

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the :
Application of Duke Energy:
Ohio to Modify its : Case No. 06-986-EL-UNC
Market-Based Standard :
Service Offer. :

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

DEPOSITION

of James E. Ziolkowski, taken before me, Maria
DiPaolo Jones, a Notary Public in and for the State
of Ohio, at the Offices of Duke Energy, 221 East
Fourth Street, 25th Floor, Cincinnati, Ohio, on
Tuesday, February 13, 2007, at 10:05 a.m.

ARMSTRONG & OKEY, INC.
185 South Fifth Street, Suite 101
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

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Date Processed

1 APPEARANCES:

2 Mr. Paul A. Colbert
3 Duke Energy Corporation
4 139 East Fourth Street
5 Cincinnati, Ohio 45202

6 On behalf of Duke Energy - Ohio.

7 Janine L. Migden-Ostrander
8 Ohio Consumers' Counsel
9 By Mr. Jeffrey L. Small
10 Assistant Consumers' Counsel
11 Ten West Broad Street, Suite 1800
12 Columbus, Ohio 43215-3485

13 On behalf of the Ohio Consumers' Counsel.

14 ALSO PRESENT:

15 Ms. Beth Hixon;
16 Ms. Anita Schafer.

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Tuesday Morning Session,
February 13, 2007.

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STIPULATIONS

It is stipulated by and between counsel for
the respective parties that the deposition of James
E. Ziolkowski, a witness called by the Office of
Consumers' Counsel under the applicable Rules of
Civil Procedure, may be reduced to writing in
stenotypy by the Notary, whose notes thereafter may
be transcribed out of the presence of the witness;
and that proof of the official character and
qualification of the Notary is waived.

- - -

1 Tuesday Morning Session,
2 February 13, 2007.

3 - - -

4 (Witness sworn.)

5 MR. SMALL: This deposition is taken in
6 case 03-93-EL-ATA and cases consolidated with it
7 before the Public Utilities Commission of Ohio. It's
8 also a deposition noticed under 06-986-EL-UNC, a
9 related but separate matter before the Public
10 Utilities Commission of Ohio.

11 This deposition is taken pursuant to a
12 notice issued January 29th, 2007, location and date
13 agreed to by counsel and notice to all the other
14 parties.

15 - - -

16 JAMES E. ZIOLKOWSKI

17 being by me first duly sworn, as hereinafter
18 certified, deposes and says as follows:

19 EXAMINATION

20 By Mr. Small:

21 Q. Mr. Ziolkowski, would you please state
22 your name and spell your last name for the court
23 reporter?

24 A. My name is James E. Ziolkowski, Z- -- as

1 in zebra -- -i-o-l-k-o-w-s-k-i.

2 MR. SMALL: Why don't we just note the
3 people who are in the room. Paul.

4 MR. COLBERT: Paul Colbert, counsel for
5 Duke Energy - Ohio, I guess 139 East Fourth Street,
6 25th floor, Cincinnati, Ohio, and I have no idea
7 what the zip code is.

8 MR. SMALL: That's fine.

9 MS. SCHAFER: Anita Schafer, Senior
10 Paralegal, Duke Energy - Ohio.

11 MS. HIXON: Beth Hixon with the Ohio
12 Consumers' Counsel.

13 MR. SMALL: My name is Jeff Small, and I
14 represent the office of the Ohio Consumers' Counsel
15 in the cases that I just mentioned.

16 Q. (By Mr. Small) Mr. Ziolkowski, have you
17 ever had your deposition taken?

18 A. Yes.

19 Q. And how many times?

20 A. Two or three times.

21 Q. Have you ever had one taken in a case
22 before the Public Utilities Commission?

23 A. Yes.

24 Q. What was the most recent time?

1 A. I believe that I was deposed in
2 early-2004 in this case prior to the hearing.

3 Q. And who took the deposition? What party?
4 Not what person, what party?

5 A. I don't recall exactly, but it might have
6 been you. Possibly.

7 Q. Were you a witness in the case?

8 A. Yes, I was.

9 Q. What did you testify about? What was the
10 subject matter of your testimony?

11 A. I testified about CG&E's competitive
12 market option.

13 Q. Under those circumstances you might have
14 been deposed by another counsel in my office, but
15 you'll pardon me if I've just misplaced the thing, it
16 was a couple years ago. Prior to that had you
17 testified before the Public Utilities Commission?

18 A. Yes.

19 Q. What was that case?

20 A. I testified in a complaint case, it was
21 *Surf Cincinnati versus CG&E*.

22 Q. What was the name, Surf?

23 A. *Surf Cincinnati*.

24 Q. S-u-r-f?

1 A. Yes.

2 Q. And was there another occasion that you
3 testified before the PUCO?

4 A. I don't believe so.

5 Q. Okay. Well, pardon again if some of this
6 seems repetitious, but I wasn't aware of some of that
7 so I'd like to go over a little bit of your
8 educational background after high school. Where did
9 you receive your bachelor's degree?

10 A. United States Naval Academy.

11 Q. And what year was that?

12 A. 1979.

13 Q. Are there areas of concentration?

14 A. Mechanical engineering.

15 Q. And do you have a degree other than --
16 that's a, what kind of a degree is that?

17 A. Bachelor of Science in mechanical
18 engineering.

19 Q. Do you have a degree beyond the Bachelor
20 of Science?

21 A. Yes.

22 Q. And what is that?

23 A. MBA.

24 Q. And where did you do that work?

1 A. Miami University.

2 Q. Here in Ohio?

3 A. Yes.

4 Q. And what year was that?

5 A. 1988.

6 Q. And any other postsecondary education?

7 A. No.

8 Q. All right. A little bit of background
9 concerning your work for the Cinergy-Duke companies.
10 Because of the merger in 2006 we'll kind of go back
11 and forth between the terminology, but I'd like to
12 know your first position with a Cinergy-affiliated
13 company.

14 A. My first position was a product
15 applications engineer.

16 Q. Did you say "products"?

17 A. Product applications engineer.

18 Q. What year did you join the company?

19 A. 1990.

20 Q. Who was your employer? Which company did
21 you work for?

22 A. I believe it was CG&E.

23 Q. And what did you do in that position?

24 A. I developed and managed demand-side

1 management programs.

