identified" means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
 - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

- F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
11. The term "e.g." connotes illustration by example, not limitation.
12. "Application" means the pleading that initiated the above-captioned case (Case No. 06-986-EL-UNC).
14. "DE-Ohio" or "Company" means Duke Energy Ohio, including its predecessor organization (the Cincinnati Gas & Electric Company).
15. "CRES" means certified retail electric service.
16. "RSC" means Rate Stabilization Charge.
17. "RTC" means Regulatory Transition Charge.
18. "AAC" means Annually Adjusted Component.
19. "IMF" means Infrastructure Maintenance Fund.
20. "SRT" means System Reliability Tracker.
21. "RTC" means Regulatory Transition Charge.
22. "FPP" means Fuel and Economy Purchased Power.
23. "DE-Ohio's Distribution Rate Case" means PUCO Case Nos. 05-59-EL-AIR and 05-60-EL-AAM.

24. “Complaint” means the document attached to this discovery set (*John Deeds v. Duke Energy Corporation and Duke Energy Retail Services*, Case No. 1:06-CV-00835-SJD, Complaint for Unlawful Retaliatory Employment Termination, United States District Court, Southern District of Ohio, Western Division).
24. “Option Agreement” means the agreements referenced in the Complaint (e.g. ¶40)
25. “Option Payment” means the payments referenced in the Complaint (e.g. ¶41).

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2004 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

REQUESTS FOR ADMISSION

RA1. Please admit or deny that the Complaint attached to this discovery set (i.e. that names John Deeds as a Plaintiff and Duke Energy Corporation as well as Duke Energy Retail Sales, LLC as defendants) is an authentic copy of the complaint filed in federal court.

RESPONSE:

INTERROGATORIES

RI13. Who is the plaintiff listed in the Complaint, John Deeds (i.e. identify John Deeds)?

RESPONSE:

RI14. Since January 1, 2002, for whom did John Deeds perform employment-related services (i.e. identify the persons, noting the definition for “person” stated above, including DE-Ohio and/or its affiliates, subsidiaries, and parent organizations, including predecessors)?

RESPONSE:

RI15. Referring to the employment-related services mentioned in the previous interrogatory:

A. What positions did John Deeds hold and when did he hold those positions?

RESPONSE:

B. What job duties did John Deeds perform in the positions?

RESPONSE:

C. Who were John Deeds' supervisors since January 1, 2002 (i.e. identify each and every supervisor) and what were the position titles for each supervisor?

RESPONSE:

D. Who did John Deeds supervise (i.e. identify each and every person), since January 1, 2002?

RESPONSE:

RI16. What are the Option Agreements that are referenced in the Complaint attached hereto (i.e. identify the agreements)?

RESPONSE:

RI17. With regards to the Option Agreements that are referenced in the Complaint attached hereto:

- A. What are the purposes of the Option Agreements (i.e. describe the Option Agreements)?

RESPONSE:

- B. What are the terms that are included in the Option Agreements?

RESPONSE:

- C. Who entered into an Option Agreements (i.e. identify the person, including DE-Ohio and/or its affiliates, subsidiaries, and parent organizations, including predecessors)?

RESPONSE:

- D. When were each of the Option Agreements executed by each of the parties?

RESPONSE:

RI18. What are the Option Payments that are referenced in the Complaint attached hereto (i.e. identify the payments for each and every act)?

RESPONSE:

RI19. Regarding the “Option Payments” that are referenced in the Complaint attached hereto, what are:

A. What were the purposes of the Option Payments (i.e. describe the Option Payments)?

RESPONSE:

B. Who paid and who received each and every Option Payment (i.e. identify each and every person)?

RESPONSE:

C. When were each of the Option Payments made (i.e. provide dates), what form of payment was used for each (e.g. check, cash, credit on bills), and what were the amounts of the payments?

RESPONSE:

- D. For each payment by check identified in the preceding subsection, who signed the checks (i.e. identify the person)?

