

**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
)	

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

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PUCO

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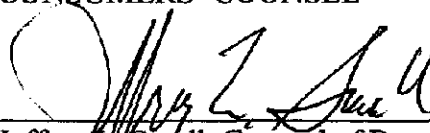
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential consumers of Duke Energy Ohio, Inc. ("Company" or "Duke Energy," including its predecessor The Cincinnati Gas and Electric Company) and pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A), applies for rehearing of the Entry on Rehearing issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on July 31, 2008. The OCC submits that the Commission's Entry on Rehearing and the associated treatment of information that restricts public access to public records in the above-captioned cases is unreasonable and unlawful in the following particulars:

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

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF THE ISSUES

A. Introduction

On July 31, 2008, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) issued an Entry on Rehearing regarding public access to information that has accumulated under a protected status over the years of litigation in the above-captioned cases. That Entry on Rehearing 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 on Rehearing.

The Entry on Rehearing addresses the Commission’s decision in the Order on Remand that certain information from the above-captioned cases should be withheld from public scrutiny. That Order on Remand is the subject of appeal by the OCC to the Supreme Court of Ohio. As stated previously, 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 information should be released to the public regarding the information presented by the OCC on remand.

B. The Documents at Issue in the Instant Application for Rehearing.

1. Documents other than side agreements.

These cases have involved documents other than the more widely publicized side agreements that have been maintained under seal and that are addressed in the Entry on Rehearing. The Commission's originally proposed redactions offered 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.¹ 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."² The OCC gained access to these documents for the first time as the result of an entry in June 2008. The Entry on Rehearing concluded that portions of this information should remain outside the public view.

2. Side agreements and documents discussing such side agreements.

An important component of the ruling in the Order on Remand dated October 24, 2007, as well as the Entry on Rehearing (and related redactions), is the treatment of side deals. In the Order on Remand, the Commission identified only eight items that it

¹ Duke Energy Motion for Protection (May 5, 2007).

² *Id.* at 7.

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, 2007.³

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.⁴ These items are repeated in an entry dated May 28, 2008.⁵

An entry dated May 28, 2008 on the subject of the redaction of documents explains that the release of documents to the public means that the information is not a trade secret.⁶ This subject was again discussed in the Entry on Rehearing whereby the Commission rejected efforts by the Duke-affiliated companies to keep information concealed in the PUCO’s files that had already been released to the public.⁷ “[T]he Commission agrees with OCC that information already released in the proceeding is not trade secret.”⁸ This is the framework under which the redaction of “side agreements and documents discussing such side agreements” should be undertaken.

³ Id. at 44 (emphasis added).

⁴ Id. at 15.

⁵ Entry at 1-2, ¶(3) (May 28, 2008).

⁶ Id. at 4-5, ¶¶(10) and (11).

⁷ Entry on Rehearing at 2-4.

⁸ Id. at 4.

II. ARGUMENT: The Commission's Entry on Rehearing is Unreasonable and Unlawful Because the Commission Redacted Portions of Filed Information that is 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 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.⁹

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 Commission's Entry dated May 28, 2008 recognizes that "information that is or already has been made public cannot be treated as a trade secret under Section 1333.61."¹⁰ As stated earlier, the Entry on Rehearing contains essentially the same

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

¹⁰ Entry at 4, ¶(10) (May 28, 2008).

analysis.¹¹ The redactions stated in the Entry on Rehearing do not, however, reflect all instances where information has already been released to the public.

Instances where the Commission's 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. On rehearing of the Commission's decisions in its Entry on Rehearing, instances of redactions that cover previously released information should be corrected.

A. The Commission's Entry on Rehearing is Unreasonable and Unlawful Because it Approves The Duke-Affiliated Companies' Request to Conceal Information that is Regularly Released by Duke Affiliates that Actually Engage Commercial Activities.

The Duke-affiliated companies argued that documents that name "marquee customers" of an affiliated company should not reveal those customers, and the Entry on Rehearing mistakenly agreed.¹² The information is contained on pages 2318, 2372, 2437, and 2535 of the Commission's original list of pages. On its face, the information was released by the Duke-affiliated companies and was "known outside the business," as that factor has been discussed by the Supreme Court of Ohio and quoted above.¹³ The Duke-affiliated companies placed their customer names on a public "marquee," and redaction of that information by the PUCO is pointless and will be confusing.

¹¹ Entry on Rehearing at 4.

¹² Entry on Rehearing at 6-7 (referring to pages 2318, 2372, 2437, and 2535).

¹³ *Besser v. Ohio State University* (August 9, 2000), 89 Ohio St. 3d 396, 399-400. The OCC previously pointed out that the information had already been released to the financial community. OCC Memorandum Contra Duke's Application for Rehearing at 4 (July 18, 2008).

The Entry on Rehearing relied upon an affidavit submitted by an attorney for the Duke-affiliated companies.¹⁴ The Duke affiliates that actually engage in commercial activities *advertise* their activities and achievements rather than conceal their existence. The openness shown by Duke affiliates that engage in commercial activities is illustrated by attachments to the instant Application for Rehearing taken from the internet. The attachments provide examples that show how the Duke affiliated companies release information about their “marquee customers” to the public.¹⁵ Concealing information from PUCO sources can only result in confusion, but cannot effectively withhold the information from the public.

The Commission should correct its error regarding redactions that withhold from the public information regarding “marquee customers” that already exists in the public domain.