2 Q. And those are programs for CG&E?

3 A. Yes.

4 Q. And what was your next position with a
5 Cinergy-affiliated company? The year.

6 A. In 1996 I became an account engineer.

7 Q. And who was your employer?

8 A. I believe it was CG&E.

9 Q. And what were your duties?

10 A. I was an account representative and met
11 with various large industrial and commercial
12 accounts, resolved various billing and operational
13 issues with those accounts.

14 Q. Who was your supervisor in that position?

15 A. Jim Brewer, B-r-e-w-e-r.

16 Q. All right. The date of your next
17 position?

18 A. In January of 1998 I became a rate
19 coordinator in the Rate department.

20 Q. And Rate department working for what
21 corporation?

22 A. I believe it was Cinergy Shared Services.

23 Q. Is that Cinergy Services, Inc., or
24 Cinergy Shared Services? I have Shared Services as

1 going along with a Duke name, that's the only reason
2 I asked.

3 A. I'm not certain.

4 Q. Okay. And what were your duties?

5 A. I performed various revenue analyses,
6 performed rate design during rate cases, tariff
7 administration, new rate filings as necessary.

8 Q. And these -- I'm sorry, were you done?

9 A. And I conduct training for internal and
10 external groups on rate issues.

11 Q. What would be an example of a training
12 for an outside group?

13 A. Each year I give a presentation at a
14 workshop at the Ohio Energy Conference in Columbus.

15 Q. And is there any particular company that
16 you work with or would it be for multiple companies?
17 In particular the rate design tariff administration
18 and so forth, is that for CG&E, or CG&E and PSI, or
19 what companies did you work on?

20 A. I've done tariff administration and rate
21 design for all of the Cinergy and now Duke Energy
22 operating companies.

23 Q. And who did you report to in that
24 position?

1 A. I've reported to Don Rottinghaus, Jeff
2 Bailey, Don Storck, and now Jeff Bailey again.

3 Q. Okay. You mentioned "now." Is that your
4 current position?

5 A. My title is currently Rate Supervisor.

6 Q. You said this changed from January 1998.

7 A. My duties are essentially the same as
8 they've been, but I have a new title as of July 2006.

9 Q. What was the title again?

10 A. Rate Supervisor.

11 Q. Rate Supervisor. And you said the duties
12 are largely the same as you just described?

13 A. Yes.

14 Q. And you report to Mr. Bailey.

15 A. Yes.

16 Q. Do you supervise others in your position?

17 A. No.

18 Q. Is Mr. Don Wathen in your rate area?

19 A. Yes.

20 Q. And what's your business relationship
21 with him? How do you interact with him?

22 A. Occasionally he will ask me for
23 information on various topics, in particular
24 revenues.

1 Q. What do you mean by "revenues"? You
2 perform calculations for him?

3 A. Well, I will tabulate revenues for
4 various regulated riders, tabulate usage, information
5 that's required for various filings with the PUCO.
6 For example, our rider SRT filing is one example.

7 Q. When you use the words "regulated
8 riders," were you including things like the SRT, AAC?

9 A. I was referring to the riders that appear
10 in our tariff book, so yes.

11 Q. Okay. I noticed you mentioned that you
12 reported at one time to Mr. Storck. Is that the way
13 to pronounce his name?

14 A. Yes.

15 Q. And is he still with the company?

16 A. Yes.

17 Q. And what's your business relationship
18 with him now? I understood that before you reported
19 to him; is he still in the area that you work in?

20 A. Yes, he is.

21 Q. And what is that relationship?

22 A. On occasion he will ask me to complete
23 various projects particularly related to revenues,
24 average customer costs, items like that.

1 Q. Do you know a Paul Smith?

2 A. Yes.

3 Q. What does he do?

4 A. He is Vice President of Rates.

5 Q. Is that a level above Mr. Bailey?

6 A. On the current organization chart
7 Mr. Bailey is at the same level as Mr. Smith.

8 Q. What is Mr. Bailey's title?

9 A. I don't know.

10 Q. He's a vice president, though?

11 A. I believe he is not.

12 Q. Okay. Horizontal to Mr. Smith but
13 without a vice president title.

14 A. That's my understanding.

15 Q. And what are the respective
16 responsibilities of Mr. Bailey and Mr. Smith, if
17 they're both at the same level in the organization?

18 A. Mr. Bailey is primarily responsible for
19 rate design work for all of the Duke Energy operating
20 companies, and Mr. Smith, my perception is that he is
21 more responsible for revenue requirements, cost of
22 service models.

23 Q. All right. That takes care of some of
24 the preliminaries. Let me take care of a

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(OPEN RECORD.)

MR. SMALL: Going to be inquiring into certain things having to do with Mr. Deeds at this point. The only exhibit I have is the Deeds complaint.

MR. COLBERT: That's fine. That's a public document.

MR. SMALL: I'm just giving you little forewarning where I'm headed, and you let me know if you think there's something you need to mark.

MR. COLBERT: I will do that. Thank you.

MR. SMALL: I think we're done with the documents.

1 and I pick that point as when you said you joined the
2 Rate department and you worked for Cinergy Services,
3 since that time have you filled out time sheets to
4 allocate your time to one or another organization
5 within the, first the Cinergy organization, later the
6 Duke organization?

7 A. Our time reporting is done only by
8 exception.

9 Q. Exception meaning for vacations and that
10 type of thing?

11 A. Vacations and that type of thing. And
12 also if we had some long-term special project, for
13 example, you might do an exception report.

14 Q. Have you ever done an allocation of time
15 for instance to CRS or DERS, Cinergy Retail Sales or
16 Duke Energy Retail Sales?

17 A. No.

18 Q. That is -- do you fill out -- let me
19 summarize. I think what I understand is you said
20 it's only done by exception, so at the end of the
21 week or pay period or whatever you don't hand in
22 anything if there have been no exceptions.

23 A. That's correct.

24 Q. Do you know how your time gets allocated

1 between the various Cinergy organizations,
2 corporations?

3 A. No.

4 Q. The same is true after joining the
5 Duke-affiliated companies.

6 A. That's correct.

7 MR. SMALL: I'm done with my questions.
8 I want to thank you for your time. I guess we'll
9 have something about reading it and signature.