RESPONSE:

- E. When are future Option Payments scheduled (or expected) to be made (provide dates), what form of payment is expected to be used (e.g. check, cash, credit on bills), and what were the amounts of the expected payments?

RESPONSE:

- RI20. Who, on behalf of DE-Ohio and/or its affiliates, subsidiaries, and parent organizations, including predecessors, participated in the origination of each and every Option Agreement and the fulfillment of the terms of the Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI21. Who, on behalf of DE-Ohio and/or its affiliates, subsidiaries, and parent organizations, including predecessors, authorized (including, but not limited to, the actual execution) of each and every Option Agreement and the fulfillment of the terms of the Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI22. Who were the persons employed by the PUCO who, prior to May 25, 2006, were aware of the existence of Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI23. For each person whose identity is sought in the preceding Interrogatory:

A. What was the date upon which the person became aware of the existence of one or more Option Agreement (provide the date for each and every occurrence)?

RESPONSE:

- B. How did each person became aware of the existence of one or more of the Option Agreements (provide a response for each and every occurrence)?

RESPONSE:

- C. How was each person involved with the Option Agreement (e.g. the development, creation, approval, or transmittal; provide a description for each and every involvement)?

RESPONSE:

- RI24. Who was employed by or otherwise engaged by DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors) that, prior to May 25, 2006, were aware of the existence of an Option Agreement (i.e. identify each and every person)?

RESPONSE:

RI25. For each person whose identity is sought in the preceding Interrogatory, for each Option Agreement:

- A. What was the date upon which the person became aware of the existence of the Option Agreement?

RESPONSE:

- B. How did each person became aware of the existence of the Option Agreement?

RESPONSE:

- C. What was the involvement of the person in the creation of the Option Agreement?

RESPONSE:

RI26. Who provided DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors) with the form (including any terms) for creating an Option Agreement (i.e. identify each and every person)?

RESPONSE:

RI27. Who, on behalf of DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors), reviewed any and all Option Agreements prior to the signing of the Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI28. Who negotiated any and all of the Option Agreements on behalf of DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors) prior to the execution of the Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI29. Where are the Option Agreements available in a repository that is accessible by the public?

RESPONSE:

RI30. For each and every Option Agreement, who has possession of the Option Agreement or a documents that contains the Option Agreements (i.e. identify each and every person)?

RESPONSE:

RI31. Regarding Timothy Duff who is referenced in the Complaint (e.g. ¶ 40) attached hereto:

A. Who is Timothy Duff (i.e. identify Mr. Duff)?

RESPONSE:

B. Who has employed Mr. Duff since January 1, 2002 (i.e. identify each and every employer)?

RESPONSE:

C. What were Mr. Duff's titles, job descriptions, and responsibilities since January 1, 2002?

RESPONSE:

RI32. Regarding Jim Gainer who is referenced in the Complaint (e.g. ¶40) attached hereto:

A. Who is Jim Gainer (i.e. identify Mr. Gainer)?

RESPONSE:

B. Who has employed Mr. Gainer since January 1, 2002 (i.e. identify each and every employer)?

RESPONSE:

C. What were Mr. Gainer's titles, job descriptions, and responsibilities since January 1, 2002?

RESPONSE:

RI33. What is the total dollar amount of Option Payments that DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors), paid to all recipients (in the aggregate) of the Option Payments?

RESPONSE:

RI34. What is the total dollar amount of Option Payments that DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors) paid to each and every recipient of an Option Payment?

RESPONSE:

RI35. In which financial statement(s) (including annual reports) are Option Agreements and Option Payments, respectively, reflected (identify each and every financial statement)?

RESPONSE:

RI36. For each and every financial statement sought for identification in the preceding interrogatory, where are the specific references (including page numbers) to Option Payments and Option Agreements?

RESPONSE:

RI37. For financial and regulatory reporting purposes, respectively, what are the accounting entries (including debits and credits) used by DE-Ohio and/or its affiliates, subsidiaries, and parent organizations (including predecessors) for the Option Payments (identify each and every entry)?