B. The Commission’s Entry on Rehearing is Unreasonable and Unlawful as a Final Result in These Proceedings Because it Does not Recognize the Release of Information to the Public by the Court of Common Pleas for Hamilton County, Ohio.

The record in these cases contains various references to a wrongful discharge action filed by John Deeds against Duke Energy and its affiliated companies connected with his objections to dealing with side deals that are also contained in the record of these PUCO proceedings.¹⁶ Mr. Deeds’ complaint, originally filed in federal court, was re-

¹⁴ Entry on Rehearing at 6.

¹⁵ The point is particularly well illustrated on page 14 of the attached presentation material for the West Virginia audience.

¹⁶ The side agreements that were addressed in the Deeds case are located in the testimony of OCC Witness Hixon. OCC Ex. 5(A), Attachment 17, PUCO redaction pages 323-641.

filed in the Hamilton County Court of Common Pleas. That Court has dealt with the appropriate application of Ohio's Trade Secrets Law.

Information regarding the option agreements that are part of the record in these cases before the PUCO was also filed in Hamilton County and was the subject of a protective order issued on December 12, 2007. On August 14, 2008, following the intervention in the case by the Cincinnati Enquirer to obtain information about the side agreements, the Hamilton County Court of Common Pleas removed the protective order and subsequently released all the information in its possession on the Deeds complaint to the public. The Court's Entry, dated August 14, 2007, is attached to this pleading and accompanied by a typed version to aid the reader.¹⁷

The Cincinnati Enquirer has reported on the contents of the agreements, an example of which (naming customers who executed an option agreement) is attached to this pleading. The names of the parties to the option agreements are in the public domain, and should also be made publicly available from the Commission (e.g. on the PUCO's web site). These names appear throughout the documents that have been the subject of the PUCO's redactions and the subject of pleadings by the OCC and other parties.

The case information regarding Mr. Deed's case before the Hamilton County Court of Common Pleas contains more than one of the option agreements.¹⁸ These option agreements were apparently attached to one or more of the deposition transcripts

¹⁷ One means by which some documents can be accessed is by registering with the Hamilton County Court of Common Pleas and turning to the docket information for *Deeds v. Duke Energy Ohio*, Case No. A 0701671. The web site is <http://www.courtclerk.org/>, and registration takes place through the "Portfolio Login/Access" listed for the site's "Quick Links."

¹⁸ OCC counsel confirmed that the Cincinnati Enquirer obtained copies of more than one of the option agreements, including pages 354-368 of the Commission's numbered documents.

and are available from the Court in hard copy form. The release of option agreements for public inspection, coupled with the release of the customer names and the obvious similarity between the option agreements, means that the contents of all twenty-two option agreements in the record of the PUCO cases are publicly available except for certain customer-specific information contained in the attachments to the option agreements. The Commission should release to the public pages 323-641 of the PUCO's numbered pages (except for exhibits to the option agreements that show account information) to the public. The customer names that appear elsewhere, such as in other agreements, should also be unredacted and the information should be released to the public.¹⁹

In addition to the option agreements themselves, the numerous references to the option agreements and their contents should also be released to the public. In the OCC's materials, numerous references should be unredacted for the materials submitted in Phase I of the proceeding.²⁰ References in materials submitted to the Commission in Phase II should also be unredacted.²¹ Additionally, the Commission should re-evaluate the record

¹⁹ See, e.g., OCC Ex. 5(A), Attachment 2 (page 248 of the PUCO's numbered pages), Attachment 3 (249 and related references on pages 250-255), and Attachment 4 (256 and related references on pages 257-261). Also OCC Ex. 5(A), Attachment 9 (page 282 and related references on pages 283-288) and Attachment 10 (page 289 and related references on pages 290-295).

²⁰ The testimony of OCC Witness Hixon should be unredacted from page 215 of the PUCO's numbered pages to page 217 (i.e. pages 50-52 of OCC Ex. 5(A)). The OCC's Initial Post-Remand Brief, Hearing Phase I, should be unredacted from the bottom half of page 1769 (page 55 of the Brief) through the top half of page 1772 (page 58 of the Brief), the very bottom of page 1775 (page 61 of the Brief) and all of page 1776 (page 62 of the Brief, and page 1780 (page 66 of the Brief). The OCC's Reply Post-Remand Brief, Hearing Phase I, should be unredacted on page 1929 for footnote 122 (page 32 of the Reply) and on page 1932 for footnote 132 (page 35 of the Reply). The OCC's Application for Rehearing regarding Phase I of the proceeding should be unredacted on page 2078-2079 regarding the option agreements (pages 22-23 of the Application) and page 2085 for footnote 94 (page 29 of the Application).

²¹ The OCC's Initial Post-Remand Brief, Hearing Phase II, should be unredacted on page 2934 (page 22 of the Brief). The OCC's Application for Rehearing regarding Phase II of the proceeding should be unredacted on page 3344 (page 25 of the Application).

for analogous changes to the redactions of submissions by others as part of the Phase I and Phase II proceedings.

The Commission should no longer undertake, as part of its handling of public documents in its possession, to withhold information that has been released elsewhere and is public. Under circumstances such as those presented by the ruling by the Hamilton County Court to release information to the public, the Duke-affiliated companies might be expected to have promptly informed the Commission and parties that they no longer need to expend any effort to maintain certain information as confidential and that the information is public. That advisory from the Duke-affiliated companies has yet to occur.

