

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates.	)	Case No. 22-507-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation.	)	Case No. 22-508-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 22-509-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 22-510-GA-AAM

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**APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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December 1, 2023

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The PUCO’s November 1, 2023, Opinion and Order adopts a Settlement between Duke, the PUCO Staff and others that allows Duke to charge consumers approximately \$29 million for deferred “costs” related to propane facilities that are not used and useful in providing service to Duke’s 411,000 Cincinnati-area consumers. And the Settlement allows Duke to charge consumers \$2,132,937 to fund financial performance incentives that do not benefit consumers and are not necessary in providing utility service.

The Opinion and Order adopting the Settlement is unreasonable and unlawful and contrary to the public interest. The Settlement also violates R.C. 4909.15, R.C. 4903.09, and important regulatory principles. Accordingly, under R.C. 4903.10, OCC applies for

rehearing of the Order. The PUCO's Order issued on November 1, 2023 was unreasonable and unlawful in the following particulars:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by approving a Settlement that does not benefit consumers and the public interest and violates R.C. 4909.15. The PUCO's Order wrongfully found that Duke's propane facilities were used and useful at date certain in providing service to Duke's consumers when they were not and allowed Duke to charge consumers for the plant. The PUCO's decision was wrong and against the manifest weight of the evidence contrary to R.C. 4903.09 and Supreme Court precedent, *Consumers' Counsel* and *AK Steel*.<sup>1</sup>

ASSIGNMENT OF ERROR NO. 2: The PUCO erred in using accounting deferrals to change utility assets into expenses, and then treated the assets as expenses to be collected from consumers over a ten-year period. The PUCO's Order unreasonably and unlawfully allows Duke to treat the propane facilities (plant assets) as a "cost" of "rendering the public utility service for the test period," in violation of R.C. 4909.15. The PUCO's action circumvented Ohio ratemaking law.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by approving a Settlement that does not benefit consumers and the public interest and also violates PUCO precedent and the important regulatory principle of cost causation. The PUCO's Order unreasonably and unlawfully allows Duke to charge consumers for costs related to employee financial performance incentives which do not benefit consumers and are not necessary in providing utility service to consumers.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred when it failed to make the charges for the amortized propane facilities subject to refund.

The reasons for granting this Application for Rehearing are more fully set forth in the attached Memorandum in Support.

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<sup>1</sup> *Office of Consumers' Counsel v. Public Utilities Com.*, (1981) 67 Ohio St.2d 153, 164 (*Consumers' Counsel*), *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 84, 765 N.E.2d 862. (*AK Steel*).

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The PUCO issued an Opinion and Order approving a settlement on November 1, 2023, that allows Duke to charge consumers approximately \$29 million for deferred “costs” related to propane facilities (“propane facilities”) that were not used and useful on date certain. The propane facilities were replaced by the Central Corridor Pipeline (“CCP”), which began commercial operation on March 14, 2022.<sup>2</sup> These deferred “costs” include approximately \$17 million for the net book value of the retired propane facilities, \$5 million for propane inventory, and \$7 million in decommissioning costs.

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<sup>2</sup> OCC Ex. 9 (Adkins) at 5.

Allowing Duke to collect money from consumers by changing plant assets into expenses circumvents and violates Ohio law. Utility plant is supposed to be valued under section R.C. 4909.15(A)(1). Under Ohio law, R.C. 4909.15(A)(1), utility property (plant) may only be included in rate base if it is “used and useful” at date certain. The date certain in this case is March 31, 2022.<sup>3</sup> The propane facilities were not used and useful on the date certain.<sup>4</sup> The Ohio Supreme Court just recently affirmed the importance of the “used and useful” standard.<sup>5</sup> It *must* be followed.

Further, the PUCO’s Opinion and Order approving the settlement authorizes Duke to charge consumers for employee financial performance incentives resulting in unjust and unreasonable rates to consumers. Under R.C. 4909.15(A)(4), when fixing and determining just and reasonable rates, the PUCO must determine “the costs to the utility of rendering the public utility service for the test period.” The Supreme Court has construed that to mean the expenses must be ordinary and necessary to provide service to utility consumers. Employee financial performance incentives are not necessary to provide utility service to consumers; nor do consumers benefit from those expenses.