RESPONSE:

RI38. For each of the accounting entries sought in the preceding interrogatory regarding Option Payments, which line items are used for each of the financial reports that contain the dollar amounts related to the accounting entries (i.e. identify the line items)?

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

- RP13. Please provide copies of the "Option Agreements" that are referenced in the Complaint attached hereto.
- RP14. Please provide copies of any receipts for Option Payments that DE-Ohio has received from parties of the Option Agreements.
- RP15. Please provide copies of all agreements between DE-Ohio and the City of Cincinnati that are mentioned or referred within the "agreement -- between CG&E and the City of Cincinnati -- that is responsive to the OCC's specific document request" as stated in DE-Ohio's letter filed in Case No. 03-93-EL-ATA on December 7, 2006.
- RP16. Please provide copies of all documents filed identified in response to Interrogatory RI16.
- RP17. Please provide copies of all documents filed with the PUCO that relate to the Commission approval(s) referenced in RI35.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Requests for Admission, Interrogatories and Requests for Production of Documents Propounded Upon The Duke Energy, Second Set Following Remand*, was served by regular U.S. Mail (also electronically upon DE-Ohio), this 14th day of December 2006.

/s/ Jeffrey L. Small
Jeffrey L. Small
Kimberly W. Bojko
Ann M. Hotz
Assistant Consumers' Counsel

PARTIES OF RECORD

Duane Luckey
Senior Deputy Attorney General
Public Utilities Commission
180 East Broad Street, 9th Floor
Columbus, OH 43215

Paul A. Colbert
Duke Energy Ohio, Inc.
139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960

David Rinebolt
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793

Michael Kurtz,
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, OH 45202

David Boehm
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, OH 45202-4454

Samuel C. Randazzo
Daniel Neilsen
McNees Wallace & Nuick
21 East State Street, 17th Floor
Columbus, OH 43215

Sally Bloomfield
Elizabeth Watts
Bricker & Eckler
100 South Third St.
Columbus, OH 43215

Thomas O'Brien
Bricker & Eckler
100 South Third St.
Columbus, OH 43215

Richard Sites
155 East Broad St., 15th Fl.
Columbus, OH 43215

First Energy Solutions Corp.
Arthur E. Korkosz
76 South Main Street
Akron, OH 44308

Mary W. Christensen
401 North Front Street, Suite 350
Columbus, OH 43215-2499

W. Jonathan Airey
Howard Petricoff
Benita Kahn
Vorys, Sater, Seymour & Pease
P.O. Box 1008
Columbus, OH 43216-1008

Shawn P. Leyden
PSEG Energy Resources & Trader 80
Park Plaza, 19th Floor
Newark, NJ 07102

Noel M. Morgan
Legal Aid Society of Greater Columbus
215 East Ninth Street, Suite 200
Cincinnati, OH 45202

Craig G. Goodman
National Energy Marketers Assoc.
3333 K Street NW, Suite 110
Washington, DC 20007

Dane Stinson
Bailey Cavalieri, LLC
One Columbus
10 W. Broad St., Suite 2100
Columbus, OH 43215

Barth E. Royer
Bell, Royer & Sanders Co., LPA
33 South Grant Ave.
Columbus, OH 43215

M. Howard Petricoff, Esq.
Vorys, Sater, Seymour & Pease
P.O. Box 1008
Columbus, OH 43216-1008

Craig I. Smith
Formica Corporation
2824 Coventry Rd.
Cleveland, OH 44120

Theodore J. Schneider
Murdock, Goldenberg, Schneider & Groh
700 Walnut St., Ste. 400
Cincinnati, OH 45202

FILED

DEC 07 2006

Randolph H. Freking (#0009158)

Elizabeth S. Loring (#0076542)

Trial Attorneys for Plaintiff

JAMES BONINI, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN DEEDS
4507 Ravenwood Ct.
Cincinnati, OH 45244

Plaintiff,

v.

