

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The) Case No. 08-1094-EL-SSO
Dayton Power and Light Company to)
Establish a Standard Service Offer in the)
Form of an Electric Security Plan.)

In the Matter of the Application of The) Case No. 08-1095-EL-ATA
Dayton Power and Light Company for)
Approval of Revised Tariffs.)

In the Matter of the Application of The) Case No. 08-1096-EL-AAM
Dayton Power and Light Company for)
Approval of Certain Accounting)
Authority.)

In the Matter of the Application of The) Case No. 08-1097-EL-UNC
Dayton Power and Light Company for)
Waiver of Certain Commission Rules.)

**MOTION TO STAY PROCEEDINGS PENDING A RULING FROM
THE SUPREME COURT OF OHIO
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 26, 2017

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To protect the 456,282 residential customers from continuing to pay millions of dollars (currently \$73 million per year) to Dayton Power and Light Company (“DP&L” or “Utility”) for unlawful transition charges, these proceedings should be stayed while the Supreme Court of Ohio considers the pending appeals of The Office of the Ohio Consumers’ Counsel (“OCC”) and others from the Public Utilities Commission of Ohio’s

(“PUCO”) decisions in this proceeding.¹ Specifically, through DP&L’s electric security plan approved by the PUCO in Case No. 12-426-EL-SSO, et al. (“ESP”), DP&L collected approximately \$285 million from customers in the Dayton area through a so-called stability charge. The Supreme Court of Ohio, however, found those so-called stability charges to constitute unlawful transition charges in *In re Application of Dayton Power & Light Co.*² Unfortunately for the 456,282 residential customers paying those unlawful transition charges, the unlawful charges were not returned to customers.

Nonetheless, in an effort to circumvent the Supreme Court of Ohio’s ruling in this regard, DP&L was authorized by the PUCO to withdraw and terminate its ESP, and return customers – in part – to pricing from its earlier ESP (established in Case No. 08-1094-EL-SSO, et al.). DP&L’s hybrid approach under a blended ESP, however, resurrected a stability charge that results in customers now paying approximately \$73 million per year in subsidies to DP&L. Significantly, this resurrected stability charge is virtually *identical* to the stability charge the Supreme Court of Ohio previously ruled unlawful. As a result, OCC has appealed the PUCO decisions to the Supreme Court of Ohio and anticipates that the court will issue a ruling consistent with its prior rulings that DP&L’s current iteration of a stability charge is an unlawful transition charge.

¹ In accordance with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, on February 13, 2017, OCC timely filed its Notice of Appeal of the PUCO’s August 26, 2016 Finding and Order and the PUCO’s Third Entry on Rehearing. On that same day, OCC attempted to amend its appeal, with specific citation to its Application for Rehearing, in response to S.Ct.Prac.R. 10.02(A), (2)(b), a new addition to the Court’s rules. Four days later, on February 17, 2017, OCC filed a Motion for Leave to Amend Notice of Appeal to formally receive leave to file the amended notice that had been submitted for filing on February 13, 2017. That motion was granted by the Supreme Court. In addition to OCC, the following parties have filed Notices of Appeal from this proceeding: The Ohio Energy Group, Industrial Energy Users – Ohio, The Kroger Company, and The Ohio Manufacturers’ Association.

² *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

Therefore, a stay is needed to avoid what the Supreme Court of Ohio has previously recognized as an “unfair outcome” to customers and a “windfall” to the utility. Under its prior ESP, DP&L was permitted to keep approximately \$285 million of Ohioans’ money after the Court overturned a PUCO decision approving an unlawful charge that was collected from customers during the pendency of the appeal. However, refunds were not made to DP&L’s customers.³ In order to prevent a potential, similar, unjust windfall to DP&L, the PUCO should stay the continued collection under the current stability charge during the pendency of the appeals to the Supreme Court of Ohio.

This Motion is supported by the following Memorandum in Support.

Respectfully submitted,

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³ *Id.*

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC respectfully requests that the PUCO stay this proceeding until the Supreme Court of Ohio rules upon the pending appeals of the PUCO's decisions in this proceeding allowing DP&L to continue to charge and collect so-called stability charges that the court previously ruled to be unlawful transition charges.