Those who seek to withhold information from the public should assist the PUCO with its efforts to “minimize the amount of information protected from public disclosure” to ensure that “only such information [is] redacted as is essential to prevent disclosure of the allegedly confidential information.”²² The PUCO should expect the Duke-affiliated companies to promptly present a complete accounting of the impact of the Court’s ruling (i.e. to release information to the public) on the information that the PUCO is holding as confidential in order to assist the Commission in making appropriate revisions to its protective orders.

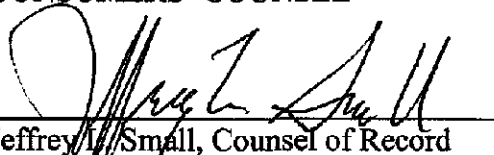
III. CONCLUSION

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

²² Ohio Adm. Code 4901-1-24(D).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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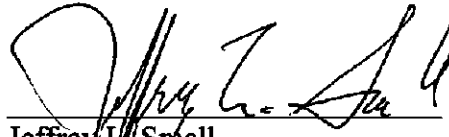
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CERTIFICATE OF SERVICE

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 attachments) has been served upon the below-named persons (pursuant to the Attorney Examiners' instructions) via electronic transmittal this 2nd day of September, 2008.



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Assistant Consumers' Counsel

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ATTACHMENTS



News Release
10/19/2000

Cinergy Solutions Announces Partnership With BP

CINCINNATI, October 19, 2000 — Cinergy Solutions, a Cinergy Corp. (NYSE:CIN) affiliate specializing in cogeneration and energy outsourcing for large industrial customers, has signed an exclusivity agreement with BP to negotiate the construction, ownership and operation of two state-of-the-art natural gas cogeneration projects. The projects will produce more than 800 megawatts of electricity and 3.5 million pounds of steam per hour for BP's Texas City and Chocolate Bayou refining and chemicals sites, both in Texas.

The operation of the new cogeneration projects will coincide with the decommissioning of older, less efficient energy facilities. Through this partnership, Cinergy Solutions will work with BP to reduce its nitrogen oxides emissions by 53 percent at Texas City and 34 percent at Chocolate Bayou.

"We are extremely pleased that BP selected us to partner with them on these projects, where we can demonstrate our talents for improving the efficiency of energy generation and usage," said Steve Harkness, Cinergy Solutions' president and chief operating officer. "Based on our successes with our other industrial partners, we know that environmental excellence can be achieved in balance with safety and economics."

In September BP announced that it could achieve Texas' 90 percent nitrogen oxides emissions reductions for most of its industrial point sources in that state. The cogeneration projects will play a key role in achieving those reductions. BP is the first major energy company to support its State Implementation Plan target reductions in an effort to bring the Houston region air quality standards into federal Clean Air Act Compliance.

"This is a further demonstration of our commitment to improving air quality in Texas," said Tim Scruggs, vice president of BP's Texas City business unit. "It gives the public, the Texas Natural Resource Conservation Commission and our colleagues a clear idea of how we plan to reach the aggressive emission targets set for industrial facilities in our area."

The new cogeneration projects, which will be built through a partnership between Cinergy Solutions and BP Global Power, will also reduce net carbon dioxide emissions from the sites by 727,000 tons per year.

Cinergy Solutions' focus is cogeneration, energy services and utility outsourcing for large industrials, municipalities and other large energy consumers. The company specializes in reducing energy costs, lowering emissions, conserving energy, and improving efficiency for its customers, some of which include Kodak, General Motors, Millennium Chemicals, the University of Maryland College Park and the city of Orlando. Cinergy Solutions currently has projects in operation or under development in 11 states.

Cinergy Solutions is an affiliate of Cinergy Corp., one of the nation's leading diversified energy companies with a total capitalization of \$7.4 billion and assets of \$10 billion. Cinergy owns or operates more than 16,500 megawatts of electrical and combined heat plant generation that is either operational or under development. It also has 55,000 miles of electric and gas transmission lines in the United States and abroad and approximately 9,000 employees in nine countries. Its largest operating companies, The Cincinnati Gas & Electric Co. and PSI Energy Inc., serve more than 1.4 million electric customers and 478,000 gas customers in Indiana, Ohio and Kentucky.



News Release
1/21/2003

Cinergy Solutions and Procter & Gamble to Partner on Utilities Outsourcing Project at St. Bernard Plant

CINCINNATI, January 21, 2002 - Cinergy Solutions, Inc., an affiliate of Cinergy Corp (NYSE:CIN), has signed a 20-year agreement with The Procter & Gamble Company as part of an overall outsourcing initiative at the St. Bernard, Ohio plant. This initiative is part of P&G's effort to concentrate on its core areas of expertise -- research & development and product marketing.

Under the agreement, Cinergy Solutions will take over the operation and maintenance (O&M) of a combined steam and electric power plant, electric infrastructure, water, sewer and steam distribution system. "P&G is pleased to leverage the capabilities of Cinergy Solutions to maximize our manufacturing cost effectiveness," stated Bill Griesser, P&G chemicals director. Cinergy Solutions' primary objective is to reduce P&G's energy expenditures and increase reliability by using Solutions' core competencies of energy asset management.

"We excel at providing efficiently produced, reliable energy at the lowest possible cost," said Tim Ferguson, vice president of Cinergy Solutions. "The U.S. Environmental Protection Agency and the U.S. Department of Energy recognized two of our projects in 2002 for energy efficiency and pollution reduction."

