

FILE

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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 Adjust and Set its System Reliability Tracker.	)	)	Case No. 06-1069-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set its System Reliability Tracker and Market Price.	)	)	Case No. 05-724-EL-UNC

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In the Matter of the Application of )  
Duke Energy Ohio, Inc. to Modify its ) Case No. 06-1068-EL-UNC  
Fuel and Economy Purchased )  
Power Component of Its Market-Based )  
Standard Service Offer. )

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. )

**CINERGY CORP.'S MOTION IN LIMINE TO EXCLUDE IRRELEVANT  
CONTRACTS AND RELATED DOCUMENTS FROM THESE PROCEEDINGS**

Cinergy Corp. (Cinergy) 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 Cinergy and its counterparty, a non-residential consumer in DE-Ohio's certified territory.

Cinergy has filed to intervene in these proceedings to protect its interests regarding the contract to which it is a signatory. Cinergy is a party to one contract that has been voluntarily provided under a protective agreement through discovery and has its own interests to protect by this motion. Support for Cinergy's Motion in Limine is set forth in the attached Memorandum in Support. Cinergy also adopts, incorporates, and support's Duke Energy Retail Sales and Duke Energy Ohio's Motions in Limine.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael D. Dortch", written over a horizontal line.

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

Cinergy Corp. (Cinergy) adopts and incorporates the Memorandum in Support of the Motions in Limine filed by Duke Energy Retail Sales (DERS) and Duke Energy Ohio (DE-Ohio) in these proceedings. Cinergy will not repeat the history and arguments made in the DERS and DE-Ohio Motions and Memorandum in Support but will advance its unique position relative to the contracts in question. Cinergy is a party to one contract with a Party to these proceedings. Nothing in that contract affected the Commission's November 23, 2004, Entry on Rehearing because the Commission did not adopt the Stipulation signed by DE-Ohio and other Parties, nor did the Commission adopt the Alternative Proposal offered by DE-Ohio. Absent relevancy, Cinergy asserts that it is appropriate to determine the admissibility of the discovered contracts and any related documents thereto.

### **II. ARGUMENT**

Cinergy was the parent company of The Cincinnati Gas & Electric Company (CG&E), the predecessor of DE-Ohio. As such Cinergy had a substantial interest in the economic development of the community in which CG&E operated and the success of CG&E. In furtherance of those interests Cinergy ultimately entered a contract with a non-residential consumer in CG&E's certified territory. The contract does not obligate DE-Ohio or its consumers in any way, nor does it change the market price paid by the counterparty. There is no connection between the contract and the Entry on Rehearing issued by the Commission on November 23, 2004. Therefore, Cinergy asks the

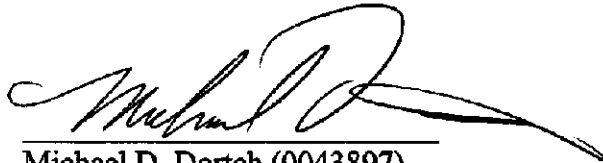
Commission to grant this Motion in Limine and the Motions filed by DERS and DE-Ohio.

Cinergy asserts that it is in the public interest to encourage contracts such as the contract it entered with a non-residential consumer. Such contracts result in economic support for consumers and are not exclusive to non-residential consumers. It is vital to the State of Ohio that businesses have the ability to negotiate contracts to their mutual self-interest to develop a competitive economic climate in Ohio. In the absence of a financial obligation to DE-Ohio or some fact that makes these contracts relevant to the Commission's Entry on Rehearing. Cinergy asks the Commission to grant this Motion in Limine.

### III. CONCLUSION

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

Respectfully Submitted,

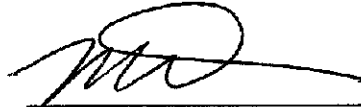
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**CERTIFICATE OF SERVICE**

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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