FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Consolidated Duke Energy Ohio, Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases.	)	Case Nos. 03-93-EL-ATA
	)	03-2079-EL-AAM
	)	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
	)	

MEMORANDUM CONTRA JOINT APPLICATION FOR REHEARING OF THE DUKE-AFFILIATED COMPANIES AND APPLICATION FOR REHEARING OF IEU-OHIO
BY
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MEMORANDUM CONTRA

I. INTRODUCTION AND PROCEDURAL HISTORY

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.

On July 7, 2008, three applications for rehearing were filed regarding the June Entry. The Office of the Ohio Consumers' Counsel ("OCC") filed its Application on Rehearing and attached a list of adjustments that should be made to the redactions performed by the Commission. The OCC noted information that should not have been redacted (i.e. more information should be available to the public), information that should have been redacted

pursuant to the Commission's Order on Remand, and exhibits and pages that should be re-collated to release documents in their original order so that they can be read and understood by interested persons. The OCC emphasized, and emphasizes again, that the OCC's arguments regarding redactions *should not be understood as any departure from the position stated in the OCC's appeal to the Court* that more information should be released to the public regarding the documents presented by the OCC to the PUCO.

The other two applications for rehearing that were filed on July 7, 2008 were submitted by the Industrial Energy Users – Ohio, Inc. ("IEU") and the Duke-affiliated companies of Duke Energy, Inc. ("Duke Energy"), Duke Energy Retail Sales, LLC ("DERS"), and Cinergy Corp. (collectively, "Duke" or "Companies"). Duke's application for rehearing ("Duke's Application") reveals its obtuse reading of the Commission's Order on Remand that will result in the inefficient use of the time by other parties and PUCO personnel. Duke argues, for example, that the Order on Remand decided that Ohio's Trade Secret Law requires the redaction of the names of customers who publicly intervened in one or more of the above-captioned cases, the names of signatory parties to a publicly filed stipulation, and even the names of customer-parties identified on a certificate of service. No serious reading of the Commission's Order on Remand could result in such arguments.

II. ARGUMENT

A. Information Listed By IEU-Ohio And Duke For Further Redaction Has Already Been Released To The Public And Therefore Cannot Possibly Be Considered "Trade Secret" Information.

1. A "trade secret" designation is unlawful if the information is already available to the public.

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 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.'[1]

From the Court's 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 PUCO's May Entry recognizes that "information that is or already has been made public cannot be treated as a trade secret under Section 1333.61.[2] As mentioned in the OCC's Application for Rehearing filed on July 7, 2008, the Commission's redactions do not reflect all instances where information has already been

[1] *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 399-400.

[2] Id.

released to the public. The Commission should not add to this problem by accepting arguments by Duke and IEU-Ohio that do not recognize that information has been released to the public.

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 claims and counter-claims that have characterized these proceedings. On rehearing, instances of redactions that cover previously released information should be corrected and arguments by Duke and IEU-Ohio that attempt to conceal information that is already public should be rejected.

2. Duke inappropriately argues for redactions of publicly available information.

a. "Marquee customers" and another Duke affiliate

Duke argues that its "marquee customers" and another Duke-affiliated company mentioned on pages 2318, 2373, 2437, and 2535 of the Commission's redactions should not be revealed.[3] Pages within 2271-2609 (e.g. 2271, 2322, 2386, 2452, 2488, and 2539) reveal that these pages -- including pages 2318, 2373, 2437, and 2535 -- were released by Duke to the financial community and have not been maintained in confidence.[4] As a consequence, these pages cannot be secreted away at this late date.

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[3] Duke's Application at 7-8 (July 7, 2008).

[4] The haphazard placement of the label "Confidential Proprietary Trade Secret" on the documents strongly suggests that the label was placed on the pages in connection with the Ohio Energy Group discovery request and not part of its apparently polished presentation to the financial community. Therefore, Duke's claim of confidentiality was inappropriate at the time the discovery was delivered to the Ohio Energy Group.

