

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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.	)	

**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential consumers of Duke Energy Ohio, Inc. ("Company" or "Duke Energy," including its predecessor The Cincinnati Gas and Electric Company) and pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A), applies for rehearing of the Entry issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on June 4, 2008 ("June Entry") that adopted most of an Entry dated May 28, 2008 ("May Entry"). The OCC submits that the Commission's recent entries and their associated treatment of information that restricts public access to public records in the above-captioned cases is unreasonable and unlawful in the following particulars:

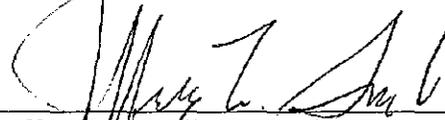
- A. The Commission's entries are unreasonable and unlawful because the Commission redacted portions of filed information that is already available to the public and therefore cannot possibly be considered "trade secret" information.

- B. The Commission's entries are unreasonable and unlawful because the Commission's Order on Remand resolved which materials are protected, subject only to later revision as the result of the OCC's appeal, and revision of the Commission's resolution of the issue is impermissible in the absence of any additional application for rehearing on the subject under R.C. 4903.10.
- C. The Commission's entries are unreasonable and unlawful because the documents the Commission states it will release are rendered unreadable by presenting pages out of order.
- D. The Commission's entries are unreasonable and unlawful because they ignore the fundamental public nature of the Commission's documents and fails to abide by Ohio law regarding the "trade secret" exception.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND STATEMENT OF THE ISSUES**

**A. Introduction**

On May 28, 2008, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) issued an Entry (i.e. the May Entry) regarding public access to information that has accumulated under a protected status over the years of litigation in the above-captioned cases. That Entry promised a computer disc that would contain redactions revealing the PUCO’s application of Ohio’s Public Records Law to these cases in light of assertions by various parties that the record contains trade secret information. Parties to these cases were provided access to the computer disc in connection with an Entry dated June 4, 2008 (i.e. the June Entry) that adopted the substantive findings of the May Entry.

The task of redacting the substantial amount of information that has been provided to the Commission in dockets encompassing many years is not light. The redactions shown

on the disc provided to parties who requested the information in connection with the June Entry demonstrate a considerable effort on the part of PUCO personnel. The instant Application for Rehearing reveals inconsistencies and oversights in the redactions that are sure to interest the PUCO in its task. The instant pleading also argues that the line drawn regarding information that can be considered “trade secret” was improperly drawn in some instances. The fundamental public nature of PUCO proceedings and the information used in those proceedings, as stated in Ohio’s statutes, should be better recognized.

The instant Application for Rehearing pays separate attention to the information that was the subject of the Order on Remand issued on October 24, 2007. The OCC is the only party that submitted an application for rehearing, pursuant to R.C. 4903.10, regarding the appropriateness of the Commission’s determination that some information would be withheld from the public under Ohio’s Trade Secrets Law. The argument that remains regarding those determinations in the Order on Remand belongs solely to the OCC, and that argument is pending at the Supreme Court of Ohio as the result of the OCC’s appeal. Further argument by other parties that the Order on Remand erred, as was evident in the Duke-affiliated companies’ Memorandum in Response to the OCC’s January 23, 2008 Motions Filed by the OCC, is inappropriate at this juncture of the proceeding because such argument should have been raised earlier in an application for rehearing.<sup>1</sup> The instant submission by the OCC reveals inconsistencies between the recent entries and the result stated in the Order on Remand. The OCC’s instant arguments *should not be understood as any departure from the position stated in the OCC’s appeal to the Court* that more

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<sup>1</sup> Memorandum in Response to the OCC’s January 23, 2008 Motions Filed by the OCC submitted by Duke Energy, Cinergy Corp., and Duke Energy Retail Sales at 5 (February 13, 2008) (argument against taking the Commission’s Order on Remand “literal[ly]”). The argument was also inappropriate in February.

information should be released to the public regarding the information presented by the OCC on remand.

