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BEFORE THE PUBLIC
UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review)
And Adjustment of the Fuel and Purchased)
Power and System Reliability Tracker) Case No. 07-723-EL-UNC
Components of Duke Energy Ohio, Inc., and)
Related Matters)

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set the) Case No. 07-973-EL-UNC
Annually Adjusted Component of its)
Market Based Standard Service Offer.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Adjust and Set its) Case No. 07-975-EL-UNC
2008 System Reliability Tracker.)

DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE OHIO CONSUMERS
COUNSEL'S MOTION FOR CONTINUANCE

Now comes Duke Energy Ohio, Inc., (DE-Ohio), and hereby respectfully submits its Memorandum Contra the Motion for Continuance of the Hearing Schedule (Motion to Continue) filed by the Office of the Ohio's Consumers Counsel (OCC). On November 7, 2007, the Commission issued an Entry setting the above captioned cases for hearing to occur on November 27, 2007. Subsequently, on November 8, 2007, OCC filed its Motion to Continue in the above styled proceedings. In its Motion to Continue, OCC requests that the Commission continue the November 27, 2007 hearings until December 11, 2007, in order to afford OCC an additional two weeks to prepare its case.

DE-Ohio does not object to OCC's request for a brief continuance. DE-Ohio would have agreed to such, if OCC had simply asked. OCC is correct in its claim that it did not have access to confidential discovery because OCC and DE-Ohio were unable to come to terms on a reasonable Protective Agreement. On August 30, 2007, OCC filed a Motion to Compel

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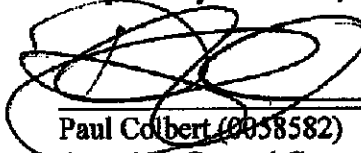
Discovery and attached its proposed protective agreement. DE-Ohio did not believe that the agreement offered by OCC was adequate to protect DE-Ohio's confidential information in that it permitted OCC to attempt to make DE-Ohio's confidential and trade secret information public, for the sake of making it public. On September 17, 2007, DE-Ohio filed its Memorandum Contra arguing the same. On September 27, 2007, OCC filed its Reply. On October 29, 2007, the Commission issued an Entry granting OCC's Motion to Compel Discovery and recommending that DE-Ohio enter into the Protective Agreement authored by OCC. DE-Ohio attempted, once again, to negotiate a reasonable agreement with the OCC, to which OCC's response was in the negative.

Rather than risk further delay in its cases pending before the Commission, DE-Ohio decided not to seek interlocutory appeal and on November 7, 2007 DE-Ohio signed the OCC's Protective Agreement. DE-Ohio has since provided OCC with all the confidential information requested in these proceedings, including the unredacted audit report, confidential responses to discovery and unredacted direct testimony. OCC now has all of the information it has requested to date. Given the recent resolution of the discovery dispute, OCC's request for an additional two weeks is not unreasonable. This should give OCC ample time to review the information, and prepare its case. However, DE-Ohio does wish to point out that the December 11, 2007 date proposed by the OCC is the same date for DE-Ohio's hearing in its Gas Cost Recovery (GCR) proceeding, Case No. 07-218-GA-GCR et al. While DE-Ohio is hopeful that the GCR case can be resolved without a full evidentiary hearing, at this date it is too soon to tell. Regardless, DE-Ohio does not oppose OCC's request to continue.

DE-Ohio however, does oppose OCC's request that the Commission delay ruling on DE-Ohio's motion for a Protective Order regarding the confidentiality of information submitted by

DE-Ohio and the auditor in Case No.'s 07-723-EL-UNC and 07-975-EL-UNC. There is no need to wait until the Commission issues an opinion regarding the merits of these cases, as suggested by OCC, to determine whether the information presented constitutes a trade secret. One is not dependent upon the other. OCC now has this information in an unredacted form. If OCC does not agree that the information should be protected, then it should notify DE-Ohio immediately and explain its reasoning, so that DE-Ohio and the Commission may address the issue appropriately, which may include DE-Ohio reevaluating its position as to whether the information continues to be deserving of trade secret protection. A Commission finding that information filed in a redacted form by DE-Ohio and the auditor in these cases constitutes confidential trade secret information and deserves appropriate protection will not prejudice OCC. OCC will still be able to use the information at the hearing while it is under seal. DE-Ohio respectfully requests that the Commission not delay ruling on the confidential nature of information submitted in a redacted form and with a Motion for a Protective Order in these proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via over electronic delivery this

14th day of November, 2007 to the following:


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