

ORIGINAL

IN THE SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy)	Case Nos. 08-1837 and 09-0314
)	
)	
Appellants,)	Appeal from the Public Utilities Commission of Ohio
)	Case Nos. 07-589-GA-AIR, 07-590-GA-ALT, 07-591-GA-AAM, 07-829-GA-AIR, 07-830-GA-ALT, 07-831-GA-AAM, 08-169-GA-ALT and 06-1453-GA-UNC
v.)	
The Public Utilities Commission of Ohio)	
)	
Appellee.)	

**JOINT MOTION TO CONSOLIDATE
BY
APPELLANTS THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Appellants, the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") hereafter ("Joint Appellants"), move this Court for an order consolidating Case Nos. 08-1837¹ and 09-0314² for purposes of oral argument and opinion. The grounds for this Joint Motion, as fully explained below, are that the issues involved and the assignments of error (all filed by the Joint Appellants) in the Duke Appeal and the DEO Appeal are intrinsically related. Accordingly, Joint Appellants respectfully request that this Court grant the Joint Motion to Consolidate.

I. HISTORY OF THE CASES

In the Duke Energy Ohio, Inc. ("Duke") rate case, the Public Utilities Commission of Ohio ("Commission" or "PUCO") issued its Opinion and Order on May 28, 2008,³ in which the Commission imposed on Duke's 380,000 residential customers the straight fixed variable ("SFV") rate design. OCC filed an Application for Rehearing advocating for the Commission to reconsider its decision to approve a SFV rate design and asking the Commission to reject the unprecedented quadrupling of the monthly customer charge from \$6.00 to as much as \$25.33.⁴ OPAE also filed an Application for Rehearing raising the same issues. On July 23, 2008, the PUCO issued its Entry on Rehearing and denied OCC's and OPAE's Applications for Rehearing.⁵ OCC's Notice of Appeal

¹ *OCC v. PUCO*, Case No. 08-1837 ("Duke Appeal").

² *OCC v. PUCO*, Case No. 09-0314 ("DEO Appeal").

³ Duke Appeal, OCC Appx. 000056.

⁴ Duke Appeal, OCC Appx. 000067.

⁵ Duke Appeal, OCC Appx. 000007.

was filed with this Court on September 16, 2008,⁶ and OPAE's Notice of Appeal was filed on September 19, 2008.⁷

In the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") rate case, the Commission issued its Opinion and Order on October 15, 2008,⁸ which imposed on DEO's 1.1 million residential customers the SFV rate design. A Joint Application for Rehearing⁹ was filed advocating for the Commission to reconsider its decision to approve an SFV rate design and asking the Commission to reject the unprecedented increase of more than tripling the fixed monthly customer charge from \$4.38 to as much as \$15.40 in the second year of the SFV rate design.¹⁰ OCC's Notice of Appeal was filed with this Court on February 17, 2009,¹¹ and OPAE's Notice of Appeal was filed on February 11, 2009.¹²

These dramatic and unprecedented increases to the natural gas utilities' fixed monthly customer charge all but ended the methodology of billing customers per cubic foot of the gas they use as the most significant part of the customer's distribution cost determined in a base rate proceeding.

⁶ Duke Appeal, OCC Appx. 000001.

⁷ Duke Appeal, OPAE Appx. 000001.

⁸ DEO Appeal, OCC Appx. 000014.

⁹ The Joint Applicants were OCC, OPAE, the City of Cleveland, the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, the Cleveland Housing Network, and the Consumers for Fair Utility Rates.

¹⁰ DEO Appeal, OCC Appx. 000056.

¹¹ DEO Appeal, OCC Appx. 000000.

¹² DEO Appeal, OPAE Appx. 000001.

II. LAW AND ARGUMENT

These cases (the Duke Appeal, Case No. 08-1837, and the DEO Appeal, Case No. 09-0314) both involve Commission approval of the SFV rate design in recent natural gas rate increase cases, and should be consolidated. Appeals that involve substantially similar legal issues may be consolidated. See *State ex rel. United States Steel Corp. v. Zaleski*, (2003), 98 Ohio St.3d 395, 2003-Ohio-1630, 786 N.E.2d 39. The two underlying proceedings for each of the utilities -- cases dealing with the SFV rate design -- are intertwined and should be consolidated. The similarity of legal issues between these two cases is apparent from the briefs and reply briefs filed in both cases. The Appellants in these cases, the OCC and OPAE, are the same between the Duke appeal and the DEO appeal, and the substantive issues argued by the Joint Appellants are intrinsically related.

On March 20, 2006, this Court recognized the similarities between two appeals filed by the OCC when it ordered, *sua sponte*, that the appeals in Case Nos. 05-1621 and 05-1679 be consolidated.¹³ There, the two underlying proceedings for each of the utilities -- cases dealing with the authorization of deferrals for costs incurred during the market development period -- were deemed to involve substantially similar legal issues and were consolidated. The Court should take similar action in these appeals relating to the rates of Duke and DEO.

If the Duke case is not consolidated with the DEO case, the Court will face multiple cases regarding similar issues proceeding along parallel tracks. Consolidation will provide a just, fair, and complete resolution of the issues raised in both appeals brought by Joint Appellants, and will save

¹³ *OCC v. PUCO* (being the the FirstEnergy deferral case, Case No. 05-1621, wherein OCC filed its Notice of Appeal of PUCO Case No. 04-1931-EL-AAM to initiate the appeal on August 31, 2005); *OCC v. PUCO* (being the DP&L deferral case, wherein OCC filed its Notice of Appeal of PUCO Case No. 04-1645-EL-AAM to initiate the appeal on September 9, 2005).

time and resources for the Court and the parties. This is true even though both of the cases have been briefed. The consolidated cases can be scheduled together for argument.

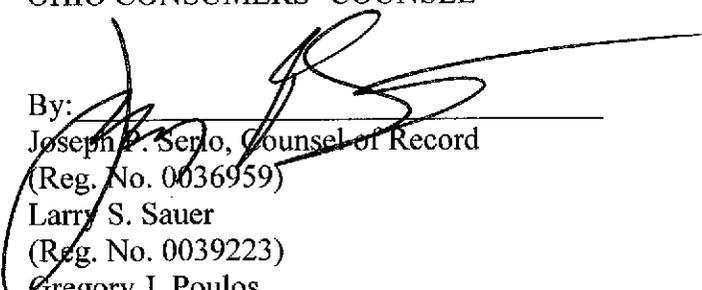
III. CONCLUSION

Joint Appellants believe consolidation to be the appropriate course of action. Consolidation will not prejudice any party, but instead will be the most efficient use of the Court's and parties' time and resources.

WHEREFORE, Joint Appellants respectfully request that this Court consolidate Case Nos. 08-1837 and 09-0314 for purposes of oral argument and opinion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Motion to Consolidate by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy* was served upon the following counsel in Supreme Court Case Nos. 08-1837 and 09-0314 by regular U.S. Mail this 2nd day of July 2009.



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