

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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 PROTECTIVE ORDER REGARDING PORTIONS OF A
DEPOSITION TRANSCRIPT AND EXHIBITS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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") an affiliate of Duke Energy Ohio, Inc. ("Duke Energy") that is a party to the above-captioned cases. As part of discovery in these proceedings, DERS has provided information to the OCC (subject to a protective agreement) and asserts 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, OCC has taken the deposition of DERS President, Charles Whitlock, and accordingly, the OCC hereby requests that the

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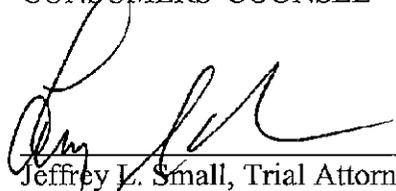
Commission issue such order as is necessary to protect the redacted portions of the deposition transcript, and exhibits thereto which were deemed confidential. OCC is filing these documents with a Notice of Filing of Deposition, subject to the OCC's rights under the protective agreements.

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 a protective agreement with DERS that provides 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
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MEMORANDUM IN SUPPORT

Contemporaneously with the filing of this Motion, a Notice of Filing of Deposition of Charles Whitlock is being filed in this matter. The Public Version of Mr. Whitlock's deposition and exhibits are being filed for viewing by the public. The Public Version reflects the redaction of information that was deemed by DERS to be confidential during the deposition of DERS representative, Charles Whitlock, pursuant to the protective agreement with DERS.

Without conceding that the information gained during the deposition meets the standard for trade secrets and deserves protection from public revelation under R.C. 1333.61(D), the OCC files the instant Motion to protect the information provided by DERS 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 deposition transcript, and exhibits thereto which were deemed confidential and filed with OCC's Notice of Filing of Deposition, subject to the OCC's rights under the protective agreements.

The OCC understands that DERS considers portions of the deposition transcript, and certain exhibits thereto, 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 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, confidential treatment of the deposition transcript 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.¹ 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.

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

Respectfully submitted,

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CONSUMERS' COUNSEL



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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 13th day of February 2007.



Larry S. Sauer
Assistant Consumers' Counsel