In The
SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel, Appellant, v. **The Public Utilities Commission of Ohio,** Appellee.	:	Case No. 08-0367 Appeal from the Public Utilities Commission of Ohio, *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, *et al.*

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SUBMITTED ON BEHALF OF APPELLEE THE PUBLIC UTILITIES COMMISSION OF OHIO

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THE PUBLIC UTILITIES COMMISSION OF OHIO

Pursuant to Rule IX, Section 8, of the Rules of Practice of the Supreme Court of Ohio, the Public Utilities Commission of Ohio submits the following list of additional authorities in the above-referenced matter:

In re Cincinnati Gas & Electric Co., Case Nos. 03-93-EL-ATA, *et al.* (Entry) (May 28, 2008).

In re Cincinnati Gas & Electric Co., Case Nos. 03-93-EL-ATA, *et al.* (Entry on Rehearing) (July 31, 2008).

In re Cincinnati Gas & Electric Co., Case Nos. 03-93-EL-ATA, *et al.* (Second Entry on Rehearing) (October 1, 2008).

In re Cincinnati Gas & Electric Co., Case Nos. 03-93-EL-ATA, *et al.* (Third Entry on Rehearing) (November 5, 2008).

In re Cincinnati Gas & Electric Co., Case Nos. 03-93-EL-ATA, *et al.* (Entry) (November 10, 2008).

Respectfully submitted,

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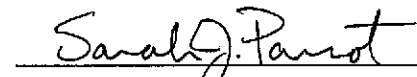

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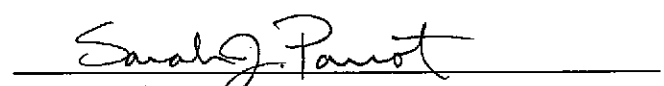
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **List of Additional Authorities** submitted on behalf of Appellee, the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 10th day of November, 2008.



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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

ENTRY

The attorney examiner finds:

(1) On May 28, 2008, the Commission issued an entry in these consolidated proceedings, addressing the redaction of confidential documents. Included in those documents are all documents shown on the docket card as confidential.

(2) One of the documents shown on the docket card as confidential is OCC Remand Exhibit 6. However, that document was admitted publicly, following a discussion on the record, on March 20, 2007, confirming that it was not a confidential document. (Tr. II at 134-135.) Therefore, the examiner finds that OCC Remand Exhibit 6, docketed on April 3, 2007, should be immediately released into the public domain.

It is, therefore,

ORDERED, That the Commission's docketing division release, into the public records, OCC Remand Exhibit 6, docketed on April 3, 2007. It is, further,

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Technician _____ Date Processed _ 5/28/08

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Jeanne W. Kingery
Attorney Examiner

;geb

Entered in the Journal
MAY 28 2008

Reneé J. Jenkins
Secretary

28

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
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	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC

ENTRY ON REHEARING

The Commission finds:

(1) On June 4, 2008, the Commission issued an entry concerning the redaction of trade secret information from numerous documents filed in these cases.

(2) 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. Section 1.14, Revised Code, provides that, when the last day of a period within which an act may be done falls on a legal holiday, that act may be done on the next succeeding day that is not Sunday or a legal holiday. That same section also provides that, when a public office in which such an act is to be performed is closed to the public for the entire day that constitutes the last day for doing the act, such act may be performed on the next succeeding day that is not a Sunday or a legal holiday.

(3) On July 4, 2008, the Commission's office was closed for the entire day for a legal holiday. On July 7, 2008, the office of the Ohio Consumers' Counsel (OCC); Industrial Energy Users – Ohio (IEU); and, jointly, Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; and Cinergy Corp. (collectively, Duke) filed applications for rehearing of the Commission's June 4, 2008, entry. On July 17, 2008, these same three parties also filed memoranda contra the applications for rehearing. In summary, OCC, IEU, and Duke submit that the entry incorrectly addressed certain trade secret issues and made other errors in the application of the Commission's prior order

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relating to the issue. Each party raises certain general issues and lists a number of specific claimed redaction errors. We will first address the general issues and then proceed to the lists of specific requested changes to the documents.

(4) *OCC raises four general assignments of error.* In the *first* claimed error, OCC indicates that the Commission's proposed redactions cover information that has already been released to the public and that, consequently, should not be treated as trade secret material.

Neither Duke nor IEU responds to this assignment of error. Duke did, however, include in its memorandum contra a lengthy description of the reasons for its recommendation that the Commission "open a docket in which to explore alternative means to the processes employed in this case," with regard to redactions. Although this is not the appropriate docket in which to consider the merits of Duke's recommendation, the arguments made by Duke also respond to OCC's first assignment of error. Therefore, we will review that discussion in the context of this assignment of error.

Duke starts by asserting that Ohio's public records laws do not "mandate the general public disclosure of confidential information following an unauthorized, or even the merely inadvertent, disclosure of such information, particularly when the general public has not exhibited an actual awareness of the disclosed information." (Duke memorandum contra at 7.) Duke supports this conclusion by reference to a number of cases, none of which is decided by the Supreme Court of Ohio and, therefore, none of which is directly controlling with regard to the Commission's decisions.

State ex rel. Lundgren v. LaTourette, 85 Ohio App.3d 809 (Ohio Ct. App. 11th Dist. 1993), is a case in which the appellate court refused to order disclosure of confidential trial-preparation materials, where a prosecutor entered into a contract to write a book about a case she was actively prosecuting. The court found that the public use of the materials was closer to an "unauthorized leak than a voluntary disclosure by the governmental agency." *Lundgren* at 811. The court specifically noted that it did not appear that the requested materials had actually been used in writing the book. The court found that the exception for trial preparation materials had not been waived by disclosure. Although Duke cites this case for the proposition that "the exempt status of confidential information under the [Public Records Act] is not waived when the information is released to the

public without authorization from the holder of the information," the holding in the case is actually based on the fact that any disclosure of confidential information was expressly prohibited by the government office. We also note that the court specifically pointed out that the author apparently did not use any of the confidential materials in writing the book. Therefore, this is not a case in which confidential materials were actually disclosed but, rather, one in which they might have been used as part of the basis for a publication.