The PUCO’s Opinion and Order is unreasonable and unlawful and contrary to the public interest. The Settlement also violates Ohio law and important regulatory principles. Accordingly, under R.C. 4903.10, OCC applies for rehearing of the Order.

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<sup>3</sup> Entry (June 29, 2022) at 1.

<sup>4</sup> See Duke Application Vol. I, Schedule B-3.3 (June 30, 2022).

<sup>5</sup> *In re Suburban Nat. Gas Co.*, 166 Ohio St.3d 176 (2021).

## II. MATTERS FOR CONSIDERATION

**ASSIGNMENT OF ERROR NO. 1: The PUCO erred by approving a Settlement that does not benefit consumers and the public interest and violates R.C. 4909.15. The PUCO's Order wrongfully found that Duke's propane facilities were used and useful at date certain in providing service to Duke's consumers when they were not and allowed Duke to charge consumers for the plant. The PUCO's decision was wrong and against the manifest weight of the evidence contrary to R.C. 4903.09 and Supreme Court precedent, *Consumers' Counsel* and *AK Steel*.<sup>6</sup>**

The PUCO's decision approving the Settlement harms consumers and the public interest. That's because it would require charges to consumers of approximately \$2.9 million per year for ten years. That means that consumers are being charged \$29 million for plant assets (not costs) that are not used and useful as of date certain.<sup>7</sup> That is contrary to Ohio law.

In its decision, the PUCO stated, "Largely at issue is whether this deferral falls under R.C. 4909.15(A)(1), and is considered property that must be used and useful as of the date certain, or whether the deferral is considered a cost of rendering utility service under 4909.15(A)(4), and not subject to the used and useful standard."<sup>8</sup> The PUCO affirmed the Settlement's consideration of the propane facilities as a cost of service under R.C. 4909.15(A)(4).<sup>9</sup> The PUCO was wrong.

The Supreme Court of Ohio has prohibited the PUCO from using accounting to circumvent the law's "used and useful" standard for consumer protection. The Court ruled that an accounting mechanism (such as creating deferrals, normally associated with

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<sup>6</sup> *Office of Consumers' Counsel v. Public Utilities Com.*, (1981) 67 Ohio St.2d 153, 164 (*Consumers' Counsel*), *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 84, 765 N.E.2d 862. (*AK Steel*).

<sup>7</sup> OCC Ex. 9 at 5.

<sup>8</sup> Opinion and Order at ¶ 44.

<sup>9</sup> *Id.*



“expenses”) cannot be used “by commission fiat” to avoid scrutiny of a utility asset that must be evaluated under the used and useful standard in R.C. 4909.15(A)(1).<sup>10</sup>

In *Consumers’ Counsel*, the PUCO allowed the Cleveland Electric Illuminating Co.’s (CEI) capital investment in terminated nuclear facilities to be charged to consumers as an amortizable cost of service under R.C. 4909.15.(A)(4).<sup>11</sup> In reversing the PUCO’s decision, the Court emphasized that the types of costs properly included under R.C. 4909.15.(A)(4) were the normal, recurring *expenses* incurred by utilities to render service to the public during the test period such as expenditures for repairs, maintenance, personnel-related costs, administrative expenses, and taxes.<sup>12</sup> The Court ruled that CEI’s capital investment in terminated nuclear facilities were not the type of normal, recurring expenses allowable under R.C. 4909.15(A)(4).<sup>13</sup> *Consumers Counsel* is Ohio Supreme Court precedent that must be followed

Here, as in *Consumers’ Counsel*, the PUCO allowed Duke to treat its capital investments associated with the propane facilities as amortizable costs under R.C. 4909.15(A)(4). But Duke’s capitalized investment associated with the propane facilities are not recurring, normal expenses under R.C. 4909.15(A)(4). The PUCO’s ruling is contrary to the Court’s ruling in *Consumers’ Counsel*.

Further, it was of no import to the Court in *Consumers’ Counsel* that CEI’s capital investment in the terminated nuclear facilities were never used and useful rate base property under R.C. 4909.15(A)(4). The salient point of the Court’s ruling was that the

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<sup>10</sup> See *Consumers’ Counsel* at 164.