10 MR. COLBERT: Yes. We don't waive
11 signature.

12 (Thereupon, the deposition concluded at
13 12:27 p.m.)

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1 State of Ohio :
2 County of _____ : SS:

3 I, James E. Ziolkowski, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Tuesday, February 13, 2007; that together
6 with the correction page attached hereto noting
7 changes in form or substance, if any, it is true and
8 correct.

9 _____
10 James E. Ziolkowski

11 I do hereby certify that the foregoing
12 transcript of the deposition of James E. Ziolkowski
13 was submitted to the witness for reading and signing;
14 that after he had stated to the undersigned Notary
15 Public that he had read and examined his deposition,
16 he signed the same in my presence on the _____ day
17 of _____, 2007.

18 _____
19 Notary Public

20 My commission expires _____, _____.
21 - - -

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CERTIFICATE

State of Ohio :
County of Franklin : SS:

I, Maria DiPaolo Jones, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named James E. Ziolkowski was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 15th day of February, 2007.

Maria DiPaolo Jones
Maria DiPaolo Jones, Registered
Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-2069A)

- - -

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | |
|--|------------------------|
| In the Matter of the Application of) | |
| Duke Energy Ohio To Modify Its) | |
| Market-Based Standard Service Offer.) | Case No. 06-986-EL-UNC |

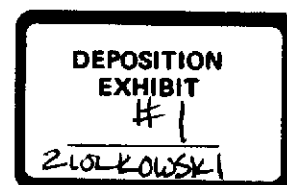
| | |
|--|-----------------------|
| In the Matter of the Application of) | |
| The Cincinnati Gas & Electric Company) | |
| To Modify its Non-Residential Generation) | |
| Rates to Provide for Market-Based Standard) | Case No. 03-93-EL-ATA |
| Service Offer Pricing and to Establish a Pilot) | |
| Alternative Competitively-Bid Service Rate) | |
| Option Subsequent to Market Development) | |
| Period.) | |

| | |
|---|-------------------------|
| In the Matter of the Application of The) | |
| Cincinnati Gas & Electric Company for) | |
| Authority to Modify Current Accounting) | Case No. 03-2079-EL-AAM |
| Procedures for Certain Costs Associated) | |
| with The Midwest Independent Transmission) | |
| System Operator.) | |

| | |
|--|-------------------------|
| In the Matter of the Application of The) | |
| Cincinnati Gas & Electric Company for) | |
| Authority to Modify Current Accounting) | Case No. 03-2081-EL-AAM |
| Procedures for Capital Investment in its) | Case No. 03-2080-EL-ATA |
| Electric Transmission and Distribution) | |
| System And to Establish a Capital) | |
| Investment Reliability Rider to be Effective) | |
| After the Market Development Period.) | |

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|--|-------------------------|
| In the Matter of the Application of) | |
| Duke Energy Ohio, Inc. to Modify Its) | |
| Fuel and Economy Purchased) | Case No. 06-1068-EL-UNC |
| Power Component of Its Market-Based) | |
| Standard Service Offer.) | |

| | |
|---|------------------------|
| In the Matter of the Application of the) | |
| Cincinnati Gas & Electric Company to) | |
| Modify Its Fuel and Economy Purchased) | Case No. 05-725-EL-UNC |
| Power Component of Its Market-Based) | |
| Standard Service Offer.) | |



| | | |
|--|-------|-------------------------|
| In the Matter of the Application of |) | |
| Duke Energy Ohio, Inc. to Adjust and Set its |) | Case No. 06-1069-EL-UNC |
| System Reliability Tracker. |) | |
| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc. to Adjust and Set its |) | Case No. 05-724-EL-UNC |
| System Reliability Tracker Market Price. |) | |
| In the Matter of the Application of |) | |
| Duke Energy Ohio, Inc. |) | Case No. 06-1085-EL-UNC |
| To Adjust and Set the Annually Adjusted |) | |
| Standard Service Offer. |) | |

**NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION
AND REQUEST FOR PRODUCTION OF DOCUMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

To: Paul A. Colbert, Esq.
Associate General Counsel
Rocco D'Ascenzo, Counsel
Duke Energy Ohio
2500 Atrium II, 139 East Fourth Street
P.O. Box 960
Cincinnati, Ohio 45201-0960
paul.colbert@duke-energy.com
rocco.d'ascenzo@duke-energy.com
cc: anita.schafer@duke-energy.com

Pursuant to Ohio Adm. Code Section 4901-1-21(B), please take notice that the
Ohio Consumers' Counsel ("OCC") will take the oral deposition of the following persons
in the following order:

Jon Gomez,
Jim Ziolkowski,
Tim Duff,
Jennifer Burns,
Don Storck, and
Don Wathen.

The depositions will be conducted at the offices of the OCC, 10 W. Broad St., 18th Floor, Columbus, Ohio, at 10:00 a. m. beginning on February 12, 2007 (or such other location that is mutually agreed upon by the parties). The OCC reserves the right to conduct additional depositions, upon oral examination, at a later point in time, including (but not limited to) depositions of Duke Energy Ohio witnesses and personnel who contributed to Duke Energy Ohio's responses to the OCC's discovery requests.

This deposition will be taken upon oral examination, as upon cross-examination, before an officer authorized by law to take depositions and will continue from day to day (beginning each day at 10:00), except for holidays and weekends, until completed.

Pursuant to Ohio Adm. Code Sections 4901-1-21(E) and 4901-1-20, the deponents are requested to produce at that time all documents¹ relating to his or her involvement and knowledge of (direct or indirect) events and communications that involve the above-captioned cases, including any backup documentation or raw data.

¹ "Documents" should be understood to be consistent with the definition of such term in the OCC's discovery transmitted in the above-captioned proceedings.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

/s/ Jeffrey L. Small

Jeffrey L. Small,
Kimberly W. Bojko,
Ann M. Hotz,
Larry S. Sauer
Assistant Consumers' Counsel

**OFFICE OF THE OHIO CONSUMERS'
COUNSEL**

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Notice to Take Depositions Upon Oral Examination* was served electronically upon all parties according to the e-mail distribution list (as provided by the Attorney Examiner) this 29th day of January, 2007.