**B. The Documents at Issue**

**1. Side agreements and documents discussing such side agreements are addressed in the Order on Remand.**

An important component of the recent entries was a ruling (and related redactions) related to the results of the PUCO's October 24, 2007 Order on Remand in Case Nos. 03-93-EL-ATA, 03-209-EL-AAM, 03-2081-EL-AAM, and 03-2080-EL-ATA ("Remand Case"). The Order on Remand stated:

[P]ursuant to our ruling on this [confidentiality] issue, those documents must now be redacted to keep confidential only those matters we have ruled to be trade secrets.<sup>2</sup>

In the Order on Remand, the Commission identified only eight items that it believed met the two-prong test of "trade secret" under R.C. 1333.61(D). The Commission ordered:

That, regarding *side agreements and documents discussing such side agreements*, customer names, account numbers, and customer social security or employer identification numbers, contract termination date or termination provisions, financial consideration for each contract, price or generation referenced in each contract, and volume of generation covered by each contract shall all be deemed trade secret information and shall be maintained on a confidential basis under protective orders for a period of eighteen months from March 19, 2007.<sup>3</sup>

At an earlier point in the Order on Remand, the Commission Order on Remand also stated that "terms under which any options may be exercisable" should be redacted.<sup>4</sup>

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<sup>2</sup> Order on Remand at 17 (October 24, 2007).

<sup>3</sup> Id. at 44 (emphasis added).

<sup>4</sup> Id. at 15.

These items are repeated in the May Entry.<sup>5</sup>

The May Entry explains that “redactions prepared by the Commission follow the general instructions delineated in the order on remand, with some important exceptions. Information that is or already has been made public cannot be treated as a trade secret under Section 1333.61 Revised Code.”<sup>6</sup> Providing an example, the May Entry explains that Duke Energy’s public release of documents in December resulted in reduced redactions by the Commission as compared to those ordered in October 2007.<sup>7</sup> This is the framework under which “side agreements and documents discussing such side agreements” should be undertaken.

**2. Other documents have been maintained under seal.**

These cases have also involved other documents that have been maintained under seal and that are addressed by the recent entries. The May Entry and the computer disc that accompanied the June Entry provide new redactions of a number of documents that were not the subject of the Order on Remand. For instance, Duke Energy filed hundreds of pages of responses to discovery that was requested by a party other than the OCC.<sup>8</sup> The OCC filed a Memorandum Contra Motion for Protective Order on October 5, 2007 regarding Duke Energy’s Motion for Protection. The Company’s Motion for Protection submitted documents “redacted in their entirety,”<sup>9</sup> and the OCC has access to these documents for the first time as the result of the June Entry.

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<sup>5</sup> Entry at 1-2, ¶(3) (May 28, 2008).

<sup>6</sup> Id at 4, ¶(10).

<sup>7</sup> Id at 4-5, ¶11 (e.g. “the termination dates of the side agreements”).

<sup>8</sup> Duke Energy Motion for Protection (May 5, 2007).

<sup>9</sup> Id. at 7.

**3. The OCC attaches page-referenced corrections that meet the specificity requirements stated in the May Entry.**

The attachment to this Application for Rehearing provides page-referenced corrections that specify changes that should be made to the redactions provided in conjunction with the June Entry. Errors associated with the arguments in the next section are identified in the first column of the attachment and coded “A,” “B,” “C,” and/or “D” according to the designation of the argument under Section II of the instant pleading. Each instance contains an explanation of the error in the redactions. All such instances should be considered part of the argument for the referenced portion of the OCC’s Application for Rehearing. This presentation abides by the “specificity” requirement stated in the May Entry<sup>10</sup> while dealing with the large number of pages that are involved in the OCC’s arguments.

