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JOINT MOTION TO CONSOLIDATE APPEALS

Appellants, Worthington Industries, Calphalon Corporation, Kraft Foods, Brush Wellman and Martin Marietta, and Appellee Public Utilities Commission of Ohio hereby respectfully move the Court to consolidate the five separate appeals, as captioned above, from the Public Utilities Commission of Ohio's (the "Appellee" or "Commission"): 1) Opinion and Order entered in its Journal on February 19, 2009; and 2) Entry on Rehearing entered in its Journal on April 15, 2009.

All parties move for consolidation on the basis that the separately filed complaints against the Toledo Edison Company were consolidated for hearing and adjudication by the Commission – as case numbers 08-67-EL-CSS, 08-145-EL-CSS, 08-146-EL-CSS, 08-254-EL-CSS, and 08-893-EL-CSS – in light of their similar facts and analogous issues.

Moreover, Appellants separately filed notices of appeals to the Ohio Supreme Court, each of which allege that the Appellee erred as a matter of law in the identical manner, as described in those notices of appeal. Thus, the five appeals each present virtually identical facts, and the same issues of law.

The parties believe that it would be a far more efficient use of the Court and Commission's resources, and the parties' time and efforts, to now consolidate these five appeals. Consolidation avoids duplication. Appellee would file a single copy of the record within 30 days of June 12, 2009, a single merit brief, and a single appendix and supplement. Similarly, consolidation will permit Appellants to file a single joint supplement, a single joint appendix, single joint merit and reply briefs, and to jointly appear at oral argument. Consolidation also would permit Intervenor Toledo Edison to file a single merit brief, rather than five virtually identical briefs. Each of the Appellants will retain their attorney as counsel of record for signature and service by the Court, Appellee, and Intervening Appellee.

Appellants also have contacted the Attorney General representing the Commission as well as counsel for Toledo Edison, both of whom have indicated their consent to consolidating the five appeals as requested herein.

WHEREFORE, all parties to this appeal request the Court grant consolidation of the separately noticed appeals.

Respectfully submitted,

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Consent to Consolidation

The undersigned counsel for Intervening Appellee, The Toledo Edison Company, consents to consolidation of the appeals referenced herein.

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Certificate of Service

I certify that a copy of the Joint Motion to Consolidate Appeals was served, as listed below, upon the Toledo Edison Company, and the Public Utilities Commission of Ohio, by regular U.S. Mail, postage pre-paid this 2nd day of July 2009.


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