The next case cited by Duke is *Public Citizen Health Research Group v. Food and Drug Administration*, 953 F.Supp. 400 (D.C. 1996). Duke correctly points out that, in this federal case, certain confidential information that was inadvertently released was allowed to maintain its confidential status. However, the court distinguished the situation it was considering, where the government inadvertently disclosed the information, from other situations in which the party seeking to maintain the confidential status was also the one that had disclosed the information. Duke also correctly notes that, in this case, the confidentiality of the information had not actually been breached by its inclusion in the court records.

In *Florida House of Representatives v. U.S. Dept. of Commerce*, 961 F.2d 941 (11th Cir. 1992), the appellate court refused to find that confidentiality was waived where the disclosure in question was ordered by a court and was, therefore, involuntary.

Finally, Duke cites to *Gates Rubber Co. v. Bando Chemical Indus. Ltd.*, 9 F.3d 823 (10th Cir. 1993). In that case, as pointed out by Duke, the federal appellate court allowed the material to remain confidential on the grounds that there was "no evidence that competitor had access to or learned of the [trade secrets]during the period after the hearing and before the record was sealed."

Duke concludes with the statement that, in the present situation, "certain confidential information was inadvertently disclosed by the Duke Entities, just as was the [Freedom of Information Act] exempt information in *Florida House of Representatives*, *Public Citizen Health Research Group*, and *Gates Rubber Co.*" (Duke memorandum contra at 9.) The Commission disagrees with this conclusion as it applies to the present circumstance. As noted in our summary of the case holdings, the *Florida House of Representatives* decision was an involuntary disclosure, not an inadvertent one. The *Public Citizen*

Health Research Group decision was not based on a disclosure by the owner of the confidential information but, rather, by the government. The *Gates Rubber Co.* decision was one in which there was no actual public access to the confidential information during the time when it was not under seal. In the situation we are considering, the disclosure was not involuntary, was not by the government, and did allow for public access to the information in question. Therefore, the Commission agrees with OCC that information already released in the proceeding is not a trade secret. We will review each of OCC's specific claims in this regard in our review of specific redactions.

(5) OCC's second issue relates to the categories of information to be protected. It points out that the order on remand determined the framework for such categories and contends that it could not be altered except through an application for rehearing. It then points out that the Commission's proposed redactions cover some financial information that was not within those categories.

In response, Duke asserts that the list of categories set forth in the Commission's order on remand was not intended to be exhaustive, as there is other information that should be regarded as a trade secret on its own merit.

While the Commission's delineation of categories was intended to be exhaustive, it was only exhaustive as it related to the side agreement issues. The Commission is also aware that, for example, certain types of financial information (such as projections and pricing methodologies) may generally and appropriately be treated as trade secrets. We do not find it unreasonable to allow such redactions, even though the information would not fall into one of the listed categories.

(6) OCC next raises a small number of instances where documents appeared out of order. It asks that they be re-collated. Neither Duke nor IEU disagrees, although Duke contends that out-or-order pages are not unreasonable or unlawful. The Commission will alter the order of the pages as suggested by OCC and will renumber those pages appropriately.

(7) Finally, OCC points out that the Commission must minimize the amount of information to be protected from public disclosure. It raises certain examples of information with regard to which Duke failed to meet its statutory burden to prove trade secret status, as well as other material that is now outdated.

Duke points out that Ohio law also requires the Commission to protect confidential information.

The Commission is aware of its competing obligations and will address these items individually, as they arise in the chart below.

(8) IEU responds to OCC's application for rehearing only with regard to one specific page of the proposed redactions. The Commission will consider that concern in the chart below.

(9) In its application for rehearing, IEU raises, first, the fact that the Commission did not redact customer names from certain locations in the documents. OCC responds with various arguments, including that certain customer names have already been released, that not all customer names are included within the Commission's categories of trade secrets, and that the amount of information held to be a trade secret should be minimized. The Commission will address each of the specific claims within the context of specific redactions.

(10) IEU's second issue relates to names of employees. It notes that the Commission specifically found that employees' names are not trade secrets but did not allow those employees' names to be released if their release would identify a customer. While the Commission does not disagree with IEU's argument in theory, the specific instances it cites will be addressed below in discussions of specific redactions.

(11) Duke asks the Commission to reconsider its finding that its employees' names are not protectable, where those employees did not appear as witnesses and are not attorneys representing Duke entities. Duke suggests that the Commission should redact their names on the ground that Duke's economic interests will be impaired if their employees believe they might be subject to public criticism for conduct in the best interests of Duke.

OCC responds on two grounds. First, it notes that this is a decision that was made in the order on remand and points out that Duke's argument is therefore a matter that should have been raised on rehearing of that order. In addition, OCC disagrees with the substance of Duke's position, pointing out that employees' responsibilities regarding these matters were far from tangential.

Duke is in error in this regard. The first factor the Commission must consider in making such an evaluation is the extent to which the information is known outside the business. That given individuals

are employed by Duke is a secret from no one. This is not trade secret information and will not be redacted.

(12) Duke's next argument is that its economic forecasts on Commission pages 1111 through 1130 should be deemed a trade secret. It points out that these forecasts run through the year 2008 and reveal the existence of economic variables that are of continuing significance to various of the Duke entities, notwithstanding their being based on information that is not current. Further, Duke asserts that neither this type of information nor this specific information is generally known outside of Duke or within Duke other than as necessary. Finally, it indicates that great efforts were taken to protect information of this sort.

OCC points out that the factors to be relied upon in determining whether information is a trade secret include an analysis of whether it is outdated. These pages, according to OCC, contain projections that were filed in 2004 and are now of no further significance. In addition, OCC takes issue with Duke's statement that the documents are of significance to various Duke affiliates.

The Commission finds that this information remains sensitive to the Duke entities and should be maintained as confidential. While we reach this conclusion as to its current significance, we would underline the fact that financial projections will not remain confidential forever, regardless of the fact that outdated projections may give a competitor some idea of historical capacity, costs, and business operations.

(13) Duke also asserts that four specific documents (pages 2318, 2372, 2437, and 2535) identify the names of "marquee customers" of an unregulated subsidiary of Duke Energy Corp. Customer identity, it suggests, is a classic example of confidential business information and should be redacted. If the information is to be released, Duke suggests that the Commission provide advance notice of that release to the customers in question.

OCC contends that this information has already been revealed to "the financial community."

The Commission notes that, according to an affidavit attached to Duke's motion for a protective order on this information, the credit rating analysts to whom Duke released this information had agreed

to keep it confidential. We find that, like other customers' names, the identification of these marquee customers is a trade secret.

