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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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.)

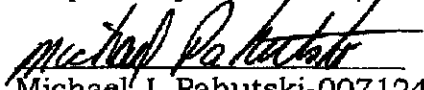
In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set its) Case No. 05-724-EL-UNC
System Reliability Tracker and Market)
Price.)

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 RETAIL SALES MOTION TO INTERVENE FOR THE
LIMITED PURPOSE OF PROTECTING ITS INTEREST IN CONTRACTS
TO WHICH IT IS A PARTY**

Duke Energy Retail Sales (DERS) respectfully moves the honorable Public Utilities Commission of Ohio (Commission), for limited intervention into the proceedings for the purpose of protecting its interest in contracts that have been the subject of substantial discovery in these proceedings and that OCC is seeking to admit into evidence. Use of the contracts in discovery and hearing may cause harm and prejudice to DERS and its counterparties. Therefore, DERS has a real and substantial interest in these proceedings and asks the Commission to approve this Motion to Intervene for the reasons more thoroughly explained in the attached Memorandum in Support.

Respectfully Submitted,


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MEMORANDUM IN SUPPORT

On November 22, 2006, the Ohio Supreme Court issued its remand to the Public Utilities Commission of Ohio (Commission) concerning the Commission's disposition of cases 03-93-EL-ATA *et. al.*¹ The Court remanded to the Commission on two procedural issues, one of which was that, regarding "side agreements" the Commission must "compel disclosure of the request information."² Despite the fact that the Ohio Consumers' Counsel had never requested any contracts signed by Duke Energy Retail Sales (DERS) the Commission permitted OCC to issue a subpoena to DERS and depose a DERS employee concerning contracts between DERS and Parties to cases 03-93-EL-ATA *et. al.*, and members of organizations that were a party to those cases.³

Now OCC has filed an Entry on Rehearing that makes it plain that it intends to seek admission of DERS's confidential contracts into evidence.⁴ In order to protect its interests relative to its contracts DERS seeks intervention in these proceedings.

¹ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St. 3d 300, 856 N.E.2d 213 (2006).

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

³ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA *et. al.* (Entry at 4-5) (January 2, 2007).

⁴ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA *et. al.* (Application for Rehearing) (February 1, 2007).

The standard for intervention in Commission cases is that the intervener has a real and substantial interest, be situated such that the disposition of the proceeding may impair its ability to protect that interest, and no other party may protect that interest.⁵ DERS is in precisely that position.

DERS is a principle to contracts discovered by, and in the possession of, the OCC and other Parties to these cases subject to the provision of protective agreements. OCC has represented its intent to seek admission of the contracts for numerous purposes including, but not limited to, a demonstration of rebated charges to non-residential consumers, unfair advantage in the bargaining process due to the contracts, and failure of the Commission to order a competitive bid process due to unfair waiver regarding O.A.C. 4901:1-35-02.⁶ DERS has a substantial interest in defending its contracts against such inaccurate charges. No Duke Energy affiliate, including Duke Energy Ohio, is a party to the contracts. No Party to these proceedings is in a position to protect DERS's interests regarding the contracts.

DERS has already suffered harm because counterparties with divergent contract terms and conditions have seen the various contracts. Further exposure and inaccurate public descriptions of the contracts may harm DERS and its ability to conduct business in the future. It may

⁵ OHIO ADMIN. CODE ANN. § 4901-1-11 (Baldwin 2007).

⁶ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA *et. al.* (Application for Rehearing) (February 1, 2007).

also prevent future transactions that may benefit consumers and economic development in Ohio. Under these circumstances DERS requests that the Commission grant its Motion to Intervene.

Respectfully Submitted,



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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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