Duke further argues that the Commission should permit yet another Duke-affiliated company to intervene (i.e. the fourth such company) in these proceedings at this late date. An intervention by a fourth affiliate is long beyond the deadline for such an intervention,[5] and no extraordinary circumstance exists to justify such an untimely intervention as required under Ohio Adm. Code 4901-1-11(F). The arguments by the three existing Duke-affiliated companies that are parties -- Duke Energy, DERS, and Cinergy Corp. -- have not differed in any respect during the proceedings before the Commission or in the pending appeal before the Ohio Supreme Court. Argument regarding the identical issue related to the identical documents on a subject that has long been at issue -- and no doubt argued by the same Duke legal department that has represented the three Duke-affiliated companies -- could not perform any service contemplated under the PUCO's rules or otherwise.

b. Other information revealed in the PUCO's dockets

Duke's Application does not recognize that some of its arguments for further redaction of documents cover information that was previously released by Duke Energy. For example, Duke argues that a customer name on page 644 of the Commission's redactions should be free from redaction.[6] The customer name was released by Duke Energy in its filing on December 7, 2007 and cannot be retracted from the public domain.

As stated in the OCC's Application for Rehearing, overlap exists between the arguments that the Order on Remand did not require redactions and the argument that

[5] Duke's Application at 8. In any event, there is no additional motion to intervene pending.

[6] Duke's Application, Attachment at 5 (referring to page 644).

information has already been released to the public. Taking an example from Duke's Application (and as discussed later in this pleading), Duke argues that customer names in a certificate of service should be redacted.[7] The public version of the document referred to by Duke is a *Duke Energy pleading* that publicly states the names of customer-parties.[8] Duke never had a serious argument regarding the redaction of party names on a certificate of service, and the time is long past when any argument could be made that the names of parties is a trade secret of any of the Duke affiliates.

3. IEU-Ohio inappropriately argues for redactions of publicly available information.

The Commission should not redact information identified by IEU-Ohio that has previously been released to the public by Duke Energy, both as a matter of law and as a practical matter.[9] IEU-Ohio's Application for Rehearing sought such additional redactions in two instances, both of which involve page 647 of the Commission's redactions. Rehearing should be denied in these two instances.

First, the redaction sought for page 647 regarding the customer's name (i.e. "right column (at top) . . . [for] the unprotected portion of the customer's name"[10]) is inappropriate because the information sought to be protected by IEU-Ohio has already been released. Second, the redaction sought regarding an employee's name (i.e.

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[7] Id., Attachment at 13 (referring to pages 1268-1273).

[8] Duke Energy's Reply to OCC's Memo Contra Motions for Protection at 19-24 (March 15, 2007).

[9] IEU-Ohio previously unconditionally endorsed Duke Energy's redactions. IEU-Ohio's Memorandum Contra OCC's Motion to Accept Redactions at 6 (January 25, 2008) ("urges the Commission to accept DE-Ohio's version of the redactions").

[10] IEU-Ohio's Application for Rehearing at 10 (July 7, 2008).

"employee's printed name . . ."[11]) is inappropriate for the same reason. The Commission's redactions on page 647 follow Duke Energy's redaction of that page on December 7, 2007. The decision of Duke Energy to release to the public the information contained in Duke Energy's document is irreversible.

The Commission should deny rehearing on IEU-Ohio's assignments of error for the two instances argued by IEU-Ohio for page 647. The Commission should not confuse matters by issuing an entry on rehearing that is not only unlawful but is also completely impractical.

B. Information Listed By Duke For Further Redaction Does Not Comply With The Commission's Decision Regarding Trade Secrets In The Order On Remand, And Duke's Re-Argument At This Time Is Inappropriate.

1. Duke's attempt to re-argue matters decided in the Order on Remand is an inappropriate and unlawful effort to re-argue the Commission's decision, and should be ignored.

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

[11] Id. at 12.

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.[12] Re-argument regarding the decision in the Order on Remand is inappropriate.