(14) Finally, Duke asks for rehearing of the Commission's conclusion that certain documents should be considered public records, even if they did not form the basis of a Commission opinion. Duke opines that this holding would mean that information offered in a case but not admitted, on the grounds that it is irrelevant, is nonetheless a public record for purposes of documenting the Commission's determination of irrelevancy.

OCC disagrees with Duke's reasoning, pointing out that the Commission is not entitled to disregard Ohio law regarding public records.

Duke has raised no new argument on rehearing of this issue that was not fully considered in our entry. This ground for rehearing is denied.

(15) The Commission has prepared a grid, reflecting our responses to parties' specific claims of redaction errors. In the page/line column, we describe the location, if the item being addressed is not on a line. In the "party" column, the letter "O" means that OCC claims the error, the letter "I" means that IEU claims the error, and the letter "D" means that Duke claims the error. In the "result" column, the letter "G" means that the claim of error is granted and the letter "D" means that the claim of error is denied. In the "rationale" column, we refer to the following several bases for the Commission's ruling:

(a) "Error." These are instances where the Commission simply made an inadvertent error. Where the error may not be clear, we will provide a brief explanation of its nature.

(b) "Identification." These are instances where a party has suggested that information be revealed, where it is currently proposed to be redacted. The Commission will deny these claimed errors where revealing the information would tend to identify a customer or a party to a side agreement.

(c) "Contract term." These are instances where a party has suggested that information be revealed on the basis that it is not a contract term, whether because it is just a term

of the rate stabilization plan or material deleted from a draft contract. These may also be instances where a party has suggested that information be redacted on the ground that it is a contract term. Where the information in question would disclose or tend to disclose trade secret contract terms that are otherwise being redacted, the Commission will maintain it as a trade secret.

(d) "Customer 1." Duke, IEU, and OCC all claim that the Commission erred in proposing to release, in various identified places, a particular customer name and a particular rider name. These instances, however, were not unintentional and stem from Duke's prior release of this information, causing it not to qualify as a trade secret. In Duke's filing on January 23, 2008, Duke publicly disclosed the following:

> OCC continues to complain that the agreement between [Duke Energy Retail Sales LLC (DERS)] and [customer 1] turns the RTC into a bypassable charge. The simple fact that DERS agreed to provide service to [customer 1] at a price based upon a discount measured by the RTC does not render the RTC bypassable. As the evidence shows, DE-Ohio continues to collect the full RTC from [customer 1]. Furthermore, Ohio law expressly authorizes payment of the RTC by one entity on behalf of another. . . . OCC and OMG contend that DERS' payment to [customer 1] calculated with reference to the RTC contravenes the non-discrimination section . . ..

This section of the pleading in question includes citations to the OCC brief that was being discussed. OCC, in its brief, included citations to the customer side agreement, by Bates number. All of this information is already public. Thus, in that particular, referenced side agreement, identified by Bates number, neither the customer name nor the rider name can be considered trade secret information. We will therefore release the

customer name throughout that side agreement. In addition, on the specified page of that side agreement, we will release the reference to the reimbursement of the RTC.

(e) "Customer 2." Duke and OCC assert that the Commission erred in proposing to release the name of another customer, and the name of its employee, in certain documents. These instances were intentional and stem from Duke's prior release of this information, making it no longer qualify as a trade secret. In its filing on January 23, 2008, Duke released a version of the transcript of a deposition, openly disclosing the name of the deponent and the deponent's employment information. The transcript, while redacting the name of the employer when discussing negotiations and the terms of the specific contracts, is littered with statements regarding the negotiation of the employer's side agreements. The deponent also discusses the fact that no other parties would have been present during their negotiations. A reader could come to no reasonable conclusion other than that the employer was the counterparty to the attached side agreements. The deponent's participation in side-agreement negotiations was also not redacted by Duke from the Duke reply brief. The Duke affiliates also failed to redact a section heading in a brief, identifying the succeeding single paragraph as being related to the employer's side agreements. As a result of the numerous references to this customer's involvement, we find that this information is no longer a trade secret. We will, therefore, not redact the customer's name anywhere in the transcript of that deposition or in the attached side agreements. In addition, since those side agreements show the parties' Bates-stamped page numbers, we will unredact the customer's name in those same documents, where the documents in question appear elsewhere in the record. In one other location, we will redact only Bates stamp numbers that would, without redaction, continue the chain of disclosures.

(f) "Termination." Duke claims that termination dates of side agreements, or termination information, should be redacted. While the Commission's order on remand

allowed the redaction of such dates, this is another circumstance in which Duke has already publicly released this information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, but did not redact other information, thereby revealing that the payments to parties with side agreements "will last through [redacted] at which point the ERRSP will terminate." The date on which the rate stabilization plan terminates is public knowledge. Therefore, Duke's own publicly filed document reveals termination date of the agreements.

(g) "Volume." Duke also claims that the volume of generation covered by side agreements should be redacted. While the Commission's order on remand allowed redaction of the volume of generation covered by each side agreement, this is another circumstance in which Duke has already publicly released this information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, thereby revealing that the parties with side agreements "are actually full-requirement customers of Duke Energy Ohio . . .." Therefore, references in the side agreements to covering the full requirements of the customers are not trade secret and will not be redacted.

(h) "Riders." Duke further claims that names of Riders should be redacted. While the Commission's order on remand allowed the redaction of the consideration in each such side agreement, which could certainly include the names of the riders, this is another circumstance in which Duke has already publicly released information, making it not qualify as a trade secret. In its filing on December 7, 2007, Duke redacted only portions of an e-mail, dated July 24, 2006, thereby revealing that "[g]enerally speaking, the contracts with each group specify that the customers belonging to that group will receive refunds of various RSP riders (e.g., Rider AAC, Rider FPP, Rider IMF, Rider SRT, etc.)." Therefore, we are not redacting discussions of the fact that the side agreements, in general, provided for the reimbursement

of riders. In the side agreements themselves, however, we continue to redact the specific terms for reimbursement, as the e-mail did not reveal that information.