/s/ Jeffrey L. Small
Jeffrey L. Small

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 1 of 3

RATE TS

SERVICE AT TRANSMISSION VOLTAGE

APPLICABILITY

Applicable to electric service for usual customer load requirements where the Company specifies service at a nominal transmission system voltage of 69,000 volts or higher, and the Company determines that facilities of adequate capacity are available and adjacent to the premises to be served. Electric service must be supplied at one point of delivery and the customer furnishes and maintains all transformation equipment and appurtenances necessary to utilize the service.

For customers taking service under any or all of the provisions of this tariff schedule, this same schedule shall constitute the Company's Standard Service Offer.

TYPE OF SERVICE

Alternating current 60 Hz, three phase at Company's standard transmission voltage of 69,000 volts or higher.

NET MONTHLY BILL

Computed in accordance with the following charges (kilovolt amperes are abbreviated as kVA; kilowatt-hours are abbreviated as kWh):

1. Distribution Charges

- | | |
|-------------------------------|------------------|
| (a) Customer Charge per month | \$150.00 |
| (b) Demand Charge | |
| All kVA | \$ 0.196 per kVA |

2. Applicable Riders

The following riders are applicable pursuant to the specific terms contained within each rider:

Sheet No. 51, Rider AAC, Annually Adjusted Component Rider
Sheet No. 52, Rider DSMR, Demand Side Management Cost Recovery Rider
Sheet No. 53, Rider FPP, Fuel and Economy Purchased Power Rider
Sheet No. 54, Rider IMF, Infrastructure Maintenance Fund Rider
Sheet No. 55, Rider RSC, Rate Stabilization Charge Rider
Sheet No. 56, Rider SRT, System Reliability Tracker
Sheet No. 57, Rider TCR, Transmission Cost Recovery Rider
Sheet No. 58, Rider DRI, Distribution Reliability Investment Rider
Sheet No. 59, Rider RSS, Rate Stabilization Surcredit Rider
Sheet No. 81, Rider EER, Energy Efficiency Revolving Loan Program Rider
Sheet No. 83, Rider OET, Ohio Excise Tax Rider
Sheet No. 84, Rider RTC, Regulatory Transition Charge Rider
Sheet No. 85, Rider SC, Shopping Credit Rider
Sheet No. 86, Rider USR, Universal Service Fund Rider
Sheet No. 103, Rider MSR-E, Merger Savings Credit Rider-Electric

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

DEPOSITION
EXHIBIT

#8

2106061461

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 2 of 3

NET MONTHLY BILL (Contd.)

3. Market Price Generation Charges – Market Based Standard

Service Offer

(a) Demand Charge

First 50,000 kVA

\$7.1256 per kVA

Additional kVA

\$5.1366 per kVA

(b) Energy Charge

Billing Demand times 300

\$0.012243 per kWh

Additional kWh

\$0.013924 per kWh

The Generation Charges listed above are applicable to all customers except those customers that switch to a Certified Supplier for their generation service. For customers who are procuring their energy supply from a Certified Supplier and receiving a shopping credit on December 31, 2004, the Generation Charges shown below will continue to apply until December 31, 2005.

Customers who return to the Company's energy supply after January 2, 2005, will be billed for generation service for each hour at the higher of the following:

1. The demand-related component of the Market Price Generation Charge, plus the energy-related component of the Market Price Generation Charge, plus Rider FPP, or
2. The demand-related component of the Market Price Generation Charge, plus the incremental dispatch cost of the highest cost generation unit/purchased power to serve Duke Energy Ohio load.

The following Generation Charges apply to customers receiving a Shopping Credit during 2005:

Generation Charges

(a) Demand Charge

First 50,000 kVA

\$8.3830 per kVA

Additional kVA

\$6.0430 per kVA

(b) Energy Charge

Billing Demand times 300

\$0.019994 per kWh

Additional kWh

\$0.016481 per kWh

MINIMUM CHARGE

The minimum charge shall be not less than fifty (50) percent of the highest demand charge established during the preceding eleven (11) months or the billing of 1,000 kVA, whichever is higher.

METERING

The Company may meter at secondary or primary voltage as circumstances warrant. If the Company elects to meter at secondary voltage, the kilowatt-hours registered on the Company's meter will be increased one and one-half (1.5) percent for billing purposes.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 3 of 3

DEMAND

The demand shall be the kilovolt amperes derived from the Company's demand meter for the fifteen-minute period of the customer's greatest use during the month, but not less than the higher of the following:

- a) 85% of the highest monthly kilovolt amperes similarly established during the summer period for the next succeeding eleven (11) months; or
- b) 1,000 kilovolt amperes.

For purposes of administration of the above clause, the summer period is defined as that period represented by the Company's billing for the four (4) revenue months of June through September. The winter period is defined as the period represented by the Company's billing for the eight (8) revenue months of January through May and October through December.

The Company may re-determine customer's billing demand at any time in recognition of a permanent change in load due to such occurrences as the installation of load control equipment or a temporary change due to malfunctions of such equipment.

LATE PAYMENT CHARGE

Payment of the total amount due must be received in the Company's office by the due date shown on the bill. When not so paid, an additional amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable. The late payment charge is not applicable to unpaid account balances for services received from a Certified Supplier.

TERMS AND CONDITIONS

The initial term of contract shall be for a minimum period of five (5) years terminable thereafter by either the customer or the Company as follows:

- (1) Thirty (30) days after receipt of written notice for customers with a most recent twelve (12) month average demand of less than 10,000 kVA.
- (2) Twelve (12) months after receipt of written notice for customers with a most recent twelve (12) month average demand of 10,000 kVA or greater.

The Company is not obligated to extend, expand or rearrange its transmission system voltage if it determines that existing distribution and/or transmission facilities are of adequate capacity to serve the customer's load.

If the Company offers to provide the necessary facilities for transmission voltage, in accordance with its Service Regulations, an annual facilities charge, applicable to such additional facilities, is established at twenty (20) percent of actual cost. The annual facilities charge shall be billed in twelve monthly installments to be added to the demand charge.