Duke inappropriately argues against the Commission's decision to divulge all of the names of Duke's employees that can be found in the documents held by the Commission for these cases.[13] Duke "requests that the Commission reconsider its May 28, 2008, and June 4, 2008, rulings with regard to their efforts to protect the privacy of Duke Entity employees."[14] Duke's premise that the Commission made that decision in May 2008 must be rejected. The May Entry stated: "We would also point out that some of the proposed redactions [such as names of employees] sought to treat, as trade secrets, categories and information that our order on remand did not allow to be so treated."[15] The decision that employee names did not fit the description of trade secrets was issued on October 24, 2007 in the Order on Remand. Duke failed to seek rehearing within thirty days (it took eight months) as required by R.C. 4903.10. Duke's issue regarding employee names is untimely and should be ignored.

In the alternative -- if Duke is unlawfully heard on the matter of employee identification -- the Companies' argument on this matter is troubling. Duke correctly

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[12] May Entry at 4, ¶(10).

[13] Duke's Application at 5 (July 7, 2008).

[14] Id.

[15] May Entry at 5, ¶(12). The Entry refers to other matters not treated as trade secrets under the Order on Remand. Another matter named in the Entry was "payment of legal fees." Id. Duke also inappropriately reargues that determination. Duke's Application, Attachment at 14 (referring to pages 1762 and 1766) and at 15 (referring to page 1800).

points out that it previously asserted an interest in keeping secret the names of its employees that appear in the documents.[16] Duke previously argued for protection of all employee names.[17] Duke's most recent pleading states that "the Duke Entities do not assert that the names of executives or employees who appeared as witnesses . . . require protection. Furthermore, the Duke Entities do not assert that the names of attorneys representing any of the Duke Entities require protection."[18] Neither the significant change in position nor the distinction drawn between the two classes of Duke employees is explained in Duke's Application.[19]

The Commission has little record upon which to decide which of Duke's employees "had tangential responsibilities for the matters at issue before this Commission."[20] The example that the OCC can cite from the record runs counter to Duke's argument. A Duke employee's admissions were used in the testimony of OCC Witness Hixon.[21] The employee's responsibilities regarding matters at issue, during the time period at issue, were far from "tangential." The Commission should not accept the unsupported assertions of Duke's attorneys, especially after their "flip-flop" on the matter of whose names should be redacted from documents.

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[16] Duke's Application at 6 (July 7, 2008).

[17] Duke Energy' Memorandum in Response to OCC's Motion to Approve Redactions at 9 (February 13, 2008). The argument was not timely when it was submitted in February.

[18] Duke's Application at 5 (July 7, 2008).

[19] Duke's Application does not even identify all of the Duke attorneys whose names appear in the documents, one or more of which may not have made an appearance in these proceedings.

[20] Id.

[21] OCC Ex. 2(A) at 32, 47, and 54.

Duke's Application asserts that the Companies' decisions should be followed regarding what is "relevant material" and what is a "legitimate concern of the public."[22] The Commission decided the matter regarding the names of Duke's employees in October 2007, and the Order on Remand should be followed.

2. The customer names withheld by the Order on Remand are those located in agreements and discussion of those agreements; not all customer names are secret under the PUCO's Order.

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.[23]

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

[22] Duke's Application at 7. Duke also makes a fairly obvious reference to the OCC as an entity "which ha[s] agendas other than the best interest of the Duke Entities, their customers, and their community." Id. at 6. The argument is presumptuous and extremely offensive to the OCC's dedicated employees. A primary purpose for the OCC is to vigorously represent the interests of residential customers and not Duke's shareholders. R.C. Chapter 4911.

[23] Order on Remand at 17 (October 24, 2007).

> basis under protective orders for a period of eighteen months from March 19, 2007.[24]

At an earlier point in the Order on Remand, the Commission also stated that "terms under which any options may be exercisable" should be redacted.[25] These items are repeated in the May Entry.[26]

Withholding information from the public, as stated in the Order on Remand, involves *agreements* that were made part of the record in the OCC's presentation of evidence and the discussion of those agreements. The portion of the Order on Remand, quoted above, states that the decision addresses "side *agreements* and documents discussing side *agreements*."[27] That subsequent discussion in the Order on Remand regarding efforts by Duke Energy and DERS to maintain the confidentiality of the documents discusses the "counterparties" to the documents, another clear reference to *agreements*.

