

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,
v.	)	07-590-GA-ALT, 07-591-GA-AAM,
	)	07-829-GA-AIR, 07-830-GA-ALT,
The Public Utilities Commission of Ohio	)	07-831-GA-AAM, 08-169-GA-ALT
	)	and 06-1453-GA-UNC
Appellee.	)	

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**JOINT MOTION FOR EXPEDITED RULING ON 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 "Appellants"), move this Court for an expedited ruling on Appellants' Joint Motion to Consolidate Case Nos. 08-1837<sup>1</sup> and 09-0314<sup>2</sup> ("Motion to Consolidate") filed on July 2, 2009. Appellants request that this Court rule upon this Motion by September 2, 2009, which would allow all parties a period of two weeks after the ruling for preparation in advance of the oral argument now scheduled for September 16, 2009. S.Ct.Prac.R. XIV(4)(C) provides for the Court to rule before the deadline for parties filing a memorandum opposing this Motion.

The grounds for this Motion, as fully explained below, are that a decision on the Motion to Consolidate is necessary to assist the attorneys preparing for argument before this Court and to avoid any prejudice to the parties. Accordingly, Appellants respectfully request that this Court grant the Joint Motion for Expedited Ruling on the Joint Motion to Consolidate Case Nos. 08-1837 and 09-0314, on the time line requested above.

## **I. HISTORY OF THE CASES**

The Duke Energy Ohio, Inc. rate case ("Duke"), Case No. 08-1837, and the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") rate case, Case No. 09-0314, are both currently under appeal before this Court.<sup>3</sup> On July 2, 2009, Appellants filed a Motion to Consolidate these cases for purposes of oral argument and opinion on the grounds that the issues involved and the assignments

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<sup>1</sup> *OCC v. PUCO*, Case No. 08-1837 ("Duke Appeal"); *OCC v. PUCO*, Case No. 09-0314 ("DEO Appeal").

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

<sup>3</sup> Duke Appeal OPAE Appx. 000001; DEO Appeal OPAE Appx. 000001.

of error in both appeals are intrinsically related.<sup>4</sup> On July 13, 2009, Appellee, the Public Utilities Commission of Ohio (“PUCO”) filed a Memorandum Contra Appellant’s Motion to Consolidate, stating that either the Court should refuse to consolidate the cases or that the Court should extend the allotted time for oral argument by five minutes to 20 minutes per side in consideration of the number of participating parties in the case.<sup>5</sup> An oral argument is currently scheduled in the Duke Appeal for September 16, 2009.<sup>6</sup> As of the date of the filing of this Motion, there has been no ruling on Appellants’ Motion to Consolidate filed on July 2, 2009.

## **II. LAW AND ARGUMENT**

To assist the attorneys preparing for argument before this Court on September 16, 2009, and to avoid any prejudice to the parties, this Court should rule on Appellant’s Motion to Consolidate as soon as practicable. It is evident that there are at least three potential scenarios that could occur at the oral argument currently scheduled for September 16, 2009. First, this Court could deny the Motion to Consolidate and the oral argument would only encompass the Duke Appeal. Second, this Court could grant the Motion to Consolidate and order that the oral argument encompass both the Duke Appeal and the DEO Appeal within the typical 15 minute oral argument format. Third, this Court could grant the Motion to Consolidate and order that the oral argument encompass both the Duke Appeal and the DEO Appeal in an extended 20 minute oral argument format as requested as an alternative by Appellee PUCO. These are three distinct scenarios that call

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<sup>4</sup> Joint Motion of the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy to Consolidate Cases 2008-1837 and 2009-0314 (July 2, 2009).

<sup>5</sup> Memo Opposing Motion to Consolidate Cases (July 13, 2009).

<sup>6</sup> Notice of Oral Argument (July 9, 2009).

for different preparation methods and approaches to the upcoming oral argument. Accordingly, a decision on the Motion to Consolidate is crucial with the oral argument imminent.

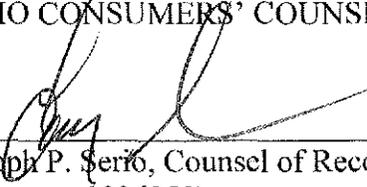
In preparing for the upcoming argument, it is crucial that the parties understand both the scope of the arguments to be presented and the time frame within which the parties must present them. A decision by this Court regarding these matters is necessary to assist the attorneys preparing their oral argument so that they can adequately tailor their arguments to present the best case possible to this Court. Further, a lack of decision on this issue may prejudice the parties by undermining the quality of their oral arguments. Therefore, to enable the parties to present the best argument possible at the upcoming oral argument and to avoid prejudice that may occur as a result of the lack of decision on the Motion to Consolidate, Appellants respectfully request that this Court rule at least two weeks in advance (by September 2, 2009) of the oral argument. Also, in accordance with S.Ct.Prac.R. XIV(4)(C), this Court may rule upon this Motion before the deadline for other parties to file a memorandum opposing this Motion.

### **III. CONCLUSION**

An expedited ruling on Appellant's Motion to Consolidate is necessary to ensure that the parties may present the best argument possible and to avoid prejudice at the upcoming oral argument. Therefore, Appellants respectfully request that this Court expedite its ruling on Appellant's Joint Motion to Consolidate Case Nos. 08-1837 and 09-0314 for purposes of oral argument and opinion.

Respectfully submitted,

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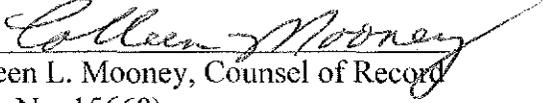
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Joint Motion for Expedited Ruling on the 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 25th day of August 2009.

  
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