As part of the efficiency efforts, Cinergy Solutions will upgrade or replace portions of the existing system. "We're pleased that P&G has chosen us as a partner to manage their energy facility and that we are an important part of their core business focus initiative," said Michael Cyrus, president and CEO of Cinergy Corp.'s Energy Merchant Business Unit.

About Cinergy Solutions

Cinergy Solutions focuses on cogeneration, energy services and utility outsourcing for large industrials, municipalities, universities and other large energy consumers. Its customers include BP Amoco, Kodak and General Motors. It is an affiliate of Cincinnati-based Cinergy Corp., one of the nation's leading diversified energy companies with assets of \$12 billion.

About Procter & Gamble

P&G is celebrating 165 years of providing trusted, quality brands that make every day better for the world's consumers. It markets nearly 300 brands - including Pampers®, Tide®, Ariel®, Always®, Whisper®, Pantene®, Bounty®, Pringles®, Folgers®, Charmin®, Downy®, Lenor®, Iams®, Crest®, Actonel®, Olay® and Clairol® - in more than 160 countries around the world. The P&G community consists of nearly 102,000 employees working in almost 80 countries worldwide. P&G Chemicals, a business unit of The Procter & Gamble Company, is a global marketer of fatty alcohols, methyl esters, fatty acids, glycerine, SEFOSE and tertiary amines. P&G Chemicals has sales offices in Cincinnati, Ohio, Sao Paulo, Brazil, London, England, Mexico City, Mexico, Singapore and Kobe, Japan. Please visit www.pg.com for the latest news and in-depth information about P&G and its brands.

1. [PDF]

Microsoft PowerPoint - Cinergy presentation

1358k - Adobe PDF - [View as HTML](#)

Operating **2002**. 66 MW. Permitted projects. – Mount Storm ... **Cinergy Solutions Customers**. 15. Dow (Union Carbide), South Charleston WV ...

iofwv.nrcce.wvu.edu/.../Symposium2005BrabenderSession3presentation.pdf

Energy and Raw Materials from Renewables

West Virginia

Industries of the Future

Charleston, WV

November 8-9, 2005

CINERGY.
SOLUTIONS



Agenda

- WV Renewable Energy Sources
 - *Wind*
 - *Solar*
 - *Hydro*
 - *Biomass*
 - Ethanol/biodiesel
- Cinergy Solutions
 - *Business model*
 - *Relevant projects*

WV Renewable Energy Sources - Wind

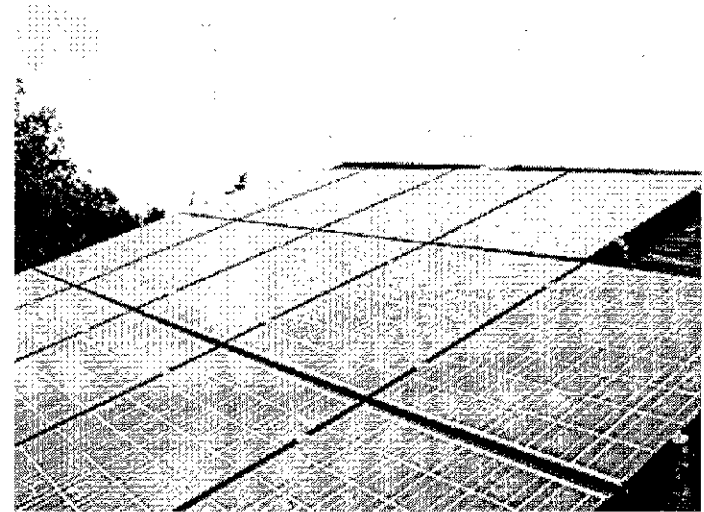
- Existing projects
 - *Mountaineer Wind Energy Center*
 - Operating 2002
 - 66 MW
- Permitted projects
 - *Mount Storm*
 - Projected 2005-06 depending on turbine delivery
 - Proposed 300 MW
- Proposed projects
 - *437 turbines in 4 projects (Rich Mountain, Liberty Gap, McClung, Grassy Falls, Gauley Mountain)*
- Issues/benefits
 - *Projects benefit from Federal Production Credits which are subject to renewal risk*
 - *Projects are under review for impact on bird and bat populations*
 - *Increased wind generation reduces natural gas for power generation*
 - *Major benefit is reduced emissions and reduced use of fossil fuel*
 - *Capacity factors limit output and peak time response*

- Source AWAE

WV Renewable Energy Resources – Solar/Geothermal

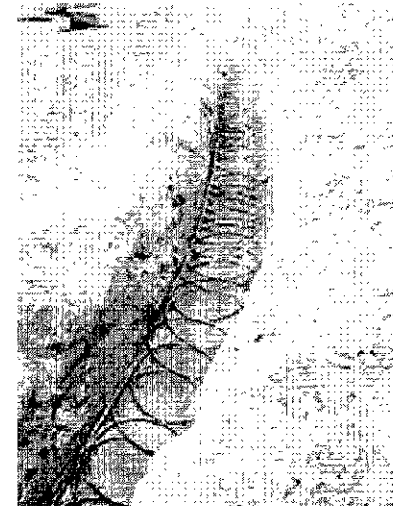
- Solar

- *WV does not have sufficient sunlight to provide large scale opportunities*
- *Some potential for residential or commercial flat panels*
- *Utilities and state organizations offer programs to fund partial up front costs*
- *No opportunity for solar collectors (larger projects)*