**II. ARGUMENT**

**A. The Commission’s entries are unreasonable and unlawful because the Commission redacted portions of filed information that is already available to the public and therefore cannot possibly be considered “trade secret” information.**

The Ohio Supreme Court has addressed the test for protection from disclosure under Ohio’s Trade Secrets Law. R.C. 149.43 provides, the “state or federal law” exemption to Ohio’s Public Records Law, and has been considered by the Court in light of “trade secrets” allegations:

We have also adopted the following factors in analyzing a trade secret claim:

- (1) The extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, *i.e.*, by the employees;
- (3) the precautions taken by the

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<sup>10</sup> May Entry at 5, ¶(15) (“each asserted error should be specifically referenced and explained”).

holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.<sup>11</sup>

From the foregoing analysis regarding the public nature of information, the fact that information has already been released to the public destroys any claim of “trade secret” status. The May Entry recognizes that “information that is or already has been made public cannot be treated as a trade secret under Section 1333.61,”<sup>12</sup> but the redactions do not reflect all instances where information has already been released to the public.

Instances where the Commission’s recent redactions cover information that has already been released to the public should be corrected as a matter of law and as an important matter to clarify the status of certain information. No decision by the Commission that declares information “trade secret” can be, as a practical matter, effective in protecting that information from public inspection. Such a Commission declaration, however, can confuse matters and result in the type of finger-pointing that has characterized arguments regarding confidentiality arguments in the above-captioned cases. On rehearing, instances of redactions that cover previously released information should be corrected.

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<sup>11</sup> *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 399-400.

<sup>12</sup> *Id.*

As stated above, the attachment to this Application for Rehearing provides page-referenced corrections that specify changes that should be made to the redactions provided in conjunction with the June Entry. Errors associated with the redaction of information that has already been made public are identified in the first column of the attachment and coded "A." Each instance contains an explanation of the error in the redactions provided by the Commission. All such instances should be considered part of this portion of the OCC's Application for Rehearing as statements of the error regarding withholding too much information from public inspection.

Further explanation regarding matters addressed in the attachment provides greater insight into the instances where information has been released and cannot be lawfully or effectively withdrawn from public inspection at this point. The PUCO's recent redactions include, for instance, the substantive content on tax forms for the Duke-affiliated companies.<sup>13</sup> That information was presented at hearing by Duke Energy in public session, and appears in the public docket.<sup>14</sup> OCC Remand Exhibit 5(A), Attachment 22 reproduces a document that appears on the PUCO's web site. Quotes from the attachment and references to the information contained in the attachment cannot be effectively withheld from the public, and should not be included in the Commission's new redactions.<sup>15</sup> The information contained on redaction pages 1594-1599, part of OCC Exhibit 5(A), was previously released on April 3, 2007 by the PUCO as an attachment to

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<sup>13</sup> See redaction pages 1532-1583.

<sup>14</sup> Tax information was used by Duke Energy in questioning as part of an open session of the hearing. Remand Tr. III at 97-104 (March 21, 2007) (part 1 of 2 filed April 4, 2007). The tax information is contained in publicly available exhibits. Remand Tr. II, part 2 of 2 (filed April 4, 2007).

<sup>15</sup> See, e.g., redaction page 228, footnote 102 and other references in the OCC's attachment that refers to OCC Exhibit 5(A), Attachment 22 or cross-references the correction to redaction page 228, footnote 102.

the transcript for the hearing on March 19, 2007.<sup>16</sup> The PUCO's previous release of the information redacted only the account number information on the document. That treatment by the PUCO is irreversible.

Duke Energy's filing on January 23, 2007 did not redact information that the OCC redacted as part of its filing on that same date, or did not redact information that Duke Energy previously included in its redactions. Such information, regardless of whether it should have been redacted according to the Order on Remand, is in the public domain and renders previous efforts to redact the information useless. For example, the termination provision on pages 14 of OCC Ex. 2(A) was redacted by the OCC in its January filing but not by Duke Energy.

The Commission should correct its errors regarding redactions that cover information that has previously been released to the public as both a matter of law and as a practical matter.

**B. The Commission's entries are unreasonable and unlawful because the Commission's Order on Remand resolved which materials are protected, subject only to later revision as the result of the OCC's appeal, and revision of the Commission's resolution of the issue is impermissible in the absence of any additional application for rehearing on the subject under R.C. 4903.10.**

The starting framework set out in the May Entry regarding side agreements and documents discussing such side agreements is appropriate for the existing procedural setting (i.e. until any action is taken on the OCC's appeal) for these cases. The results of the Order on Remand could be altered in only limited circumstances.

