

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)	
Existence of Significantly Excessive)	
Earnings for 2017 Under the Electric)	
Security Plans of Ohio Edison Company,)	
The Cleveland Electric Illuminating)	Case No. 18-857-EL-UNC
Company, and The Toledo Edison)	
Company.)	

**INITIAL BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Bruce Weston (0016973)
Ohio Consumers' Counsel

William Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov

January 8, 2019

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. BURDEN OF PROOF AND STANDARD OF REVIEW	3
III. OVERVIEW OF THE SIGNIFICANTLY EXCESSIVE EARNINGS TEST.....	4
IV. RECOMMENDATIONS	5
A. The PUCO should protect consumers by rejecting the proposed Settlement because it is not the product of serious bargaining.	5
B. The PUCO should protect consumers by rejecting the proposed Settlement because it harms consumers and the public interest by allowing Ohio Edison to keep \$42 million in significantly excessive profits.	7
C. The PUCO should protect consumers by rejecting the proposed Settlement because it violates Ohio law and important regulatory principles.....	9
1. The Settlement would result in unjust and unreasonable rates and violates state policy.....	9
2. Distribution Modernization Rider revenues should not be excluded from SEET.	10
3. The Settlement harms Ohio consumers and its economy.	13
D. OCC’s proposed SEET threshold should be used and Ohio Edison should be ordered to refund to consumers its significantly excessive earnings. ..	13
V. CONCLUSION.....	15

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)	
Existence of Significantly Excessive)	
Earnings for 2017 Under the Electric)	
Security Plans of Ohio Edison Company,)	
The Cleveland Electric Illuminating)	Case No. 18-857-EL-UNC
Company, and The Toledo Edison)	
Company.)	

**INITIAL BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case is another example of how the ratemaking in Ohio's 2008 electricity law (S.B. 221) favors utilities and disfavors consumers. One of the awful provisions of the law allows utilities to charge consumers for excessive profits, where the law merely bars utilities from charging consumers for "significantly" excessive profits. But in this case Ohio Edison consumers will be denied even this mere protection. The PUCO Staff and Ohio Edison have agreed by settlement to not count for the profit calculation more than a hundred million dollars in utility charges to consumers. The result is that Ohio Edison magically does not have "significantly" excessive profits for refunding to consumers, when charges for its so-called (and inaptly named) distribution modernization rider are excluded from the calculation of its profits. This, of course, is the same

distribution modernization rider that the PUCO decided need not be spent by Ohio Edison on actual distribution modernization.¹

Ohio Edison Company (“Ohio Edison”) had significantly excessive profits of over \$42 million in 2017.² Under Ohio law (R.C. 4928.143(F)) Ohio Edison should return that money to customers. But in this case, Ohio Edison and the Staff of the Public Utilities Commission of Ohio (the “PUCO Staff”) signed a Settlement³ that does not return a single penny of the significantly excessive profits to customers. That is unlawful and unreasonable.

The PUCO should reject the Settlement because it fails the PUCO’s three-part test for evaluating settlements. It was not the product of serious bargaining because the only signatory parties are Ohio Edison and the PUCO Staff, and they did not resolve any issues in dispute between them. It does not benefit (but it harms) customers and the public interest because it denies Ohio Edison’s customers the \$42 million refund they deserve. And it violates regulatory principles and practices by causing customers to pay unjust and unreasonable rates.

The PUCO should adopt the Office of the Ohio Consumers’ Counsel’s (“OCC”) recommendation for a \$42 million refund to customers. This is the just and reasonable result for Ohioans.

¹ Under the law a utility must provide a refund to customers when its electric security plan earnings are significantly excessive. R.C. 4928.143(F).

² OCC Exs. 1 and 2 (Duann Testimony).

³ Joint Ex. 1 (Settlement).

II. BURDEN OF PROOF AND STANDARD OF REVIEW

The applicant bears the burden of proof in PUCO proceedings.⁴ When there is a settlement, the signatory parties "bear the burden to support the stipulation" and must "demonstrate that the stipulation is reasonable and satisfies the Commission's three-part test."⁵ And in cases involving the significantly excessive earnings test "[t]he burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility."⁶ Because this burden of proof is required by law, Ohio Edison must satisfy it regardless of whether there is a settlement.