By way of background, at a time when 456,282 residential customers of DP&L should have been receiving long overdue rate decreases, the PUCO allowed DP&L to avoid fully reducing rates to customers. Beginning January 1, 2014, DP&L had taken approximately \$285 million in subsidies from customers in the Dayton area-- where there

is financial distress, a poverty level of 35%, and insecure access to food⁴ -- through its inaptly named service stability charge (“Rider SSR”). On June 20, 2016, the Supreme Court of Ohio ruled that Rider SSR was an unlawful transition charge that DP&L’s customers should not be paying and ordered the PUCO to carry out its judgment in this regard.⁵

Rather than heeding the Supreme Court of Ohio’s mandate and eliminating the \$9.86 per month stability charges to customers, the PUCO allowed DP&L to terminate its plan and implement a hybrid of its prior ESP rates. Under those rates, DP&L has been collecting more unlawful stability charges -- this time charging customers \$6.05 per month (approximately \$73 million per year) in above-market transition charges under the moniker, Rate Stabilization Charge (“RSC”).⁶ So instead of getting a full \$10 per month reduction as ordered by the Supreme Court of Ohio, customers have seen only a fraction of the reduction (\$4.00 per month), with DP&L pocketing the difference. Once those unlawful stability charges are collected, however, refunds are highly unlikely under the current state of the law in Ohio. As such, an immediate stay is warranted.

⁴ Map the Meal Gap 2016. Feeding America <http://www.feedingamerica.org/hunger-in-america/our-research/map-the-meal-gap/data-by-county-in-each-state.html?referrer=https://www.google.com/>.

⁵ *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179; *see also In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Supreme Court mandate (July 19, 2016).

⁶ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Sixth Entry on Rehearing (Aug. 26, 2016).

II. THE PUCO SHOULD PROTECT CONSUMERS FROM THE UNJUST AND UNREASONABLE COLLECTION OF UNLAWFUL STABILITY CHARGES BY STAYING THE CURRENT PROCEEDING PENDING A RULING BY THE SUPREME COURT OF OHIO.

To prevent injury to the interests of the public and avoid irreparable harm to customers, OCC requests that the PUCO exercise its discretionary power under Title 49 of the Revised Code to protect the customers of DP&L. The PUCO's authority to act to protect customers can be found under various statutes and case precedent.⁷

The Supreme Court of Ohio has recognized that there is an apparent unfairness when a decision is determined to be unlawful because customers receive no refund of the unlawful charges that were already collected due to the principal of retroactive ratemaking.⁸ But if the PUCO stays this proceeding and the collection by DP&L of the RSC from customers pending the outcome of the appeals to the Supreme Court of Ohio regarding the legality of the RSC, it can avoid such unjust results. Accordingly, the PUCO should stay this proceeding and the collection of the RSC until a decision from the Supreme Court of Ohio is rendered.

A. The Law

Although the PUCO has noted that there is no controlling precedent in Ohio setting the conditions under which it will stay one of its orders,⁹ it has favored a four-factor test governing a stay that was delineated in a dissenting opinion by Justice

⁷ See, e.g., *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982); *In re Commission's Review of Columbus Southern Power Company's and Ohio Power Company's Independent Transmission Plan*, Case No. 02-1586-EL-CSS, Entry (February 20, 2003); *Cinnamon Lake Utilities Co. v. Pub. Util. Comm.*, 42 Ohio St. 2d 259 (1975) (Ohio Supreme Court noted that R.C. 4909.16 exists to protect the public interest as well as the interests of the public utility).

⁸ See *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512 (2011); *In re Columbus S. Power Co.*, 138 Ohio St.3d 448 (2014).

⁹ See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing (February 20, 2003) ("Access Charge Decision") at 5.

Douglas.¹⁰ This standard has been deemed appropriate by courts when determining whether to stay an administrative order pending judicial review.¹¹ The criteria in the four-factor test includes:

- (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) Where the public interest lies; and
- (d) Whether the stay would cause substantial harm to other parties.¹²

As discussed below, OCC satisfies the four-part test to warrant a stay.