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<sup>16</sup> The transcript for the hearing reveals that the OCC treated the document as confidential in a closed session of the hearing.

The primary circumstance under which the Order on Remand could be altered was rehearing on the determination of the “trade secret” status after the timely submission of an application for rehearing. R.C. 4903.10 provides:

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission.

Only the OCC submitted an application for rehearing that disputed the degree to which information would become available to the public, a matter that is pending on appeal before the Supreme Court of Ohio. Therefore, the May Entry’s statement that the PUCO’s specific redactions “follow the general instructions delineated in the [O]rder on [R]emand” is appropriate.<sup>17</sup>

The May Entry also recognizes that “information that is or already has been made public cannot be treated as a trade secret under Section 1333.61.”<sup>18</sup> The May Entry notes that some information has been publicly filed, and it is the PUCO’s intention that its redactions recognize this change in circumstance.<sup>19</sup> This circumstance was discussed in the last section of the instant pleading, both regarding the law and the impracticality of redacting information that is otherwise available to the public. Some overlap of arguments exists where customer names were apparently mistakenly redacted by PUCO personnel as being parties to contracts when in fact the customer name appears in a document as either a party to one of the above-captioned cases or a party to a publicly

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<sup>17</sup> May Entry at 4, ¶(10).

<sup>18</sup> Id.

<sup>19</sup> Id. at 4-5, ¶(11).

filed stipulation in a case.<sup>20</sup> Customer names should only be redacted, according to the Order on Remand, if they are used in a contract or a discussion of a contract. Other appearances of customer names have been publicly revealed and should not be hidden from view in documents. Also, terms were mistakenly redacted by PUCO personnel as being terms of a contract when in fact the terms are publicly available terms to the Company's "Rate Stabilization Plan."<sup>21</sup> Such terms should not be redacted in documents and should not be withheld from the public.

The parties to these cases and the PUCO itself must follow the decision stated in the Order on Remand regarding information that has not been made public. In that regard, the OCC has identified redactions of side agreements and documents discussing such side agreements that do not agree with the Order on Remand. Errors associated with the redaction of information that conflicts with the decision in the Order on Remand are identified in the first column of the attachment and coded "B."

Further explanation regarding matters addressed in the attachment provides insight into the instances where information should not have been redacted by the Commission. The PUCO's redactions, for example, cover some financial information that was part of the discussion of the side agreements and is not within the items mentioned as "trade secret" in the Order on Remand. That information should be released to the public as previously ordered in the Order on Remand.<sup>22</sup>

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<sup>20</sup> See, e.g., redaction pages 1613-1615, 1617-1619, and 1751.

<sup>21</sup> See, e.g., redaction pages 58, 749, 768, and 769.

<sup>22</sup> See, e.g., redaction pages 1091, 1093, 1095-1106, and 1110.

Despite the PUCO's efforts to redact documents as stated in the May Entry, refinements to the redactions are required as a matter of Ohio law.

**C. The Commission's entries are unreasonable and unlawful because the documents the Commission states it will release are rendered unreadable by presenting pages out of order.**

The order in which document pages are presented and the order in which documents appear as attachments as part of exhibits is incorrect in some of the redacted pages released to the OCC in connection with the June 2007 Entry. R.C. 4901.12 requires that "all proceedings of the public utilities commission and all documents and records in its possession are public records," except as provided in the exceptions under R.C. 149.43. R.C. 149.43 is Ohio's public records law. "All documents" are public records, not simply mixed up pages that do not constitute the documents in the possession of the PUCO. In an earlier case that involved redacted documents, the Commission intended that redactions would not "render[ ] the remaining document incomprehensible or of little meaning...."<sup>23</sup> A document can lose meaning because its pages are displayed out of order, not just because its contents are redacted too heavily.

