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PUCO

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
	)	

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MEMORANDUM CONTRA JOINT APPLICATION FOR REHEARING OF THE  
DUKE-AFFILIATED COMPANIES

BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Office of the Ohio Consumers' Counsel ("OCC") files this memorandum contra to promote transparency in the Ohio regulatory process and to oppose a request for the Public Utilities Commission of Ohio ("Commission" or "PUCO") to keep certain information secret from the Ohio public. On May 28 and June 4, 2008, the PUCO issued Entries regarding public access to information that has accumulated under a protected status in the above-captioned cases.

On July 7, 2008, three applications for rehearing were filed regarding the June Entry, including one submitted by the Duke-affiliated companies of Duke Energy, Inc., Duke Energy Retail Sales, LLC, and Cinergy Corp. (collectively, "Duke" or "Companies"). The Commission issued its Entry on Rehearing on July 31, 2008.

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On September 2, 2008, the Office of the Ohio Consumers' Counsel filed an Application for Rehearing. The Commission issued its Second Entry on Rehearing on October 1, 2008.

On October 31, 2008, Duke filed a second Application for Rehearing ("Application"). In this most recent Application, Duke seeks redactions to a portion of the PUCO's Bate stamp page 114, and attaches a proposed redaction. Duke's Application did not mention the redactions shown on Bate stamp page 255, a page that contains nearly the same information as Bate stamp page 114 but for the most part has fewer redactions than proposed by Duke (meaning Bate stamp page 255 for the most part makes more information available to the public than what Duke proposes for Bate stamp page 114). The redactions to Bate stamp page 255 are the same as those shown on both Bate stamp pages 114 and 255 on the disc provided in connection with the May/June Entries. Duke never applied for rehearing regarding the redactions on Bate stamp pages 114 and 255 that resulted from the May/June Entries.

## **II. ARGUMENT**

Duke seeks the redaction to Bates stamp page 114 because that page does not deal with either General Motors or Marathon/Ashland Petroleum,<sup>1</sup> companies whose agreements were a main topic in the Second Entry on Rehearing. Specifically, Duke requests "that Bates page 114 be redacted so as to remove all references to the option

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<sup>1</sup> Application at 2.

contract customer names revealed therein, along with all references to the pricing methodologies of those option contracts.’’<sup>2</sup> According to the PUCO’s orders and entries in these cases, portions of Bate stamp page 114 should be redacted.<sup>3</sup> But those redactions should be made in the manner shown on nearly identical Bate stamp page 255 and not according to the redactions proposed in Duke’s Application that for the most part are greater than any the PUCO ordered.

R.C. 4903.10 states the requirements concerning the timely submission of an application for rehearing:

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.

Duke did not submit an application for rehearing regarding the redactions to Bate stamp pages 114 and 255 that resulted from the May/June Entries. Duke’s submission of new, substitute redactions in its latest Application is untimely and should be rejected.

The redactions to Bate stamp page 114 should be the same as the redactions for that page that resulted from the May/June Entries. These are the same redactions that are shown on Bate stamp page 255 that resulted from the October Entry.

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<sup>2</sup> Id.

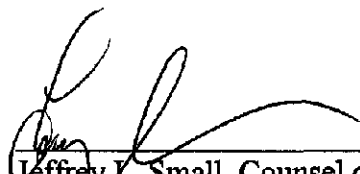
<sup>3</sup> As stated in previous pleadings on the subject of the redactions, the OCC does not agree with the Commission’s determinations regarding the application of Ohio’s Trade Secrets Law to the release of information in these cases—and OCC believes that more information should be made available to the public to serve the principle of transparency in PUCO proceedings. That issue is the subject an appeal to the Supreme Court of Ohio. The OCC herein argues only within the bounds of the Commission’s previous orders and entries on the subject of the release of information to the public.

### III. CONCLUSION

The public has waited for the release of information concerning these cases for over a year. Duke's Application reveals an oversight by the Commission, one that can be corrected simply and without consideration of Duke's re-argument concerning the form of the redactions. Under these circumstances, the PUCO should correct its oversight and release information otherwise consistent with its Second Entry on Rehearing *without further delay*.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



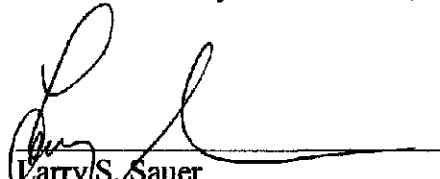
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra Application 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 4<sup>th</sup> day of November, 2008.

  
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