<sup>11</sup> *Consumers’ Counsel* at 161.

<sup>12</sup> *Id.* at 164

<sup>13</sup> *Id.*

utilities capital investment was not a recurring, normal expense under R.C. 4909.15(A)(4).

The PUCO's Opinion and Order is contrary to *Consumers' Counsel*. The PUCO allows Duke to use a ratemaking mechanism that changes utility assets, subject to a used and useful standard, into costs subject to a different standard, under R.C. 490915.(A)(4). This is contrary to the Court's ruling in *Consumer's Counsel* and circumvents Ohio ratemaking law.

The Ohio Supreme Court has held that the PUCO's decision will not be disturbed unless the decision is "against the manifest weight of the evidence or is clearly unsupported by the record."<sup>14</sup> Here the PUCO's ruling was wrong and against the manifest weight of the evidence.

The only evidence that the PUCO relied upon to support its finding the propane facilities were used and useful on the date certain was the testimony of Duke's regulatory strategist, Ms. Lawler.<sup>15</sup> Ms. Lawler did not testify from first-hand knowledge as to whether the propane facilities were in fact physically used and useful on the date certain. Yet, the PUCO took Ms. Lawler's word for it that the propane facilities were used and useful on the date certain and let Duke off the hook regarding its burden of proof on this issue.

The evidence of record, including Duke's Schedule B-3.3, OCC witness Kerry Adkins' testimony and Ohio Supreme Court precedent, establishes that the propane facilities were not used and useful on date certain. One need only look to the most potent

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<sup>14</sup> See *AK Steel Corp* at 84.

<sup>15</sup> Opinion and Order at ¶ 45.

evidence in the record in this regard—the Company’s Schedule B 3.3. There the utility *excluded* the propane facilities from the plant schedule. Why? Because the facilities were not used and useful as of date certain. Enough said.

The PUCO’s decision was wrong and against the manifest weight of the evidence. Accordingly, the Order violates R.C. 4903.09. The PUCO’s Opinion and Order approving the Settlement was contrary to Ohio Supreme Court precedent, and against the manifest weight of the evidence. The PUCO decision violated R.C. 4909.15. The PUCO should grant rehearing.

**ASSIGNMENT OF ERROR NO. 2: The PUCO erred in using accounting deferrals to change utility assets into expenses, and then treated the assets as expenses collected from consumers over a ten-year period. The PUCO’s Order unreasonably and unlawfully allows Duke to treat the propane facilities as a “cost” of “rendering the public utility service for the test period,” in violation of R.C. 4909.15. The PUCO’s action circumvented Ohio ratemaking law.**

At the outset, OCC incorporates the ratemaking law cited in its Assignment of Error No. 1. Allowing Duke to collect deferred costs related to the propane facilities violates the law -- R.C. 4909.15(A)(1) requires that “property of the public utility” must be “used and useful” at date certain.<sup>16</sup> As demonstrated above, Duke repeatedly represented publicly, over a period of years, before multiple regulatory bodies, that the purpose of the Central Corridor Pipeline was to retire the propane facilities, rendering them no longer used and useful. Duke’s public representations also demonstrate that the Central Corridor Pipeline began commercial operation – rendering the propane facilities not used and useful – on the date certain in this case.

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<sup>16</sup> R.C. 4909.15(A)(1).

The PUCO treatment of the propane facilities as a “cost to the utility of rendering the public utility service for the test period...,” under R.C. 4909.15(A)(4) would allow Duke to charge consumers for the propane facilities even though they were no longer used and useful. But R.C. 4909.15(A)(1) requires utility property to be used and useful. Treating the propane facilities as a cost of service under R.C. 4909.15(A)(4) would circumvent the law and is contrary to Ohio Supreme Court precedent.