The attachment to this Application for Rehearing identifies instances where the PUCO's redacted pages rearrange document pages in such a way that would result in confusion to the reader or would render a document unreadable. The readability problem is created beyond the existence of any redactions. The OCC's attachment identifies such instances as "collation" problems, by PUCO page number, along with an explanation of the required change to reassemble the document. These errors are identified in the first column of the attachment and coded "C."

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<sup>23</sup>*In re MxEnergy, Inc.*, Case No. 02-1773-GA-CRS et al., Entry at 3 (September 7, 2004).

**D. The Commission's entries are unreasonable and unlawful because they ignore the fundamental public nature of the Commission's documents and fails to abide by Ohio law regarding the "trade secret" exception.**

R.C. 4901.12 requires that "all proceedings of the public utilities commission and all documents and records in its possession are public records," except as provided in the exceptions under R.C. 149.43. R.C. 149.43 is Ohio's public records law. R.C. 4905.07 states that, "[e]xcept as provided in section 149.43 of the Revised Code . . . , all facts and information in the possession of the public utilities commission shall be public . . . ."

Ohio Adm. Code 4901-1-24(D) requires of the PUCO that "[a]ny order issued under this paragraph shall *minimize* the amount of information protected from public disclosure."<sup>24</sup> The Commission stated in a 2004 case:

The Commission has emphasized, in *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT, Entry issued November 23, 2003, that:

[a]ll proceedings at the Commission and all documents and records in its possession are public records, except as provided in Ohio's public records law (Section 149.43, Revised Code) and as consistent with the purposes of Title 49 of the Revised Code. Ohio public records law is intended to be liberally construed to 'ensure that governmental records be open and made available to the public ... subject to only a few very limited exceptions.' *State ex. rel. Williams v. Cleveland* (1992), 64 Ohio St. 3d 544, 549, [other citations omitted].<sup>25</sup>

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<sup>24</sup> Emphasis added.

<sup>25</sup> *In re MxEnergy, Inc.*, Case No. 02-1773-GA-CRS et al., Entry at (3) (September 7, 2004) (notations in original).

Faced with demands for “wholesale removal of the document from public scrutiny,”<sup>26</sup> the Commission reviewed several documents in the above-cited telephone case and determined in each circumstance how documents could be redacted “without rendering the remaining document incomprehensible or of little meaning....”<sup>27</sup>

Ohio Adm. Code 4901-1-27 (B)(7)(e) places the “burden of establishing that such protection is required” squarely on the party seeking to prevent public disclosure of information. That subsection of the Rule also states that the Commission shall:

take such actions as are necessary to \* \* \* prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The presiding hearing officer may, upon motion of any party, direct that a portion of the hearing be conducted *in camera* and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information.

\* \* \* The commission or the presiding hearing officer shall issue a ruling prior to the closing of the case regarding the amount of time that any sealed portion of the hearing record shall remain sealed.

The Commission has recognized that R.C. 4901.12 and R.C. 4905.07 create a heavy burden for parties such as Duke Energy to meet in order to redact information because those laws “provide a strong presumption in favor of disclosure, which the party claiming protective status must overcome.”<sup>28</sup> As previously stated, Ohio Adm. Code 4901-1-24(D) reflects that fact, stating: “Any order issued under this paragraph shall

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<sup>26</sup> Id. at 3.

<sup>27</sup> Id.

<sup>28</sup> *In the Matter of the Joint Application of the Ohio Bell Telephone Company and Ameritech Mobile Services, Inc. for Approval of the Transfer of Certain Assets*, Case No. 89-365-RC-ATR, *Opinion and Order* at 5 (October 18, 1990); Ohio Adm. Code 4901-1-27(B)(7)(e).

*minimize* the amount of information protected from public disclosure.”<sup>29</sup> Therefore, in order to minimize protection under 4901-1-24(D), redactions must be made on a word-by-word basis.