DUKE ENERGY CORPORATION
c/o Duke Energy Ohio, Inc.
139 East Fourth Street
Cincinnati, OH 45201

and

DUKE ENERGY RETAIL SALES, LLC
139 East Fourth Street
Cincinnati, OH 45201

Defendants.

CASE NO.

1:06 CV 835

(Judge

J. DLOTT

COMPLAINT FOR UNLAWFUL
RETALIATORY EMPLOYMENT
TERMINATION IN VIOLATION
OF OHIO PUBLIC POLICY AND
OHIO WHISTLEBLOWER LAW

JURY DEMAND ENDORSED

NATURE OF ACTION

Plaintiff brings this action because he was abruptly terminated after questioning Defendants regarding certain agreements that Plaintiff believed, and continues to believe, are "sham transactions" designed to allow Defendant Duke Energy Corporation, formerly Cinergy Corporation, to push a significant rate increase through the Public Utilities Commission of Ohio ("PUCO") by providing a kickback to large industrial users that is equivalent, or nearly so, to the amount of the rate increase for those particular users in violation of Ohio law. Plaintiff believes that Defendants "bought" the cooperation of major users to allow it to gain approval of its proposed increases. Plaintiff was advised by superiors not to put his concerns in writing because it would cause "big trouble," since Defendants had successfully refused to make public these agreements in connection with the administrative litigation over the proposed rate increase. The Ohio Supreme Court recently upheld most of the approved rate

increases, but questioned the PUCO's failure to force Defendants to turn over these side agreements. In effect, Plaintiff believes Defendants defrauded the PUCO and the Ohio Supreme Court by entering into unlawful, private agreements with certain large industrial users, and unlawfully terminated him in violation of Ohio public policy after he questioned the lawfulness of the side agreement. In 2005 alone, Defendants paid out \$20,000,000 as part of this scheme.

PARTIES

1. Plaintiff John Deeds is a citizen and resident of the State of Ohio.
2. Defendant Duke Energy Corporation is a foreign corporation doing business in Hamilton County, Ohio. Defendant is an employer within the meaning of state law.
3. Defendant Duke Energy Retail Services, Inc. is a foreign corporation doing business in Hamilton County, Ohio. Defendant is an employer within the meaning of state law.

NATURE OF CAUSE OF ACTION

4. This action is filed by Plaintiff John Deeds, who began working for Defendants as a Customer Service Clerk in 1990. During Plaintiff's nearly sixteen-year tenure with Defendants, Plaintiff completed his Bachelor's Degree, he obtained a Masters Degree, and he achieved the position of a director while successfully creating over twenty million dollars of value for Defendants. Plaintiff brings this action because he was terminated for reporting possible unlawful business practices conducted by Defendants.¹

5. In January 2004, Cinergy Corp. created Cinergy Retail Sales, LLC ("CRS")², which is an unregulated competitive retail electric service provider. Although created as a competitive service provider, CRS does not offer electric services and had neither revenue nor sales as of Plaintiff's

¹ Most of the transactions outlined in this Complaint took place during the merger and acquisition between Cinergy Corp. and Duke Energy Corp, which was announced May 9, 2005. Therefore, although this Complaint will refer to Cinergy, through the merger, the corporation is currently owned and succeeded by Duke Energy Corp. Duke Energy Corp. also participated in Plaintiff's termination.

² Currently Duke Energy Retail Sales, LLC.

termination date of May 1, 2006. Personnel doing business for CRS are employed by Cinergy, and both CRS and Cinergy operate at 139 East Fourth Street. CRS's primary function is to process transactions on behalf of Cinergy. Therefore, CRS is an alter ego of Cinergy.

6. On January 26, 2004, Cincinnati Gas & Electric ("CG&E")³ applied to the Public Utilities Commission of Ohio ("PUCO") to authorize a rate increase CG&E's "Rate Stabilization Plan."

