

FILE

RECEIVED-DOCKETING DIV  
2007 JAN 26 PM 1:58  
PUCO

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

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician 76 Date Processed 1-26-07

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

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

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

---

**MOTION FOR  
SUBPOENA DUCES TECUM**

---

Now comes the Office of the Ohio Consumers' Counsel ("OCC") and, pursuant to Ohio Adm. Code 4901-1-25, hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena *duces tecum* compelling John Deeds, a former employee of one or more of the companies affiliated with Duke Energy Ohio, Inc. (including their predecessor companies)<sup>1</sup> to appear for oral deposition as on cross-examination on February 8, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 10:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time) and attend from day to day until the deposition is completed to provide testimony concerning side agreements that were made with the customers of Duke Energy Ohio, Inc. (and/or membership organization(s))

---

<sup>1</sup> References to companies using the term "Duke" (all variations, such as "Duke Energy Ohio, Inc." and "Duke-affiliated companies" are used throughout this pleading. These references should be understood to also include the predecessor companies before the recent merger (e.g. reference to Duke Energy Ohio, Inc. includes reference to its predecessor, the Cincinnati Gas & Electric Company).

to which such customers belong) that have a bearing on the above-captioned cases, including with respect to the remand from the Ohio Supreme Court on November 22, 2006 in Case Nos. 03-93-EL-ATA et al. *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

The subpoena should also compel the witness to bring with him, and provide to OCC at 10:00 a.m. on said day and at said place, i) all documents and information that Mr. Deeds possesses or controls that support his action ("Wrongful Termination Action") against Duke Energy Corporation and Duke Energy Retail Sales, LLC ("DERS"<sup>2</sup>) filed in Federal District Court,<sup>3</sup> ii) all documents containing agreements as well as any and all agreements between a company affiliated with Duke Energy Ohio, Inc. (including DERS and all other Duke-affiliated companies) that are in the possession or control of Mr. Deeds (by way of example only, the Option Agreements described in Paragraph 7 of the Wrongful Termination Action), iii) all documents containing correspondence related to these agreements involving customers of Duke Energy Ohio, Inc. (or their representatives, including representatives of membership organizations to which the customers belong) and representatives of a Duke-affiliated company that are in the possession or control of Mr. Deeds (by way of example only, the e-mail described in Paragraph 12 of the Wrongful Termination Action), and iv) all documents in the possession or control of Mr. Deeds pertaining to the aforementioned agreements. The

---

<sup>2</sup> The predecessor company for DERS is Cinergy Retail Services, LLC.

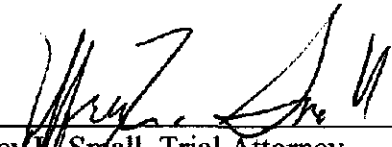
<sup>3</sup> *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination.

Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



---

Jeffrey W. Small, Trial Attorney  
Kimberly W. Bojko  
Ann M. Hotz  
Larry S. Sauer  
Assistant Consumers' Counsel

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

**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. )

---

**MEMORANDUM IN SUPPORT**

---

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command John Deeds to appear and to submit to oral deposition as on cross-examination on February 8, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time) and attend from day to day until the deposition is completed by the OCC in the above-captioned proceedings.

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

filed by John Deeds, a former employee of one or more Duke-affiliated companies.<sup>4</sup> Mr. Deeds claims that Duke Energy Ohio, Inc. used DERS agreements with customers to circumvent the requirement that Duke Energy Ohio, Inc. properly charge its customers for electric service and that DERS was used as a veil to conceal agreements that were sought in connection with the litigation before the PUCO. From his Complaint, Mr. Deeds appears to be knowledgeable about the agreements entered into by DERS and will be able to provide in-depth information regarding these matters. Mr. Deed's full participation in the examination will facilitate a full and complete development of the cases before the Commission, including the ultimate record upon which the Commission will base its decision

Additionally, the OCC requests the PUCO to command Mr. Deeds to bring with him, for delivery to OCC at 10:00 a.m. on said day and at said place, i) all documents and information that Mr. Deeds possesses or controls that support his action ("Wrongful Termination Action") against Duke Energy Corporation and Duke Energy Retail Sales, LLC ("DERS"<sup>5</sup>) filed in Federal District Court,<sup>6</sup> ii) all documents containing agreements as well as any and all agreements between a company affiliated with Duke Energy Ohio, Inc. (including DERS and all other Duke-affiliated companies) that are in the possession or control of Mr. Deeds (by way of example only the Option Agreements described in Paragraph 7 of the Wrongful Termination Action), iii) all documents containing

