BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates.	)))	Case No. 12-1685-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 12-1686-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	))))	Case No. 12-1687-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 12-1688-GA-AAM

DUKE ENERGY OHIO, INC.'S
MEMORANDUM CONTRA MOTION FOR STAY

I. Introduction

A consortium of intervenors in these proceedings seeks to stay implementation of an order, lawfully issued by the Public Utilities Commission of Ohio (Commission) on November 13, 2013, authorizing the recovery of costs incurred in the investigation and remediation of certain environmentally contaminated utility property. The Motion for a Stay to Prevent Duke from Charging Manufactured Gas Clean-Up Costs to Customers While the Process is Pending for Rehearing and Any Appeals or, in the Alternative, Motion to Make Duke's Impending Rates for Charging Manufactured Gas Clean-Up Costs to Customers Subject to Refund Pending the Outcome of Rehearing and any Appeals (Motion to Stay) is a veiled and opportunistic effort to reassert arguments already heard and decided upon by the Commission, and to preview

arguments likely to be made on rehearing. The motion is procedurally and legally defective for reasons set forth below. It should be denied.

II. Procedural History

This case was initiated by the Application of Duke Energy Ohio, Inc., (Duke Energy Ohio) for an increase in rates. The following parties were granted intervention in these proceedings: Stand Energy Corporation; Interstate Gas Supply, Inc.; the City of Cincinnati; Ohio Partners for Affordable Energy (OPAE); Wausau Paper Towel & Tissue, LLC;[1] the Office of the Ohio Consumers' Counsel (OCC); Cincinnati Bell Telephone Company LLC; Greater Cincinnati Health Council; The Kroger Co.; Direct Energy Services, LLC, and Direct Energy Business, LLC; Ohio Manufacturers' Association (OMA); and People Working Cooperatively, Inc. Many of the issues relevant to the rate application were resolved by stipulation. The stipulating parties agreed to reserve the issue of recovery of costs related to environmental investigation and remediation of manufactured gas plants (MGPs) for hearing. That hearing began on April 29, 2013, and concluded on May 2, 2013.

On November 13, 2013, the Commission issued an Opinion and Order concluding, *inter alia*, that Duke Energy Ohio had sustained its burden to prove that MGP environmental investigation and remediation costs incurred through 2012 should be recovered in the amount of $62.8 million, less $2,331,580 for a purchased parcel of land, less 2008 costs for work done during a particular period of time at the West End site, and less all carrying charges.[2]

On November 27, 2013, Duke Energy Ohio submitted tariff sheets and the supporting work papers to implement the tariff rates related to the MGP portion of the rate application, consistent with the Opinion and Order. On December 2, 2013, OCC, Kroger, OMA, and OPAE

[1] Wausau Paper Towel & Tissue, LLC, withdrew its motion to intervene on August 22, 2012.
[2] Opinion and Order at pp. 64-65.

(collectively, the Movants) moved the Commission for a stay of the rates to be implemented for costs related to the MGP portion of the rate application or, in the alternative, for an order making the rates subject to refund. Movants' arguments are legally incorrect and factually unsupported and the motion should be denied.

III. Argument

A. Movants have not complied with required legal procedure.

"The process of public utility rate-making in Ohio is wholly controlled by statute."[3]

Pursuant to R.C. 4905.32:

> No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the Public Utilities Commission which is in effect at the time.
>
> No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified in such schedule or regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.

As the Ohio Supreme Court has declared, based upon these statutory mandates, "a utility has no choice but to collect the rates set by the order of the commission."[4]

Further, it is axiomatic that an order of the Commission is effective immediately upon journalization, unless a different time is specified by the Commission.[5] In these proceedings, the Commission issued an Opinion and Order that does not specify an alternative effective date. Accordingly, the order became effective on November 13, 2013, when it was entered upon the

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[3] *The Cleveland Electric Illuminating Company v. Public Utilities Commission of Ohio* (1976), 46 Ohio St.2d 105, 107.
[4] *Keco v. The Cincinnati & Suburban Bell Telephone Company* (1957), 166 Ohio St. 254, 258.
[5] R.C. 4903.15.

journal of the Commission. Duke Energy Ohio filed tariffs consistent with the Opinion and Order on November 27, 2013.