(i) "Payments." Duke claims that we erred in not redacting information relating to certain special payments called for by certain of the side agreements. Duke suggests that these are examples of contractual consideration that is trade secret information. Duke is incorrect. The consideration that we held to be trade secret is what is to be paid for the electric services that are the subject of those agreements. The payments that we have not redacted are entirely unrelated to electric service. As we noted in our last entry, we find that they are not trade secret information and, thus, should not be redacted.

(j) "Inconsistency." In the thousands of pages at issue, there are numerous documents that appear multiple times and there are even more instances of contract language that appears multiple times. Those documents should be redacted consistently. Where a party has observed that the Commission's proposed redactions of such documents are inconsistent, the claimed error will be granted to make the items consistent. However, the Commission will not necessarily redact in the form requested by the party. Rather, the Commission will redact these areas appropriately, on the basis of the principles that guide all of the redactions being made in these proceedings.

(k) "Public." As discussed previously, information that has already been publicly released will not be held under seal.

(l) "Collation." OCC has noted several instances in which the Commission's Bates-stamped page numbers reflect incorrect collation of the pages. These will be corrected.

(m) "Trade secret." As discussed previously, certain information should be held under seal due to the fact that it falls within the definition of a trade secret, even though it is not one of the Commission's categories relating to side agreements.

Page/ location	Party	Result	Rationale
40/3	O	G	Error. Not a term of a side agreement.
58/18	O	D	Contract term.
67/22	O	D	Identification.
67/24	O	D	Identification.
68/21	O	D	Identification.
69/5	O	D	Identification.
122/para. 2 & 7	I/D	G	Error.
124/para. 1	I/D	G	Error.
137	D	G/D	Regarding para. 2, error. Regarding para. 5, denied because the agreement only says party will comply with Commission order. Regarding para. 1, inconsistency in redacting 137 and 244. They will be made consistent.
143/para. 1	D	G	Inconsistency in redacting para. 1 and pages 279 and 348. They will be made consistent.
144/para. 5	D	G	Inconsistency in redacting para. 5 and page 279. They will be made consistent.
147	D	G	Inconsistency in redacting 147 and 526. They will be made consistent. Error regarding signature.
151	D	D	Although Duke stated that 151 and 536 were inconsistent, they were actually unrelated.
157/title in 1st section	D	G	Inconsistency in redacting the titles. They will be made consistent.
180	D	G	Inconsistency in redacting 180 and 137. They will be made consistent.

Page/ location	Party	Result	Rationale
183/14-15	O	G	Error. Language after footnote will be unredacted.
186/16	O/D	G	Error. Customer name will be redacted.
189/footnote	D	D	Public. This footnote was fully disclosed, with no redactions, in Duke's January 23, 2008, filing.
201/1-2	O	D	Contract term.
211	D	G	Inconsistency in redacting 211 and 285. They will be made consistent.
215/chart	O	G	Error. The descriptor in the first row of the chart will be disclosed, but not the number and no individual customer names.
218-219/12, 1-4	O	G	Public. This information is disclosed in numerous other places in the documents.
228/footnote 102	O	G	Public.
229/6-8	O	G	Riders. This discussion does not relate to any individual customer.
236/12	D	D	This sentence merely states that certain parties supported the rehearing proposal.
244	D	G	Inconsistency in redacting 244 and 137. They will be made consistent.
250	D	G	Inconsistency in redacting 109 and 250. They will be made consistent.
251/para. 1	D	G	Inconsistency in redacting 110 and 251. They will be made consistent.
257/footnote & date	D	G	Inconsistency in redacting 257 and 116. They will be made consistent.

Page/ location	Party	Result	Rationale
258/para. 1	D	G	Inconsistency in redacting 117, 185, 258. They will be made consistent.
263/para. 5	D	G	Error. Customer name will be redacted.
266-272/throughout	O/D	D	Public/Customer 2 issue.
278/para. 1 & 2	D	G	Inconsistency in redacting 278 and 143. They will be made consistent.
279/para. 5	D	G	Inconsistency in redacting 279 and 144. They will be made consistent.
285/para. 7	D	G	Inconsistency in redacting 285 and 211. They will be made consistent.
290/footnote	D	G	Inconsistency in redacting 290 and 116. They will be made consistent.
300-307/throughout	O/D	D	Customer 2 issue/Public.
312/bubbles	O	D	Contract term.
326/para. G	D	G	Contract term.
328/sec. 6.2	D	G	Inconsistency in redacting 328 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
340/para. G	D	G	Contract term.
342/sec. 6.2	D	G	Inconsistency in redacting 342 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
354-369/throughout	I, O, D	D	Customer 1 issue/Public.
370-371/throughout	D	D	Entire page is already redacted.

Page/ location	Party	Result	Rationale
376/sec. 6.2	D	G	Inconsistency in redacting 376 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
460/sec. 6.2	D	G	Inconsistency in redacting 460 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
472/sec 6.2	D	G	Inconsistency in redacting 472 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
486/sec. 6.2	D	G	Inconsistency in redacting 486 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
489/top	O	G	Error. This information will be unredacted.
491/Ex. A, para. 2	D	G	Error. Customer name will be redacted.
503/sec. 6.2	D	G	Inconsistency in redacting 503 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
517/sec. 6.2	D	G	Inconsistency in redacting 517 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
530/sec. 6.2	D	G	Inconsistency in redacting 530 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
534	O	G	Collation.

Page/ location	Party	Result	*Rationale*
546/sec. 6.2	D	G	Inconsistency in redacting 546 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
559/top right	D	G	Error. Signature will be redacted.
563/sec. 6.2	D	G	Inconsistency in redacting 563 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
577/sec. 6.2	D	G	Inconsistency in redacting 577 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
591/sec. 6.2	D	G	Inconsistency in redacting 591 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
605/sec. 6.2	D	G	Inconsistency in redacting 605 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
618/sec. 6.2	D	G	Inconsistency in redacting 618 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
632/sec. 6.2	D	G	Inconsistency in redacting 632 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.
641	O	G	Collation.

Page/ location	Party	Result	Rationale
644/top right	D	D	Public. This customer name was released by Duke in its January 23, 2008, filing.
646	O	G	Error. Account numbers will be redacted.
647/right column, at top	I	D	Public.
647/top	O	G	Public and not customer information. The name and telephone number will be unredacted.
648/top	D/I	G	Error. Customer name will be redacted.
649-662	O	G	Collation.
654	O	D	Trade secret.
685-686	O	D	Identification.
703-772, 799-824/throughout; 704-749, 751-762, 769-823/throughout	D O	D	Customer 2 issue/Public.
745	D	G	Error. Rate element will be redacted throughout the page.
746	D	G	Error. Rate element will be redacted throughout the page.
749/6-7	O	D	Contract terms.
768/23-24	O	D	Contract terms.
769/1, 3, 4, 5	O	D	Contract terms.
824	O	G	Collation.
884/14-15	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.

