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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
of Duke Energy Ohio, Inc. to)
Adjust and Set the Annually) Case No. 06-1085-EL-UNC
Adjusted Component of its Market)
Based Standard Service Offer)

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**DUKE ENERGY OHIO'S MOTION TO RECONCILE THROUGH A TRUE-
UP TO JANUARY 1, 2007, THE ANNUALLY ADJUSTED COMPONENT
ULTIMATELY APPROVED IN THIS PROCEEDING**

Duke Energy Ohio (DE-Ohio) moves this honorable Public Utilities Commission of Ohio (Commission) to grant DE-Ohio authority to implement the 2007 Annually Adjusted Component (AAC) market price subject to true-up to January 1, 2007 so that DE-Ohio and consumers do not suffer the detrimental effects associated with a failure to recover environmental, homeland security, and tax costs. By Entry dated November 29, 2006, the Attorney Examiner suspended this proceeding pending the resolution of issues regarding the Ohio Supreme Court's remand of the Ohio Consumers' Counsel's (OCC) appeal of the Commission's decision in Case No. 03-93-EL-ATA *et. al.* As a result of the suspension DE-Ohio will not recover incremental environmental, homeland security, and tax costs beginning January 1, 2007. For the reasons more fully explained in the attached Memorandum in Support DE-Ohio respectfully requests that the Commission grant this Motion.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "P.A. Colbert", written in a cursive style.

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MEMORANDUM IN SUPPORT

On November 23, 2004, the Public Utilities Commission of Ohio (Commission) approved Duke Energy Ohio's (DE-Ohio) Market-Based Standard Service Offer (MBSSO), including the Annually Adjusted Component (AAC) that is the subject of this proceeding.¹ The Commission approved the AAC market price for 2005 and 2006 but agreed that DE-Ohio must apply for approval of an AAC market price effective January 1, 2007, and each year thereafter.² DE-Ohio filed its application to set the AAC market price effective January 1, 2007.³

On March 18, 2005, and May 23, 2005, the Ohio Consumers' Counsel (OCC) filed Notices of Appeal with the Ohio Supreme Court asserting various procedural and substantive defects with the

¹ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA (Entry on Rehearing at 9) (November 23, 2004).

² *Id.*

³ *In re DE-Ohio's AAC*, Case No. 06-1085-EL-UNC (Application) (September 5, 2006).

Commission's November 3, 2004, Entry on Rehearing in Case No. 03-93-EL-ATA.⁴ The Court upheld the Commission's decision in all substantive respects but remanded to the Commission on two issues.⁵ Specifically, the Court directed the Commission to support its Entry on Rehearing approving DE-Ohio's MBSSO with evidence of record and directed the Commission to cause DE-Ohio to disclose alleged side agreements through discovery.⁶ To determine how to address the Court's remand the Commission set a prehearing conference for December 14, 2006, and indefinitely suspended this proceeding.⁷ Due to the indefinite suspension of this proceeding the hearing previously set for December 5, 2006, will not take place and DE-Ohio will not have an opportunity to implement its AAC market price on January 1, 2007. Thereafter, DE-Ohio will not be able to recover incremental costs associated with environmental, homeland security, and tax expenditures until such time as the Commission acts on this proceeding.

The adjustments to the AAC market price are integral components of DE-Ohio's MBSSO market price because it is the only mechanism that permits it to recover costs associated with environmental expenditures,

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St.3d 300 (Notices of Appeal).

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 111 Ohio St.3d 300 (November 22, 2006).

⁶ *Id.* at 13, 33.

⁷ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA (Entry at 3) (November 29, 2006).

homeland security, and taxes.⁸ DE-Ohio is making substantial environmental expenditures and expects to continue to make such expenditures. If DE-Ohio cannot recover environmental costs it must re-examine environmental investments to the detriment of consumers. Ultimately consumers will suffer from a deteriorating environment and increased fuel costs. Absent an amended AAC DE-Ohio cannot agree to the current MBSSO price.

To preserve the status quo DE-Ohio requests that, upon the resumption of this proceeding, the Commission permit DE-Ohio to reconcile the AAC to January 1, 2007, through a true-up to fully recover 2007 environmental, homeland security, and tax costs. DE-Ohio agrees that the true up should reflect any increase or decrease in costs ultimately approved by the Commission. In this way consumers and DE-Ohio will avoid any detriment associated with a gap in cost recovery. Potential detriments include increased fuel costs, a lack of AAC cost recovery, and a renegotiation of the MBSSO market price. DE-Ohio respectfully requests that the Commission grant this Motion.

⁸ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA (Entry on Rehearing at 9-10) (November 23, 2004).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Duke Energy Ohio Motion to Extend the Annually Adjusted Component Market Price Until the Resolution of this Proceeding was served by US Mail or hand delivered on the following parties this 5th day of December 2006.



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