B. The PUCO should grant a stay to prevent unlawful transition charges from being collected from customers under the guise of a stability charge consistent with the four-part test.

- 1. There is a strong likelihood that OCC will prevail on its appeal to the Supreme Court of Ohio and the RSC will be deemed an unlawful transition charge.**

Like DP&L's so called "stability" charge the Supreme Court of Ohio struck down on June 20, 2016,¹³ the RSC or "Rate Stabilization Charge" that the PUCO authorized is an unlawful transition charge prohibited by Ohio law. As such, consumers have a strong likelihood of success on the merits of its appeal.

¹⁰ See *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604 (1987).

¹¹ Access Charge Decision at 5.

¹² *Id.*

¹³ *In re: Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

a. The PUCO unlawfully and unreasonably permitted DP&L to implement a rate stability charge in violation of Ohio Supreme Court precedent and statutory authority.

OCC intends to argue, and establish, in their appeal to the Supreme Court of Ohio that the PUCO erred when it approved DP&L's request to collect a RSC from customers as part of continuing DP&L's standard service offer.¹⁴ The RSC charge permits DP&L to collect an unlawful transition charge or equivalent revenues in violation of R.C. 4928.38, 4928.39, and 4928.40.

Specifically, under the law (R.C. 4928.38, 4928.39, and 4928.40), following the market development period, DP&L is supposed to be "fully on its own in the competitive market." DP&L's market development period ended in 2005. As such, by the clear language of the statute, there should be no more above-market subsidies paid by customers to support generation in Ohio. Recent Ohio Supreme Court precedent¹⁵ confirmed that the PUCO is prohibited from approving the collection of transition revenues or "equivalent revenues" when it struck down both AEP Ohio's and DP&L's stability charges.¹⁶

¹⁴ *In the Matter of the Application of the Dayton Power & Light Co. to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO et al., Finding and Order at ¶5 (Aug. 26, 2016).

¹⁵ *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, ¶25 ("In sum, we find that the commission erred in focusing solely on whether AEP had expressly sought to receive transition revenues rather than looking at the nature of the costs recovered through the RSR. R.C. 4928.38 bars the '[sic] receipt of transition revenues or any equivalent revenues by an electric utility.' Based on the record before us, we find that the RSR in this case recovers the equivalent of transition revenue and the commission erred when it found otherwise.") (emphasis in original), *In re: Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179 ("The decision of the Public Utilities Commission is reversed on the authority of *In re Application of Columbus S. Power Co.*, ___ Ohio St.3d ___, 2016-Ohio-1608, ___ N.E.3d ___.")

¹⁶ *Id.*

In issuing its decisions, the PUCO failed to acknowledge the recent Supreme Court of Ohio rulings striking down two similar stability charges. It did not fulfill the Court's mandate, thereby violating R.C. 4903.13. Moreover, there can be no dispute that DP&L's RSC is similar, and indeed, virtually identical, to DP&L's Rider SSR struck down by the Court. In its proposed tariffs filed in this proceeding, DP&L described the RSC as a mechanism "intended to compensate DP&L for providing stabilized rates for customers . . ." ¹⁷ This description is almost identical to DP&L's description of Rider SSR: "The Service Stability Rider (SSR) is intended to compensate DP&L for providing stabilized service for customers." ¹⁸

Accordingly, there is a substantial likelihood of success that the Supreme Court of Ohio will act consistently with its recent prior rulings and conclude that DP&L's RSC is an unlawful transition charge.

b. The PUCO unlawfully and unreasonably precluded parties from re-litigating the reasonableness and lawfulness of DP&L's RSC charge.

OCC intends to argue, and establish, in their appeal to the Supreme Court of Ohio that the PUCO unreasonably precluded parties from re-litigating the reasonableness and lawfulness of charging DP&L's RSC to customers by applying the doctrines of res judicata and collateral estoppel to its 2012 decision. With all due respect, the PUCO erred.

