

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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

CINERGY CORP.'S
MEMORANDUM IN OPPOSITION TO THE
FEBRUARY 1, 2007 APPLICATION FOR REHEARING BY
THE OHIO CONSUMERS' COUNSEL

On February 1, 2007, the Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing of this Commission's January 3, 2007 Entry (the "Entry.") Through the Entry, this Commission *denied* a Motion submitted by Duke Energy Ohio that OCC had ardently opposed. Thus, OCC seeks rehearing of a motion upon which it prevailed.

As the noted physicist, Sir Arthur Eddington once warned: "Not only is the universe stranger than we imagine, it is stranger than we can imagine." OCC's odd reaction to its success becomes apparent only when OCC's ambitions regarding these matters are considered. It uses these proceedings as a vehicle to accuse those with whom it disagrees of vague improprieties. It seeks to expand these proceedings well beyond their proper scope. In short, OCC wishes, by any means at its disposal, to re-litigate issues it litigated and lost before this Commission and before the Ohio Supreme Court.

For example, OCC complains that this Commission has pre-determined that OCC will be permitted to use the existence of so called "side agreements" only for the purpose

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expressly permitted by the Ohio Supreme Court— whether a May 19, 2004, stipulation between The Cincinnati Gas & Electric Company, now known as Duke Energy Ohio (“DE-Ohio”), and various parties to this proceeding that was rejected by this Commission was or was not “the product of serious bargaining among knowledgeable parties.”¹ *Ohio Consumers Counsel v. PUCO*, 2006-Ohio-5789 ¶29.

Indeed, upon remand from the Ohio Supreme Court this Commission well might follow the direction of the Ohio Supreme Court and choose to do exactly that which now alarms OCC. Nothing, however, about this Commission's Entry suggests that the Commission has “predetermined” anything. Indeed, the language to which OCC objects:

. . . the hearing in these proceedings may also consider evidence relating to relevant side agreements and how such side agreements may have impacted the seriousness of the bargaining that led to the stipulation adopted in the opinion and order . . .

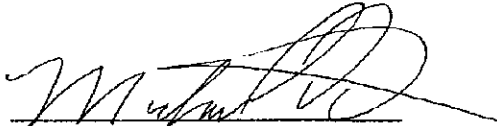
does nothing more than acknowledge that the issue identified by the Ohio Supreme Court will require determination by this Commission.

In fact, DE-Ohio, Duke Energy Retail Services (“DERS”), and Cinergy Corp. last week filed motions in limine through which they have asked this Commission to define the proper scope of these proceedings and to determine the degree, if any, to which the alleged “side agreements” bear actual relevance to these proceedings. OCC is at liberty to oppose those motions, and it will no doubt present whatever arguments it chooses in response to those motions within a proper context in which the issues might be debated. In due course, this Commission will have an opportunity to render a ruling that very likely will determine whether the so called side-agreements have any real relevance

¹ OCC expends the majority of its efforts attempting to dramatically expand the scope of these proceedings, suggesting to this Commission that the side agreements “may” be relevant to such issues as whether a waiver under OAC 4901:1-35-02(C) should be granted, whether CG&E, n/k/a Duke Energy Ohio engages in “discriminatory and predatory” schemes, and even the biases of witnesses.

whatsoever to these proceedings. OCC's claims that this Commission has "predetermined" those issues, however, is completely without merit. Accordingly, Cinergy Corp., respectfully requests that the Commission deny OCC's Application for Rehearing.

Respectfully Submitted,

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

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically upon parties, their counsel, and others through use of the following email addresses this 12th day of February 2007.

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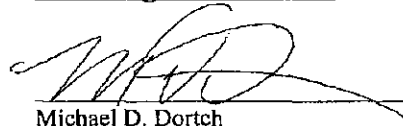
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