

In The
SUPREME COURT OF OHIO

ORIGINAL

The Office of the Ohio Consumers' Counsel, :
 : Case No. 08-1837
 :
 :
 Appellants, :
 :
 : Appeal from the Public Utilities
 v. : Commission of Ohio, Case Nos. 07-
 : 589-GA-AIR, 07-590-GA-ALT, 07-
 The Public Utilities Commission of : 591-GA-AAM, *In the Matter of the*
 Ohio, : *Application of Duke Energy Ohio*
 : *Inc. for an Increase in Gas Rates.*
 Appellee. :

**MEMORANDUM CONTRA
SUBMITTED ON BEHALF OF APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO,
AND INTERVENING APPELLEE,
DUKE ENERGY OHIO**

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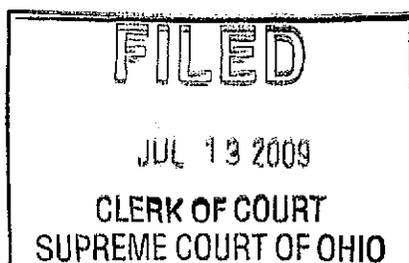
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**In The
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The Office of the Ohio Consumers’ Counsel,	:	Case No. 08-1837
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Appellants,	:	
	:	Appeal from the Public Utilities
v.	:	Commission of Ohio, Case Nos. 07- 589-GA-AIR, 07-590-GA-ALT, 07- 591-GA-AAM, <i>In the Matter of the</i>
The Public Utilities Commission of Ohio,	:	<i>Application of Duke Energy Ohio</i>
	:	<i>Inc. for an Increase in Gas Rates.</i>
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SUBMITTED ON BEHALF OF APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO,
AND INTERVENING APPELLEE,
DUKE ENERGY OHIO**

On July 2, 2009, appellants, The Office of the Ohio Consumers’ Counsel and Ohio Partners for Affordable Energy (Joint Appellants), filed a motion to consolidate these cases for purposes of oral argument¹ and opinion. While in the experience of the Commission and Intervening Appellee, Duke Energy Ohio (Duke), the issue of consolidation has been one routinely discussed with opposing counsel and sought jointly by *both* sides, neither Joint Appellant contacted counsel for the Commission or Duke prior to making this filing.

Joint Appellants characterize the issues in case nos. 08-1837 and 09-0314 as “intrinsicly related.” While the Commission and Duke are unsure exactly what this label means, each believes that both appeals present the same dispositive issue for the

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On July 8, 2009, the Court scheduled Case No. 08-1837 for oral argument on September 16, 2009.

Court's consideration. That issue is whether the facts underlying each appeal support the Commission's exercise of discretion to change a rate design to fit changing industry conditions. In both cases, the Commission approved and implemented a new rate design for natural gas service that applied established ratemaking principles and corrected sub-optimal results caused by the former, and now anachronistic rate design. In each case, the Court must determine whether the Commission's policy determinations are supported by the factual record specific to that case. While the reasoning and judgment applied by the Commission in both cases is similar, the facts in each are obviously different. Therefore, the Court should not consolidate the cases but, instead, resolve each case on its merits.

While the Commission and Duke believe that the efficiencies to be gained by consolidation are minimal at this late stage, neither objects to the scheduling of both oral arguments on the same day. Given the different factual records, this approach constitutes a manageable and more efficient use of the Court's and the parties' resources. If the Court disagrees and chooses to consolidate both cases into a single oral argument, the Commission and Duke respectfully request that allotted argument time be extended by five minutes to 20 minutes per side in consideration of the number of participating parties in the cases.

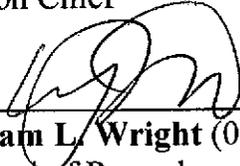
CONCLUSION

The Commission and Duke Energy Ohio oppose the Joint Motion to Consolidate insofar as it requests a single opinion for two factually different cases. The Commission and Duke support the scheduling of oral arguments in both cases on the same day. If the Court chooses instead to consolidate the cases into a single oral argument, both the Commission and Duke would request that oral argument time be extended by five minutes per side.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum Contra**, submitted on behalf of Appellee, the Public Utilities Commission of Ohio, and Intervening Appellee, Duke Energy Ohio, was served by regular U.S. Mail, upon the following parties of record, this 13th day of July, 2009.



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