The Ohio Supreme Court in *Consumers’ Counsel* “seriously question[ed] whether the General Assembly contemplated that the commission would treat the type of expenditures controverted herein [major capital investments] as costs under R. C. 4909.15(A)(4).”<sup>17</sup> The Court explained that a major capital investment cannot be transformed into an operating expense by “commission fiat.”<sup>18</sup>

The Court’s decision in *Consumers’ Counsel* is Ohio law, to be followed, not disregarded. The propane facilities were major capital investments that must be analyzed under R.C. 4909.15(A)(1), not as a costs under R.C. 4909.15(A)(4) just because the utility says so. As OCC expert Kerry Adkins concluded, “the propane facilities and the propane inventory were a utility asset,” not a cost of rendering service.

In fact, Duke has never treated the propane facilities as a cost of rendering utility service before. As Mr. Adkins testified, “[p]reviously, they have always been in rate base.” Only when the propane facilities ceased to be used and useful, did Duke attempt to treat the propane facilities as a cost of rendering utility service. This is a classic bait and

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<sup>17</sup> *Consumers’ Counsel*, 67 Ohio St.2d at 164.

<sup>18</sup> *See id.*

switch. The propane facilities are property, not costs of rendering service, meaning they must be used and useful at the date certain.

The PUCO should and must apply the used and useful standard embodied in the statutory ratemaking formula in R.C. 4909.15. The propane facilities were not useful for providing utility service on the date certain, so charging consumers for them (as permitted under the Settlement) would violate Ohio law as well as important regulatory practices and principles. The PUCO should grant rehearing.

**ASSIGNMENT OF ERROR NO. 3: The PUCO erred by approving a Settlement that does not benefit consumers and the public interest and also violates PUCO precedent and the important regulatory principle of cost causation. The PUCO’s Order unreasonably and unlawfully allows Duke to charge consumers for costs related to financial performance incentives which do not benefit consumers and are not necessary in providing utility service to consumers.**

The PUCO’s Opinion and Order approving the Settlement allows Duke to charge consumers for financial performance incentives paid to Duke’s employees.<sup>19</sup> The PUCO found that the Settlement’s terms providing for a credit in the CFP Rider to offset the rate effect of any capitalized financial incentive compensation for incremental investments placed in service after the March 31, 2022 date certain represented a reasonable compromise of the issue.<sup>20</sup> The “negotiation” of this “compromise” started with the false premise that performance incentives are necessary to ensure safe and reliable customer service to its customer base.<sup>21</sup> They are not.

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<sup>19</sup> Opinion and Order at ¶ 64.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Financial performance incentives are compensation to utility employees for achieving performance goals set by the utility management.<sup>22</sup> The financial performance incentives, which consumers fund under the Settlement, are unjust and unreasonable. OCC witness Kerry Adkins testified that “Duke’s performance incentive awards benefit only the utility and its shareholders and do not provide any benefit to consumers. They are not necessary for the provision of utility service.”<sup>23</sup>

Further, Mr. Adkins testified that including financial performance incentives in the rate base harms consumers because it causes them to pay more in rates than they would otherwise pay.<sup>24</sup> Consequently, the financial performance incentives in the Settlement charge consumers unjust and unreasonable rates for a benefit they do not receive. For this reason, the PUCO Opinion and Order approving the Settlement harms consumers and the public interest.

The PUCO’s decision approving the Settlement’s financial performance incentives also violates PUCO precedent and the important regulatory principle and practice of cost causation. The PUCO has previously disallowed Duke’s attempts to charge consumers for utility employee incentive pay.<sup>25</sup> OCC witness Kerry Adkins described this principle as meaning “utility costs should be charged to those who benefit from the services that led to the utility costs.”<sup>26</sup> Again, Duke and Duke’s shareholders, not consumers, are the beneficiaries if Duke achieves financial targets. Since consumers

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<sup>22</sup> OCC Ex. 9 at 52.

<sup>23</sup> OCC Ex. 9 at 53.

<sup>24</sup> OCC Ex. 9 at 6.

<sup>25</sup> Case No. 17-781-EL-RDR, Finding & Order (May 15, 2019) at ¶13, 16-17.

<sup>26</sup> OCC Ex. 9 at 54.

do not benefit from these incentives, charging consumers for them violates cost causation principles. The PUCO should grant rehearing.