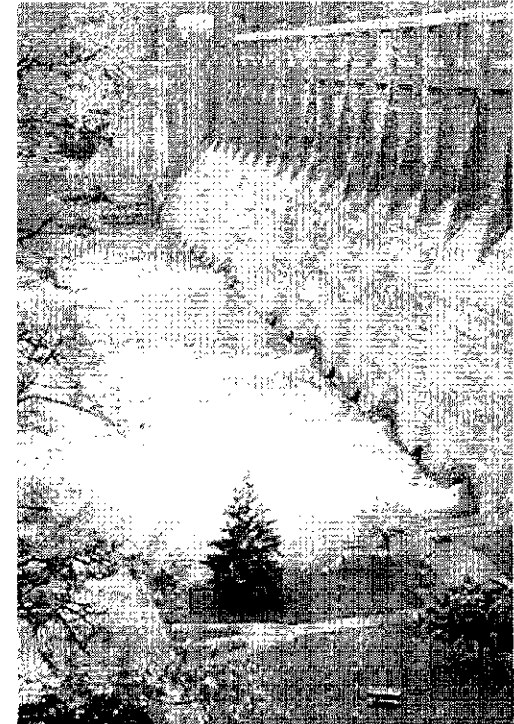
- Geothermal

- *WV does not have high temperature sources but does have extensive low temperature resources*
- *Opportunity for geothermal heat pumps for residential or commercial applications*



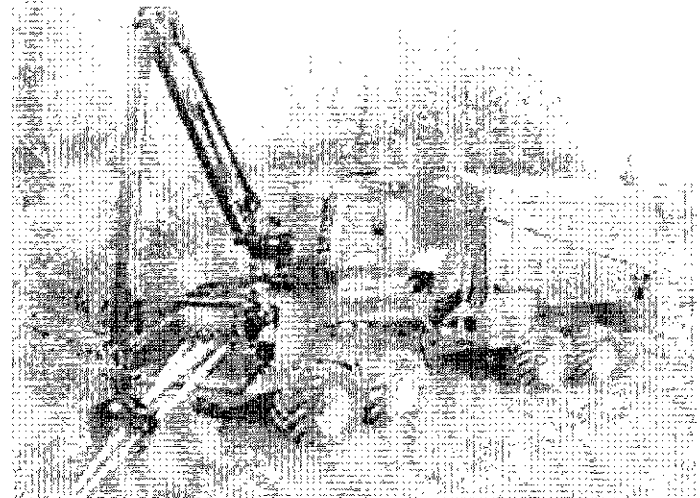
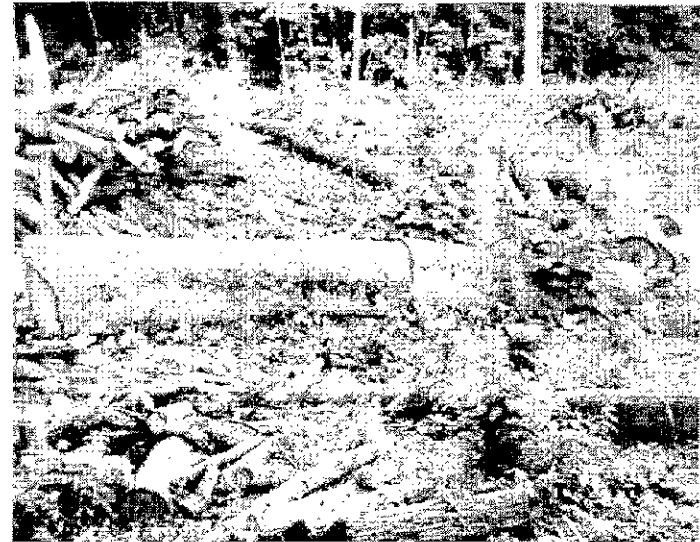
WV Renewable Energy Resources - Hydro

- Potential 6.3 Million MWH/year from current and prospective resources
- Current electricity production is less than 2% of total state production
- Additional resource development is very difficult due to stringent environmental regulations and permitting requirements
- Minimal value for WV industrial users from direct use but state utility rates would benefit from additional generation



WV Renewable Energy Resources - Biomass

- Biomass resources offer the best opportunity for energy and raw material supply
- Biomass categories
 - *Urban and mill residues*
 - Tree trimmings, clean C&D waste, sawdust, bark trimmings, other waste from processing
 - Can include sludges and waste streams which contain substantial organic materials
 - Estimated potential of 200,000 – 900,000 dry tons/year
 - Fairly developed market with price pressure from existing biomass boilers and mulch business
 - *Forest residues*
 - Available from thinning and clearing operations of dead or no value trees/shrubs
 - Estimated potential of 1.3 million tons/year
 - Supply chain not fully developed due to distance from market and collection expense.