Page/ location	Party	Result	Rationale
886/1, 2, 12, 13	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
887/12	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
888/10, 12	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
890/20, 22, 23	O	G in part	Identification. However, we are making 890 consistent with 1834.
892	D	D	Named entities are not customers.
899/3	O	D	Identification.
901	D	D	Riders. General discussion only.
904/12-14	O	D	Identification.
919/9-18	O	D	Trade secret.
920/3-24	O	D	Trade secret.
921/1-20	O	D	Trade secret.
922/6	O	G	Error. The number will be *unredacted*.
924/18	O	D	Trade secret.
925/11-15	O	D	Trade secret.
926/2-3	O	D	Trade secret.
935/22, 24	D	G	Trade secret.
936/6-12	D	G in part	Trade secret as to amount and time period.

Page/ location	Party	Result	Rationale
943/2-3	O	D	Trade secret.
958/26-27	D	G	Inconsistency in redacting 958 and 109. They will be made consistent.
958-959/sec. 1	D	D	Not all of this information qualifies as trade secret.
973/sec. 7	D	D	Duke claimed an inconsistency between 211 and 973. These pages are unrelated. However, 974 and 211 will be made consistent.
990/para. 2, sec. 2	D	D	Regarding para. 2, no page number is given for "BEH ex. 13" so no changes will be made. Regarding lines 10 and 11 of section 2, there is no section 2 on this page.
991/bubbles	O	D	Contract terms.
997/para. 2, sec. 2	D	D/G	Regarding "para. 2, no page number is given for "BEH ex. 13" so no changes will be made. Regarding lines 10 and 11 of section 2, inconsistency in redacting pages 997 and 312. They will be made consistent.
1004/para. 1, 2	D	D	Regarding paragraph 1, Duke has not indicated what the claimed error is, so no change will be made. Regarding paragraph 2, inconsistency in redacting 143 and 1004. They will be made consistent.
1012/sec. 6.2	D	G	Inconsistency in redacting 1012 and 151. They will be made consistent. The Commission would note that Duke failed to provide a page reference.

Page/ location	Party	Result	Rationale
1024/footnote	D	G	Inconsistency in redacting 1024 and 116. They will be made consistent.
1033/para. 5	D	D	There is no paragraph 5 on page 1033.
1044/throughout page	O/D	D	Customer 2 issue/Public.
1050	O	D	Customer 2 issue/Public.
1051/throughout	D	D	Customer 2 issue/Public.
1051-1058/throughout	O	D	Customer 2 issue/Public.
1059/throughout	D	D	Customer 2 issue/Public.
1059-1066/throughout	O	D	Customer 2 issue/Public.
1091	O	D	Trade secret.
1092/throughout	D	G	Error. The customer name will be redacted throughout the page, as will the price of generation.
1093	D	D	Price of generation is already redacted.
1093	O	D	This CRES pricing information is trade secret.
1095-1106	O	D	Trade secret.
1097/top left of grid	I	G	The Commission had intended that the redaction would cover the BKWH figure, along with all other numbers in that column.
1107-1108	O	G/D	The group names will be unredacted, as they are not customer names. The remainder of the information is a trade secret.
1110	O	D	Trade secret.
1111-1130	D	G	Pages 1111 through 1130 will be redacted with regard to dollar amounts.
1172	D	G	Contract term.

Page/ location	Party	Result	Rationale
1199	D	D	Pages 1111-1130 have no direct connection with page 1199.
1206	D	D	Pages 1111-1130 have no direct connection with page 1206.
1212	D	D	Pages 1111-1130 have no direct connection with page 1212.
1217	D	D	Pages 1111-1130 have no direct connection with page 1217.
1244/footnote	D	D	Named entity is not a customer.
1249	D	D	This page lists parties to a public proceeding. This is not trade secret information.
1258	D	G	Identification. The nature of the businesses will be redacted, except where an association name that is public would already convey the same information.
1268-1273	D	D	This page lists parties to a public proceeding. This is not trade secret information.
1292	D	G	Identification. The nature of the businesses will be redacted, except where an association name that is public would already convey the same information.
1349/20, 24	D	D	Public. This date was released by Duke in its January 23, 2008, filing.
1350/2, 3, 6, 7	D	D	Public.
1431	O	G	Previously redacted information referenced a document that will now be public.
1532-1583	O	G	Public. As this information was previously filed publicly, it will be unredacted.

Page/ location	Party	Result	Rationale
1594-1599	O	G	Public. As this information was previously filed publicly, it will be unredacted.
1602-1605	O	G	Public. As this information was previously filed publicly, it will be unredacted.
1609/22-24	D	D	Public. The information being quoted on 1609 is not redacted in the actual agreement to which the discussion refers. The corresponding agreement page appears at 244.
1610/1-5, 24	D	D/G	Public. The information being quoted on 1610 is not redacted in the actual agreement to which the discussion refers. The corresponding agreement page appears at 244. Regarding line 24, the two quoted words will be redacted.
1613	O	G	Because Duke agrees with unredacting the names on pages 1614, this information will also be unredacted.
1614/1-19	O	G	Duke agrees that these names should be unredacted. However, as Duke noted, the name on line 23 will remain redacted.
1615/21	O	D	Identification.
1617-1619	O	D	Identification.
1621-1623	O	G	Public.
1624/4-5	O	G	Public.
1626/22	O	G	Public.
1627/10-16	D	D	This discussion merely relates to the Commission-approved standard service offer of Duke.

Page/ location	Party	Result	Rationale
1629/6-17	D	D	This discussion merely relates to the Commission-approved standard service offer of Duke.
1646/23	O	D	Identification.
1653/5	D	D	Public.
1658/21	D	G	Error. Customer name on line 21 will be redacted.
1661/bottom	D	D	Customer name on page 237, which this page 1661 is correcting, is not redacted.
1702/para. 1	D	D	The discussion relates to hypothetical CRES providers. It is not referring to any customer.
1722/4	O	D	Identification.
1724/para. 2	D	D	The identification of entities that signed a stipulation is public information.
1732/para.1, 2	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1733/para. 1	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1737/para. 2	D	D	Public. This discussion is based on public testimony, filed on February 28, 2007.
1749/footnote 117	O	D	Customer 2 issue/Public.
1751/1	O	D	Identification.
1762/para. 1	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.