SERVICE REGULATIONS

The supplying and billing for service and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to the Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 1 of 3

RATE TS

SERVICE AT TRANSMISSION VOLTAGE

APPLICABILITY

Applicable to electric service for usual customer load requirements where the Company specifies service at a nominal transmission system voltage of 69,000 volts or higher, and the Company determines that facilities of adequate capacity are available and adjacent to the premises to be served. Electric service must be supplied at one point of delivery and the customer furnishes and maintains all transformation equipment and appurtenances necessary to utilize the service.

For customers taking service under any or all of the provisions of this tariff schedule, this same schedule shall constitute the Company's Standard Service Offer.

TYPE OF SERVICE

Alternating current 60 Hz, three phase at Company's standard transmission voltage of 69,000 volts or higher.

NET MONTHLY BILL

Computed in accordance with the following charges (kilovolt amperes are abbreviated as kVA; kilowatt-hours are abbreviated as kWh):

1. Distribution Charges

- | | |
|-------------------------------|------------------|
| (a) Customer Charge per month | \$150.00 |
| (b) Demand Charge | |
| All kVA | \$ 0.196 per kVA |

2. Applicable Riders

The following riders are applicable pursuant to the specific terms contained within each rider:

Sheet No. 51, Rider AAC, Annually Adjusted Component Rider
Sheet No. 52, Rider DSMR, Demand Side Management Cost Recovery Rider
Sheet No. 53, Rider FPP, Fuel and Economy Purchased Power Rider
Sheet No. 54, Rider IMF, Infrastructure Maintenance Fund Rider
Sheet No. 55, Rider RSC, Rate Stabilization Charge Rider
Sheet No. 56, Rider SRT, System Reliability Tracker
Sheet No. 57, Rider TCR, Transmission Cost Recovery Rider
Sheet No. 58, Rider DRI, Distribution Reliability Investment Rider
Sheet No. 59, Rider RSS, Rate Stabilization Surcredit Rider
Sheet No. 81, Rider EER, Energy Efficiency Revolving Loan Program Rider
Sheet No. 83, Rider OET, Ohio Excise Tax Rider
Sheet No. 84, Rider RTC, Regulatory Transition Charge Rider
Sheet No. 85, Rider SC, Shopping Credit Rider
Sheet No. 86, Rider USR, Universal Service Fund Rider
Sheet No. 103, Rider MSR-E, Merger Savings Credit Rider-Electric

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DEPOSITION
EXHIBIT

#9

ZIOLKOWSKI

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 2 of 3

NET MONTHLY BILL (Contd.)

3. Market Price Generation Charges – Market Based Standard

Service Offer

(a) Demand Charge

First 50,000 kVA

\$7.1256 per kVA

Additional kVA

\$5.1366 per kVA

(b) Energy Charge

Billing Demand times 300

\$0.012243 per kWh

Additional kWh

\$0.013924 per kWh

The Generation Charges listed above are applicable to all customers except those customers that switch to a Certified Supplier for their generation service. For customers who are procuring their energy supply from a Certified Supplier and receiving a shopping credit on December 31, 2004, the Generation Charges shown below will continue to apply until December 31, 2005.

Customers who return to the Company's energy supply after January 2, 2005, will be billed for generation service for each hour at the higher of the following:

1. The demand-related component of the Market Price Generation Charge, plus the energy-related component of the Market Price Generation Charge, plus Rider FPP, or
2. The demand-related component of the Market Price Generation Charge, plus the incremental dispatch cost of the highest cost generation unit/purchased power to serve Duke Energy Ohio load.

The following Generation Charges apply to customers receiving a Shopping Credit during 2005:

Generation Charges

(a) Demand Charge

First 50,000 kVA

\$8.3830 per kVA

Additional kVA

\$6.0430 per kVA

(b) Energy Charge

Billing Demand times 300

\$0.019994 per kWh

Additional kWh

\$0.016481 per kWh

MINIMUM CHARGE

The minimum charge shall be not less than fifty (50) percent of the highest demand charge established during the preceding eleven (11) months or the billing of 1,000 kVA, whichever is higher.

METERING

The Company may meter at secondary or primary voltage as circumstances warrant. If the Company elects to meter at secondary voltage, the kilowatt-hours registered on the Company's meter will be increased one and one-half (1.5) percent for billing purposes.

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Issued: March 31, 2006

Effective: April 3, 2006

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Duke Energy Ohio
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P.U.C.O. Electric No. 19
Sheet No. 50.10
Cancels and Supersedes
Sheet No. 50.9
Page 3 of 3

DEMAND

The demand shall be the kilovolt amperes derived from the Company's demand meter for the fifteen-minute period of the customer's greatest use during the month, but not less than the higher of the following:

- a) 85% of the highest monthly kilovolt amperes similarly established during the summer period for the next succeeding eleven (11) months; or
- b) 1,000 kilovolt amperes.

For purposes of administration of the above clause, the summer period is defined as that period represented by the Company's billing for the four (4) revenue months of June through September. The winter period is defined as the period represented by the Company's billing for the eight (8) revenue months of January through May and October through December.

The Company may re-determine customer's billing demand at any time in recognition of a permanent change in load due to such occurrences as the installation of load control equipment or a temporary change due to malfunctions of such equipment.

LATE PAYMENT CHARGE

Payment of the total amount due must be received in the Company's office by the due date shown on the bill. When not so paid, an additional amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable. The late payment charge is not applicable to unpaid account balances for services received from a Certified Supplier.

TERMS AND CONDITIONS

The initial term of contract shall be for a minimum period of five (5) years terminable thereafter by either the customer or the Company as follows:

- (1) Thirty (30) days after receipt of written notice for customers with a most recent twelve (12) month average demand of less than 10,000 kVA.
- (2) Twelve (12) months after receipt of written notice for customers with a most recent twelve (12) month average demand of 10,000 kVA or greater.

The Company is not obligated to extend, expand or rearrange its transmission system voltage if it determines that existing distribution and/or transmission facilities are of adequate capacity to serve the customer's load.

If the Company offers to provide the necessary facilities for transmission voltage, in accordance with its Service Regulations, an annual facilities charge, applicable to such additional facilities, is established at twenty (20) percent of actual cost. The annual facilities charge shall be billed in twelve monthly installments to be added to the demand charge.