Errors associated with the redaction of information that should not be withheld from the public and that was *not* addressed in the Order on Remand are identified in the first column of the attachment and coded “D.” For example, the information contained on pages 2139-2829 should not be redacted. Duke Energy failed to meet its statutory burden to show that the information was deserving of protection from public scrutiny. Duke Energy also failed to comply with the Commission’s rules, Ohio Adm. Code 4901-1-24(D)(3), that requires “a memorandum in support setting forth the specific basis of the motion [for protection], including a detailed discussion of the need for protection from disclosure.” The Company’s Motion for Protection and Memorandum in Support, filed May 6, 2004, was so vague that the OCC had difficulty even identifying the subject matter of the information over which the Company sought protection.<sup>30</sup> Therefore, the contents of redaction pages 2139-2829 should be released to the public.

Time is an important element in the protection of document, and should be analyzed in any decision concerning information from a case that spans many years. The factors relied upon by the Ohio Supreme Court, as stated above from *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 399-400, require an analysis of whether information may have lost “value to the holder in having information as against

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<sup>29</sup> Emphasis added.

<sup>30</sup> OCC Memorandum Contra Motion to Compel Discovery, Request for Expedited Ruling and Memorandum Contra Motion for Protection at 5 (May 11, 2004). The OCC’s May 11, 2004 pleading points out other violations of Ohio Adm. Code 4901-1-24 by Duke Energy. *Id.*

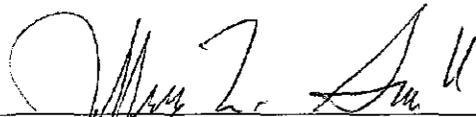
competitors” over time from being outdated. The attachment to this pleading identifies material that was filed long ago (towards the beginning of these cases) that contains projections and other information that is old and therefore holds no value as information protected from the view of others.<sup>31</sup> Such dated material should be released as part of the documentation to the Commission’s proceedings.

### III. CONCLUSION

Pursuant to R.C. 4903.10, the PUCO should abrogate and modify the June Entry, consistent with the OCC’s claims of error.

Respectfully submitted,

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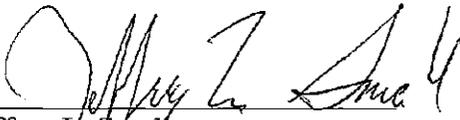
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<sup>31</sup> See redaction pages 3071-3113, 3114-3116, and 3120. The dated material should also include OCC Ex. 12, a Duke Energy response to OCC Interrogatory 269 from proceedings in 2004 that is referred to on redaction page 2835 but is not included in the pages shown on the computer disc. The dated projections contained in OCC Ex. 12 should be released to the public at this point in time.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Application for Rehearing by the Office of the Ohio Consumers' Counsel* (including its attachment) has been served upon the below-named persons (pursuant to the Attorney Examiners' instructions) via electronic transmittal this 7<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
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**OCC ATTACHMENT**  
**Explanation**

<b>Code</b>	<b>Page</b>	<b>Line</b>	<b>Change</b>	<b>Explanation</b>
B	40	3	Unredact	Not a contract amount (DERS expense).
A,B	58	18	"	Publicly available terms of the RSP, not contract terms.
A,B	67	22	"	Party to case identified, not party to contract.
A,B	67	24	"	Attorney for party, not attorney for party to a contract.
A,B	68	21	"	Party to case, not party to contract with DERS.
A,B	69	5	"	Party to case, not party to contract.
B	183	14-15	"	Portion after footnote 19 repeats unredacted statement earlier in sentence.
B	186	16	Redact	Party (customer) to contract is identified.
A	201	1-2	Unredact	The sentence describes the Commission's 2004 Order, a public document.
B	215	Chart	"	The first set of agreements involve multiple entities, and no customer is named.
B	218-219	12, 1-4	"	Information comes from discovery response, and does not reveal provisions in any contract.
A	228	Footnote 102	"	Attachment 22 reproduces a public document on display at the PUCO website (DERS certification information). See also 655-658.
B	229	6-8	"	Information comes from financial analysis, and does not reveal provisions in any contract per Order on Remand at 15.
B	266-272		Redact	Party (customer) to contract is identified.
B	300-307		"	Party (customer) to contract is identified.
B	312		Unredact	Redacted portions in "bubbles" are not part of any contract.
B	354-369		Redact	Party to contract is identified.
B	489		Unredact	Redaction at top does not relate to customer and is inconsistent with other redactions (e.g., page 408).
C	534		Recollate	Page 534 should follow page 532 for correct sequence of contract pages.
B	641		"	Page 641 should follow page 639 for correct sequence of contract pages.
B	646		Redact	Account numbers should be redacted per Order on Remand at 15.
B	647		Unredact	Name and telephone number at top is not customer information, and the information was not redacted in Duke Energy's earlier filings of the attachments to OCC Ex. 2(A).
C	649-662		Recollate	The following is the correct page sequencing for attachments to OCC Ex. 2(A): BEH Att. 20 (649, 662); BEH Att. 21 (661, 660, 659); BEH 22 (658, 657, 656, 655); BEH Att. 23 (653, 654); BEH Att. 24 (652, 651, 650). The incorrect sequence makes the documents difficult or impossible to read.
B	654		Unredact	Document discusses contracts, but the values redacted are not listed as information that should be withheld per Order on Remand at 15.