Page/ location	Party	Result	Rationale
1766/para. 1	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
1772/quote	O	G	Inconsistency in redacting 1772 and 1194. The quote on page 1772 will be made consistent with the redaction of the document that is being quoted, found on page 1194.
1792/para. 2	D	D	Parties to stipulations are not a trade secret.
1800	D	D	Payments. Also, this information is proposed to be released on at least 30 other pages in these documents, but is not itemized in those other locations as a ground for rehearing.
1807/para. 1	D	D	Case names are not a trade secret.
1834-1835	O	G	Inconsistency in redacting 1834-1835 and 890. They will be made consistent.
1911	D	D	Public. This discussion is based on testimony publicly filed.
1920/footnote	D	D	Trade organization is not a customer.
1927/para. 1	D	D	There are no rate elements discussed in paragraph 1.
1932/footnote 134	O	G	Error. Party to case will be unredacted in footnote 134.
1975	O	G	Public.
1976/1	O	G	Public.
1982/footnote 133	O	D	Identification.
2078/11	O	D	Customer 1 issue/Public.
2078/footnote 73	I	D	Customer 1 issue/Public.

Page/ location	Party	Result	Rationale
2085/footnote 96	O	D	Identification.
2139-2829	O	D	Regarding compliance with rules, protective order granted based on 2004 motion. Regarding 2318, 2373, 2437, and 2535 (marquee customers' names), 5/6/04 affidavit confirms that credits rating analysts, etc., keep information confidential.
2835/6	O	G in part	OCC Ex. 12 from the original hearing in these proceedings is now included in these document as page 3358. The financial information in this document is a trade secret and has been redacted.
2871/"P. 103 line 24; P. 104 lines 7, 11, 23; P. 105 line 13)	D		Public.
2911-2948	D	D	No specificity. Denied.
2958/13-14	O	D	Contract terms.
2964/para. 1	D	D	No specificity. Denied.
3071-3113	O	D	The Commission finds that this information remains confidential.
3114-3116	O	D	The Commission finds that this information remains confidential.
3120	O	D	The Commission finds that this information remains confidential.

(16) On July 17, 2008, Duke filed a motion for a protective order, covering certain information in the memorandum contra OCC's application for rehearing, which was also filed on that date. The unredacted version of the attachment to that memorandum contra is now paginated as Bates-stamp pages 3359-3362. The Commission has

reviewed the information that is proposed by Duke to be redacted and finds that it is already public. This same information was discussed other places in these documents, in unredacted form, with regard to which Duke did not seek rehearing (see, for example, pages 746 and 749).

(17) On July 21, 2008, Duke filed a motion for continuation of prior protective orders in these proceedings. Duke notes, in its supporting memorandum, that the Commission's May 28, 2008, entry appears to address the extension of all such protective orders through January 1, 2011. However, Duke explains that, "in the event that any information in the possession of this Commission might be determined to fall outside the scope of . . . [that entry], the Duke Entities respectfully ask for the extension to January 1, 2011, of this Commission's protective orders . . .." It was the Commission's intent, in our May 28, 2008, entry, to cover all protective orders previously granted in these proceedings, such that no motions for continuation of protective orders would need to be filed until just prior to that expiration date. Therefore, we find that this motion was unnecessary and moot.

(18) We note, finally, that the confidentiality determinations made in these proceedings, both with regard to substance and length of confidential treatment, are applicable only in the specific factual situation before us. Such determinations should not be considered to have any precedential relevance to any other case.

(19) The revised version of the Commission-redacted documents will be filed publicly in these dockets on September 5, 2008, unless an application for rehearing is filed under Section 4903.10, Revised Code. Parties to these proceedings may contact the attorney examiners in order to receive an electronic copy (on a computer disk) of the documents, with highlighting to indicate the Commission's revised redactions, which computer disk should be available no later than Monday, August 4, 2008. Parties will note that this disk includes every page on which any alteration of the redactions has been made. All new redactions appear in green. In addition, where a change was made on only one side of a two-sided document, an image of the unchanged side is also included. Recollated pages show the old page numbers struck through and corrected page numbers added.

(20) The parties should understand that this copy of the information must be treated under the same confidentiality restrictions that apply to any previous copies or versions of the information that they have previously obtained, regardless of the medium in which, or the party from whom, such information was conveyed. Therefore, the disks, and the information thereon, are not to be copied or transmitted in any way to any other person or entity. As has been the case through the remand process with regard to those parties who have not entered into confidentiality agreements with Duke or its affiliates relating to this information, such information is also not to be shared by any counsel with his or her client or with any other person or entity.

(21) If any party, after reviewing the Commission's revised redactions, chooses to file an application for rehearing, each asserted error should be specifically referenced and explained. For this purpose, the Commission-redacted documents have again been arranged on the disk in chronological order and all of the pages have been consecutively numbered at the top of the page. A table of contents, referencing Commission page numbers, has been prepared and will be included on the disk. Assignments of error should refer to such Commission page numbers and the specific text on such pages. Parties should not expect the Commission to locate additional similar instances of asserted errors. Assignments of error that do not use Commission page numbers or that are general in nature will be denied, as will assignments of error that relate to matters not determined in this entry on rehearing.

It is, therefore,

ORDERED, That the applications for rehearing by OCC, IEU, and Duke be granted in part and denied in part, as set forth herein. It is, further,

ORDERED, That Duke's July 17, 2008, motion for a protective order be denied. It is, further,

ORDERED, That Duke's July 21, 2008, motion for continuation of protective orders be denied as moot. It is, further,

ORDERED, That the parties comply with the requirements of this entry. 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

JWK /SEF;geb

Entered in the Journal

JUL 3 1 2008

Renee J. Jenkins
Secretary

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

SECOND ENTRY ON REHEARING

The Commission finds:

(1) On July 31, 2008, the Commission issued an entry on rehearing (July entry on rehearing) concerning the redaction of trade secret information from numerous documents filed in these cases.