¹⁷ DP&L Notice of Filing Proposed Tariffs, P.U.C.O. No. 17, First Sheet No. G25, Page 1 of 2 (June 29, 2009).

¹⁸ DP&L Notice of Filing Proposed Tariffs, P.U.C.O. No. 17, Case No. 12-0426-EL-SSO, et al., Original Sheet No. G29, Page 1 of 2 (December 30, 2013).

First, the PUCO ignored the fact that DP&L's rate stabilization surcharge had undergone fundamental changes since the PUCO's earlier decisions in 2005, 2009, and 2012. With these fundamental changes there was no identity of issues. And without identical issues, neither collateral estoppel nor res judicata can bar a parties' claim. *State ex rel. Westchester Estates, Inc. v. Bacon*, 61 Ohio St.2d 42, 45, 399 N.E.2d 81 (1980); *Jacobs v. Teledyne, Inc.*, 39 Ohio St.3d 168, 169, 529 N.E.2d 1255 (1988).

The rate stabilization surcharge, approved by the PUCO in 2009, was intended to compensate DP&L for being the provider of last resort. At that time DP&L was providing a standard service offer to its customers, using its own power plants. DP&L was also serving as the provider of last resort. The PUCO's 2009 approval of the rate stabilization surcharge followed on the heels of its 2005 decision to compensate DP&L for provider of last resort service, under a rate stabilization plan.

But, since January 1, 2014, a lot has changed, including DP&L's POLR obligations. Under DP&L's ESP II, DP&L began to procure power for standard service through various rounds of competitive auctions. *In re the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer*, Pub. Util. Comm. No. 12-426-EL-SSO *et al.*, Opinion & Order at 12-17 (Sept. 4, 2013); *id.*, Entry Nunc Pro Tunc at ¶4 (Sept. 6, 2013); *id.*, Second Entry on Rehearing at ¶31 (Mar. 19, 2014). With each successive auction, more and more of the standard service offer was bid out with DP&L phasing out its own supply of the standard service offer. Under the competitive auctions, winning suppliers (marketers) have contracted to supply the standard service offer through May 31, 2017. Those winning bids have set the standard service offer rate charged to customers. As such, DP&L's POLR obligations are entirely gone, with POLR

being provided by winning suppliers –not DP&L-- during the remaining months of DP&L's ESP. *In the Matter of the Application of DP&L for Approval of its Security Plan*, Pub. Util. Comm. No. 12-426-EL-SSO *et al.*, Opinion and Order at 15-17 (Sept. 4, 2013).

There is no longer an identity of issues. The rate stabilization surcharge back in 2009 was considered a provider of last resort charge -- a charge that under the law could be included as part of utility's electric security plan. Now, with DP&L's POLR obligations gone, the rate stabilization surcharge functions as a financial integrity charge -- one that is very similar to charges the court struck down as unlawful transition charges. The changed facts underlying the rate stabilization surcharge make collateral estoppel and res judicata inapplicable.

Second, the court has issued two intervening decisions that explained and expounded upon the controlling legal principles limiting the recovery of transition costs from customers under Ohio law. Applying collateral estoppel to bar claims against the rate stabilization surcharge virtually ignores this court's determinations in *In re Application of the Dayton Power & Light Co* and *In re Application of Columbus S. Power Co*. This can result in inequitable consequences where DP&L, and no other electric utility, gets a free pass on collecting transition charges from customers, simply due to the timing of its prior application and the blind application of collateral estoppel.

Moreover, the court has acknowledged that when res judicata does apply to administrative proceedings, it should be applied with flexibility, not rigidity. *Jacobs v. Teledyne, Inc.*, 39 Ohio St.3d at 171. The PUCO itself has conceded that res judicata should be flexibly applied to its decisions because of changes that occur and its continuing responsibilities: “[Res judicata] is not always applied in the same manner in

administrative proceedings as in the courts, given the nature of ongoing regulatory responsibility of administrative agencies and their need to take into account changes in facts and circumstances in determining what is in the public interest at a particular point in time.” *In the Matter of the Complaint of Union Rural Electric Cooperative Inc. v. DP&L*, Pub. Util. Comm. No 88-947-EL-CSS, 1988 Ohio PUC LEXIS 776, at 7 (Aug. 16, 1988).