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. Duke's arguments to the contrary should be rejected. Duke's Application contains many arguments that reveal the Companies' nonsensical interpretation of the Commission's October 24, 2007 Order on Remand.

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[24] Id. at 44 (emphasis added).

[25] Id. at 15.

[26] Entry at 1-2, ¶(3) (May 28, 2008).

[27] Id. The quoted portion addressed "*contract* termination dates or other termination provisions, financial consideration in each *contract*, price . . . in each *contract*, volume of generation covered by each *contract*, and terms under which any *options* may be exercisable." Id. The focus is clearly on *contracts*.

Examples of Duke's nonsensical interpretation illustrate the OCC's counter-argument. Duke argues that a customer name located in a certificate of service should be have been redacted.[28] The identities of customer-parties to one or more of the above-captioned cases should not, and cannot, be hidden from public view. Duke also argues for redaction of customer names in testimony that cites the PUCO's November 23, 2004 Entry on Rehearing as the source of the customer names.[29] Discussions of side agreements are the subject of the Commission's determinations regarding trade secrets, *not discussions of the PUCO's entries and orders.* Contrary to Duke's assertion, customer-parties to publicly filed stipulations should not, and cannot, be hidden from public view in the resolution of state regulatory cases that are supposed to be transparent to the public in the conduct of the business of their government.[30] The names of witnesses associated with customer-parties to the cases should not be redacted.[31] The Order on Remand did not order that the "nature of customers' business" be redacted.[32] Duke argues for redaction of a customer name that was used in argument as a short title to a case before the Supreme Court of Ohio.[33] Surely parties can cite case law without such references being hidden away as a Duke trade secret.

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[28] Duke's Application, Attachment at 13 (referring to pages 1268-1273).

[29] Id., Attachment at 1 (referring to page 236).

[30] Id., Attachment at 15 (referring to page 1792).

[31] Id., Attachment at 5 (referring to page 703). Duke seeks the redaction of a customer name, but no unredacted customer name appears on page 703.

[32] Id., Attachment at 13 (referring to page 1258).

[33] Id., Attachment at 15 (referring to page 1807).

Duke continues to unnecessarily impose upon the time and resources of other parties and PUCO personnel with its arguments. Such Duke arguments should be summarily rejected.

C. Information Listed By Duke For Further Redaction Cannot Be Considered "Trade Secret" Under Ohio Law.

1. Ohio law regarding the "trade secret" designation should be followed.

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."[34] 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, Revise Code) and as consistent with the purposes of Title 49 of the Revised Code. Ohio pubic 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.'

[34] Emphasis added.

> *State ex. rel. Williams v. Cleveland* (1992), 64 Ohio St. 3d 544, 549, [other citations omitted].[35]

Faced with demands for "wholesale removal of the document from public scrutiny,"[36] 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...."[37]

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

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[35] *In re MxEnergy, Inc.*, Case No. 02-1773-GA-CRS et al., Entry at (3) (September 7, 2004) (notations in original).

[36] Id. at 3.

[37] Id.

claiming protective status must overcome."[38] As previously stated, Ohio Adm. Code 4901-1-24(D) reflects that fact, stating: "Any order issued under this paragraph shall *minimize* the amount of information protected from public disclosure."[39] Therefore, in order to minimize protection under 4901-1-24(D), redactions must be made on a word-by-word basis.

2. Duke Energy's dated projections are not trade secrets.

Duke argues that pages 1111-1130 should be protected as "trade secrets" even though they "were created in 2004 and based upon earlier RSP proposal by DE-Ohio."[40] Time is an important element in the protection of documents, 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 competitors" over time from being outdated. Pages 1111-1130 contain material that was filed long ago that contains projections and other information that is old and therefore holds no value as information protected from the view of others.[41] Such dated material should be released as part of the documentation to the Commission's proceedings.

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[38] *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).

[39] Emphasis added.

[40] Duke's Application at 7.

[41] 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.