(2) 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. Section 1.14, Revised Code, provides that, when the last day of a period within which an act may be done falls on a legal holiday, that act may be done on the next succeeding day that is not Sunday or a legal holiday. That same section also provides that, when a public office in which such an act is to be performed is closed to the public for the entire day that constitutes the last day for doing the act, such act may be performed on the next succeeding day that is not a Sunday or a legal holiday.

(3) On August 30, 2008, the Commission's office was closed for the entire day. August 31, 2008, was a Sunday. September 1, 2008, was a legal holiday. On September 2, 2008, the office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Commission's July entry on rehearing. On September 12, 2008, Duke Energy Ohio, Inc. (Duke); Duke Energy Retail Sales, LLC (DERS); and Cinergy Corp. (jointly, the Duke entities) filed a memorandum contra the application for rehearing. In summary, OCC submits that the entry on rehearing incorrectly addressed the

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redaction of certain customer names and, in addition, that the release of certain information in a separate forum requires that numerous pages of information that were previously determined to be trade secrets now be made public. The Duke entities disagree.

(4) OCC asserts that the Commission's July 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." (Application for rehearing at 1.) OCC separates its concerns into a discussion of the names of certain customers of one or more of the Duke entities that are described as "marquee customers" and a discussion related to the release of certain information by the Court of Common Pleas for Hamilton County, Ohio.

(5) With regard to the marquee customers, OCC points to four specific pages on which the names can be found. OCC claims that the "Duke affiliates that actually engage in commercial activities *advertise* their activities and achievements rather than conceal their existence." OCC goes on to explain that the documents attached to the application for rehearing are copies of internet pages that "provide examples that show how the Duke affiliated companies release information about their 'marquee customers' to the public." (Application for rehearing at 5-6.)

(6) In response to this argument, the Duke entities clarify the situation, stating that the customers in question are customers of Cinergy Solutions, Inc., (CSI) an affiliate of Duke and DERS. According to Duke, CSI is not a party to these proceedings and therefore is not in a position to defend the confidentiality of its information. Further, release of the customers' names, according to Duke, would reveal which customers are linked to certain CSI cogeneration percentages and target industrial market potentials.

(7) Duke's arguments are persuasive on this issue. The pages in question are clearly designated as information concerning CSI, a Duke affiliate that is not a party to these proceedings. The "marquee customers" are customers of CSI, not the Duke affiliates that are parties. As the information attached to OCC's application for rehearing does not clearly reflect the public disclosure of the specific CSI "marquee customers," we will maintain their names as confidential.

(8) With regard to the release of certain information in another proceeding, OCC points out that some of the side agreements at issue in these proceedings were released by the Hamilton County Court of Common Pleas, as of August 14, 2008, in *Deeds v. Duke Energy Ohio*, Case No. A 0701671 (Deeds). OCC contends that the Commission should release all information that was made public in the Deeds case. According to OCC, that court released all of the information in its possession, including "more than one of the option agreements." (Application for rehearing at 7.) Therefore, OCC declares, the Commission should release to the public pages 323 through 641 of the Commission's Bates-stamped pages. OCC identifies information on certain pages within its filings that it believes should be released on the ground that the underlying information is now public. OCC also argues that the Commission should reevaluate the record for analogous changes in the filings of other parties. (Application for rehearing at 8-9.)

(9) Duke, in response, first suggests that OCC is not arguing that the entry on rehearing was unreasonable or unlawful but, rather, is collaterally attacking the entry on the basis of the Deeds ruling. Duke contends that the entry was lawful and reasonable when it was issued and that, therefore, new events should not be interjected into these proceedings to undermine the finality of the order. (Memorandum contra at 4-5.)

(10) With regard to Duke's contention that the subsequent release of documents should not impact the Commission's determination that certain information is a trade secret, the Commission first notes that Duke cited no statutes, rules, or precedent to support its position. The Commission is bound by Rule 4901-1-24, Ohio Administrative Code (O.A.C.), which allows us to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code. The Ohio

Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

(a) The extent to which the information is known outside the business.

(b) The extent to which it is known to those inside the business, i.e., by the employees.

(c) The precautions taken by the holder of the trade secret to guard the secrecy of the information.

(d) The savings effected and the value to the holder in having the information as against competitors.

(e) The amount of effort or money expended in obtaining and developing the information.

(f) The amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (1997). Where information that may previously have met the trade secret test has now been released to the public, we will not maintain a protective order prohibiting its release. However, from a procedural standpoint, a suggestion that a protective order be modified due to the release of information in another forum, subsequent to the initial grant of the protective order, would be more appropriately handled through the filing of a motion. Thus, while we will consider modification of the protective order through the vehicle of OCC's application for rehearing, any additional modifications to the protective order, due to any subsequent releases, should be addressed by motion.

(11) Duke's next argument goes to the question of precisely which information should be released in light of the Deeds release. In that discussion, Duke concedes that, as a result of the Deeds order, "all the Original Direct Serve Contracts and all the November Direct Serve Contracts were, indeed, revealed to the public." With regard to the option contracts, Duke suggests that OCC was "deliberately imprecise" in stating that the release included "more than one" of the option contracts. Duke asserts that exactly two such contracts

were released: one with Marathon/Ashland Petroleum and one with General Motors. (Memorandum contra at 6-7.) Therefore, Duke disagrees with OCC's proposed wholesale release of all side agreements.

(12) The Commission agrees that information that has been released to the public must similarly be released in these proceedings. However, we will not release more than was, according to Duke, released in the Deeds case. Therefore, the Commission has reviewed all of the redaction modifications specifically proposed by OCC, together with Duke's responses to those proposals. In addition, the Commission has reviewed all previously proposed redactions and is proposing to release any information that clearly stems from, or discusses, contracts that are now public information.

(13) The following chart addresses the specific redaction modifications proposed by OCC, thereby granting or denying rehearing on each ground. Additional changes to the redactions, in other documents, being proposed by the Commission in response to OCC's assertion that a review of all confidential documents was necessary, are not included in this chart. However, as with previous entries, the Commission has prepared a computer disk that shows all changed pages (as well as the reverse side of any page, where the page had information on two sides). Parties should also note that this disk includes pages 2318, 2373, 2437, and 2535, which the Commission determined should be redacted in the first entry on rehearing but were omitted from the disk that was a part of that entry.

