

**BEFORE THE PUBLIC  
UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc. for an Increase in Gas     ) Case No. 07-589-GA-AIR  
Rates.     )

In the Matter of the Application of Duke     )  
Energy Ohio, Inc. for Approval of an     ) Case No. 07-590-GA-ALT  
Alternative Rate Plan for its Gas     )  
Distribution Service.     )

In the Matter of the Application of Duke     )  
Energy Ohio, Inc. for Approval to Change     ) Case No. 07-591-GA-AAM  
Accounting Methods.     )

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**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE OHIO PARTNERS  
FOR AFFORDABLE ENERGY'S MOTION FOR CONTINUANCE**

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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 Ohio Partners for Affordable Energy (OPAE). While DE-Ohio does not oppose the expedited treatment of OPAE's motion given that the hearing for this matter is less than seven days away, DE-Ohio does object to, and opposes OPAE's request for any continuance, albeit in whole or in part, in the above styled proceedings.

On February 1, 2008, the Commission issued an Entry setting the above captioned cases for hearing to begin on February 26, 2008. Subsequently, on February 22, 2008, OPAE filed its Motion to Continue in the above styled proceedings. In its Motion to Continue, OPAE requests that the Commission continue the February 26, 2008 hearings until March 4, 2008, or in the alternative the hearing begins on February 26, 2008 as scheduled and then be "suspended until March 18, 2008," in order to afford OPAE additional time "to review and analyze the evolving

proposals and have adequate time to prepare appropriate counter proposals on the various issues.”

Contrary, to OP&E’s allegations, the time afforded OP&E to prepare has been more than adequate. DE-Ohio filed its Case in Chief on July 18, 2007. Direct Testimony was filed on August 1, 2007 and Supplemental Testimony was filed on January 30, 2007. On February 22, 2007, DE-Ohio filed its Second Supplemental Testimony, which included support for the Stipulation reached with the signatory parties, resolving all issues in this proceeding. All parties have had the opportunity to conduct discovery in this proceeding. All Parties have had ample opportunity to meet and discuss issues and settlement positions. DE-Ohio held a Technical Conference on August 20, 2007. The first settlement conference was held on January 25, 2008 at the offices of the Public Utilities Commission. Subsequent settlement conferences were held on February 7, February 12, February 14, February 15 and February 20, 2008. All parties were invited to participate in these discussions, including OP&E. Terms of settlement offers were exchanged during negotiations, and most of the parties, but not OP&E, have now agreed to a settlement resolving all issues in the case.

DE-Ohio remains willing to continue discussions with OP&E, or any other non-signatory party, up to the commencement of the hearing on February 26, 2008. However, DE-Ohio is not willing to delay this proceeding so that OP&E may continue to advance specific demand which have already been rejected by settling parties. OP&E is free to support or oppose any stipulation reached and filed in this proceeding, and has all the information necessary to do so.

DE-Ohio has worked diligently to move settlement discussions to fruition while continuing to prepare for the hearing. DE-Ohio believes all parties have been doing the same.

Moreover, delaying the hearing will cause a significant burden upon DE-Ohio, both logistically and financially. Travel arrangements and accommodations have been made for DE-Ohio's witnesses who are coming from out of town. None of DE-Ohio's witnesses are from Columbus, Ohio and rescheduling on short notice will create be unreasonably burdensome at this late a date. It is unknown when these witnesses would be available again if the hearing is rescheduled. These witnesses are set to defend the initial filing and any stipulation that was reached in the ongoing settlement discussions. OPAE is free to cross examine any of these witnesses.

Rescheduling the case would be difficult and prejudicial to DE-Ohio. Any delay in the established schedule would result in an increase in expense to the Company both in work time lost, hotel expense and travel expense. Moreover, further delays in the hearing of this case will ultimately result in a longer period before DE-Ohio would be able to implement any Commission approved rate increase. The increased expense due to a continuation would not be felt by DE-Ohio alone. Other parties to the case who are also prepared to go forward with witnesses and cross-examination beginning February 26, 2008 would incur the expense of a continuation.

OPAE's claims of prejudice are without merit. First, as previously discussed, OPAE has participated in all settlement conferences and therefore given ample opportunity to review settlement proposals. Second, if a Stipulation is reached with some of the Parties, DE-Ohio will pre-file its testimony in support of the Stipulation in this proceeding, and will do so contemporaneously with the filing of the Stipulation and prior to the commencement of the hearing. Moreover, at the hearing, DE-Ohio is willing to present any witness in support of a Stipulation last, giving all non-signatory parties ample opportunity to review the Stipulation, testimony, and cross examine the witness. If a Stipulation is reached, DE-Ohio would also be

willing to present its witness supporting such Stipulation for deposition during non-hearing times. Therefore, OPAE will not be prejudiced by allowing the hearing to commence on February 26, 2008 and the case should follow the present schedule.

Respectfully submitted,

/s/ John J. Finnigan, Jr.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic delivery this \_\_\_\_\_  
day of February, 2008 to the following:

/s/ John J. Finnigan, Jr.

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Summary: Memorandum Contra OPAE Motion for Continuance electronically filed by ANITA M SCHAFER on behalf of Finnigan, John J. Mr.