	Page	Line	Change	Reason
A,B	685-686		Unredact	The redacted company name refers to a movant and not a party to a contract. Redaction should agree with the OCC's January filing.
B	704-748		Redact	Party (customer) to contract is identified. See page 704 (21); 706 (7, 15); 707 (20); 708 (7); 712 (10); 717 (10, 14, 22); 718 (9, 24); 721 (6, 13); 723 (1, 23, 24); 724 (12, 14); 725 (4, 5, 14, 15); 726 (11, 12); 727 (7); 728 (19); 730 (3); 731 (1, 7, 18); 733 (2, 7, 13, 17); 738 (23); 739 (10); 743 (19); 744 (6, 14); 746 (3, 9, 11); 747 (4, 6); 748 (5, 11).
A,B	749	6-7	Unredact	Publicly available terms of the RSP, not contract terms.
B	749	22	Redact	Party (customer) to contract is identified.
B	751-762		"	Party (customer) to contract is identified. See page 751 (2, 18, 23); 752 (8, 22); 753 (1, 2, 19, 21); 754 (6, 15, 16, 19, 24); 756 (8, 18); 757 (14); 758 (4); 759 (2, 18, 23); 760 (11); 762 (2, 7).
A,B	768	23-24	Unredact	Publicly available terms of the RSP, not contract terms.
A,B	769	1, 3, 4, 5	"	Publicly available terms of the RSP, not contract terms.
B	769-823		Redact	Party (customer) to contract is identified. See: 769 (9, 14, 22); 799; 800; 801; 802; 803; 804; 805; 806; 807; 808; 809; 810; 812; 813; 814; 815; 816; 817; 818; 819; 820; 821; 822 & 823.
C	824		Recollate	Page 824 should follow page 822.
B	890	20, 22, 23	Unredact	Only the name of the customer on line 20 should be redacted per Order on Remand at 15.
B	899	3	"	No customer name is revealed.
B	904	12-14	"	Redactions exceed those necessary regarding the customer's identity (see the OCC's January 2008 filing).
B	919	9-18	"	None of the redactions address items in the Order on Remand.
B	920	3-24	"	None of the redactions address items in the Order on Remand.
B	921	1-20	"	None of the redactions address items in the Order on Remand.
B	922	6	"	No customer name is revealed.
B	924	18	"	The redaction does not address an item in the Order on Remand.
B	925	11-15	"	The redactions do not address items in the Order on Remand.
B	926	2-3	"	The redaction does not address an item in the Order on Remand.
B	943	2-3	"	The redaction does not address an item in the Order on Remand.
B	991		"	Redacted portions in "bubbles" are not part of any contact (see page 312).
B	1044-1050		Redact	Party (customer) to contract is identified.
B	1051-1058		"	Party (customer) to contract is identified.
B	1059-1066		"	Party (customer) to contract is identified.

