

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 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 Modify Its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer.)	Case No. 06-1068-EL-UNC

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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)

**DUKE ENERGY OHIO'S MOTION IN LIMINE TO EXCLUDE
IRRELEVANT CONTRACTS AND RELATED DOCUMENTS FROM
THESE PROCEEDINGS**

Duke Energy Ohio (DE-Ohio) respectfully moves the honorable Public Utilities Commission of Ohio (Commission), in advance of the hearing in this proceeding tentatively scheduled for March 19, 2007, to exclude from introduction into the record certain confidential contracts and related documents provided to Parties through discovery. The documents in question are not relevant to these proceedings and their admission would be unduly prejudicial to DE-Ohio and the counterparties to the contracts, all non-residential consumers in DE-Ohio's certified territory.

DE-Ohio is a party to one contract that has been provided, under compulsion, through discovery and has substantial interests to protect by this motion. Support for DE-Ohio's Motion in Limine is set forth in the attached Memorandum in Support. DE-Ohio also incorporates, adopts, and supports the Motion in Limine filed by Duke Energy Retail Sales and Cinergy Corp.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Paul A. Colbert", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

INTRODUCTION:

Duke Energy Ohio (DE-Ohio) adopts, supports, and incorporates the Relevant Factual History set forth in Duke Energy Retail Sales' (DERS) and Cinergy Corp's. (Cinergy) Motions in Limine. DE-Ohio would be remiss however, if it did not discuss its unique position in these proceedings. As the Applicant in these cases DE-Ohio had the burden to prove its application resulted in a just and reasonable market-based standard service offer.¹ The Public Utilities Commission of Ohio (Commission) did not adopt DE-Ohio's application but instead requested that it file a market-based standard service offer (MBSSO) the Commission coined a "rate stabilization plan" (RSP).

DE-Ohio filed an RSP and fashioned a Stipulation with many of the Parties and Staff, but not with OCC. The Commission rejected the filed Stipulation and ordered an MBSSO that was unacceptable to DE-Ohio as a market price. DE-Ohio filed an Application for Rehearing and offered an Alternative Proposal, adoption of the Stipulation, or adoption of its originally applied for market price known as the Competitive Market Option. The Commission, in its November 23, 2004, Entry on Rehearing rejected all of those alternatives and fashioned its own MBSSO made of

¹ Ohio Rev. Code Ann. § 4909.18 (Baldwin 2007).

bits and pieces of each part plus new components mainly pertaining to the avoidability of various market price components and the price paid by non-residential consumers returning to DE-Ohio for generation service.

On remand before the Commission DE-Ohio is prepared to support the Commission's MBSSO as ordered on November 23, 2004. Based upon substantial discovery requests made by the Ohio Consumers' Counsel it appears that DE-Ohio may also be required to defend the Commission's MBSSO from the alleged affects of contracts entered into by DE-Ohio affiliates DERS and Cinergy Corp. (Cinergy) on the Commission's ordered MBSSO. DE-Ohio also entered one such contract. DE-Ohio asserts that it is unfair and prejudicial to require it to defend allegations regarding contracts that had no connection to the Commission's ordered MBSSO and to which DE-Ohio was not a party. As more fully explained below DE-Ohio asks the Commission grant this Motion in Limine and determine that the contracts and related documents are inadmissible in these proceedings.

ARGUMENT:

DE-Ohio adopts and incorporates the argument set forth in DERS' Memorandum in Support of its Motion in Limine. It will not restate those arguments but will discuss issues unique to DE-Ohio.

- I. **Even if DE-Ohio's Stipulation or alternative proposal had been adopted by the Commission, the contracts in question remain irrelevant because there is no evidence that the City of Cincinnati is paying anything other than the Commission approved MBSSO price and the contract is neither nefarious nor inappropriate.**

DE-Ohio has no opportunity to pay any of the costs or receive any of the benefits associated with any contract except the contract it entered with the City of Cincinnati. The City of Cincinnati, like all counterparties to the DERS, Cinergy Corp., and DE-Ohio contracts, is paying DE-Ohio the full MBSSO market price approved by the Commission. The terms and conditions of the City of Cincinnati contract do not involve the MBSSO established by the Commission on November 23, 2004. In fact the City did not support the Stipulation, CMO, or Alternative Proposal but instead withdrew from the case. It is absurd to suggest that the City's withdrawal caused the Commission to order a higher market price than DE-Ohio would otherwise have received. Presumably, all of Cincinnati's residential consumers received effective representation in the case by OCC. There is simply no connection between the one DE-Ohio contract and the MBSSO ordered by the Commission and accepted by DE-Ohio. Absent a nexus between the contracts and DE-Ohio or consumers, the contracts are irrelevant to these proceedings and the Commission should not permit OCC to introduce them as evidence.

II. Admission of the contract to these proceedings would prejudice DE-Ohio and cause it, and the communities in its certified territory, undue harm.

DE-Ohio is an active member of the community where it does business. It engages in philanthropic endeavors, partners with local government, and pursues economic development initiatives. If contracts, such as the City of Cincinnati contract are used to change DE-Ohio's MBSSO to its detriment, it will have a chilling effect on DE-Ohio's ability to participate in such activities.

DE-Ohio contributes millions of shareholder dollars to the local community through similar contracts. In this instance the beneficiary is the City of Cincinnati. In other cases it is customers in economic hardship through energy efficiency and weatherization programs. For example, OCC engaged in confidential settlement discussions with DE-Ohio to resolve OCC's appeal of the Duke merger with Cinergy. Among other things those discussions resulted in a settlement where DE-Ohio contributed \$1.25 million to energy efficiency and weatherization programs in the last year. OCC did not complain that its contract with DE-Ohio caused decreased merger credits. In the same manner DE-Ohio's contract with the City of Cincinnati did not cause higher generation market prices.

CONCLUSION

For the reasons set forth above, and those set forth in DERS' and Cinergy's Memorandums in Support of their Motions in Limine, DE-Ohio asks that the Commission approve each Motion in Limine.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Paul A. Colbert".

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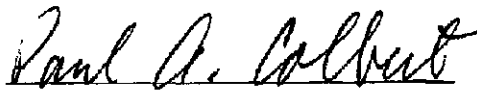
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically on the following parties this 2nd day of February 2007.


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