In PUCO proceedings, a settlement is merely a recommendation that is not legally binding on the PUCO,⁷ and the PUCO has the discretion to give each settlement the weight that the PUCO believes it deserves. The PUCO "may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing."⁸

In evaluating settlements, the ultimate issue for the PUCO's consideration is whether the agreement is "reasonable and should be adopted." In answering this question, the PUCO has adopted the following three-part test:⁹

⁴ *In re Application of the Ottoville Mut. Tel. Co.*, Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, at *4 ("the applicant must shoulder the burden of proof in every application proceeding before the Commission"); *In re Application of the Ohio Bell Tel. Co.*, No. 84-1435-TP-AIR, 1985 Ohio PUC LEXIS 7, at *79 (Dec. 10, 1985) ("The applicant has the burden of establishing the reasonableness of its proposals.").

⁵ *In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agmt. for Inclusion in the Power Purchase Agmt. Rider*, No. 14-1693-EL-SSO, Opinion & Order at 18 (Mar. 31, 2016).

⁶ R.C. 4928.143(F).

⁷ *Duff v. PUCO*, 56 Ohio St.2d 367 (1978); *see also* Ohio Adm. Code 4901-1-30(E).

⁸ *Duff*, 56 Ohio St.2d 367.

⁹ *See Consumers' Counsel v. PUCO*, 64 Ohio St.3d 123, 126 (1992).

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement violate any important regulatory principles or practice?

As OCC demonstrates, the proposed Settlement in this case does not meet this standard.

III. OVERVIEW OF THE SIGNIFICANTLY EXCESSIVE EARNINGS TEST

The 2008 energy law (S.B. 221), codified in part in R.C. 4928.143, allows electric distribution utilities in Ohio to charge customers under an electric security plan. These ESPs have proven very profitable for Ohio's electric utilities, in large part because they allow the utilities to engage in previously-prohibited single-issue ratemaking.¹⁰ But the law is also designed to limit the amount of profit that the utility can charge consumers under its ESP.

R.C. 4928.143(F) requires the PUCO to compare a utility's earnings under an ESP (measured by return on common equity) to the earnings of comparable companies during the same period.¹¹ If the utility's profits are "significantly in excess" of those comparable companies' profits, then the utility must refund the excess amounts to

¹⁰ R.C. 4928.143(B)(2)(h).

¹¹ R.C. 4928.143(F) (the PUCO must determine if "the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk").

consumers.¹² If the PUCO orders such a refund, the utility then has the option to terminate its ESP and immediately file a Market Rate Offer.¹³

Ohio Edison had significantly excessive profits of more than \$42 million in 2017.¹⁴ The law requires Ohio Edison to return that amount to customers.

IV. RECOMMENDATIONS

A. The PUCO should protect consumers by rejecting the proposed Settlement because it is not the product of serious bargaining.

The Settlement is not the product of serious bargaining because no bargaining occurred in this case. Black’s Law Dictionary defines a “settlement” as “an agreement ending a dispute or lawsuit.”¹⁵ It likewise defines a “stipulation” as a “voluntary agreement between opposing parties concerning some relevant point; [especially] an agreement relating to a proceeding, made by attorneys representing adverse parties to a proceeding.”¹⁶

Under each of these definitions, the key point is that for a settlement or stipulation to exist, there must be a *dispute* between the parties to the settlement. When parties that are wholly aligned agree on something, they don’t “settle” anything when they simply acknowledge their alignment. Consider a class action lawsuit where multiple plaintiffs are suing a defendant and seeking \$100 million in damages. Surely, the judge overseeing

¹² *Id.*; see also *In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392 (2012).

¹³ R.C. 4928.143(F).

¹⁴ OCC Ex. 1 at 2.

¹⁵ Black’s Law Dictionary 1404-1405 (8th Ed. 2007).

¹⁶ Black’s Law Dictionary 1455 (8th Ed. 2007).

the case would give no weight to a proposed settlement signed by only the plaintiffs stating: “the signatory parties agree that defendant owes the plaintiffs \$100 million.”

Yet that is what is happening here. The PUCO Staff and Ohio Edison have never been adverse parties in this case. Before their proposed Settlement, Ohio Edison filed the direct testimony of Jason Petrik and Joanne Savage. Such testimony “supported” the conclusion that Ohio Edison owed no refund to customers.¹⁷ Before the proposed Settlement, the PUCO Staff filed the direct testimony of Joseph Buckley. Like Ohio Edison’s witnesses, Mr. Buckley concluded that Ohio Edison owed no refund to customers.¹⁸ The Settlement merely restates the parties’ concurring positions.

The Settlement does not even purport to resolve the one issue that the PUCO Staff and Ohio Edison disagree on – the 2017 SEET threshold. The proposed Settlement does not adopt any SEET threshold.¹⁹ Because the signatory parties do not agree on the 2017 SEET ROE threshold, there is no settlement of that issue. The proposed Settlement is just a summary of the previously-filed testimony of Ohio Edison and the PUCO Staff.