Pages	OCC's rationale	Duke's response	Grant or deny	Commission rationale
215-217	Reference to option agreement.	The names of option contract customers other than Marathon and GM have not been disclosed.	Grant in part.	Only references to Marathon or GM contracts will be released.
248	Customer	Fourteen	Grant.	Although these customer

	names.	customers are option contract customers whose names were not released.		names may or may not also be the names of option contract customers, in this location the list is an exhibit to a contract that has, according to Duke, been released.
249	Customer names.	Customers are option contract customers whose names were not released.	Grant.	This is the first page of a contract that has, according to Duke, been released.
250-255	Customer names.	No response.	Grant in part.	Pages 250-254 are part of a contract that, according to Duke, has been released. It appears that page 255 is not a part of the agreement that appears at pages 249-254. It appears to discuss an option agreement and, therefore, will not be released.
256-261	Customer names.	No response.	Grant.	Pages 256-261 are part of contract that, according to Duke, has been released.
282-288	Customer names.	No response.	Grant.	Pages 282-288 are part of contract that, according to Duke, has been released.
289-295	Customer names.	No response.	Grant.	Pages 289-295 are part of contract that, according to Duke, has been released.
323-641	All side agreements should be public.	Not all side agreements were released in Deeds case.	Deny in part.	Only side agreements that Duke concedes were released in Deeds case will be released in full. Each of such agreements will be released every time it appears in the

				documents.
1769-1772	References to option agreements.	Of the option contract customers referenced, only Marathon has been revealed. Quote from Ziolkowski is public.	Deny in part.	Only references to Marathon, as well as the Ziolkowski email quote, will be released.
1775-1776	References to option agreements.	No response as to 1775. References on 1776 are public.	Grant.	This information was released in the Deeds case.
1780	References to option agreements.	No response.	Grant in part.	The information on this page that references option information that, according to Duke, has been released will be made public.
1929	References option agreement.	This information references the name of an option contract customer that has not been revealed.	Deny.	The name of the customer in this option contract has not been released and will not, therefore, be made public.
1932	References option contract.	Only the name of Marathon should be released on this page.	Grant.	The only option contract name on this page is Marathon.

2078-2079	References option contract.	Information references names of option contract customers that have not been released, as well as pricing methodology.	Deny in part.	The name of one option contract customer that has not been revealed will be retained as confidential. In addition, the names of the only two customers who did not have option contracts will be maintained as confidential in order not to divulge the identities of the option contract customer list.
2085	References option contracts.	Marathon's name has been revealed but the other name on the page is an option contract customer whose name has not been revealed.	Grant in part.	Although Duke states, in the memorandum contra, that the customer named on this page (other than Marathon) is an option contract customer, that is contrary to the testimony on page 213. However, as noted previously, disclosure of the names of the two customers who do not have option contracts would tend to reveal the option contract customer list. Therefore, the customer name on this page other than Marathon will not be released.
2934	References option contracts.	Of the information on this page, only Marathon's contract has been revealed.	Grant in part.	Only Marathon's information will be released as the other information is still confidential.
3344	References option contracts.	Of the information on this page, only	Grant in part.	Only Marathon's information will be released as the other information is still

		Marathon's contract has been revealed.		confidential.

(14) The revised version of the Commission-redacted documents will be filed publicly in these dockets on November 14, 2008, unless an application for rehearing is filed under Section 4903.10, Revised Code. Parties to these proceedings may contact the attorney examiners in order to receive an electronic copy (on a computer disk) of the documents, with highlighting to indicate the Commission's revised redactions. Parties will note that this disk includes every page on which any alteration of the redactions has been made. In addition, where a change was made on only one side of a two-sided document, an image of the unchanged side is also included.

(15) The parties should understand that this copy of the information must be treated under the same confidentiality restrictions that apply to any previous copies or versions of the information that they have previously obtained, regardless of the medium in which, or the party from whom, such information was conveyed. Therefore, the disks, and the information thereon, are not to be copied or transmitted in any way to any other person or entity. As has been the case through the remand process with regard to those parties who have not entered into confidentiality agreements with Duke or its affiliates relating to this information, such information is also not to be shared by any counsel with his or her client or with any other person or entity.

(16) If any party, after reviewing the Commission's revised redactions, chooses to file an application for rehearing, each asserted error should be specifically referenced and explained. For this purpose, the Commission-redacted documents have again been arranged on the disk in chronological order. A table of contents, referencing Commission page numbers, has been prepared and will be included on the disk. Assignments of error should refer to such Commission page numbers and the specific text on such pages. Parties should not expect the Commission to locate additional similar instances of asserted errors. Assignments of error that do not use Commission page numbers or that are general in nature

will be denied, as will assignments of error that relate to matters not determined in this entry on rehearing.

It is, therefore,

ORDERED, That the application for rehearing by OCC be granted in part and denied in part, as set forth herein. It is, further,

ORDERED, That the parties comply with the requirements of this entry. 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

JWK;geb

Entered in the Journal

OCT 01 2008

Reneé J. Jenkins
Secretary

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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

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

SEF/JWK:ct

Entered in the Journal
NOV 0 5 2008

Reneé J. Jenkins
Secretary

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
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	)	03-2080-EL-ATA
	)	05-724-EL-UNC
	)	05-725-EL-UNC
	)	06-1068-EL-UNC
	)	06-1069-EL-UNC
	)	06-1085-EL-UNC

ENTRY

The attorney examiner finds:

(1) On May 28 and June 4, 2008, the Commission issued entries in these consolidated proceedings, addressing the redaction of confidential documents. The Commission also issued entries on rehearing regarding those redactions, on July 31 and October 1, 2008.

(2) On November 5, 2008, the Commission issued an entry in which it stated that, the time for filing any applications for rehearing concerning the redacted documents had expired, no issues remained to be determined. Therefore, the Commission directed the attorney examiners to file the redacted documents in these dockets as soon as possible.

(3) The attorney examiner finds that the voluminous redacted documents (3,362 pages) should be immediately released into the public domain.

It is, therefore,

ORDERED, That the Commission's docketing division release, into the public domain, the redacted documents addressed by the Commission in these proceedings, as referenced in this entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Jeanne W. Kingery
Attorney Examiner

JRJ
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Entered in the Journal
NOV 10 2008

Reneé J. Jenkins
Secretary