7. In 2004, CRS entered into Option Agreements with certain major commercial and industrial customers. The Option Agreements provide that CRS will pay the companies the equivalent of certain defined charges paid to CG&E. The outlined charges represent the rate increases requested by CG&E and approved by the PUCO in 2004.⁴ In effect, CRS agreed to pay certain members of the IEU the exact amount of the rate increase these companies paid to CG&E - a company owned by Cinergy Corp. Because the contracts were created by CRS, an unregulated affiliate of Cinergy, the Agreements were not made public. Discovery of these agreements during the PUCO litigation was refused by Defendants, and Defendants denied knowledge of such agreements during the Oral Argument before the Ohio Supreme Court early in 2006.

8. Between the original filing date of CG&E's Rate Stabilization Plan and 2005, CG&E faced significant opposition to the proposed rate increases; in fact, originally the companies that ultimately became counterparts to the Option Agreements vehemently opposed CG&E's Rate Stabilization Plan by way of their membership in the Ohio Energy Group ("OEG") and the Industrial Energy Users ("IEU"). However, in mid to late 2004, the IEU and OEG suddenly and unequivocally changed their stances supporting CG&E's Rate Stabilization Plan.

³ Currently Duke Energy Ohio, Inc.

⁴ The rate increases were the subject of the Ohio Supreme Court Case No. 05-0946. The Court issued a decision and questioned the PUCO's refusal to order the production by Defendant of certain "side agreements." Plaintiff believes these Option Agreements referenced in this paragraph are some of the side agreements.

9. In 2005 alone, although CRS did not supply any electric services, CRS paid out approximately \$20,000,000 (twenty million dollars) in Option Payments to the companies.

10. Once Plaintiff was assigned the responsibility of processing the Option Payments, he consistently expressed concern for the legitimacy of the transactions conducted between CRS and the companies. In August, 2005, Plaintiff contacted Timothy Duff, who reported directly to Jim Gainer, Vice President of Regulatory and Legislative Strategy who also was one of the originators of the Option Agreements. Plaintiff questioned the origin of the Option Payments. In September, 2005 Plaintiff e-mailed Duff regarding his exact duties in processing the checks.

11. On January 10, 2006, Plaintiff again contacted Duff inquiring whether the Option Agreements were public, or whether they "ha[d] not seen the light of day...."

12. In a February e-mail to Duff, Plaintiff reported that he thought the Option Payments might be "sham transactions."

13. After receiving Plaintiff's e-mail, Duff commanded that Plaintiff call him "ASAP." During the conversation with Duff, Duff admonished Plaintiff not to put such concerns in writing, that CRS had successfully avoided a subpoena in the past, and that Plaintiff's e-mail would cause "big trouble" internally. The subpoena in the past referred to the PUCO litigation.

14. After it became clear to Plaintiff that Defendants did not condone reporting possible illegal transactions, Plaintiff refused to sign off on the Payments and did not inquire further into the situation. The Managing Director of Commercial Asset Management and the Vice President of and General Counsel of the Commercial Business Unit signed off on the Agreements after Plaintiff refused.

15. Duff further demanded that Plaintiff process the transactions immediately "because the option checks need[ed] to be received by the IEU member customers by Wednesday [February 15, 2006]." Less than three months after this last report, Plaintiff was terminated.

16. Ohio law prohibits public utilities from granting reduced rates to consumers or from extending a privilege to some consumers without extending the same to all consumers.

17. Ohio law prohibits a public utility from directly or indirectly remitting "any rate, rental, toll or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified...and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service."⁵

18. By paying certain companies an amount equal to the rate increase charged by CG&E, Defendants essentially offered a reduced rate to certain energy consumers without extending the offer to all energy consumers.

19. In the interest of furthering competition in the newly formed competitive retail electric service market, Ohio statutorily deters the formation of anticompetitive subsidies of noncompetitive retail electric service providers, such as Cinergy. Moreover, Ohio ensures that electric retail consumers are protected against "unreasonable sales practices, market deficiencies, and market power."⁶ Cinergy defied this policy when it utilized CRS because the two companies combined form a monopolistic energy source creating a market deficiency and imbalanced market power.