SERVICE REGULATIONS

The supplying and billing for service and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to the Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

FILED

DEC 07 2006

Randolph H. Freking (#0009158)

Elizabeth S. Loring (#0076542)

Trial Attorneys for Plaintiff

JAMES BONINI, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN DEEDS
4507 Ravenwood Ct.
Cincinnati, OH 45244

Plaintiff,

v.

DUKE ENERGY CORPORATION
c/o Duke Energy Ohio, Inc.
139 East Fourth Street
Cincinnati, OH 45201

and

DUKE ENERGY RETAIL SALES, LLC
139 East Fourth Street
Cincinnati, OH 45201

Defendants.

CASE NO. **1:06 CV 835**

(Judge **J. DLOTT**)

**COMPLAINT FOR UNLAWFUL
RETALIATORY EMPLOYMENT
TERMINATION IN VIOLATION
OF OHIO PUBLIC POLICY AND
OHIO WHISTLEBLOWER LAW**

JURY DEMAND ENDORSED

NATURE OF ACTION

Plaintiff brings this action because he was abruptly terminated after questioning Defendants regarding certain agreements that Plaintiff believed, and continues to believe, are "sham transactions" designed to allow Defendant Duke Energy Corporation, formerly Cinergy Corporation, to push a significant rate increase through the Public Utilities Commission of Ohio ("PUCO") by providing a kickback to large industrial users that is equivalent, or nearly so, to the amount of the rate increase for those particular users in violation of Ohio law. Plaintiff believes that Defendants "bought" the cooperation of major users to allow it to gain approval of its proposed increases. Plaintiff was advised by superiors not to put his concerns in writing because it would cause "big trouble," since Defendants had successfully refused to make public these agreements in connection with the administrative litigation over the proposed rate increase. The Ohio Supreme Court recently upheld most of the approved rate

DEPOSITION
EXHIBIT

#11
ZIOLEKOWSKI

increases, but questioned the PUCO's failure to force Defendants to turn over these side agreements. In effect, Plaintiff believes Defendants defrauded the PUCO and the Ohio Supreme Court by entering into unlawful, private agreements with certain large industrial users, and unlawfully terminated him in violation of Ohio public policy after he questioned the lawfulness of the side agreement. In 2005 alone, Defendants paid out \$20,000,000 as part of this scheme.

PARTIES

1. Plaintiff John Deeds is a citizen and resident of the State of Ohio.
2. Defendant Duke Energy Corporation is a foreign corporation doing business in Hamilton County, Ohio. Defendant is an employer within the meaning of state law.
3. Defendant Duke Energy Retail Services, Inc. is a foreign corporation doing business in Hamilton County, Ohio. Defendant is an employer within the meaning of state law.

NATURE OF CAUSE OF ACTION

4. This action is filed by Plaintiff John Deeds, who began working for Defendants as a Customer Service Clerk in 1990. During Plaintiff's nearly sixteen-year tenure with Defendants, Plaintiff completed his Bachelor's Degree, he obtained a Masters Degree, and he achieved the position of a director while successfully creating over twenty million dollars of value for Defendants. Plaintiff brings this action because he was terminated for reporting possible unlawful business practices conducted by Defendants.¹

5. In January 2004, Cinergy Corp. created Cinergy Retail Sales, LLC ("CRS")², which is an unregulated competitive retail electric service provider. Although created as a competitive service provider, CRS does not offer electric services and had neither revenue nor sales as of Plaintiff's

¹ Most of the transactions outlined in this Complaint took place during the merger and acquisition between Cinergy Corp. and Duke Energy Corp, which was announced May 9, 2005. Therefore, although this Complaint will refer to Cinergy, through the merger, the corporation is currently owned and succeeded by Duke Energy Corp. Duke Energy Corp. also participated in Plaintiff's termination.

² Currently Duke Energy Retail Sales, LLC.

termination date of May 1, 2006. Personnel doing business for CRS are employed by Cinergy, and both CRS and Cinergy operate at 139 East Fourth Street. CRS's primary function is to process transactions on behalf of Cinergy. Therefore, CRS is an alter ego of Cinergy.

6. On January 26, 2004, Cincinnati Gas & Electric ("CG&E")³ applied to the Public Utilities Commission of Ohio ("PUCO") to authorize a rate increase CG&E's "Rate Stabilization Plan."

7. In 2004, CRS entered into Option Agreements with certain major commercial and industrial customers. The Option Agreements provide that CRS will pay the companies the equivalent of certain defined charges paid to CG&E. The outlined charges represent the rate increases requested by CG&E and approved by the PUCO in 2004.⁴ In effect, CRS agreed to pay certain members of the IEU the exact amount of the rate increase these companies paid to CG&E - a company owned by Cinergy Corp. Because the contracts were created by CRS, an unregulated affiliate of Cinergy, the Agreements were not made public. Discovery of these agreements during the PUCO litigation was refused by Defendants, and Defendants denied knowledge of such agreements during the Oral Argument before the Ohio Supreme Court early in 2006.

8. Between the original filing date of CG&E's Rate Stabilization Plan and 2005, CG&E faced significant opposition to the proposed rate increases; in fact, originally the companies that ultimately became counterparts to the Option Agreements vehemently opposed CG&E's Rate Stabilization Plan by way of their membership in the Ohio Energy Group ("OEG") and the Industrial Energy Users ("IEU"). However, in mid to late 2004, the IEU and OEG suddenly and unequivocally changed their stances supporting CG&E's Rate Stabilization Plan.

³ Currently Duke Energy Ohio, Inc.

⁴ The rate increases were the subject of the Ohio Supreme Court Case No. 05-0946. The Court issued a decision and questioned the PUCO's refusal to order the production by Defendant of certain "side agreements." Plaintiff believes these Option Agreements referenced in this paragraph are some of the side agreements.

9. In 2005 alone, although CRS did not supply any electric services, CRS paid out approximately \$20,000,000 (twenty million dollars) in Option Payments to the companies.

10. Once Plaintiff was assigned the responsibility of processing the Option Payments, he consistently expressed concern for the legitimacy of the transactions conducted between CRS and the companies. In August, 2005, Plaintiff contacted Timothy Duff, who reported directly to Jim Gainer, Vice President of Regulatory and Legislative Strategy who also was one of the originators of the Option Agreements. Plaintiff questioned the origin of the Option Payments. In September, 2005 Plaintiff e-mailed Duff regarding his exact duties in processing the checks.

