

FILE

RECEIVED-DOCKETING
2007 FEB -8 PM 2:14
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|---|---|------------------------|
| Consolidated Duke Energy Ohio, Inc., Rate |) | Case Nos. 03-93-EL-ATA |
| Stabilization Plan Remand and Rider |) | 03-2079-EL-AAM |
| Adjustment Cases |) | 03-2081-EL-AAM |
| |) | 03-2080-EL-ATA |
| |) | 05-724-EL-UNC |
| |) | 05-725-EL-UNC |
| |) | 06-1068-EL-UNC |
| |) | 06-1069-EL-UNC |
| |) | 06-1085-EL-UNC |
| | | |
| In the Matter of the Application of |) | |
| Duke Energy Ohio To Modify Its |) | Case No. 06-986-EL-UNC |
| Market-Based Standard Service Offer. |) | |

MOTION FOR
SUBPOENA DUCES TECUM

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 Gregory C. Ficke, an employee/former employee of one or more of the companies affiliated with Duke Energy Ohio, Inc. (including their predecessor companies)¹ to appear for oral deposition as on cross-examination on February 16, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at

¹ References to companies using the term "Duke" (all variations, such as "Duke Energy Ohio, Inc." and "Duke-affiliated companies") are used throughout this pleading. These references should be understood to also include the predecessor companies before the recent merger (e.g. reference to Duke Energy Ohio, Inc. includes reference to its predecessor, the Cincinnati Gas & Electric Company).

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician AMW Date Processed 2/8/07

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 is completed to provide testimony concerning side agreements that were made with the customers of Duke Energy Ohio, Inc. (and/or membership organization(s) to which such customers belong) that have a bearing on the above-captioned cases, including with respect to 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 subpoena should also compel the witness to bring with him, 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 Mr. Ficke that contain agreements between any and all companies affiliated with Duke Energy Ohio, Inc. (including Duke Energy Retail Sales, "DERS," and all other Duke-affiliated companies) and any and all parties or former parties in any of the above-captioned cases, if the agreements contain provisions regarding the charges known as RTC, FPP, RSC, AAC, IMF, SRT, and Insufficient Return Notice Fee in Duke Energy Ohio, Inc.'s tariffs. (By way of example only, the documents should include any agreements known as Option Agreements between DERS and parties, membership organization parties, individual members of parties' membership organizations, or former parties in the above-captioned cases); ii) all documents in the possession or control of Mr. Ficke containing correspondence related to the agreements referenced in above paragraph (i) involving customers of Duke Energy Ohio, Inc. (or their representatives, including representatives of membership organizations to which the customers belong) and representatives of a Duke-affiliated company; and iii) all documents in the possession or control of Mr. Ficke pertaining to the aforementioned agreements. The period of time

covered by the aforementioned materials should begin on December 15, 2003 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', written over a horizontal line.

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

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)
small@occ.state.oh.us
hotz@occ.state.oh.us
sauer@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|------------------------|
| Consolidated Duke Energy Ohio, Inc., Rate |) | Case Nos. 03-93-EL-ATA |
| Stabilization Plan Remand and Rider |) | 03-2079-EL-AAM |
| Adjustment Cases |) | 03-2081-EL-AAM |
| |) | 03-2080-EL-ATA |
| |) | 05-724-EL-UNC |
| |) | 05-725-EL-UNC |
| |) | 06-1068-EL-UNC |
| |) | 06-1069-EL-UNC |
| |) | 06-1085-EL-UNC |
| | | |
| In the Matter of the Application of |) | |
| Duke Energy Ohio To Modify Its |) | Case No. 06-986-EL-UNC |
| Market-Based Standard Service Offer. |) | |

MEMORANDUM IN SUPPORT

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Gregory C. Ficke to appear and to submit to oral deposition as on cross-examination on February 16, 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 is completed by the OCC in the above-captioned proceedings.

The above-captioned cases all involve Duke Energy Ohio, Inc.'s standard service charges. The agreements entered into by Duke Energy Ohio, Inc., directly or indirectly using its affiliated companies, 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 Commission issued in many of the above-captioned cases. Side agreements also figured prominently in a recent Complaint filed by John Deeds, a former employee of one or more Duke-affiliated companies.² Mr. Deeds claims that Duke Energy Ohio, Inc. used DERS agreements with customers to circumvent the requirement that Duke Energy Ohio, Inc. properly charge its customers for electric service and that DERS was used as a veil to conceal agreements that were sought in connection with the litigation before the PUCO.