The changes in facts and circumstances, including the court's issuance of two decisions that construe the statutes in question (R.C. 4928.38) are grounds for not applying res judicata and collateral estoppel.

c. The PUCO unlawfully and unreasonably approved DP&L’s RSC charge as a provider of last resort charge.

OCC intends to argue, and establish, in its appeal to the Supreme Court of Ohio that the PUCO erred when it approved DP&L’s \$73 million per year RSC charge as a provider of last resort (“POLR”) charge.

First, DP&L is not providing POLR service to its customers while it is collecting the POLR charge. Yet, the PUCO unreasonably approved increased rates for customers that charge customers for POLR service that DP&L is not providing. As purported justification, the PUCO stated that DP&L maintains a long term obligation to serve as POLR even while POLR services are being provided by competitive bidding auction participants through the standard service offer in the short term. However, it is undisputed that the POLR service will be provided by competitive retail electric suppliers for the foreseeable future. *See, e.g., In re Application of the Dayton Power and Light Company for approval of its Electric Security Plan*, Case No. 08-1094-EL-ESP, Entry (Mar. 22, 2017)(PUCO approved auction for SSO from 2017 through 2020, where DP&L

will not be providing POLR). As such, allowing DP&L to charge customers now, for possible POLR service it may provide sometime in the future, is unreasonable and unlawful. There is a strong likelihood that the Supreme Court of Ohio will agree that charging customers for services not being provided currently is unreasonable and unlawful.

Second, the PUCO previously ruled that POLR charges must be justified either on a cost basis or a non-cost basis before a utility can be compensated for being the POLR provider and carrying the risk associated therewith.¹⁹ Here, DP&L's RSC charge has not been justified as a POLR charge. At no time has DP&L produced any cost-based evidence related to POLR costs or the risks it bears associated with being the POLR. Obviously, it could not do so because the costs (or the obligation) do not exist since DP&L is not providing POLR service. Likewise, there is not sufficient and probative record evidence to support DP&L charging customers for service that is not being provided. OCC believes that there is a strong likelihood the Supreme Court of Ohio will agree and reverse the PUCO's decisions.

2. Allowing unlawful stability charges to be collected pending the outcome of the appeals to the Supreme Court of Ohio would likely cause irreparable harm to DP&L's customers.

Harm is irreparable "when there could be no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be 'impossible, difficult, or incomplete.'"²⁰ In the context of judicial orders, the Supreme

¹⁹ *In the Matter of the Ohio Power Company*, Case No. 08-917-EL -SSO, Opinion and Order at 40 (Mar. 18, 2009).

²⁰ *FOP v. City of Cleveland*, 141 Ohio App.3d 63, 81 (Cuyahoga 2001) (citation omitted).

Court of Ohio traditionally looks to whether there is an effective legal remedy if the order takes effect to determine whether to stay the proceedings.²¹

In *Tilberry v. Body*, the Court found that the effect of a court order calling for the dissolution of a business partnership would cause “irreparable harm” to the partners because “a reversal . . . on appeal would require the trial court to undo the entire accounting and to return all of the asset distributions” – a set of circumstances that would be “virtually impossible to accomplish.”²² In *Sinnott v. Aqua-Chem, Inc.*, the Court found that a lower court’s pre-trial findings could be appealed at the point they were issued because the findings allowed the case to proceed to trial.²³ The majority reasoned that “the incurrence of unnecessary trial expenses is an injury that cannot be remedied by an appeal from a final judgment,”²⁴ and so concluded that “[i]n some instances, [t]he proverbial bell cannot be unrung and an appeal after final . . . judgment on the merits will not rectify the damage’ suffered by the appealing party.”²⁵ Here, the bell is ringing loudly and Ohio customers need the PUCO to protect their interests.