20. The utilization of CRS and the transactions conducted by it, led Plaintiff to question its legality; an action which ultimately led to his termination.

21. By terminating Plaintiff and deterring him from reporting his concerns, Defendants created a corporate culture that favors turning a blind eye to possible illegal transactions.

22. Defendants violated Ohio law by granting a privilege or reduced rate to certain, powerful, corporate customers, while failing to offer the same or similar privilege to all other consumers.

23. Defendants disregarded Ohio corporate policy by utilizing CRS, an unregulated alter ego of Cinergy Corp to quell opposition to its Rate Stabilization Plan.

⁵ See Revised Code §4905.32

⁶ See Revised Code §4928.02

24. Defendants violated Ohio public policy by deterring Plaintiff from reporting possible illegal transactions in writing.

25. Defendants violated Ohio public policy by terminating Plaintiff in retaliation for expressing his reasonable concerns for the legality of conduct undertaken by CRS.

26. Defendants violated Ohio's Whistleblower statute by deterring Plaintiff from putting his reasonable concerns regarding the legality of Defendants' transactions in writing.

27. Defendants violated Ohio's Whistleblower statute by terminating Plaintiff in retaliation for reporting a possible violation of a state statute based on his reasonable belief that the violation was a criminal offense or an improper solicitation.

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction over the claims asserted in this Complaint.

29. Venue is proper in Hamilton County because Defendants' activities giving rise to Plaintiff's claim for relief occurred in this County.

PLAINTIFF'S BACKGROUND

30. Plaintiff John Deeds was born September 20, 1963. Plaintiff attended Louisiana Monroe on a full basketball scholarship. Plaintiff finished his Bachelors Degree in Business Management at the University of Cincinnati in 1992. While working for Defendants, Plaintiff received his Masters in Business Administration in Finance from the University of Cincinnati.

31. Plaintiff began working for Cinergy Corp. on or about July 2, 1990 as a Customer Service Clerk.

PLAINTIFF'S OUTSTANDING CAREER WITH DEFENDANTS

32. Although his career spanned nearly 16 years, Plaintiff achieved incredible success in a short period of time.

33. Plaintiff began his career as a Customer Service Clerk, which was his position for four years while he was finishing his Bachelor's Degree.

34. Following earning his Bachelors Degree and while working toward his Masters, Plaintiff's career began to take off. By May 1997, Plaintiff was a Project Finance Manager for Cinergy Business Solutions.

35. In December 1998, Plaintiff was promoted to Manager of Pricing and Structuring. Soon after, Plaintiff received another promotion to the position of Manager of Project Development. While his time in Project Development was short, Plaintiff performed the lead role in the successful development of a gas fired electric peaking facility in the Midwest. During this time period, Plaintiff earned substantial salary and bonuses per year.

36. In April 2000, Plaintiff became the Director of Power Origination. The position entailed creating and closing long term transactions with geographically diverse customers. Plaintiff held this position until August 2005, and during this time, Plaintiff created considerable economic value for Defendants.

37. As an example of Plaintiff's success as the Director of Power Origination, Plaintiff originated, negotiated and closed transactions with ALCOA, ALCAN Aluminum, AK Steel, Sunoco and Carolina Power & Light, among several others. During this time period, Plaintiff earned substantial bonuses, which were based on a percentage of the value he created for Defendants.

38. In August, 2005, Plaintiff became the Director of Regulatory Initiatives in the Northeast Division. While in this position, Plaintiff represented Defendants on several wholesale electric pool market committees and acted as Defendants' voice, lobbying for Defendants' interests. Plaintiff received a very positive performance review during this time period.

39. Throughout all of the aforementioned time periods, Plaintiff received high commendations and praise for his work from Defendants. It took him only ten years to work his way from a Customer Service Clerk to a Director position. During his rise in the company, Plaintiff earned performance-based bonuses nearly every year, which at times were many times greater than his base salary.

