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September 9, 2008

VIA FEDERAL EXPRESS AND FACSIMILE

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

Re: Case Nos. 08-920-EL-SSO; 08-921-EL-AAM; 08-922-EL-UNC; 08-923-EL-ATA

Dear Sir or Madam:

Pursuant to the order issued by the Attorney Examiner on September 5, 2008, enclosed for filing please find an original and 20 copies of the Motion to Leave to File Out of Time, Motion to Intervene and Memorandum In Support of the Commercial Group and the Motion for Pro Hac Vice for Grace Wung in the above-referenced cases.

Also enclosed is one extra copy of each document to be dated-stamped and returned to me in the enclosed, self-addressed Federal Express envelope. Please do not hesitate to contact me at the number above if you have any questions.

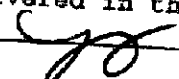
Thank you for your assistance in this matter

Sincerely,



Douglas M. Mancino

DMM/maj  
Enclosures

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan	) )	Case No. 08-920-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods	) ) )	Case No. 08-921-EL-AAM
In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge(s)	) ) ) )	Case No. 08-922-EL-UNC
In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariff	) )	Case No. 08-923-EL-ATA

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**MOTION FOR LEAVE TO FILE OUT OF TIME,  
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT OF  
THE "COMMERCIAL GROUP"**

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**Attorneys for the Wal-Mart Stores East LP,  
Sam's Club East, and Macy's Inc.  
(collectively, the "Commercial Group")**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy ) Ohio for Approval of an Electric Security Plan )	Case No. 08-920-EL-SSO
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In the Matter of the Application of Duke Energy ) Ohio for Approval to Amend its Tariff )	Case No. 08-923-EL-ATA

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**MOTION FOR LEAVE TO FILE OUT OF TIME AND  
MOTION TO INTERVENE OF THE "COMMERCIAL GROUP"**

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Now comes Wal-Mart Stores East, LP ("Wal-Mart") and Sam's East, Inc. ("Sam's East"), and Macy's Inc. ("Macy's") (collectively, the "Commercial Group") and hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, for leave to intervene in the above-captioned matters with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the Ohio Administrative Code, to intervening parties. Further, pursuant to the attorney examiner's September 5, 2008 order extending the procedural schedule and directing parties that submitting filings via the Commission's e-filing system to refile pursuant to Rule 4901-1-02, Ohio Administrative Code, the Commercial Group respectfully

requests that the Commission accept this Motion for Leave to File Out of Time and Motion to Intervene of the Commercial Group.<sup>1</sup>

On May 1, 2008, Governor Ted Strickland signed into law Amended Substitute Senate Bill ("SB 221"). SB 221 modified, among other things, Chapter 4928 of the Revised Code. Section 4928.141, Revised Code, requires each electric distribution utility ("EDU") to establish a standard service offer ("SSO") in accordance with Sections 4928.142 or 4928.143, Revised Code.<sup>2</sup>

On Thursday, July 31, 2008, Duke Energy Ohio ("DE-Ohio") filed an Application for approval of an SSO under Section 4928.143, Revised Code.

As demonstrated further in the Memorandum in Support attached hereto and incorporated herein, the Commercial Group has a direct, real and substantial interest in the issues and matters involved in the above-captioned proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. The Commercial Group believes that its participation will not unduly prolong or delay these proceedings and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in these proceedings. Further, the Commercial Group will accept the record as it stands. The interests of the Commercial Group will not be adequately represented by other parties to the proceedings and, as such, the Commercial Group is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and

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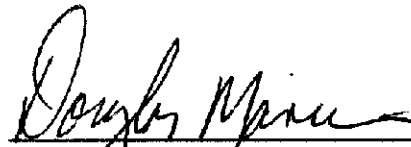
<sup>1</sup> The Commercial Group notes that on September 4, 2008, it submitted a Motion to Intervene and Memorandum in Support of the "Commercial Group" via the Commission's e-filing system. However, the Commercial Group's e-filing was submitted shortly after the 5:30 pm cut off. Therefore, in this instant filing, the Commercial Group respectfully requests that its Motion to Intervene be accepted out of time. Additionally, in its e-filed intervention, the Commercial Group noted that as of date of its e-filing Wal-Mart and Sam's East were the only entities in the Commercial Group, but that additional commercial customers were anticipated to join the group. In this instant motion, the Commercial Group now includes Wal-Mart, Sam's East, and Macy's, but still anticipates that additional commercial customers may join the commercial group before the end of this week. The Commercial Group will make the appropriate filings to reflect additional commercial customers that join the group.

<sup>2</sup> Section 4928.142, Revised Code, governs market rate option ("MRO") plans while Section 4928.143, Revised Code, controls electric security plans ("ESP").

by the provisions of the Ohio Administrative Code, to intervening parties. Further, at this juncture, given the extension in the procedural schedule granted by the attorney examiner on September 5, 2008, the scope of the issues to be addressed in DE-Ohio's application, the substantial interest of the Commercial Group in these proceedings and the consolidation of such interests through group representation, as well as the reasons provided in the Memorandum in Support, extraordinary circumstances exist that warrant granting the Commercial Group's intervention.