Although, as Justice Rehnquist observed, “the temporary loss of income, *ultimately to be recovered*, does not usually constitute irreparable injury,”²⁶ *Tilberry* and *Sinnott* illustrate that economic harm does become irreparable where the loss cannot be recovered. If the RSC charge is found to be an unlawful transition charge consistent with

²¹ See, e.g., *Tilberry v. Body*, 24 Ohio St. 3d 117 (1986); *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St. 3d 158, 161 (2007).

²²*Tilberry*, 24 Ohio St.3d at 121.

²³*Sinnott*, 116 Ohio St.3d at 164.

²⁴*Id.* at 163.

²⁵*Id.* at 162 (internal quotations and citation omitted).

²⁶*Sampson v. Murray*, 415 U.S. 61, 90 (1974) (emphasis added).

Court precedent, Ohio customers, who have been and will be paying the RSC charge, will be confronted with arguments that they cannot recover charges that have already been collected regardless of a ruling by the Supreme Court of Ohio that it is unlawful. Ohio customers previously paid approximately \$285 million to DP&L under Rider SSR before it was found to be an unlawful transition charge. None of those charges were refunded to Ohio customers. Instead, Ohio customers now are being required to pay an additional \$73 million per year for a nearly identical stability charge, the RSC. If these proceedings and the collection of the RSC charge are not stayed, Ohio customers will be irreparably harmed as it is likely under the current state of the law that the payments of those unlawful transition charges will not be refunded to customers.

3. A stay would further the public interest.

In Justice Douglas’ dissent in the Supreme Court of Ohio case that recommended standards for a stay of a PUCO decision, he noted that PUCO Orders “have effect on everyone in this state – individuals, business and industry.”²⁷ That effect on customers is all the more pronounced in these times when customers can ill afford increases in what they pay for an essential service – electricity. It thus was fitting that Justice Douglas, in articulating a standard for stays, emphasized that the most important consideration is “above all in these types of cases, where lies the interest of the public” and that “the public interest [] is the ultimate important consideration for this court in these types of cases.”²⁸

²⁷*MCI*, 31 Ohio St.3d at 606.

²⁸*Id.*

As discussed above, the stay OCC seeks would prevent irreparable harm to DP&L's customers, with no substantial harm to the utility, as discussed below. Additionally, the stay would provide some relief to customers who are already burdened by the state of the economy. The public interest, therefore, would be furthered by a stay of the PUCO's proceeding and collection of the RSC charge.

4. A stay would not cause substantial harm to DP&L.

Waiting for a decision by the Supreme Court of Ohio does not disadvantage DP&L. Based upon the court's prior decision on June 20, 2016 finding the Rider SSR to be an unlawful transition charge, it can hardly be unexpected or unforeseeable that the court will likewise find the nearly identical RSC charge to be unlawful. Whatever harm that DP&L would claim is certainly offset by the approximately \$285 million already wrongfully collected by DP&L under the Rider SSR. As such, substantial harm will not come to DP&L by staying these proceedings and the collection of the RSC charge from Ohio customers.²⁹

The PUCO should stay this proceeding until the court issues a decision on the pending appeals.

III. CONCLUSION

The PUCO should protect DP&L's 456,282 residential customers so they do not have to endure any more unfairness regarding the potential non-refundability of charges. This unfairness to customers manifests itself if there can be no refund of monies collected

²⁹ As the PUCO is aware, in its most recent ESP, Case No. 16-0395-EL-SSO, et al., DP&L has entered into a Stipulation with various parties and Staff, which is being considered by the PUCO at this time. If the Stipulation is approved, then the RSC charge is no longer applicable. As such, DP&L already is making plans for the RSC charge to no longer be collected and cannot claim substantial harm for such collections to be stayed pending the appeals.

that are later found to be unlawful. The PUCO should exercise its powers to stay this proceeding, which will not cause harm to DP&L. It is clearly in the interest of the public to grant a stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Stay and Memorandum in Support was served on the persons stated below via electronic transmission, this 26th day of April 2017.

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Summary: Motion Motion to Stay Proceedings Pending A Ruling from The Supreme Court of Ohio by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Willis, Maureen Mrs.