DEFENDANTS UNLAWFULLY TERMINATED PLAINTIFF

40. While in the position of Director of Regulatory Initiatives, Plaintiff was responsible for processing the payments to the companies who signed Option Agreements with Defendants. Shortly after taking over the new position, Plaintiff contacted Timothy Duff, who reported to Jim Gainer, Vice President of Regulatory and Legislative Strategy. Plaintiff inquired about the origin of the Option Payments. When Plaintiff further probed into what his specific duties were in relation to processing the Payments, Duff instructed Plaintiff to sign his name and make sure that his employee number was correct.

41. Plaintiff questioned another Director of Regulatory Initiatives who had worked in the area before, and was aware of the existence of the Options Agreement and Option Payments. Plaintiff was told falsely that the Option Agreement and Option Payment were made public and complied with regulations.

42. Still concerned about the large amounts Defendants were paying out, Plaintiff contacted Timothy Duff and asked whether the Payments were public. Plaintiff specifically inquired whether the Payments "ha[d] not seen the light of day...." Duff informed Plaintiff that the Option Agreements were not public, and Duff agreed to show Plaintiff one of the original Agreements.

43. After discovering the nature of the transactions conducted by CRS and that the Option Agreements were not public, and after reading one of the Option Agreements, Plaintiff was concerned both for Defendants and for his own liability.

44. In February, when Plaintiff was asked to sign off on large quarterly Option Payments, he reported to Duff that he did not feel comfortable processing them and expressed concerns for the legality of the transactions. After commanding that Plaintiff call him "ASAP," Duff angrily informed Plaintiff that it was not Cinergy's policy to put these types of concerns in writing and that Plaintiff should never put such concerns in an e-mail. Duff further instructed Plaintiff to process the transactions immediately.

45. After it became clear to Plaintiff that Defendants did not condone reporting possible illegal transactions, Plaintiff refused to sign off on the Option Payment requests. All Option Payment requests which exceeded \$100,000 had always been signed by others since \$100,000 was Plaintiff's monetary authority limit. These payments were signed initially by the Vice President of Trading and subsequently by the Managing Director of Commercial Asset Management. The Managing Director of Commercial Asset Management and the Vice President and General Counsel of the Commercial Business Unit signed off on the Option Payment requests which were less than \$100,000 after Plaintiff refused.

46. Shortly thereafter, Defendants decided to terminate Plaintiff when Duke Energy succeeded Cinergy Corp.

**DEFENDANTS' UNLAWFUL CONDUCT
ADVERSELY AFFECTS ALL CITIZENS OF OHIO**

47. Defendants created a corporate culture that favors turning a blind eye to possible illegal transactions. As a large employer of tri-state citizens, Defendants have an obligation to prevent events such as these from taking place.

48. As members of a highly-regulated industry, Defendants have an obligation to the public and the government to ensure that Defendants do not participate in actions that violate state statutes.

49. By not offering the same or similar option contracts to all companies operating in Ohio that utilize CG&E's electric services, Defendants unfairly disadvantaged these businesses, including state and federal government offices, hospitals and other business that pay substantial amounts in energy costs.

50. As a publicly traded corporation, and a subsidiary thereof, Defendants have a fiduciary duty to their shareholders to abide by the law.

COUNT I

(Ohio Public Policy Wrongful Discharge Tort)

51. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

52. There are clear public policies expressed in Ohio law which prohibit employers from retaliating against an employee for raising reasonable concerns of statutory violations.

53. Retaliating against or preventing an employee from exercising his rights under Ohio law would jeopardize clearly established public policies.

54. Defendants maliciously and willfully retaliated against Plaintiff by terminating him and deterring Plaintiff from engaging in the protected activity of reporting possible illegal transactions

conducted by Defendants. As a direct and consequential result of Defendants' retaliation, which violates clear established public policies, Plaintiff has suffered injuries for which he is entitled to recovery.

COUNT II

(Whistleblower Violation - O.R.C. § 4113.52(B))

55. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

56. Ohio prohibits employers from taking disciplinary or retaliatory action against an employee who reports a violation of any state or federal statute, or any ordinance or regulation that the employee reasonably believes is a criminal offense, felony, or an improper solicitation for a contribution.

