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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc.,	:	Case Nos.	03-93-EL-ATA
Rate Stabilization Plan Remand, and	:		03-2079-EL-AAM
Rider Adjustment Cases	:		03-2080-EL-ATA
	:		03-2081-EL-AAM
	:		05-724-EL-UNC
	:		05-725-EL-UNC
	:		06-1068-EL-UNC
	:		06-1069-EL-UNC
	:		06-1085-EL-UNC

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**MEMORANDUM IN RESPONSE  
TO  
MOTIONS *IN LIMINE***

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On February 2, 2007, certain motions *in limine* were filed in this case by Duke Energy Ohio, Duke Energy Retail Sales, and Cinergy Corporation. In Staff's view, whether the Commission chooses to grant these motions, they are useful. Although the Staff has not been involved in the discovery disputes surrounding this subject matter, it is apparent that there has been controversy in this area. The motions provide a means of laying this controversy to rest and clarifying the ultimate scope of the hearings in this case.

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Apparently there are agreements between an affiliate of Duke Energy Ohio and some of the signatories to the stipulation submitted in this case on May 19, 2004. The Staff has no such agreement. It appears to the Staff that the existence of these agreements could allow someone to argue either that the motives of those signing the 2004 stipulation are in question or some corporate separation issue. Neither argument is related to the matter before the Commission currently.

It must be remembered that the purpose of the proceeding now before the Commission is to allow the Commission to pass on a company proposal to establish its market based standard service offer in compliance with R.C. 4928.14. Only information which is pertinent to that proposal is relevant in this proceeding. An examination of the two possible arguments reveals that neither makes any difference with regard to the currently pending matter.

Regarding the potential that the agreements might discredit the motives of those who signed the 2004 stipulation, this is no longer relevant. There is no stipulation currently before the Commission. The Commission approved an application for rehearing authored solely by the company. The Supreme Court directed the Commission to provide its basis for approving that application and its reasons for moving from the outcome in the Opinion and Order to that contained in the Entry on Rehearing. No party, other than the company, is a signatory to anything currently pending. The Staff for its part will submit testimony supporting the reasonable nature of the entry on rehearing and further explaining why that result is in some degree preferable to the outcome in the Opinion and Order in this case. This testimony will have no reference to the old stipulation. There is

no reason to consider that old stipulation as it is no longer involved in this proceeding. Since the stipulation no longer matters, the motives of those signing it, whether pure or tainted, make no difference. This argument forms no basis to consider these agreements.

Turning to the other argument, that the agreements indicate some corporate separation issue, the issue does not belong in this case. The General Assembly provided the Commission with the authority to examine corporate separation issues pursuant to R.C. 4928.17. The process laid out is the filing of an R.C. 4905.26 complaint. The case currently before the Commission is not a 4905.26 complaint. If a party believes there is a corporate separation issue, they should utilize the means that the General Assembly established. They should file a complaint. In that way the matter can be properly investigated. This instant case is not such a proceeding and the claim should not be considered here. Regardless of the company's corporate separation requirements, its obligations under R.C. 4928.14 are entirely unaffected.

Although the Staff sees no relevance now to the agreements, Staff does not suggest that the motions *in limine* should be granted now. It is possible that there are arguments or factors of which the Staff is currently unaware. This matter can best be resolved through an *in camera* review of the information and of the arguments for and against admission. In this way the matter can be clarified before the hearing in the case and the interests of all can be protected.

Respectfully submitted,

**Mark Dann**  
Ohio Attorney General

**Duane W. Luckey**, Section Chief  
Public Utilities Section



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**Thomas W. McNamee**  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> floor  
Columbus, OH 43215-3793  
(614) 466-4397  
(614) 644-8764 (FAX)  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Memorandum in Response to Motions *In Limine* was served electronically (according to the Hearing Examiner's order) on the 7<sup>th</sup> day of February, 2007.



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**Thomas W. McNamee**  
Assistant Attorney General