The General Assembly has made a limited exception to the general rule – an exception pursuant to which the aggrieved party must take affirmative action to secure a stay after posting a bond. Specifically, R.C. 4903.16 authorizes the Ohio Supreme Court to stay execution of a commission order and sets forth the prerequisites for same:

> A proceeding to review, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant **shall execute an undertaking**, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned upon prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of... .[6]

As the Supreme Court has consistently and repeatedly affirmed, the collection of rates pursuant to a commission order will not be stayed absent an application to the Court and the posting of a bond.[7] Here, however, the Movants ignore this established protocol and instead seek to improperly achieve a stay of the Commission's Opinion and Order. Through the Motion to Stay, Movants seek to create their own unique appellate procedure. Rather than comply with the statutory requirements, Movants seek to reargue all of the same points raised at hearing using the pretext of a motion, when in fact such arguments have not yet been argued in an application for rehearing.

As stated above, the Commission's rules require that a party seek rehearing and a final order prior to filing a notice of appeal to the Ohio Supreme Court. Once such a final order is received and once a party has provided proper notice of appeal, a party may then seek a stay

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[6] R.C. 4903.16 (emphasis added).

[7] *See, e.g., Office of Consumers' Counsel v. Public Utilities Commission of Ohio* (1991), 61 Ohio St.3d 396, 403; *In re Application of Columbus Southern Power Company*, 2011-Ohio-1788 ¶18, 128 Ohio St.3d 512; *Keco*, 166 Ohio St. at 258.

before the Ohio Supreme Court and post the necessary bond.[8] In *Consumers' Counsel v. Pub. Util. Comm.*, the OCC sought a stay, from the Commission, of an order directing the collection of new rates, and then attempted to appeal the Commission's denial of the stay. The Ohio Supreme Court rejected such an effort to circumvent the statute, stating:

> If appellant wished to stay the collection of the rates authorized by that [final] order pending its appeal thereof, it should have moved to stay the order. **Additionally, in that R.C. 4903.16 is the statute dealing with staying a final Commission order, appellant should have complied with all of its requirements.** Appellant did not apply to this court for a stay of the final order eliminating the condominium clause, nor did it post a bond. Therefore, based upon R.C. 4903.16, and this court's interpretation thereof, appellant would not be entitled to the relief it seeks... .[9]

Likewise, in a proceeding before the Commission, where the Consumers' Counsel similarly argued that the Commission should stay its own proceedings until the Commission's opinion in a companion proceeding was final and nonappealable and indeed to stay its own proceedings until a decision in the companion proceeding was appealed and a verdict rendered by the Ohio Supreme Court, the Commission agreed with Ohio Edison's argument contra and stated:

> OCC would have the Commission operate under the premise that we erred in rendering our decision in Copley Village, and in striking down Ohio Edison's "condominium clause" as being inequitable and unreasonably discriminatory. The legality of our decision in Copley Village is now a question to be decided by the Ohio Supreme Court.[10]

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[8] *Columbus v. Pub. Util. Comm.* (1959), 170 Ohio St. 105, 109 ("[A]ny stay of an order of the commission is dependent on the execution of an undertaking by the appellant"). *See, also, Consumers' Counsel v. Pub. Util. Comm.* (1991), 61 Ohio St.3d 396, 403.

[9] 61 Ohio St. 3d at 403 (emphasis added). *See, also, In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with the Request to Implement a Billing Cost Recovery Rider,* Case No. 05-792-EL-ATA, Opinion and Order at pg. 32 (March 1, 2006) (the Commission recognized that the Ohio Supreme Court is the proper forum in which to determine the advisability of a stay).

[10] *In the Matter of the Application of Ohio Edison Company for Authority to Amend its Residential Tariff Nos. 10, 12 and 17,* Case No. 90-718-EL-ATA, Finding and Order (August 30, 1990).