11. On January 10, 2006, Plaintiff again contacted Duff inquiring whether the Option Agreements were public, or whether they "ha[d] not seen the light of day...."

12. In a February e-mail to Duff, Plaintiff reported that he thought the Option Payments might be "sham transactions."

13. After receiving Plaintiff's e-mail, Duff commanded that Plaintiff call him "ASAP." During the conversation with Duff, Duff admonished Plaintiff not to put such concerns in writing, that CRS had successfully avoided a subpoena in the past, and that Plaintiff's e-mail would cause "big trouble" internally. The subpoena in the past referred to the PUCO litigation.

14. After it became clear to Plaintiff that Defendants did not condone reporting possible illegal transactions, Plaintiff refused to sign off on the Payments and did not inquire further into the situation. The Managing Director of Commercial Asset Management and the Vice President of and General Counsel of the Commercial Business Unit signed off on the Agreements after Plaintiff refused.

15. Duff further demanded that Plaintiff process the transactions immediately "because the option checks need[ed] to be received by the IEU member customers by Wednesday [February 15, 2006]." Less than three months after this last report, Plaintiff was terminated.

16. Ohio law prohibits public utilities from granting reduced rates to consumers or from extending a privilege to some consumers without extending the same to all consumers.

17. Ohio law prohibits a public utility from directly or indirectly remitting "any rate, rental, toll or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified...and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service."⁵

18. By paying certain companies an amount equal to the rate increase charged by CG&E, Defendants essentially offered a reduced rate to certain energy consumers without extending the offer to all energy consumers.

19. In the interest of furthering competition in the newly formed competitive retail electric service market, Ohio statutorily deters the formation of anticompetitive subsidies of noncompetitive retail electric service providers, such as Cinergy. Moreover, Ohio ensures that electric retail consumers are protected against "unreasonable sales practices, market deficiencies, and market power."⁶ Cinergy defied this policy when it utilized CRS because the two companies combined form a monopolistic energy source creating a market deficiency and imbalanced market power.

20. The utilization of CRS and the transactions conducted by it, led Plaintiff to question its legality; an action which ultimately led to his termination.

21. By terminating Plaintiff and deterring him from reporting his concerns, Defendants created a corporate culture that favors turning a blind eye to possible illegal transactions.

22. Defendants violated Ohio law by granting a privilege or reduced rate to certain, powerful, corporate customers, while failing to offer the same or similar privilege to all other consumers.

23. Defendants disregarded Ohio corporate policy by utilizing CRS, an unregulated alter ego of Cinergy Corp to quell opposition to its Rate Stabilization Plan.

⁵ See Revised Code §4905.32

⁶ See Revised Code §4928.02

24. Defendants violated Ohio public policy by deterring Plaintiff from reporting possible illegal transactions in writing.

25. Defendants violated Ohio public policy by terminating Plaintiff in retaliation for expressing his reasonable concerns for the legality of conduct undertaken by CRS.

26. Defendants violated Ohio's Whistleblower statute by deterring Plaintiff from putting his reasonable concerns regarding the legality of Defendants' transactions in writing.

27. Defendants violated Ohio's Whistleblower statute by terminating Plaintiff in retaliation for reporting a possible violation of a state statute based on his reasonable belief that the violation was a criminal offense or an improper solicitation.

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction over the claims asserted in this Complaint.

29. Venue is proper in Hamilton County because Defendants' activities giving rise to Plaintiff's claim for relief occurred in this County.

PLAINTIFF'S BACKGROUND

30. Plaintiff John Deeds was born September 20, 1963. Plaintiff attended Louisiana Monroe on a full basketball scholarship. Plaintiff finished his Bachelors Degree in Business Management at the University of Cincinnati in 1992. While working for Defendants, Plaintiff received his Masters in Business Administration in Finance from the University of Cincinnati.

31. Plaintiff began working for Cinergy Corp. on or about July 2, 1990 as a Customer Service Clerk.

PLAINTIFF'S OUTSTANDING CAREER WITH DEFENDANTS

32. Although his career spanned nearly 16 years, Plaintiff achieved incredible success in a short period of time.

33. Plaintiff began his career as a Customer Service Clerk, which was his position for four years while he was finishing his Bachelor's Degree.

34. Following earning his Bachelors Degree and while working toward his Masters, Plaintiff's career began to take off. By May 1997, Plaintiff was a Project Finance Manager for Cinergy Business Solutions.

35. In December 1998, Plaintiff was promoted to Manager of Pricing and Structuring. Soon after, Plaintiff received another promotion to the position of Manager of Project Development. While his time in Project Development was short, Plaintiff performed the lead role in the successful development of a gas fired electric peaking facility in the Midwest. During this time period, Plaintiff earned substantial salary and bonuses per year.

36. In April 2000, Plaintiff became the Director of Power Origination. The position entailed creating and closing long term transactions with geographically diverse customers. Plaintiff held this position until August 2005, and during this time, Plaintiff created considerable economic value for Defendants.

37. As an example of Plaintiff's success as the Director of Power Origination, Plaintiff originated, negotiated and closed transactions with ALCOA, ALCAN Aluminum, AK Steel, Sunoco and Carolina Power & Light, among several others. During this time period, Plaintiff earned substantial bonuses, which were based on a percentage of the value he created for Defendants.

38. In August, 2005, Plaintiff became the Director of Regulatory Initiatives in the Northeast Division. While in this position, Plaintiff represented Defendants on several wholesale electric pool market committees and acted as Defendants' voice, lobbying for Defendants' interests. Plaintiff received a very positive performance review during this time period.

39. Throughout all of the aforementioned time periods, Plaintiff received high commendations and praise for his work from Defendants. It took him only ten years to work his way from a Customer Service Clerk to a Director position. During his rise in the company, Plaintiff earned performance-based bonuses nearly every year, which at times were many times greater than his base salary.

DEFENDANTS UNLAWFULLY TERMINATED PLAINTIFF

40. While in the position of Director of Regulatory Initiatives, Plaintiff was responsible for processing the payments to the companies who signed Option Agreements with Defendants. Shortly after taking over the new position, Plaintiff contacted Timothy Duff, who reported to Jim Gainer, Vice President of Regulatory and Legislative Strategy. Plaintiff inquired about the origin of the Option Payments. When Plaintiff further probed into what his specific duties were in relation to processing the Payments, Duff instructed Plaintiff to sign his name and make sure that his employee number was correct.

