

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

THIRD ENTRY ON REHEARING

The Commission finds:

- (1) On November 22, 2006, the Supreme Court of Ohio issued its decision in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300, 2006-Ohio-5789, remanding certain issues to the Commission for further consideration in Cases 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, AND 03-2080-EL-ATA. The additional, above-captioned cases were subsequently consolidated with the remanded cases.
- (2) In the course of these proceedings, parties obtained certain information through discovery, including side agreements between parties, and sought to maintain it as confidential. Thus, with regard to those side agreements and certain other information, numerous motions for protective orders were filed by various parties.
- (3) On October 24, 2007, the Commission issued its order on remand in these consolidated proceedings. In our order, we discussed the motions for protective orders at great length, ultimately finding that certain of the information in the documents in question is within the definition of a trade secret and should, therefore, be the subject of a protective order. The parties were directed to identify all documents or portions of documents that they sought to have redacted as a trade secret information.

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- (4) On May 28 and June 4, 2008, the Commission addressed the parties' proposed redaction of trade secret information from numerous documents filed in these cases, numbered the pages at issue, and proposed specific redactions.
- (5) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (6) On July 7, 2008, Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; and Cinergy Corp. (jointly, Duke entities) filed an application for rehearing of that entry, identifying numerous pages on which the Duke entities believed that the proposed redactions were in error.
- (7) On July 31, 2008, the Commission issued its first entry on rehearing on this issue, modifying many of the redactions.
- (8) The Duke entities did not apply for rehearing of the first entry on rehearing, although one other party did do so.
- (9) On October 1, 2008, the Commission issued its second entry on rehearing, further modifying the proposed redactions.
- (10) On October 31, 2008, the Duke entities filed an application, under consideration here, for rehearing of the second entry on rehearing. In its only assignment of error, the Duke entities request that the Commission find that one identified document, Bates page 114, should be redacted pursuant to the holding in the second entry on rehearing. According to the Duke entities, the Commission held that, except for General Motors and Marathon/Ashland Petroleum, the customer names in the option contracts and the pricing methodology used in those option contracts remained a trade secret because they have not been revealed to the general public. They argue that Bates page 114 should be redacted so as to remove all references to the customer names revealed thereon, along with all references to the pricing methodologies of those option contracts.
- (11) On November 4, 2008, the Ohio Consumers' Counsel (OCC) filed a memorandum contra the Duke entities' rehearing application. OCC points out that page 114, and the redactions thereof, are identical to page 255 and its redactions. OCC notes

that the Duke entities did not ask for rehearing concerning page 255.

- (12) The proposed redactions of all confidential documents in this docket, including Bates page 114, were first identified by the Commission in its entries issued on May 28 and June 4, 2008. Applications for rehearing of the Commission's June 4, 2008, entry were filed by several of the parties, including the Duke entities. However, neither the Duke entities nor any other party raised any assignment of error concerning page 114 at that time. We would also note that neither the Duke entities nor any other party raised any concern regarding page 114 in the filing of applications for rehearing of the first entry on rehearing.
- (13) It is only in the Duke entities' application for rehearing of the second entry on rehearing when they raise this issue. Although the Duke entities phrase their argument in terms of the "holding in the Second Entry," the Commission's order that customer names and pricing methodologies be redacted has not changed since its issuance as part of the order on remand on October 24, 2007. The Duke entities' assignment of error, therefore, actually stems from our original conclusion regarding the matters to be redacted, not on any new decision made in the second entry on rehearing.
- (14) It is also critical to note that the redactions on page 114 have not been altered in any regard since the initial issuance of redactions in June 2008. If the Commission had altered page 114 in the second entry on rehearing, then the alteration would have been an appropriate subject matter for a new assignment of error.
- (15) As the second entry on rehearing made no change to either the directive by which the redactions on page 114 were made or the proposed redactions on page 114, no assignment of error concerning this page is timely. Therefore, the Duke entities' application for rehearing is untimely and should be denied.
- (16) As the time for filing any applications for rehearing concerning the redacted documents has expired, no issues remain to be determined in this regard. Accordingly, the Commission directs the attorney examiners to file the redacted documents in this docket as soon as possible.

- (17) Even if the Duke entities' application were not untimely, we would deny it on the ground that, as pointed out by OCC, any information that the Duke entities are seeking to redact from page 114 is also to be released on page 255, about which the Duke entities did not complain.

It is, therefore,

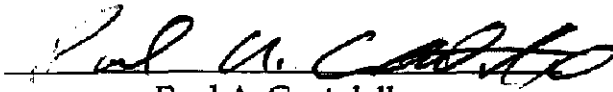
ORDERED, That the Duke entities' application for rehearing be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in these proceedings.

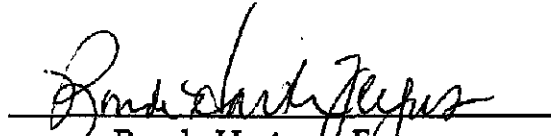
THE PUBLIC UTILITIES COMMISSION OF OHIO



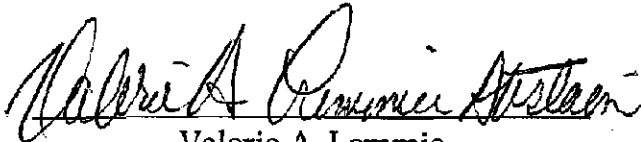
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

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Renee J. Jenkins
Secretary