



Office of the Ohio Consumers' Counsel

Your Residential Utility Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

September 24, 2007

Ms. Renee Jenkins
Director of Administration
Secretary to Commission
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, Ohio 43215-3793

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PUCO

Re: Duke Energy's Motion to Extend Protective Order,
Case Nos. 03-93-EL-ATA, et al.

Dear Ms. Jenkins:

This letter notifies the Public Utilities Commission of Ohio ("PUCO" or "Commission") and the parties to the above-captioned cases that the Motion to Extend Protective Order filed by Duke Energy Ohio, Inc. ("Duke Energy") on September 17, 2007 was not served upon the Office of the Ohio Consumers' Counsel ("OCC") in the manner ordered by the Attorney Examiners.¹ The service requirements were set in the status conference conducted on December 14, 2006, and required electronic service of pleadings in connection with expedited treatment of such pleadings.² An Entry dated February 1, 2007 revised the timetable for pleadings to seven days for memoranda contra and three days for replies.³ That Entry did not revise the requirement that service be provided by electronic means, a requirement that was linked to expedited treatment of pleadings at the status conference.

¹ The improper service of pleading by Duke-affiliated companies has been a continuing source of concern in these cases, and cases related thereto, especially regarding the deadlines for responsive pleadings. See, e.g., OCC Letter Regarding Failure to Serve (February 6, 2007) (noting failures by Duke-affiliated entities to serve five motions and the backdating of another pleading) and *In re SRT Proceedings*, OCC Motion to Hold Ruling in Abeyance, Case Nos. 07-723-EL-UNC and 07-975-EL-UNC (September 19, 2007). In a voicemail message left for the OCC's trial counsel in Case No. 03-93-EL-ATA, et al., counsel for Duke Energy Retail Sales ("DERS") stated that electronic service of that company's Memorandum in Response to Attorney Examiner's August 8, 2007 Entry, filed on August 16, 2007, failed again ("... since service has occasionally been a problem in this case..."). DERS counsel conjectured (incorrectly) that the OCC's e-mail addresses may have changed.

² Transcript at 40-41 (December 14, 2006).


³ Entry at 3, ¶(8) (February 1, 2007).

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As the result of the foregoing, any OCC pleading that is responsive to Duke Energy's Motion to Extend Protective Order will be filed by October 5, 2007, in conformance with the timing requirements set in Ohio Adm. Code 4901-1-12(B)(1). The requirement that the OCC respond on an expedited basis would be prejudicial to the OCC and any other party who would like to address Duke Energy's pleading.

Very truly yours,



Jeffrey L. Small
OCC Trial Attorney

Cc: Persons on electronic service list