By separate motion, a request for admission *Pro Hac Vice* for Grace C. Wung, of the firm of McDermott Will & Emery, LLP, has been filed in the above captioned proceeding. The Commercial Group asks that if approved, she be added to the official service list. Additional contact information for the additional counsel and representatives are provided in the attached Memorandum in Support.

Respectfully submitted,



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**Attorneys for the Wal-Mart Stores East LP,  
Sam's Club East, and Macy's Inc.  
(collectively, the "Commercial Group")**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy ) Ohio for Approval of an Electric Security Plan )	Case No. 08-920-EL-SSO
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Unavoidable Capacity Charge(s) ) In the Matter of the Application of Duke Energy ) Ohio for Approval to Amend its Tariff )	Case No. 08-923-EL-ATA

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**MEMORANDUM IN SUPPORT OF THE "COMMERCIAL GROUP'S" MOTION FOR  
LEAVE TO FILE OUT OF TIME AND MOTION TO INTERVENE**

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Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record. In examining whether a party should be permitted to intervene in a proceeding, the Public Utilities Commission of Ohio ("Commission") considers, among other factors, the direct interests of the party, whether the intervention by the prospective party will unduly prolong or delay the proceedings, whether the party will significantly contribute to the full development and equitable resolution of the factual issues, and in the case of untimely motions to intervene, the extraordinary circumstances that warrant late intervention.<sup>3</sup> A review of these factors in light of following facts supports granting the Commercial Group's intervention.

In support of this Motion to Intervene, the Commercial Group states that each entity in the Commercial Group is an ultimate customer of DE-Ohio. Further, the entities that comprise

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<sup>3</sup> See also R.C. 4903.221(B) upon which the above rule is authorized.

the Commercial Group each purchase substantial amounts of electric and related services from DE-Ohio, which is a public utility subject to the jurisdiction of the Commission.

Wal-Mart, Sam's East, and Macy's, are each served by DE-Ohio and may be affected by DE-Ohio's proposed ESP. The Commercial Group has a real and substantial interest inasmuch as these proceedings may directly or indirectly impact the provision of electric service to the Commercial Group. Specifically, the Commercial Group's direct interest in these proceedings is the result of the effect that these proceedings shall have upon the price, adequacy, and reliability of the electric supply and related services within Ohio, including the areas presently served by DE-Ohio.

Additionally, as the Commercial Group consists of more than one commercial customer served by DE-Ohio, the collective representation of the Commercial Group's interest will significantly contribute to the full and expeditious development of an equitable resolution of the factual issues in this proceeding. The Commercial Group has also formed to consolidate their substantially similar interests, and to consolidate their examination of witnesses and presentation of testimony. The instant motion is being filed no later than five days after the specific deadline set forth in this proceeding and therefore no harm or prejudice will occur if the Commercial Group's intervention is granted at this time. Extraordinary circumstances exist to grant the Commercial Group's motion to intervene, because additional time was needed to form the Commercial Group.<sup>4</sup> Further, in light of the extension in the procedural schedule issued on September 5, 2008 (and directing parties who e-filed in this proceeding to refile before September 12, 2008), good cause exists to warrant the Commercial Group's intervention at this time.

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<sup>4</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, 2004 Ohio PUC LEXIS 358 (June 1, 2004) at paragraphs 7 -8 (where the Commission granted the a late-filed motion to intervene nearly one month after the intervention deadline recognizing that the intervenor had numerous members that required additional time to determine whether the proposal could have a disruptive impact on their interests).

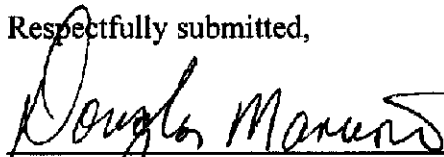
WHEREFORE, for the foregoing reasons, the Commercial Group respectfully requests that the Commission grant this motion for leave to intervene and that they be made a full party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, the Commercial Group requests that the following persons be placed on the official service list:

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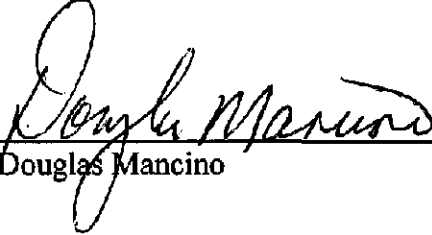
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**Attorneys for the Wal-Mart Stores East LP,  
Sam's Club East, and Macy's Inc.  
(collectively, the "Commercial Group")**



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support of the "Commercial Group" was served upon the following parties of record this 9th day of September, 2008, via first class mail, postage prepaid.

  
\_\_\_\_\_  
Douglas Mancino

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