WV Renewable Energy Resources – Biomass (cont'd)

- Biomass categories
 - *Municipal solid waste*
 - Sorted biomass fraction of waste stream currently going to landfill
 - Requires substantial costs of sorting and use of new technologies for clean combustion
 - Excellent opportunity for gasification of sorted materials
 - *Energy crops*
 - Sawgrass and hybrid poplar are the most discussed sources
 - Estimated potential at 1 million dry tons/year
 - Not a developed market for supply or end users
 - *Agricultural residues*
 - Available from harvest process including wheat straw, corn stover and animal wastes (i.e. poultry litter)
 - Estimated potential of 51,000 dry tons/year
 - Market not developed due to low end use and collection/storage issues



WV Renewable Energy Resources – Biomass (cont'd)

- Biomass is a viable fuel supply for industrial heating and cogeneration
 - *Need long term fuel supply. Depending on the source, pricing may be less volatile than natural gas or coal.*
 - *Uses standard technology such as stoker or fluidized bed*
 - *Technology is very scalable*
- Other benefits
 - *3rd party owned (outsourced) facilities which produced electricity to the facilities or grid can benefit from tax credits in 2005 Federal Energy Bill*
 - *Green tags are also available for sale from generation*
 - *Depending on the fuel supply, CO2 reductions are possible due to diversion from landfill or natural decomposition*

WV Renewable Energy Resources – Biomass (cont'd)

- Biomass collection systems and markets will become more developed regionally
 - *Reliable supply chain will make project finance easier*
 - *State or national Renewable Portfolio Standards will drive usage and price*
 - *Technology advances beyond direct combustion will improve environmental compliance*
 - Numerous gasification technologies can use biomass as primary fuel. Examples of evolving technologies are FERCO, PrimEnergy, rem Enineering
 - Gasification provides low quality (100-500 btu/ft³) gas which can be used in recip. engines, turbines or existing gas boilers.

St. Paul, MN Biomass Cogeneration Project

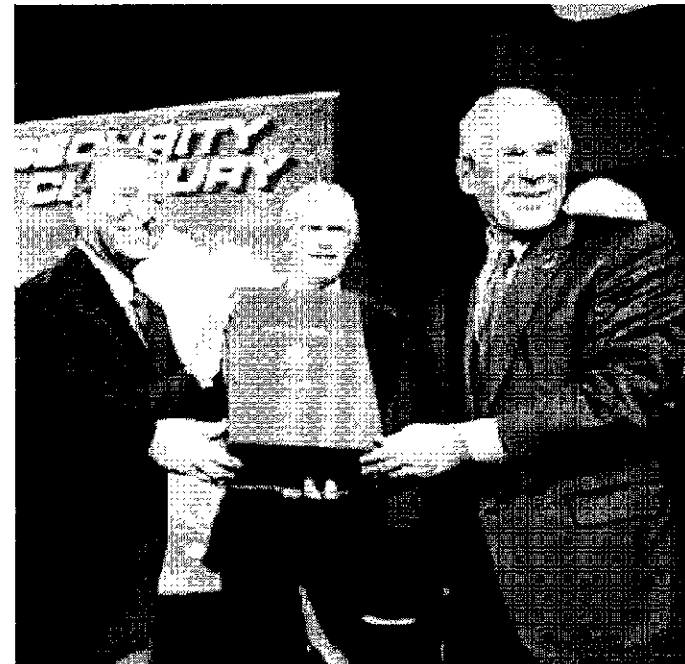


President Bush has praised District Energy as an example of energy efficiency, diversity and affordability

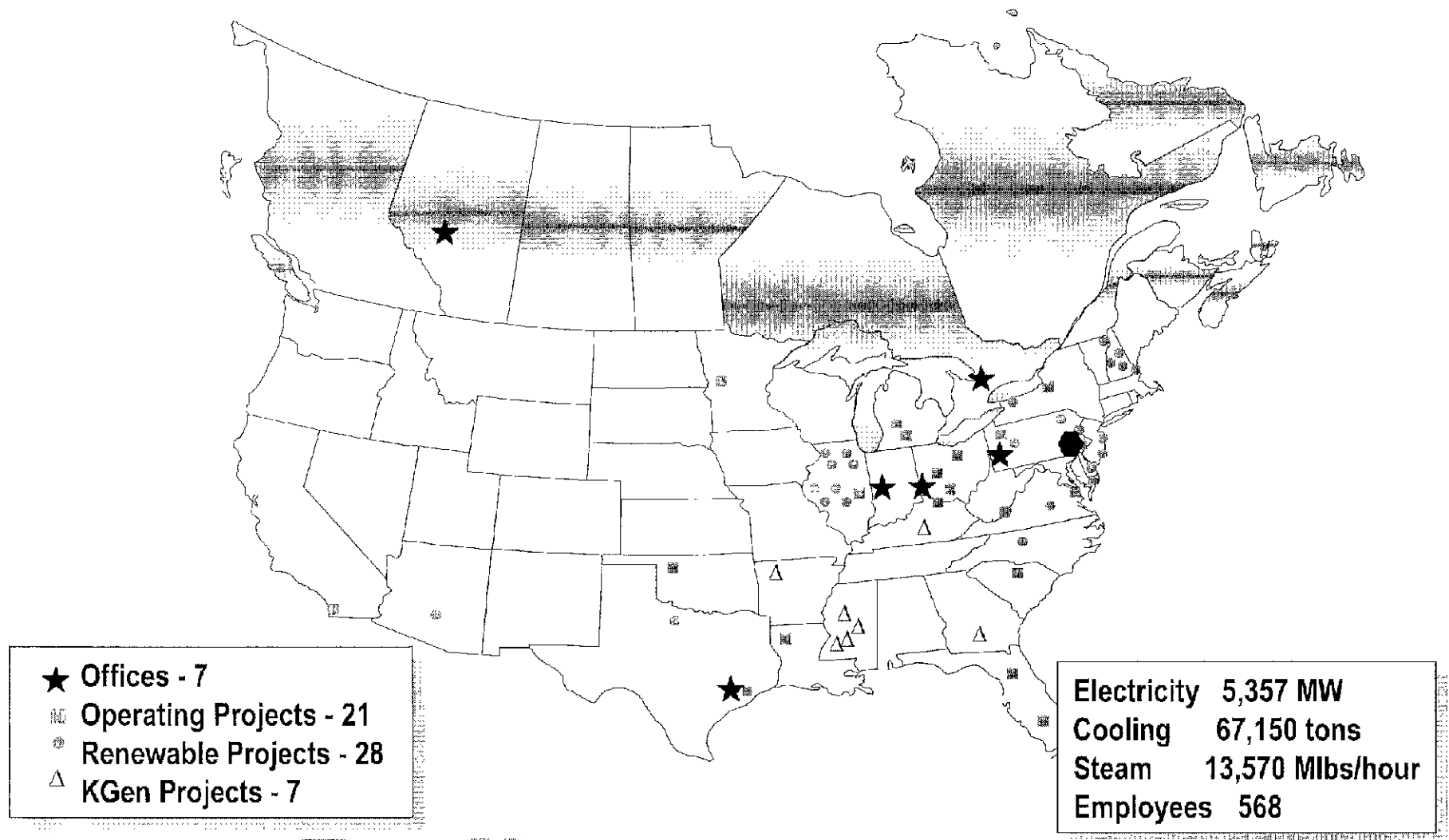
- Wood fired cogeneration plant
- Uses primarily urban waste wood from within 100 mile radius
- Generates 25 MW power 15 MWe thermal (steam) for district heating
- Reduced coal emissions by 600 tons SO₂ and 238,000 tons CO₂