The Commission, in the *Ohio Edison* case, recognized that staying its own order was illogical and would work to shed doubt on its own deliberations. Instead, as was proper, the Commission referred the Consumers' Counsel to the Ohio Supreme Court.

In addition, if it is the intention of Movants to appeal this matter beyond the Commission, once such appeal is perfected, the Commission will lose jurisdiction until such time as the matter is decided by the Ohio Supreme Court. The Commission itself has recognized this in noting that, once an appeal is taken, it no longer has the authority to issue a stay but rather such a stay must be sought at the Ohio Supreme Court.[11]

Finally, a stay of a proceeding is an action in equity and the Commission does not have any equitable jurisdiction.[12] Even Movants agree with this point; they state that the Commission's powers are only those conferred by statute and, absent specific statutory authority to do so, the Commission lacks authority to deviate from the statutory requirements related to ratemaking.[13] The law is very clear on the procedure to be followed and imposes on Movants specific procedural requirements in order to obtain a stay of the Commission's order. Movants simply chose not to comply with these requirements.

B. Movants cannot satisfy the standard necessary to sustain a motion to stay.

The Movants rely on a four-part test employed to determine the availability of the extraordinary remedy afforded by a stay. The four-part test originated in an Ohio Supreme Court dissenting opinion of Justice Douglas wherein Justice Douglas noted that satisfaction of this standard was a very high hurdle.[14] In explaining the standard, Justice Douglas discussed the

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[11] *In the Matter of the Commission Investigation into the Regulatory Framework for Telecommunication Services in Ohio*, Case No. 84-944-TP-COI, Opinion and Order, (April 9, 1985).
[12] *In the Matter of the Complaint of State Alarm, Inc. Complainant, v. Ameritech Ohio, Respondent*, Case No. 95-1182-TP-CSS, Opinion and Order at p. 5 (February 21, 1996).
[13] Motion to Stay at p.6.
[14] *MCI Telecommunications Corporation v. Public Utilities Commission of Ohio, et al.*, 31 Ohio St.3d 604, 605.

unique nature of Commission orders and the thorough review given by the Commission and its experts. Justice Douglas further noted that "a stay of the Commission's order [by the Court] should only be given after substantial thought and consideration – if at all."[15]

The Commission has adopted the standard suggested by Justice Douglas for assessing motions to stay.[16] The four-factor test requires examination of:

(a) Whether there has been a strong showing that movant is likely to prevail on the merits;
(b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay;
(c) Whether the stay would cause substantial harm to other parties; or
(d) Where lies the public interest.

As discussed below, Movants cannot satisfy these four requirements.

1. Movants cannot establish a likelihood of prevailing on the merits.

Movants claim that the Commission's Opinion and Order derogates Ohio's ratemaking formula. However, in making this argument, for reasons that are conspicuously unclear, Movants neglect to refer to R.C. 4909.15, but rather cite to a law enacted in 1911. The Commission's Opinion and Order is well-founded and is based upon rate-making authority in R.C. 4909.15(A)(4) and years of precedent. Virtually every rate case ever prosecuted before the Commission includes an analysis of the prudence and reasonableness of allowable expenses. The costs related to statutory compliance with environmental remediation was, as determined by the Commission in this case, a normal and necessary cost of doing business. As noted by the Commission, these costs are necessary in order for the Company to remain in business and to be in compliance with Ohio law.[17] Because the Commission found that such costs "were a necessary cost of doing business as a public utility in response to federal law" and that such costs

[15] Id.
[16] *In re Modification of Intrastate Access Charges*, Case No. 00-127-COI, Entry on Rehearing (February 20, 2003).
[17] Opinion and Order at pg. 55.

"are a current cost of doing business," it found that recovery of such costs, to the extent determined to be "appropriate and prudent," is permissible.

Movants unpersuasively raised this same argument during the hearing of the MGP portion of these proceedings. Seeking to reargue the same points in the guise of a motion to stay violates the Commission's process for rehearing and is contrary to the law and the Commission's regulations. Fundamentally, Movants provide no reason why the Commission should reconsider its own decision to be unlawful.