---

<sup>4</sup> *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

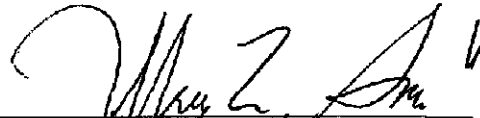
<sup>5</sup> The predecessor company for DERS is Cinergy Retail Services, LLC.

<sup>6</sup> *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

correspondence related to these agreements involving customers of Duke Energy Ohio, Inc. (or their representatives, including representatives of membership organizations to which the customers belong) and representatives of a Duke-affiliated company that are in the possession or control of Mr. Deeds (by way of example only, the e-mail described in Paragraph 12 of the Wrongful Termination Action), and iv) all documents in the possession or control of Mr. Deeds pertaining to the aforementioned agreements. The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination. This information is central to understanding and addressing the issues related to Duke Energy Ohio, Inc.'s proposed standard service charges and the support that has been shown by some parties for Duke Energy Ohio Inc.'s proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



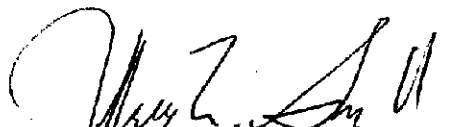
Jeffrey L. Small, Trial Attorney  
Kimberly W. Bojko  
Ann M. Hotz  
Larry S. Sauer  
Assistant Consumers' Counsel

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



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Hearing Examiner's electronic service list) and by regular U.S. Mail the 26<sup>th</sup> day of January, 2007.

  
\_\_\_\_\_  
Jeffrey W. Small  
Assistant Consumers' Counsel

STATE OF OHIO  
PUBLIC UTILITIES COMMISSION  
180 EAST BROAD STREET  
COLUMBUS, OHIO 43266-0573

Ted Strickland  
GOVERNOR



THE PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM

TO: John Deeds  
4507 Ravenwood Court  
Cincinnati, Ohio 45244

Upon application of Counsel for the Office of the Ohio Consumers' Counsel ("OCC"), John Deeds is hereby required to appear for and submit to oral deposition as on cross-examination on February 8, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio location as agreed to by the OCC for that date and time), continuing from day to day until completed, by the OCC regarding Case Nos. 06-986-EL-UNC, 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA, 06-1068-EL-UNC, 05-725-EL-UNC, 06-1069-EL-UNC, 05-724-EL-UNC, and 06-1085-EL-UNC, all cases related to Duke Energy Ohio, Inc.'s standard service offer charges. In addition, you are required at 10:00 a.m. on said day and at said place to provide to the OCC i) all documents and information that Mr. Deeds possesses or controls that support his action ("Wrongful Termination Action") against Duke Energy Corporation and Duke Energy Retail Sales, LLC ("DERS"<sup>7</sup>) filed in Federal District Court,<sup>8</sup> ii) all documents containing agreements as well as any and all agreements

---

<sup>7</sup> The predecessor company for DERS is Cinergy Retail Services, LLC.

<sup>8</sup> *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

between a company affiliated with Duke Energy Ohio, Inc.<sup>9</sup> (including DERS, all other Duke-affiliated companies, and the predecessor companies to DERS and the Duke-affiliated companies) that are in the possession or control of Mr. Deeds (by way of example only, the Option Agreements described in Paragraph 7 of the Wrongful Termination Action), iii) all documents containing correspondence related to these agreements involving customers of Duke Energy Ohio (or their representatives, including representatives of membership organizations to which the customers belong) and representatives of a Duke affiliated company that are in the possession or control of Mr. Deeds (by way of example only, the e-mail described in Paragraph 12 of the Wrongful Termination Action), and iv) all documents in the possession or control of Mr. Deeds pertaining to the aforementioned agreements. The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination.

Dated at Columbus, Ohio, this 26th day of January, 2007.

BY: Scott Farkner

TITLE: Attorney Examiner

---

<sup>9</sup> The predecessor company to Duke Energy Ohio, Inc. is the Cincinnati Gas & Electric Company.