The PUCO Staff and Ohio Edison did not seriously bargain for anything. This is evident from the face of the Settlement, which does nothing more than acknowledge that the PUCO Staff and Ohio Edison have never been adverse parties in this case.

¹⁷ Ohio Edison Ex 2, 3, and 4 (Testimony of Petrik and Savage).

¹⁸ Staff Ex. 1 at 2 (Buckley Testimony).

¹⁹ See Joint Ex. 1.

B. The PUCO should protect consumers by rejecting the proposed Settlement because it harms consumers and the public interest by allowing Ohio Edison to keep \$42 million in significantly excessive profits.

If properly applied in this case, the significantly excessive earnings test requires Ohio Edison to provide a \$42 million refund to customers. The Settlement, however, proposes no refund to customers. Customers do not benefit from a settlement that allows Ohio Edison to charge its customers for significantly excessive profits.

Rather than adopt the Settlement's proposal to allow Ohio Edison to keep significantly excessive profits, the PUCO should adopt OCC witness Duann's proper application of the significantly excessive earnings test, which results in overearnings being returned to customers. Dr. Duann explained that the signatory parties misapplied the significantly excessive earnings test.²⁰ Therefore, the signatory parties' conclusion that Ohio Edison's 2017 profits were not significantly excessive is wrong.

The customers of Ohio Edison are harmed under the proposed Settlement. As discussed in Dr. Duann's testimony, Ohio Edison had significantly excessive profits in 2017 and \$42,064,470 should be returned to customers through either a refund or a credit on their monthly electricity bills.²¹ If the proposed Settlement is adopted, Ohio Edison's customers will be harmed because they will not receive a SEET refund or a credit.

There is no benefit to customers included in the proposed Settlement that would counterbalance or compensate customers for giving up the \$42 million SEET refund to which they are entitled.²² Ohio Edison's own witness cannot identify or quantify any

²⁰ OCC Exs. 1 and 2.

²¹ See OCC Ex. 1 at 30.

²² See OCC Ex. 2 at 6.

customer benefits from the proposed Settlement in her Supplemental Testimony.²³ At best, she provided a generic and unsubstantiated statement that the proposed Settlement would benefit customers and the public interest “as it contributes to a timely and reasonable resolution to this case.”²⁴ As discussed earlier, the filing of the proposed Settlement does not present any new or useful facts or arguments. The proposed Settlement is just a rehash of the previously-filed testimony of Ohio Edison and the PUCO Staff.²⁵ The proposed Settlement will have no effect on the timeliness or the efficiency of the adjudication of this case.²⁶ As a result, the Settlement does not benefit customers. The so-called timely resolution of this case only benefits Ohio Edison and its shareholders.

Customers would benefit from a timely resolution where they receive \$42 million in refunds from Ohio Edison’s significantly excessive profits in 2017.²⁷ Further, the proposed Settlement being a product of “negotiation” mainly by Ohio Edison and the PUCO Staff, if adopted, would likely discourage participation and negotiation by all parties with diverse interests in resolving difficult issues in many future cases before the PUCO.²⁸ Allowing this to happen will not achieve the PUCO’s goal of promoting regulatory efficiency.²⁹

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.* at 7.

²⁸ *See id.*

²⁹ *See id.*

C. The PUCO should protect consumers by rejecting the proposed Settlement because it violates Ohio law and important regulatory principles.

1. The Settlement would result in unjust and unreasonable rates and violates state policy.

Ohio law requires utilities to charge just and reasonable rates.³⁰ In violation of the law, the proposed Settlement would allow Ohio Edison to overcharge consumers and keep its significantly excessive profits for the year 2017. The General Assembly adopted the SEET as a necessary check to safeguard that, for the benefit of customers, Ohio's electric utilities do not earn significantly excessive profits through their electric security plan. Ohio Edison had the option to offer market-based rates or an ESP subject to the SEET, and chose to be subject to the SEET. As the Supreme Court of Ohio has noted, Ohio Edison "not only had notice of R.C. 4928.143(F), but chose to be subject to it. . . . Presumably, the potential reward outweighed the risk."³¹ Indeed, to Ohio Edison the rewards of the ESP were great, because Ohio Edison's profits significantly exceeded those of other companies facing comparable business and financial risk.