Biofuels and Biomass

- 2005 Energy Bill will provide significant opportunity/pressure on the biomass market
 - *Tax incentives and mandatory volumes were extended. Ethanol is primarily made from corn but the bill provides development incentives and significant additional tax benefits for cellulose to ethanol production.*
 - *Currently there is tremendous activity in the cellulose to ethanol market with multiple technologies trying to be the first to commercialize*
 - *Cellulose to ethanol plants will require year round raw material supply*
 - Likely suppliers are energy crops, forest residues and agricultural waste
 - Organized markets will develop to serve these plants



Cinergy Solutions' Offices and Operating Projects



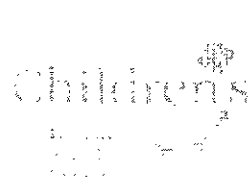
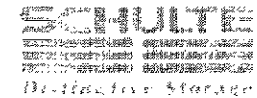
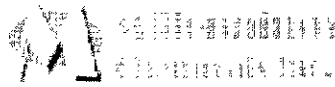
CINERGY
SOLUTIONS



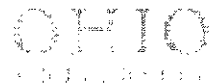
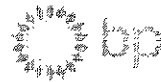
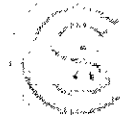
Cinergy Solutions Business Focus

- Supply Solutions
 - *Build, own, operate and maintain plants for industrial, hospital and universities*
 - *Provide O&M outsourcing services*
 - *Focus on cogeneration*
- Demand Solutions
 - *Energy Services Company (ESCO) providing energy reduction services to industrial, municipal, education and government clients*
 - *Projects are done on a shared cost savings basis*
- Utility Solutions
 - *High voltage infrastructure projects for industrial and education clients*

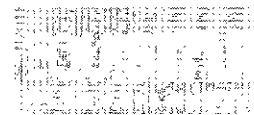
Cinergy Solutions Customers



Celanese



Essroc
Largest in the world



ALBERTA-PACIFIC
FOREST INDUSTRIES INC.



Dow (Union Carbide), South Charleston WV

- Starting 2005, CS provide steam to the South Charleston Technical Park
- New gas fired boiler assets providing up to 90,000 lb/hr of 230 psi steam
- Operates under long term contract
- CS provides construction, financing and O&M services

Cinergy Solutions - Contact Information

John Brabender

Director, Project Development

139 East Fourth Street

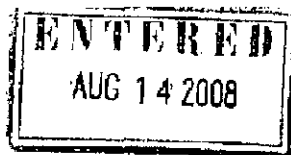
Cincinnati, OH 45202

Office Phone 513-419-5962





D79723546

Court of Common Pleas
Hamilton County, OhioJUDGE ROBERT P. RUEHLMAN
Court of Common Pleas
Hamilton County, Ohio

John Deeds

NO. A 0701671

Plaintiff.

vs.

ENTRY

Duke Energy, et al

Defendant

Unsealing the records
in this case &removing the protective
order

This matter having come on for hearing on
the motions of Plaintiff and Intervening Third
Party The Court has considered it is
hereby ordered that said motions are granted &
it is ordered that the records in this case are
unsealed & the stipulated protective order in this
case is revoked.

Judge _____

Plaintiff ~~John~~ Deeds

Louis F. Dilligan - under objection & Exception of all Defendants
Defendant Duke Energy

Kent Wallington
Counsel for Interv.
Interv.

**Court of Common Pleas
Hamilton County, Ohio**

John Deeds

NO. A 0701671

Plaintiff.

vs.

ENTRY

Duke Energy, et al.