In arguing likelihood of success on the merits, the Movants assert that the MGP properties are unrelated to service or to facilities that are used and useful in service to current customers. This is a legal assertion that was argued at hearing, in initial briefs and again on reply. The Commission has explicitly rejected the notion that the recovery of costs in this context must be examined under this paradigm. The Commission clearly stated that the applicable statute is R.C. 4909.15(A)(4) and that the costs of investigating and remediating MGP sites are necessary costs incurred for rendering utility service. Thus, these are costs that may be treated as expenses incurred during the test year.[18] The Commission's decision is replete with references to a very comprehensive record supporting its decision. The decision is well within the Commission's authority. This is a test year expense that has been deferred and recovered much like other expenses that are typically recovered in a rate case. The argument by some of the intervenors that costs are only recoverable if directly associated with used and useful plant is inconsistent with CERCLA[19] and Ohio Environmental Protection Agency (Ohio EPA) law and is nonsensical in the context of contaminants such as those found at MGP sites, as the contaminants move onto and off of utility property. Many similar expenses are not directly related to a

[18] Opinion and Order at pg. 58.
[19] The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA).

particular piece of utility property, real estate, or personal property, but rather simply relate to the cost of running a viable business, such as certain taxes, travel expenses, insurance, etc.

Additionally, the Movants argue that the Commission erred when it found that the Company had met its burden of proof with respect to whether remediation costs were prudently incurred. This too is a well-worn argument, and one that has already failed to persuade the Commission at hearing. The Commission has declined to grant a stay where, as here, it has devoted a great deal of time to the matters taken up at hearing and no new arguments are raised.[20] In these proceedings, the Commission found that the Company's experts were compelling and that OCC's expert simply was not.[21] Weighing the evidence is well within the Commission's responsibility and authority. In this case, there is ample factual support in the record to demonstrate that the Company met its burden of proof. For example, the Commission's decision is seventy-nine pages long, with an extensive and detailed discussion related to all of the evidence that was presented. Moreover, the Commission specifically explained the history of MGP plants, as supported by the Company's witnesses;[22] the legal requirement for remediation, as supported by the Company's witnesses;[23] the nature and extent of remediation work undertaken[24] and why, in each case, such work was required, as supported by the Company's witnesses;[25] and the cost control methods employed to ensure that the work was accomplished prudently and in a cost effective manner, as supported by the Company's witnesses.[26]

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[20] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates*, Case No. 07-589-GA-AIR, Entry at pg. 2 (June 4, 2008).
[21] Opinion and Order at pg. 64.
[22] Opinion and Order at pp. 23-25.
[23] Opinion and Order at pp. 30-31.
[24] Opinion and Order at pp. 43-46.
[25] Opinion and Order at pp. 30-31, 36-37, 38, 43-45.
[26] Opinion and Order at pp. 60-63.

The only witness presented by any of the Movants to testify about the environmental elements of the investigation and remediation of the MGP sites was one who is not licensed to work under the Ohio Environmental Protection Agency's Voluntary Action Plan (VAP) program. That witness, James R. Campbell, sponsored by the OCC, had significant shortcomings with respect to his experience and ability in relation to this area of inquiry.[27] Dr. Campbell was not licensed to work in Ohio under the Ohio EPA's VAP program and he had no in-depth, first-hand knowledge of the MGP sites.[28] Movants failed to refute the soundness of the Company's decisions and prudence with respect to the MGP investigation and remediation at hearing. They cannot hope to prevail on the merits in seeking rehearing or appeal.

The Commission Staff, understandably, did not take a position in the Staff Report of Investigation related to prudence. The Commission Staff is not charged with responsibility of analysis and advocacy as related to environmental matters. Such issues are within the purview of the Ohio Environmental Protection Agency. However, the Company provided experts who testified at length to all of the factors necessary to prove that the remediation of the MGP sites was done in compliance with Ohio law, at the lowest and responsibly least cost and in the most expedient manner. Thus, the Movants simply reiterate the same arguments made at hearing and the arguments they will no doubt make in an application for rehearing, as if that will somehow change the outcome. Repetition notwithstanding, Movants cannot prove likelihood of success on the merits when they have been resoundingly unsuccessful in doing so in the first instance.