Mr. Ficke's previous position as President of Cincinnati Gas and Electric Company during the time of the litigation of the Duke Energy Ohio, Inc. rate stabilization plan case (Case No. 03-93-EL-ATA, et al.), would make it likely for Mr. Ficke to be knowledgeable about the agreements entered into by DERS and that he will be able to provide in-depth information regarding these matters. Mr. Ficke's full participation in the examination will facilitate a full and complete development of the cases before the Commission, including the ultimate record upon which the Commission will base its decision

Additionally, the OCC requests the PUCO to command Mr. Ficke to bring with him, 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 Mr. Ficke that contain agreements between any and all companies affiliated with Duke Energy Ohio, Inc. (including Duke Energy Retail Sales,

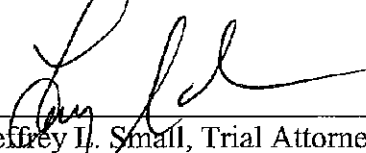
² *Deeds v. Duke Energy Corporation et al.*, United States District Court, Southern District of Ohio (Western Division), Case No. 1:06CV835, Complaint (December 7, 2006).

“DERS,” and all other Duke-affiliated companies) and any and all parties or former parties in any of the above-captioned cases, if the agreements contain provisions regarding the charges known as RTC, FPP, RSC, AAC, IMF, SRT, and Insufficient Return Notice Fee in Duke Energy Ohio, Inc.’s tariffs. (By way of example only, the documents should include any agreements known as Option Agreements between DERS and parties, membership organization parties, individual members of parties’ membership organizations, or former parties in the above-captioned cases); ii) all documents in the possession or control of Mr. Ficke containing correspondence related to the agreements referenced in above paragraph (i) involving customers of Duke Energy Ohio, Inc. (or their representatives, including representatives of membership organizations to which the customers belong) and representatives of a Duke-affiliated company; and iii) all documents in the possession or control of Mr. Ficke pertaining to the aforementioned agreements.

The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination. This information is central to understanding and addressing the issues related to Duke Energy Ohio, Inc.’s proposed standard service charges and the support that has been shown by some parties for Duke Energy Ohio Inc.’s proposals in Case Nos. 03-93-EL-ATA et al.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 (telephone)

(614) 466-9475 (facsimile)

small@occ.state.oh.us

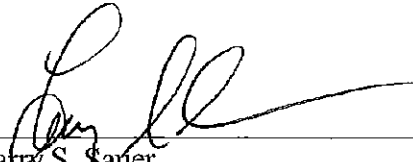
hotz@occ.state.oh.us

sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Hearing Examiner's electronic service list shown below)

on the 8th day of February, 2007.


Larry S. Sauer,
Assistant Consumers' Counsel

paul.colbert@duke-energy.com
rocco.d'ascenzo@duke-energy.com
anita.schafer@duke-energy.com
emooney2@columbus.rr.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
sam@mwncmh.com
dncilsen@mwncmh.com
lmcalister@mwncmh.com
jbowser@mwncmh.com
drinebolt@aol.com
WTTPMLC@aol.com
schwartz@evainc.com
rsmithla@aol.com
barthroyer@aol.com
sbloomfield@bricker.com
TOBrien@Bricker.com
dane.stinson@baileycavalieri.com
korkosza@firstenergycorp.com
JKubacki@strategicenergy.com
mchristensen@columbuslaw.org
tschneider@mgsglaw.com
shawn.leyden@pseg.com
ricks@ohanet.org
cgoodman@energymarketers.com
nmorgan@lascinti.org
eagleenergy@fuse.net
Stephen.Reilly@puc.state.oh.us
Thomas.McNamee@puc.state.oh.us
Werner.Margard@puc.state.oh.us
Anne.Hammerstein@puc.state.oh.us

Scott.Farkas@puc.state.oh.us
Jeanne.Kingery@puc.state.oh.us