Defendant

Unsealing the records
in this case &
removing the protection
order

This matter having come on for hearing on the motions of Plaintiff and Intervening Third Party The Cincinnati Enquirer, it is hereby ordered that said motions are granted & it is ordered that the records in this case are unsealed & the stipulated protection order in this case is revoked.

Judge _____

Plaintiff Deeds

Defendant Duke Energy

Counsel for Cint.
Enquirer



August 15, 2008

Duke payout list revealed

By Dan Horn
dhorn@enquirer.com

Some of southern Ohio's largest companies saved millions of dollars on their electric bills during the past three years while residential customers saw a 30 percent increase in their rates.

Documents obtained today by The Enquirer show that Duke Energy has paid 22 companies – including Procter & Gamble, AK Steel, General Electric and several major hospitals – a total of about \$22 million a year since 2005.

Duke describes the payments as option agreements that ensured the companies would continue to buy electrical power from Duke instead of a competitor.

But two lawsuits, one of which goes to trial Monday, claim the payments are kickbacks that rewarded the companies for dropping opposition to a proposed rate increase in 2004.

"The big users get a huge discount and the people who are not in position to negotiate are harmed financially," said Randy Freking, one of the lawyers suing Duke. "Goliath wins and David loses."

He said the payments are improper because Ohio law bars utilities from giving rebates to one group of customers at the expense of another.

Duke officials, as well as some of the customers who signed the deals, say the payments are legitimate business transactions that did not impact rates for any other customers.

"We believe these contracts are fully lawful and proper," said Duke spokesman Steve Brash.

The list of companies that received the payments from Duke had remained secret since they were signed in late 2004 and early 2005. Duke said the contracts, which expire at the end of this year, contain trade secrets and should remain confidential.

The Enquirer challenged that assertion this week in Hamilton County Common Pleas Court, arguing that the contracts now are part of a court record and should be opened to the public. Judge Robert Ruehlman agreed, clearing the way for the release of hundreds of pages of documents today.

A wide range of companies are on the list.

They include automakers, such as Ford and General Motors; hospitals, such as Christ Hospital, Jewish Hospital, Drake Center, the Tri-Health hospitals and the Mercy hospitals; and industrial customers, such as AK Steel, General Electric, Procter & Gamble, BP North America and Marathon Petroleum.

All of the companies do business in southern Ohio, where Duke dominates electric service, and all of them are big energy consumers.

The contracts include a formula for calculating the annual payments but do not specify how much each company received from Duke. Other court documents show the payments total about \$22 million a year.

Most of the companies contacted today either declined comment or did not respond to interview requests. But those that did respond said the deals made good business sense and did no harm to other Duke customers.

"There have been accusations that these option agreements caused someone else's rate to go up. That's simply not true," said Alan McCoy, a spokesman for AK Steel. "These option agreements were not impacting other rate payers."

Brash said the agreements, also known as "side deals," are common in the utility industry and arose in this case from Ohio's venture into a competitive market system in 2004.

He said Duke, which was Cinergy at the time, created an independent spinoff company in 2004 that now is known as Duke Energy Retail Sales. The unregulated company, like those created by other utilities, was supposed to compete for customers on the open market.

When some of Duke's big customers objected to the proposed rate increase and started shopping for a better deal, Duke Energy Retail Sales offered them service contracts with lower rates.

But Brash said those contracts fell apart in late 2004 when officials at Duke Energy Retail Sales became concerned they were too risky.

As an alternative, the company offered the 22 big customers "option agreements," which gave Duke Energy Retail Sales the option of selling power to the companies if competition drove down rates.

If rates remained high, Brash said, the companies would keep buying from Duke and would receive annual payments from the utility.

Because the rates never fell, Duke kept writing checks to the companies.

"The option agreement was essentially an insurance policy," Brash said.

He said the Public Utilities Commission of Ohio reviewed the side deals and approved them, confirming they are legal.

Freking and others dispute that contention because the commission did not approve the deals when they were signed. It did conclude in 2007 that the deals did not influence rates, but Freking said that's different than declaring them legal.

"The PUCO did not approve them," Freking said. "It took no position on the legality of the agreements."

The Ohio Consumers' Counsel, a state agency that represents the interests of residential customers, also has opposed the side deals and believes they discriminate against residential customers.

Freking said in-house emails at Duke prove the payments were made to win the companies' support for the rate increase.

One email exchange describes the companies' initial opposition to the rate increase as a "roadblock" to approval. Duke cut a deal to "eliminate this roadblock," the email states.

The payments are the focus of both lawsuits against Duke. One suit alleges antitrust violations and is pending in federal court.

The other involves former Duke employee John Deeds, who claims he was fired after he raised concerns about the payments. Deeds case is set for trial Monday before Judge Ruehlman.

The following companies based or with operations in southern Ohio received payments from Duke Energy over the past three years:

General Motors Inc.

Marathon Petroleum

Tri-Health Hospitals

Mercy Hospital, Fairfield

Children's Hospital Medical Center

AK Steel Corp.

General Electric Co.

BP Products North America

Mercy Franciscan Hospital, Western Hills

Middletown Regional Hospital (now Atrium Medical Center)

Ford Motor Co.

Summit Behavioral Health Care

Procter & Gamble Co.

Air Products and Chemicals Inc.

Christ Hospital

Jewish Hospital

Drake Center Inc.

Mercy Franciscan Hospital, Mt. Airy

Mercy Hospital, Anderson

Mercy Hospital, Clermont

McCullough-Hyde Memorial Hospital

Deaconess Hospital

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