In a proceeding involving The Cincinnati Gas & Electric Company, the Commission noted that it had already considered the merits of the matters before it, through evidence collected at multiple hearings, and therefore still believed its orders were correct and justified.

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[27] Opinion and Order at pg. 64.
[28] Id.

On that basis, it declined to issue a stay.[29] In this case, the Commission stated that it has done its due diligence to ensure that the ultimate decision is factually based and supported by the evidence.[30] The Movants have not raised any issue that was not already addressed at hearing in these proceedings. The Commission considered these arguments and has rejected them with ample legal and factual support.

In a final argument, Movants suggest that they may succeed on appeal simply because the Commission did not reach a unanimous decision in these proceedings. However, it is undeniable that a majority of the public utilities commissioners constitutes a quorum for the transaction of any business or performance of any duty or the exercise of any power. The act of the majority is the act of the commission.[31] What is clear is that a majority of the Commissioners reached the conclusion that it did, allowing recovery of prudently incurred costs for environmental investigation and remediation. The existence of a minority position is irrelevant to the legality and sustainability of the Commission's decision.

2. Movants cannot establish and cannot support the existence of irreparable harm.

Movants next assert that the implementation of lawfully determined rates will irreparably harm customers. However, as noted above, Movants already have an adequate remedy at law. Where, as here, an adequate remedy exists, the Ohio Supreme Court has found with respect to extraordinary remedy, that it will not interfere.[32] Movants may seek rehearing of the Commission's Opinion and Order and may then appeal the final decision at the Ohio Supreme Court. Nothing in the Commission's Order deprives any party of its rights under the law.

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[29] *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing*, Case No. 03-93-EL-ATA, Entry at pg. 2 (June 11, 2008).
[30] Opinion and Order at pg. 64.
[31] R.C. 4901.08
[32] *Goodall v. Crofton* (1877), 33 Ohio St. 271, 275.

Therefore, Movants are unable to establish a basis for the claim that there is the possibility of irreparable harm.

3. Movants cannot support the claim that a stay is needed to avoid harm to other parties.

Movants cite several cases in support of the notion that customers are harmed by the collection of lawfully approved rates for MGP-related costs prior to the time when all appeals are exhausted. None of the cases cited involves matters even remotely related to the types of decisions incumbent upon the Commission to decide, given its authority and statutory foundations. In *FOP v. City of Cleveland*, the Eighth District Court of Appeals recognized that harm is irreparable "when there could be no plain, adequate and complete remedy at law... ."[33] This definition is inapposite here since there is an adequate remedy at law.

Movants likewise refer to additional cases that are not helpful. In *Tilberry v. Body*, the Court was addressing the termination of a partnership leasehold. This case involved civil litigation and statutes governing the winding up of a partnership agreement and the interests of each partner under the partnership. Such matters are remote from those under consideration in these proceedings.[34] Likewise, *Sinnott v. Aqua-Chem, Inc.*, involved an asbestos claim. The Court in *Sinnott* discussed the nature of a final appealable order and compliance with statutes in Chapter 25, Revised Code. Again, these matters are unrelated to Movants' present argument.

4. A stay subject to refund is inappropriate in this rate proceeding.

Movants argue magnanimously in the alternative that in order to remove the possibility that the Company may be harmed if rates are stayed, the Commission could authorize the Company to accrue reasonable carrying charges during the pendency of the stay. The Ohio

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[33] *FOP v. City of Cleveland* (8th Dist. 2001), 141 Ohio App. 63, 81, citing *Cleveland v. Cleveland Elec. Illuminating Co.* (8th Dist. 1996), 115 Ohio App.3d 1, 12, appeal dismissed, 78 Ohio St.3d 1419 (1997).
[34] *Tilberry v. Body* (1986), 24 Ohio St.3d 117.