41. Plaintiff questioned another Director of Regulatory Initiatives who had worked in the area before, and was aware of the existence of the Options Agreement and Option Payments. Plaintiff was told falsely that the Option Agreement and Option Payment were made public and complied with regulations.

42. Still concerned about the large amounts Defendants were paying out, Plaintiff contacted Timothy Duff and asked whether the Payments were public. Plaintiff specifically inquired whether the Payments "ha[d] not seen the light of day...." Duff informed Plaintiff that the Option Agreements were not public, and Duff agreed to show Plaintiff one of the original Agreements.

43. After discovering the nature of the transactions conducted by CRS and that the Option Agreements were not public, and after reading one of the Option Agreements, Plaintiff was concerned both for Defendants and for his own liability.

44. In February, when Plaintiff was asked to sign off on large quarterly Option Payments, he reported to Duff that he did not feel comfortable processing them and expressed concerns for the legality of the transactions. After commanding that Plaintiff call him "ASAP," Duff angrily informed Plaintiff that it was not Cinergy's policy to put these types of concerns in writing and that Plaintiff should never put such concerns in an e-mail. Duff further instructed Plaintiff to process the transactions immediately.

45. After it became clear to Plaintiff that Defendants did not condone reporting possible illegal transactions, Plaintiff refused to sign off on the Option Payment requests. All Option Payment requests which exceeded \$100,000 had always been signed by others since \$100,000 was Plaintiff's monetary authority limit. These payments were signed initially by the Vice President of Trading and subsequently by the Managing Director of Commercial Asset Management. The Managing Director of Commercial Asset Management and the Vice President and General Counsel of the Commercial Business Unit signed off on the Option Payment requests which were less than \$100,000 after Plaintiff refused.

46. Shortly thereafter, Defendants decided to terminate Plaintiff when Duke Energy succeeded Cinergy Corp.

DEFENDANTS' UNLAWFUL CONDUCT
ADVERSELY AFFECTS ALL CITIZENS OF OHIO

47. Defendants created a corporate culture that favors turning a blind eye to possible illegal transactions. As a large employer of tri-state citizens, Defendants have an obligation to prevent events such as these from taking place.

48. As members of a highly regulated industry, Defendants have an obligation to the public and the government to ensure that Defendants do not participate in actions that violate state statutes.

49. By not offering the same or similar option contracts to all companies operating in Ohio that utilize CG&E's electric services, Defendants unfairly disadvantaged these businesses, including state and federal government offices, hospitals and other business that pay substantial amounts in energy costs.

50. As a publicly traded corporation, and a subsidiary thereof, Defendants have a fiduciary duty to their shareholders to abide by the law.

COUNT I

(Ohio Public Policy Wrongful Discharge Tort)

51. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

52. There are clear public policies expressed in Ohio law which prohibit employers from retaliating against an employee for raising reasonable concerns of statutory violations.

53. Retaliating against or preventing an employee from exercising his rights under Ohio law would jeopardize clearly established public policies.

54. Defendants maliciously and willfully retaliated against Plaintiff by terminating him and deterring Plaintiff from engaging in the protected activity of reporting possible illegal transactions

conducted by Defendants. As a direct and consequential result of Defendants' retaliation, which violates clear established public policies, Plaintiff has suffered injuries for which he is entitled to recovery.

COUNT II

(Whistleblower Violation - O.R.C. § 4113.52(B))

55. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

56. Ohio prohibits employers from taking disciplinary or retaliatory action against an employee who reports a violation of any state or federal statute, or any ordinance or regulation that the employee reasonably believes is a criminal offense, felony, or an improper solicitation for a contribution.

57. Terminating an employee for reporting unlawful conduct undertaken by the employer violates Ohio's Whistleblower statute.

58. Defendants' above-described actions violate this statute.

59. Defendants' actions constitute a breach of public policy and are willful, wanton and malicious in nature

60. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered substantial damages. Plaintiff is entitled to judgment.

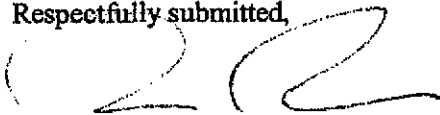
WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) That Defendants be enjoined from further unlawful conduct as described in the Complaint;

(b) That Plaintiff be awarded all lost pay and benefits up until the time of trial ("backpay");

- (c) That Plaintiff be awarded all lost pay and benefits from the time of trial until a reasonable time in the future ("frontpay");
- (d) That Plaintiff be awarded reasonable compensatory damages;
- (e) That Plaintiff be awarded reasonable punitive damages in an amount at least equivalent to the payments made that were deemed unlawful, estimated to be \$40 million to date;
- (f) That Plaintiff be awarded reasonable attorneys' fees and costs; and
- (g) That Plaintiff be awarded all other legal and equitable relief to which he may be entitled.

Respectfully submitted,



Randolph H. Freking (0009158)
Elizabeth S. Loring (0076542)
Trial Attorneys for Plaintiff
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randy@frekingandbetz.com
eloring@frekingandbetz.com

JURY DEMAND

Plaintiff hereby demands a trial by jury.



1 State of Ohio :
 2 County of HAMILTON : SS:

3 I, James E. Ziolkowski, do hereby certify that
 4 I have read the foregoing transcript of my deposition
 5 given on Tuesday, February 13, 2007; that together
 6 with the correction page attached hereto noting
 7 changes in form or substance, if any, it is true and
 8 correct.

9 
 10 James E. Ziolkowski

11 I do hereby certify that the foregoing
 12 transcript of the deposition of James E. Ziolkowski
 13 was submitted to the witness for reading and signing;
 14 that after he had stated to the undersigned Notary
 15 Public that he had read and examined his deposition,
 16 he signed the same in my presence on the 22ND day
 17 of FEBRUARY, 2007.

18 
 19 Notary Public

20 My commission expires _____



21 **ANITA M. SCHAFER**
 22 Notary Public, State of Ohio
 23 My Commission Expires
 24 November 4, 2009