	Page	Line	Change	Reason
B	1091		Unredact	Only customer names are items in the Order on Remand. The other information is not part of any contract.
B	1093		"	No customer information is revealed, and the information is not part of any contract.
B	1095-1106		"	Redact only customer names. The remainder of the information is not part of any contract.
A,B	1107-1108		"	Some redacted identifiers are not customer names. The remainder of the information is not part of any contract. Redact only customer names (see the OCC's January filing of redactions).
B	1110		"	The values redacted are not listed as information that should be redacted per Order on Remand at 15 (see page 654).
B	1431		"	The values redacted are not listed as information that should be redacted per Order on Remand at 15 (see page 654). No contract terms are revealed.
A	1532-1583		"	The tax information was released by Duke Energy to the public, and appears as an attachment to the public transcript filed on April 4, 2007 (Remand Tr. III, part 2 of 2).
A	1594-1599		"	The account numbers were redacted by the OCC and do not appear in the record. The remainder of the information was released by the PUCO on April 3, 2007 as attachments to the transcript for March 19, 2007.
A	1602-1605		"	Redactions cover information in OCC Remand Ex. 5(A), which is a public document (see discussion of page 1594-1599).
A,B	1613		"	Parties to the case should not be redacted (only customers in contracts).
A,B	1614	1-19	"	Parties to the case should not be redacted (only customers in contracts).
A,B	1615	21	"	Entity was identified as member of a party to the case, not as party to a contract.
A,B	1617-1619		"	Entity was identified as member of a party to the case, not as party to a contract.
A	1621-1623		"	Reference is to OCC Remand Ex. 22, which is a public document (see discussion of page 228; information not redacted on page 656).
A	1624	4-5	"	Provision in contract unredacted elsewhere as having been released by Duke Energy (see, e.g., page 253).
A	1626	22	"	Provision in contract unredacted elsewhere as having been released by Duke Energy (see, e.g., page 253).
B	1646	23	"	Hypothetical does not reveal the identity of a customer in a contract.
B	1722	4	"	Word does not reveal identity of customer.
B	1749	Footnote 117	"	Attachment numbers do not reveal information listed per Order on Remand at 15.
A,B	1751	1	"	The last two redactions are referred to as parties to a publicly filed stipulation and not as customer-parties to a contract.
A	1772	Quote	"	Redactions exceed those made by Duke Energy in its January filing. Redactions should follow those in the OCC's January filing.

	Page	Line	Change	Reason
B	1834-1835		Unredact	Last deposition response is redacted more heavily than page 890, and page 890 is itself redacted more than as provided in Order on Remand at 15 (i.e., more than the identify of the customer).
A	1932	Footnote 134	"	Entity was identified as a member of a party to the case, not as party to a contract (see discussion of page 1615).
A	1975		"	The figure comes from and attachment to OCC Remand Ex. 5(A), and is a public document (see discussion of pages 1594-1599 and 1602-1605).
A	1976	1	"	The figure comes from and attachment to OCC Remand Ex. 5(A), and is a public document (see discussion of pages 1975,1594-1599, and 1602-1605).
A	1982	Footnote 133	"	Entity was identified as a member of a party to the case, not as party to a contract (see discussion of pages 1594-1599 and 1602-1605).
B	2078	11	Redact	Party (customer) to contract is identified.
A	2085	Footnote 96	Unredact	Party to the case is identified, not a party to a contract (see discussion of page 1932).
D	2139-2829		"	The filing did not comply with PUCO rules regarding sealing records.
D	2835	6	Unredact OCC Ex. 12 and include in PUCO release to public	The document referenced on redaction page 2835 (i.e. OCC Ex. 12) should be contained in documents to be released to the public, but was not included in the PUCO's numbered pages (i.e. those on the computer disc) that contain the most recent redactions. OCC Ex. 12 contains dated projections that should be released for public inspection.
A	2958	13-14	Unredact	Reference is to terms of a stipulation that have been released to the public, not to contract terms protected per Order on Remand at 15.
D	3071-3113		"	Projections and other information (e.g. 3088) is old, and no value is protected by means of confidential treatment.
D	3114-3116		"	Projections and other information is old, and no value is protected by means of confidential treatment.
D	3120		"	Projections and other information is old, and no value is protected by means of confidential treatment.