Supreme Court has specifically and unequivocally spoken with regard to this proposal. In *In re Application of Columbus Southern Power Co. et al.*, where the OCC similarly argued that the Commission should have made a rate increase subject to refund, the Court stated:

> As OCC recognizes, under *Keco*, we have consistently held that the law does not allow refunds in appeals from Commission orders. As we have stated only two years ago, "any refund order would be contrary to our precedent declining to engage in retroactive ratemaking." Ohio Consumers' Counsel v. Pub. Util. Comm., 121 Ohio St.3d 362, 2009 Ohio 604, 904 N.E.2d 853 at para. 21.[35]

The Court made clear in the *Columbus Southern* case that its decisions in *Keco* and other cases hold that the statutes protect against unlawfully high rates by allowing stays, since R.C. 4903.16 authorizes the Court to stay execution of commission orders. The General Assembly in R.C. 4903.16 has made clear its intent that a public utility shall collect the rates set by Commission order and that an aggrieved party has the right to seek a stay and post bond once it appeals an order to the Court.[36] The Movants made this argument and failed previously. The argument here is identical to the argument in *Columbus Southern* and must fail again.

Movants rely upon a Commission determination related to the allowance of Construction Work in Progress (CWIP) for the construction of the Zimmer Plant to assert that the Commission has ordered that utility rates be subject to a refund (Zimmer Case).[37] However the facts in the Zimmer Case were quite different. In the Zimmer Case, the Commission's decision to make rates subject to refund was based upon the fact that a week after the Commission's Opinion and Order in that proceeding, the Nuclear Regulatory Commission (NRC) issued an order suspending

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[35] *In re Application of Columbus Southern Power Company, et al.; Office of the Ohio Consumers Counsel, et al. v. Pub. Util. Comm.* (2011), 128 Ohio St.3d 512, 516, 2011 Ohio 1788, 947 N.E.2d 655. *See, also, Green Cove Resort I Owners' Assn. v. Pub. Util. Comm.*, 103 Ohio St.3d 125, 2004 Ohio 4774, 814 N.E.2d 829 ("Neither the commission nor this court can order a refund of previously approved rates, however, based on the doctrine set forth in *Keco*...").

[36] Id.

[37] *In the Matter of the Application of Columbus & Southern Ohio Electric Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service, Amend Certain Terms and Conditions of Service and Revise Its Depreciation Accrual Rates and Reserves*, Case No. 81-1058-EL-AIR, Entry (November 17,1982).

construction of Zimmer. Thus, the Commission issued an entry, subsequent to its Opinion and Order, approving tariffs implementing the rate increase it had authorized, including a portion attributable to the Zimmer CWIP allowance. But given the significant change in circumstances due to the NRC ruling, the Commission made the CWIP-related portion of the rate increase subject to refund. No such change in circumstances has occurred in this case. The costs incurred are historic rather than forward looking. Thus, the Commission's Entry in the Zimmer Case provides no support for the alternative request to make rates subject to refund.

5. Movants do not adequately address that which is in the public interest.

Finally, Movants refer to the fact that these are "difficult times" and suggest that a stay would provide some "relief to customers who are already burdened by the fragile economy." Duke Energy Ohio is always mindful of its customers' interests and is indeed more than well aware of the state of the economy. But it remains in the public interest to have affordable, reliable, safe, and clean energy available to customers. The balance created in the regulatory process takes all of this into consideration. The Commission is likewise mindful of such concerns and its decision has been rendered. For the Commission to grant a stay of its own decision would create significant doubt in the eyes of those who maintain an interest in the financial status of the Company and its regulatory oversight. Such uncertainty would have negative financial consequences for the Company and for its customers. A stay is not in the best interest of the public.

IV. Conclusion

The Commission has already rejected the arguments advanced by Movants. It should reject them again and deny the Motion to Stay. Movants' Motion to Stay fails to meet the

Commission's standard for a stay. It is procedurally and legally defective. For these reasons, Duke Energy Ohio respectfully requests that the Commission deny Movants' Motion to Stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13th day of December, 2013, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.

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