**ASSIGNMENT OF ERROR NO. 4: The PUCO erred when it failed to make the charges for the amortized propane facilities subject to refund.**

The PUCO failed to protect customers by ordering the amortized propane facilities rates subject to refund. The PUCO should have ordered the rates to be collected, subject to refund, pending the outcome of any final decision by it or the Ohio Supreme Court.

The PUCO has the authority to make rates subject to refund. It has done so in the past. The PUCO has acted to prevent harm from occurring by ordering utilities, on an ongoing basis, to collect an existing rate increase subject to refund and subject to appropriate interest charges. The PUCO has used this approach to permit it to explore the reasonableness of rates in light of events that occurred after the issuance of its orders. For instance, the PUCO granted rehearing and ordered rates to be collected subject to refund in a rate case filed by the Columbus & Southern Ohio Electric Company.<sup>27</sup> In that rate case, one week after the issuance of the PUCO's rate order, the Nuclear Regulatory Commission issued an Order that suspended construction at the Zimmer Nuclear Power Plant ("Zimmer"). The original Opinion and Order included a rate base allowance for construction work in progress ("CWIP") for Zimmer.<sup>28</sup>

In its order setting the rehearing, the PUCO approved the utility's filed tariffs but expressly found the portion of the increase granted attributable to Zimmer CWIP "should

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<sup>27</sup> *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982).

<sup>28</sup> *Id.*, Opinion and Order at 8-14 (November 5, 1982).

be made subject to refund, pending a rehearing on the CWIP issue.”<sup>29</sup> A rehearing was held and the PUCO ordered that all of the Zimmer costs should be excluded from CWIP. The PUCO ordered the utility to file tariffs reducing the total revenue requirements by approximately \$13 million.<sup>30</sup> The utility appealed and sought a stay of the PUCO's Order on Rehearing from the Supreme Court of Ohio. The Court granted the stay but subsequently affirmed the PUCO's denial of a CWIP allowance.<sup>31</sup> After the PUCO's action was upheld on appeal,<sup>32</sup> the PUCO ordered the utility to refund approximately \$4.5 million to its customers.<sup>33</sup> The PUCO ordered the collection, subject to refund, to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

Another example where the PUCO has collected rates subject to refund involved the Ohio Utilities Company.<sup>34</sup> After a rate order was issued,<sup>35</sup> legislation was enacted that changed Ohio's ratemaking formula. The PUCO opened an investigation to determine if the previously-established rates were still reasonable in light of the new law.<sup>36</sup> The PUCO determined that the rates were excessive, taking into account the new law, and ordered the utility to withdraw its tariffs and file new lower rates consistent with the PUCO's

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<sup>29</sup> *Id.*, Entry at 1 (November 17, 1982).

<sup>30</sup> *Id.*, Order on Rehearing (March 16, 1983).

<sup>31</sup> *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.*, (1984), 10 Ohio St.3d 12.

<sup>32</sup> *Id.*

<sup>33</sup> *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

<sup>34</sup> *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry at 2 (June 7, 1978).

<sup>35</sup> *In the Matter of the Ohio Utilities Co. Application for an Increase in Rates*, Case No. 79-529-WS-AIR, Opinion and Order (January 18, 1977).

<sup>36</sup> *In the Matter of the Commission's Investigation of the Current Rates, Revenues, Rate Base, and Rate of Return of the Ohio Utilities Company*, Case No. 77-1073-WS-COI, Entry (September 7, 1977).



findings.<sup>37</sup> The utility sought a stay of the PUCO’s order, pending further review, which was granted with the condition that the utility was required to collect rates subject to refund.<sup>38</sup>

And in a case involving AEP’s Rate Stability Rider (“RSR”), the PUCO ordered that the RSR be collected subject to refund after the case was remanded by the Court.<sup>39</sup> The PUCO “direct[ed] AEP Ohio to file revised tariffs that provide that the RSR is being collected subject to refund” in order to protect consumers from irreparable harm – continuing to pay the RSR without the potential of getting a refund.<sup>40</sup>

The PUCO has the discretion to order rates collected from customers to be refundable. It should have acted within its discretion and required these replacement rates to be collected subject to refund. It should have avoided the travesty of justice for consumers that has become all too familiar when utilities charges are overturned by the Court and yet no refunds are available to customers.