Further, R.C. 4928.02 identifies the policies of the state of Ohio regarding electric services. It is the policy of the state of Ohio to maintain the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; to protect at-risk populations; and to facilitate the state's effectiveness in the global economy.³² The proposed Settlement violates each of these state policies. The proposed Settlement would allow Ohio Edison to sidestep refunding its customers over

³⁰ R.C. 4905.22.

³¹ *In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690 at ¶30.

³² See R.C. 4928.02(A), (L), and (N).

\$42 million, which is the amount that Ohio Edison overcharged them. This is not providing reasonably priced retail electric service, protecting at-risk populations, or facilitating the state's effectiveness in the global economy.

2. Distribution Modernization Rider revenues should not be excluded from SEET.

Under the Settlement, revenue from the Distribution Modernization Rider ("Rider DMR") is excluded from SEET.³³ That is wrong. Rider DMR was approved as part of Ohio Edison's most recent ESP.³⁴ Under the Rider, Ohio Edison does not have to spend even one penny on distribution service.³⁵ Instead the Rider DMR revenues provide credit support for FirstEnergy Corp.³⁶ OCC and others have appealed the PUCO's approval of this charge to the Supreme Court of Ohio.³⁷ Rider DMR revenue was collected by Ohio Edison from its customers in 2017 and has been authorized for at least two more years after 2017, with the potential for Ohio Edison to collect more in years four and five (2020 and 2021).³⁸ In 2017, Ohio Edison collected more than \$58 million net of tax through Rider DMR.³⁹

Rider DMR revenue was recorded and recognized as net income by Ohio Edison in its 2017 financial statements.⁴⁰ The collection of Rider DMR revenue was not a one-time or extraordinary event in 2017, that if true, would have been a justification for

³³ See OCC Ex. 1 at 7.

³⁴ OCC Ex. 1 at 9-11.

³⁵ See OCC Ex. 1 at 9.

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* at 11.

⁴⁰ See *id.* at 10.

exclusion of those revenues from the SEET test.⁴¹ It is real cash collected by Ohio Edison resulting directly from its electric security plan approved by the PUCO in Case No. 14-1297-EL-SSO.⁴² There is no valid reason not to include the Rider DMR revenue of \$58.5 million as part of Ohio Edison's 2017 net income for purposes of reviewing its profits under the SEET review.⁴³

If Rider DMR revenues are excluded, then Ohio Edison's 2017 SEET-adjusted net income would be unreasonably and artificially reduced from approximately \$184.8 million to \$126.3 million.⁴⁴ The resulting 2017 SEET ROE would also be unreasonably reduced from 17.39% to 11.80%.⁴⁵ This would mean that any potential refund to customers would be gone.⁴⁶

The profits resulting from Rider DMR should be included in earnings for SEET purposes as a matter of fairness and reasonableness for consumers.⁴⁷ This requirement regarding SEET under Ohio law cannot be disregarded through a settlement.⁴⁸ It is an important consumer protection.⁴⁹ It is meant to protect the public from setting electricity rates approved in an ESP case that are too high.⁵⁰ A ruling approving the Settlement would thwart a complete review of Ohio

⁴¹ *See id.*

⁴² *See id.*

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See* OCC Ex. 2 at 7.

⁴⁸ *See id.*

⁴⁹ *See* OCC Ex. 1 at 10.

⁵⁰ *See id.*

Edison's earnings under an ESP.⁵¹ It segregates out one portion of Ohio Edison's ESP (the Rider DMR) and treats it differently from all other revenues collected under its ESP.⁵² This case shows the injustice of the PUCO's ruling in Ohio Edison's ESP decision.⁵³

Further, as a result of allowing the unreasonable reduction to Ohio Edison's 2017 profits for the after-tax Rider DMR revenue of \$58.5 million, Ohio Edison's 2017 SEET return on equity will be reduced from 17.39% to 11.80%.⁵⁴ In doing so, the customers of Ohio Edison will be deprived of a significant benefit (approximately \$42 million) in the form of either a refund or a credit to their monthly bills.⁵⁵ So Ohio Edison's customers are being asked to pay unreasonably high profits to Ohio Edison, resulting in unjust charges to consumers for essential electric services.⁵⁶ Thus, the proposed Settlement violates the fundamental regulatory principle that the rates of regulated utility services must be just and reasonable.⁵⁷ This forbearance of a 2017 SEET refund of approximately \$42 million to which customers are entitled also abandons or at a minimum dilutes the protection of electric utility customers intended by the Ohio General Assembly in enacting the SEET statutes.⁵⁸

⁵¹ *See id.*

⁵² *See id.* at 10-11.

⁵³ *See id.* at 11.