57. Terminating an employee for reporting unlawful conduct undertaken by the employer violates Ohio's Whistleblower statute.

58. Defendants' above-described actions violate this statute.

59. Defendants' actions constitute a breach of public policy and are willful, wanton and malicious in nature

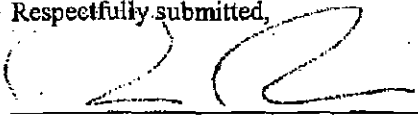
60. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered substantial damages. Plaintiff is entitled to judgment.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) That Defendants be enjoined from further unlawful conduct as described in the Complaint;
- (b) That Plaintiff be awarded all lost pay and benefits up until the time of trial ("backpay");

- (c) That Plaintiff be awarded all lost pay and benefits from the time of trial until a reasonable time in the future ("frontpay");
- (d) That Plaintiff be awarded reasonable compensatory damages;
- (e) That Plaintiff be awarded reasonable punitive damages in an amount at least equivalent to the payments made that were deemed unlawful, estimated to be \$40 million to date;
- (f) That Plaintiff be awarded reasonable attorneys' fees and costs; and
- (g) That Plaintiff be awarded all other legal and equitable relief to which he may be entitled.

Respectfully submitted,



Randolph H. Freking (0009158)
Elizabeth S. Loring (0076542)
Trial Attorneys for Plaintiff
FREKING & BETZ
525 Vine Street, Sixth Floor
Cincinnati, OH 45202
(513) 721-1975/FAX: (513) 651-2570
randy@frekingandbetz.com
eloring@frekingandbetz.com

JURY DEMAND

Plaintiff hereby demands a trial by jury.



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 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.)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Adjust and Set the	)	Case No. 06-1085-EL-UNC
Annually Adjusted Component)	

**AFFIDAVIT
OF
PAUL A. COLBERT**

COMES NOW Paul A. Colbert, being duly sworn, deposes and says:

1. My name is Paul A. Colbert. I am employed by Duke Energy Shared Services Inc., as Counsel for Duke Energy Ohio, Inc (DE-Ohio).
2. This Affidavit is being filed with the Public Utilities Commission of Ohio ("PUCO" or "Commission") in support of DE-Ohio's Motion for a Protective Order and Memorandum in Support of the Motion to Quash of Duke Energy Retail Sales, LLC.
3. OCC has now served DE-Ohio two sets of discovery in the above captioned cases which delve in information which is irrelevant, unreasonable and not reasonably calculated to lead to the discovery of relevant or admissible evidence in the above captioned cases.
4. OCC's discovery requests are unreasonable and oppressive in that they are outside the scope of the above captioned proceedings.
5. OCC's Discovery requests are unreasonable and oppressive in that they are outside the scope of discovery of the above captioned proceedings in that the Commission has not ruled upon the scope of Discovery in the above captioned matters.
6. I attended a pre-hearing conference on December 14, 2006 at the offices of the Commission. During the pre-hearing conference the issues regarding the scope of discovery and the manner in which discovery is to proceed was the subject of heated discussion between DE-Ohio and the Office of the Ohio's Consumers' Counsel.
7. At the hearing conference it became apparent that no reasonable agreement regarding the scope of discovery was possible between DE-Ohio and OCC.

FURTHER AFFIANT SAITH NOT.

Paul A. Colbert

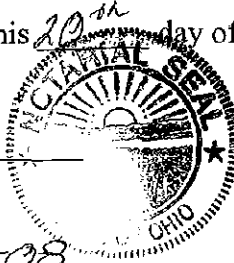
Paul A. Colbert

STATE OF OHIO)
 FRANKLIN) SS:
COUNTY OF HAMILTON)

Subscribed and sworn to before me this 20th day of ~~December~~ 2006.

Jared O. Smith

Notary Public



JARED O. SMITH
Notary Public
in and for the State of Ohio
My Commission Expires 10-01-08

My Commission Expires: 10-01-08