

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
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 Jason Barker, a 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 March 2, 2007 at the offices of the OCC (10 W. Broad Street, 18th Floor, Columbus, Ohio 43215) at 11:00 a.m. (or other Ohio

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).

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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 by Duke Energy Retail Sales, LLC ("DERS") 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.

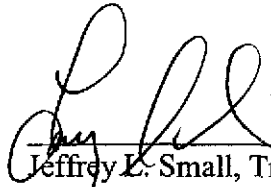
The subpoena should also compel the witness to bring with him, and provide to OCC at 10:00 a.m. on said day and at said place all documents in the possession or control of Mr. Barker that contain information regarding agreements between any and all companies affiliated with Duke Energy Ohio, Inc. (including Duke Energy Retail Sales, "DERS," formerly known as Cinergy Retail Sales) and customers of Duke Energy Ohio, Inc. The documents should include those in the possession or control of Mr. Barker pertaining to the aforementioned agreements or relating to his involvement and knowledge of (direct or indirect) events and communications that involve the agreements, including any backup documentation or raw data.

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



Jeffrey L. Small, Trial Attorney

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Consolidated Duke Energy Ohio, Inc., Rate)	Case Nos. 03-93-EL-ATA
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Adjustment Cases)	03-2081-EL-AAM
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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 Jason Barker to appear and to submit to oral deposition as on cross-examination on March 2, 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. Barker was previously employed by Duke Energy Ohio, Inc. during the time of the litigation of the Duke Energy Ohio, Inc.'s rate stabilization plan case (Case No. 03-93-EL-ATA, et al.), and would make it likely that Mr. Barker is knowledgeable about the agreements entered into by DERS and that he will be able to provide information regarding these matters. Mr. Barker'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 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 all documents in the possession or control of Mr. Barker that contain information regarding agreements between any and all companies affiliated with Duke Energy Ohio, Inc. (including Duke Energy Retail Sales, "DERS," formerly known as Cinergy Retail Sales) and customers of Duke Energy

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).

Ohio, Inc. The documents should include those in the possession or control of Mr. Barker pertaining to the aforementioned agreements or relating to his involvement and knowledge of (direct or indirect) events and communications that involve the agreements, including any backup documentation or raw data.

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



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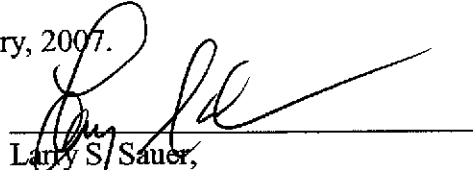
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena *Duces Tecum*, was served electronically (according to the Attorney Examiners' electronic service list shown below, as supplemented) on the 22nd day of February, 2007.


Larry S. Sauer,
Assistant Consumers' Counsel

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Ted Strickland
GOVERNOR



**THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM**

TO: Jason Barker
1302 Herlin Place
Cincinnati, Ohio 45208

Upon application of Counsel for the Office of the Ohio Consumers' Counsel ("OCC"), Jason Barker is hereby required to appear for and submit to oral deposition as on cross-examination on March 2, 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), continuing from day to day until completed, by the OCC regarding Case Nos. 06-986-EL-UNC, 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA, 06-1068-EL-UNC, 05-725-EL-UNC, 06-1069-EL-UNC, 05-724-EL-UNC, and 06-1085-EL-UNC, all cases related to Duke Energy Ohio, Inc.'s standard service offer charges.

In addition, you are required at 10:00 a.m. on said day and at said place to provide to the OCC all documents in the possession or control of Mr. Barker that contain information regarding agreements between any and all companies affiliated with Duke Energy Ohio, Inc. (including Duke Energy Retail Sales, "DERS," formerly known as Cinergy Retail Sales) and customers of Duke Energy Ohio, Inc. The documents should include those in the possession or control of Mr. Barker pertaining to the aforementioned

agreements or relating to his involvement and knowledge of (direct or indirect) events and communications that involve the agreements, including any backup documentation or raw data.

The period of time covered by the aforementioned materials should begin on December 15, 2003 and continue to the date of the examination.

Dated at Columbus, Ohio, this 22nd day of February, 2007.

BY: R Russell Goodey

TITLE: Attorney Examiner