⁵⁴ *See* OCC Ex. 1 at 10.

⁵⁵ *See* OCC Ex. 2 at 8.

⁵⁶ *See id.*

⁵⁷ *See* R.C. 4905.22.

⁵⁸ *See* R.C. 4928.143 (F).

3. The Settlement harms Ohio consumers and its economy.

The proposed Settlement is also detrimental to the welfare of many Ohioans and the Ohio economy. Specifically, the proposed Settlement, if adopted by the PUCO, would violate state electric services policy regarding: (1) the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service; (2) the protection of at-risk populations; and (3) the state's effectiveness in the global economy.⁵⁹

D. OCC's proposed SEET threshold should be used and Ohio Edison should be ordered to refund to consumers its significantly excessive earnings.

The proposed Settlement does not recommend a specific SEET ROE threshold applicable to Ohio Edison's 2017 SEET.⁶⁰ Without a SEET ROE threshold, there is no basis to decide whether Ohio Edison's SEET-adjusted ROE was significantly excessive.⁶¹ This is yet another example of the unreasonable nature of the proposed Settlement.⁶²

Dr. Duann proposed a SEET ROE threshold of 14.91%.⁶³ This proposed SEET ROE threshold is reasonable and fair to both Ohio Edison and its customers.⁶⁴ It will allow Ohio Edison to earn a reasonable return on its capital investments and to maintain its ability to obtain funding from the financial markets at reasonable costs, but not a

⁵⁹ See OCC Ex. 2 at 8; *see also* R.C. 4928.02 (A), (L), and (N).

⁶⁰ See OCC Ex. 2 at 9.

⁶¹ See *id.*

⁶² See *id.*

⁶³ See *id.*

⁶⁴ See *id.*

significantly excessive return.⁶⁵ It is also the basis for calculating the \$42 million refund to be returned to Ohio Edison's customers.⁶⁶

Including Rider DMR revenues in the SEET analysis would result in Ohio Edison having a SEET-adjusted net income of \$184,838,588 and an average SEET-adjusted common equity of \$1,062,702,154.⁶⁷ The allowed earnings for Ohio Edison using Dr. Duann's SEET threshold of 14.91% would be \$158,448,891.⁶⁸ A comparison of Ohio Edison's SEET-adjusted net income with the allowed earnings indicates that Ohio Edison would have excessive earnings of \$26,389,697 in 2017.⁶⁹ The pre-tax revenue collection that should be returned to customers, using a gross-up factor of 1.5939732 approved in the last rate case, would be \$42,064,470.⁷⁰

Importantly, the \$42 million refund will not reduce the amount of Rider DMR revenue authorized under Ohio Edison's approved ESP. Any refund to customers resulting from the 2017 SEET review is the result from an overall level of significantly excessive profits by Ohio Edison in 2017 under an approved ESP.⁷¹ The annual SEET review does not examine the earnings of any individual provision (such as Rider DMR) of an ESP.⁷² The SEET refund to customers is a return of money collected for the overall excessive

⁶⁵ *See id.*

⁶⁶ *See* OCC Ex. 1 at 29-30.

⁶⁷ *See* OCC Ex. 1 at 29.

⁶⁸ *See id.* at 29-30.

⁶⁹ *See id.* at 30.

⁷⁰ *See id.*

⁷¹ *See id.* at 31.

⁷² *See id.*

profits, not the return of excessive earnings associated with any individual rate or rider.⁷³

There is no such thing as a refund of earnings specifically from Rider DMR revenue.⁷⁴

V. CONCLUSION

Ohio Edison bears the statutory burden of proving that its 2017 profits were not significantly in excess of those earned by comparable companies. Ohio Edison did not meet that burden in this case. Instead, Ohio Edison and the PUCO Staff signed a settlement that fails to adopt any SEET threshold and provides literally nothing to consumers for funding Ohio Edison's significantly excessive earnings.

The PUCO should reject the Settlement and instead order Ohio Edison to refund \$42,064,470 to customers.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by e-mail)

⁷³ See *id.*

⁷⁴ See *id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief by the Office of the Ohio Consumers' Counsel was served on the persons stated below via electric transmission this 8th day of January 2019.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

SERVICE LIST

mkurtz@BKLawfirm.com

Kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

Thomas.mcnamee@ohioattorneygeneral.gov

rendris@firstenergycorp.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

Attorney Examiners:

Megan.addison@puc.state.oh.us

Gregory.price@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/8/2019 3:05:38 PM

in

Case No(s). 18-0857-EL-UNC

Summary: Brief Initial Brief by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.