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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 ) Case No. 03-93-EL-ATA  
Service Offer Pricing and to 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 ) Case No. 03-2079-EL-AAM  
Procedures for Certain Costs Associated )  
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 ) Case No. 03-2081-EL-AAM  
Procedures for Capital Investment in its ) Case No. 03-2080-EL-ATA  
Electric Transmission and Distribution )  
System And to Establish a Capital )  
Investment Reliability Rider to be Effective )  
After the Market Development Period. )

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

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. )

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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 Market Price.	) ) )	Case No. 05-724-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. To Adjust and Set the Annually Adjusted Standard Service Offer.	) ) ) )	Case No. 06-1085-EL-UNC

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**MOTION FOR PROTECTIVE ORDER REGARDING PORTIONS OF A  
MOTION FOR SUBPOENA TO BE ISSUED TO CENERGY CORP. AND  
ASSOCIATED FILINGS**

**BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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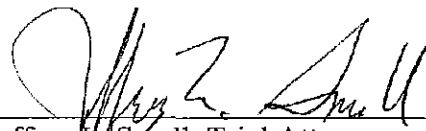
Pursuant to Ohio Adm. Code 4901-1-24, the Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") for a protective order regarding certain of the information asserted to be confidential by Duke Energy Retail Sales, LLC ("DERS") and Cinergy Corp. ("Cinergy"), both affiliates of Duke Energy Ohio, Inc. ("Duke Energy") that is a party to the above-captioned cases. As part of discovery in these proceedings, both DERS and Cinergy have provided information to the OCC (subject to protective agreements) and assert that this information constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of R.C. Title 49. In the OCC's progressive discovery efforts, some of that information is used in this OCC filing connected with a subpoena related to a deposition and additional documents that are sought from Cinergy.

By this motion (“Motion”), the OCC does not concede that the information does indeed constitute trade secrets. However, the OCC acknowledges that it has obtained this information pursuant to protective agreements with DERS and Cinergy that provide for such information to be treated under a protected status (subject to OCC’s right under the protective agreements to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Jeffrey M. Small, Trial Attorney  
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Larry S. Sauer  
Assistant Consumers’ Counsel

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**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 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 Market Price.	) ) )	Case No. 05-724-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. To Adjust and Set the Annually Adjusted Standard Service Offer.	) ) )	Case No. 06-1085-EL-UNC

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**MEMORANDUM IN SUPPORT**

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Contemporaneously with the filing of this Motion, a Motion for Subpoena and subpoena are being filed in this matter. Documents labeled “Public Version Redacted” are being filed for viewing by the public. The Public Version reflects the redaction of information that was revealed by documents previously obtained from DERS and Cinergy, and labeled by those Duke Energy affiliates as confidential pursuant to protective agreements with those entities.

Without conceding that the information gained under protective agreements from DERS and Cinergy meet the standard for trade secrets and deserve of protection from public revelation under R.C. 1333.61(D), the OCC files the instant Motion to protect the information provided by DERS and Cinergy pending such a determination at a later point in time in the event OCC exercises its right to initiate the process for the PUCO to decide if confidential treatment is appropriate. Accordingly, the OCC hereby requests that the Commission issue such order as is necessary to protect the redacted portions of the

Motion for Subpoena and portions of the subpoena itself, subject to the OCC's rights under the protective agreements.

The OCC understands that DERS and Cinergy consider the documents provided to the OCC to be confidential and deserving of the status of trade secrets as defined in R.C. 1333.61(D). Such assertions would be based on claims by DERS and Cinergy that the information (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Under the assertions made by DERS and Cinergy, confidential treatment of the documents and the information that the OCC seeks to use from those documents would be appropriate, subject to the OCC's rights under the protective agreements to initiate a process for the PUCO to decide whether the information is subject to protection.

Confidential treatment would be consistent with the executed protective agreements between OCC and the Duke Energy affiliates and with the Attorney Examiner's previous encouragement that such agreements would assist during the discovery phase of these cases.<sup>1</sup> Granting this Motion will speed progress in this case.

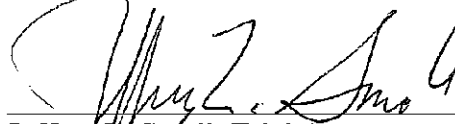
For the foregoing reasons and subject to the foregoing reservations of rights, this Motion for Protective Order should be granted.

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<sup>1</sup> Entry at 4, ¶ 11(C) ("Such [protective] arrangements are generally forthcoming.") (January 2, 2007).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", written over a horizontal line.

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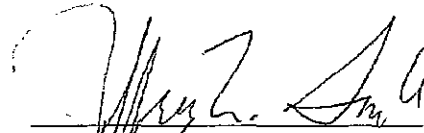
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Protective Order of the Office of the Ohio Consumers' Counsel was served electronically to the persons listed on the e-mail distribution list (provided by the Attorney Examiner) on this 5<sup>th</sup> day of February 2007.

  
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Jeffrey L. Small  
Assistant Consumers' Counsel