

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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
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Technician mm Date Processed 2/5/07

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
(PUBLIC VERSION)**

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 Cinergy Corp. ("Cinergy," including any of its predecessor organizations), an affiliate of Duke Energy Ohio Inc.¹ ("Duke Energy," a party to all the above-captioned cases), to provide a witness or witnesses to appear for oral deposition as on cross-examination on February 14, 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). The OCC asks that the deponent(s) be required to attend from day to day until the deposition(s) is completed to provide

¹ The affiliation is shown in certification regarding Duke Energy Retail Sales, LLC, located in Case No. 04-1323-EL-CRS.

testimony and information concerning agreements that involve Cinergy Corp. in connection with service to customers of Duke Energy. These documents may have an important bearing on the above-captioned cases, including 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 deponent(s) should be knowledgeable in the aforementioned matters and the documents that are more fully described below. A deponent should have first-hand knowledge of (i.e. shall have participated in) the negotiations of the agreements.

The subpoena should also compel the deponent(s) to bring with him/her/them, and provide to OCC at 10:00 a.m. on said day and at said place, i) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between Cinergy [REDACTED] [REDACTED] for the period January 1, 2000 to the date of the deposition(s), ii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to these agreements or pertaining to the aforementioned agreements (by way of example only, with [REDACTED], iii) all

[REDACTED]

documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) related to [REDACTED]

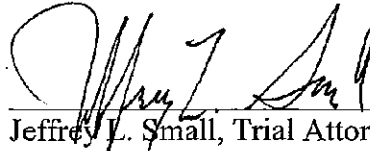
[REDACTED], iv) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to [REDACTED]

[REDACTED] v) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements for electric service to customers of Duke Energy Ohio, Inc. not previously mentioned, and vi) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to the aforementioned agreements (i.e. in section (v)) for electric service to other customers of Duke Energy Ohio, Inc. or pertaining to such agreements for electric service. The period of time covered by the aforementioned materials should begin on January 1, 2000 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

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

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To Adjust and Set the Annually Adjusted)	
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MEMORANDUM IN SUPPORT

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Cinergy to provide a witness or witnesses to appear and to submit to oral deposition as on cross-examination on February 14, 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(s) is completed by the OCC in the above-captioned proceedings.

The above-captioned cases all involve Duke Energy's standard service charges. The agreements entered into by Duke Energy, directly or indirectly using Duke Energy's affiliated companies (including Cinergy), 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 PUCO issued in

many of the above-captioned cases. Side agreements also figured prominently in a recent Complaint filed by a former Duke Energy employee John Deeds³ and where the subject matter of a previously issued subpoena regarding Duke Energy Retail Sales, LLC.⁴ Mr. Deeds claims that Duke Energy used side agreements to circumvent the requirement that Duke Energy properly charge its customers for electric service. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A deponent knowledgeable about any agreements entered into by Cinergy, including their negotiation, will be able to provide in-depth information regarding these matters. The full participation of the deponent(s) in the examination will facilitate a full and complete development of the cases before the PUCO, including the ultimate record upon which the Commission will base its decision

Additionally, the OCC requests the PUCO to command the deponent(s) designated by Cinergy to bring with him/her/them, for delivery to OCC at 10:00 a.m. on said day and at said place, i) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing agreements as well as any and all agreements between Cinergy [REDACTED]

[REDACTED] for the period

³ *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).

⁴ Pursuant to subpoena, a deposition was conducted of a Duke Energy Retail Sales, LLC representative on January 9, 2007.

January 1, 2000 to the date of the deposition(s), ii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) containing correspondence related to these agreements or pertaining to the aforementioned agreements (by way of example only, with [REDACTED]

[REDACTED]), iii) all documents in the possession or control of Cinergy (all forms of documents, including hard copies of information stored on electronic media) related to [REDACTED]

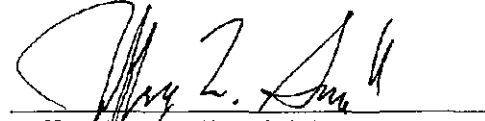
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This information is central to understanding and addressing the issues related to Duke Energy's proposed standard service charges and the support that has been shown by some parties for Duke Energy's proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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

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

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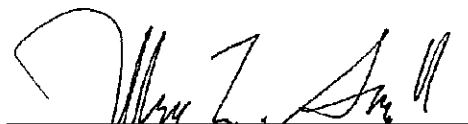
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum* (*Public Version*), was served electronically (according to the Hearing Examiner's e-mail) the 5th day of February 2007.

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

Jeffrey L. Small
Assistant Consumers' Counsel