Either Duke's argument concerning pages 1111-1130 is disingenuous or the Duke-affiliated companies have inappropriately and unlawfully mixed their businesses. Duke's Application states:

> Even though Documents No. 1111-1130 were created in 2004 and based upon earlier RSP proposals by DE-Ohio, the Duke Entities assert that the calculations and the discussion of the calculations in Documents No. 1111-11130 {sic, 1111-1130}, which consist of economic forecast running through the year 2008, reveal the existence of economic variables that were and remain of continuing significance to DE-Ohio, *DERS*, and the ultimate corporate parent, Duke Energy Corporation.[42]

The documents in question are forecasts filed by the predecessor of Duke Energy in connection with its rate plan filing in 2004. The calculations in such *Duke Energy documents* should not "[have significance] and remain of continuing significance to . . . DERS" as *trade secrets of DERS* when there has been no representation that they are DERS documents (i.e. unless the Duke-affiliated companies admit that Duke Energy and DERS have unlawfully mixed their businesses).

D. The Commission's Rejection of Duke's Argument That This Case Does Not Involve "Public Records" Was Correct.

Duke re-argues that the Commission should have accepted the Companies' unique theory that the documents at issue are not "records" for purposes of Ohio's Public Records Law.[43] Duke legal argument was properly rejected by the Commission,[44] and Duke's argument on rehearing is that the Commission's decision "will prove incredibly

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[42] Duke's Application at 7 (emphasis added).

[43] Id. at 8-10.

[44] May Entry at 8 (May 28, 2008). The OCC previously opposed Duke's argument, and incorporates those arguments herein. OCC Memorandum Contra Duke Energy's Motion for Continuation of Protective Order at 3-7 (October 5, 2007).

damaging."[45] A decision to reveal the contents of the Commission's files based upon Ohio's Public Records Law is not against public policy, and the Commission is not entitled to disregard Ohio law.[46]

Duke's analogies are stretched. Duke argues that vendors may not want to conduct business in Ohio if documents that describe their technologies cannot be protected from public view.[47] These cases involve Duke's regulatory strategies that undermine a transparent, public process of setting rates; they do not involve the protection of a third-party's technological secrets.

Duke also suggests that the response to the Commission's decision will result in parties "seek[ing] to evade discovery obligations." Duke Energy is bold to tell its regulator that it may seek to evade that regulator's rules regarding discovery, and is especially bold considering Duke Energy's recent record on responding to discovery.[48] The Commission's actions on rehearing should not be swayed by the threat of bad acts by Duke.

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[45] Duke's Application at 8 (July 7, 2008).

[46] The Commission is a creature of statute and lacks authority to deviate from the statutory requirements. *Canton Storage and Transfer Co. v. Pub. Util. Comm.* (1995), 72 Ohio St.3d 1.

[47] Id. at 10.

[48] See, e.g., *In re FPP and SRT Riders*, Case Nos. 07-723-EL-UNC, et al., Entry at 4, ¶(8) (October 29, 2007) ("motion to compel [discovery] should be granted") and *In re Duke Gas Distribution*, Case Nos. 07-589-GA-AIR, et al., Entry at 3, ¶(6) (October 26, 2007) ("motion to compel [discovery] should be granted").

III. CONCLUSION

For the foregoing reasons, arguments by Duke and IEU-Ohio should be rejected in favor of a transparent state regulatory process for the setting of electricity rates for customers in Southwestern Ohio.

Respectfully submitted,

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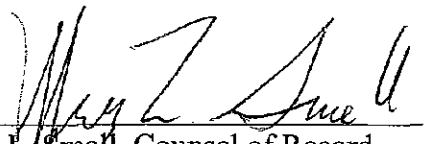

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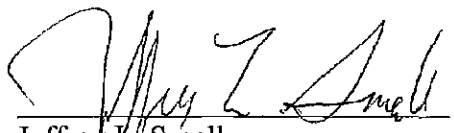
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra Applications for Rehearing by the Office of the Ohio Consumers' Counsel* has been served upon the below-named persons (pursuant to the Attorney Examiners' instructions) via electronic transmittal this 17th day of July, 2008.



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