The Court most recently has opined on this travesty of justice which could be avoided if the PUCO makes rates refundable. In a recent opinion, where it sided with FirstEnergy’s claim that the PUCO could not make FirstEnergy refund \$43 million to

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<sup>37</sup> *Id.*, Opinion and Order (May 18, 1978).

<sup>38</sup> *Id.*, Entry (June 7, 1978). The utility was also required to file an “undertaking” consisting of a promise to refund any amount collected for service rendered after the date of the Entry by a method later determined by the Commission (either cash refund or as a credit to future bills). The undertaking was required to be under oath by an officer of the company and was to include a promise to include interest. The amount ordered for refund was the amount collected for service in excess of those rates ultimately determined to be lawful. *Id.*

<sup>39</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC *et. al.* (May 18, 2016).

<sup>40</sup> *Id.* at 4.

consumers for renewable energy overcharges,<sup>41</sup> the Court found that the PUCO was barred from ordering refunds because it had not made FirstEnergy's tariffs subject to refund.<sup>42</sup> In another recent denial of refunds, the Court found unlawful the PUCO's allowance of a so-called distribution modernization rider (subsidy charge) for FirstEnergy. There, the Court denied half a billion dollars in refunds to two million consumers (where the PUCO had not protected consumers by making the charge subject to refund).<sup>43</sup> (In that case, the PUCO had rejected making the charge subject to refund).<sup>44</sup> The PUCO had rejected a motion by OCC and the Ohio Manufacturers' Association, in 2016, to make FirstEnergy's subsidy charge subject to refund.<sup>45</sup>

Ohio Supreme Court Justice Pfeifer highlighted the extreme injustice to Ohio consumers when they are denied refunds for charges later found to be unlawful:

[T]he PUCO asserted that a refund under the circumstances would be tantamount to retroactive ratemaking, something it is not authorized to engage in.

It is unconscionable that a public utility should be able to retain \$368 million that it collected from customers based on assumptions that are unjustified. The problem stems from this court's 1957 decision [in *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*] Clearly the time has come to overturn this case.

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<sup>41</sup> *In re Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, 153 Ohio St.3d 289, 2018-Ohio-229, ¶¶ 15-20.

<sup>42</sup> *Id.*

<sup>43</sup> *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 23 ("despite our finding that the DMR is unlawful, no refund is available to ratepayers for money already recovered under the rider").

<sup>44</sup> *Id.*

<sup>45</sup> *In re Application of Ohio Edison Co., the Cleveland Electric Illuminating Co., & the Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Finding & Order ¶ 16 (December 21, 2016).

[I]t boggles the mind that this court would ever countenance such a proposition: that a public utility should be allowed to fatten itself on the backs of Ohio residents by collecting unjustified charges.

...

Allowing AEP to retain the \$368 million that it collected based on charges that were not justified is unconscionable. Doing so because of a 50-year-old case that is not supported by the statute on which it is based is ridiculous. The ratepayers of Ohio deserve better.<sup>46</sup>

Just since the advent of the 2008 energy law that favors electric utilities in ratemaking, Ohioans have lost \$1.2 billion in denied refunds for electric charges after Supreme Court reversals of PUCO orders.<sup>47</sup>

The PUCO should have acted to protect Duke consumers by ordering the amortized propane facilities rates to be collected subject to refund. There was no reason not to. The PUCO erred. Rehearing should be granted.

### **III. CONCLUSION**

The PUCO must follow the law, not avoid it. Here the PUCO failed to follow the law. Rehearing should be granted.

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<sup>46</sup> *In re Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶¶ 61-67.

<sup>47</sup> See *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 17-20 (\$63 million); *In re: Columbus S. Power Co.*, 138 Ohio St.3d 448, ¶ 56 (\$368 million); *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166 (\$330 million); *In re Application of Ohio Edison Co.*, 2019-Ohio-2401, ¶ 23 (\$456 million collected through June 2019).

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Application for Rehearing was served by electronic transmission upon the parties below this 1st day of December, 2023.

/s/ William J. Michael  
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by Office of The Ohio  
Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of  
Michael, William J..