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IN THE SUPREME COURT OF OHIO
On Appeal From the Public Utilities Commission of Ohio

The Office of the Ohio Consumers' Counsel,)
)
Appellant,)
)
v.)
)
The Public Utilities Commission)
of Ohio,)
)
Appellee.)

Case No. **06-0536**

Appeal from the Public
Utilities Commission of Ohio

Public Utilities
Commission of Ohio
Case No. 05-844-EL-ATA

PUCO

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NOTICE OF APPEAL
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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MAR 14 2006
MARCIA J MENDEL CLERK
SUPREME COURT OF OHIO

Appellant, the Office of the Ohio Consumers' Counsel, pursuant to R.C. 4903.11, R.C. 4903.13, and S. Ct. Prac. R. II (3)(B), hereby gives notice to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of this appeal to the Supreme Court of Ohio from Appellee's Opinion and Order entered in its Journal on January 25, 2006 and Entry on Rehearing entered in its Journal on March 7, 2006 in Case No. 05-844-EL-ATA before the PUCO.

Pursuant to R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of the Dayton Power & Light Company ("DP&L" or the "Company"). Appellant entered its appearance in the case before the PUCO. On February 13, 2006, pursuant to R.C. 4903.10, Appellant timely filed an Application for Rehearing from the January 25, 2006 Opinion and Order. Appellant's Application for Rehearing was denied with respect to the issues raised in this appeal by an Entry on Rehearing entered in Appellee's Journal on March 7, 2006.

Appellant files this Notice of Appeal, complaining and alleging that Appellee's January 25, 2006 Opinion and Order and March 7, 2006 Entry on Rehearing result in a final order that is unlawful and unreasonable, and that Appellee erred as a matter of law, in the following respects that were raised in Appellant's Application for Rehearing:

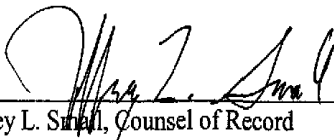
- 1) The PUCO Erred When It Authorized Increased Rates That Implement Illegal Deferrals That Violate The Rate Cap Provision Contained In R.C. 4928.34(A)(6);
- 2) The PUCO Erred When It Approved An Application That Violated The Market Development Period Extension Stipulation and Order, in PUCO Case No. 02-2779-EL-ATA, That The PUCO Must Follow;
 - a) The PUCO Erred When It Did Not Apply The Doctrine of Collateral Estoppel That Bars The Violation Of The Market Development Period Extension Stipulation and Order;

- b) The PUCO Erred When It Approved The Illegal Violation Of The Market Development Period Extension Stipulation And Order Because Offsetting Adjustments In Rates Were Not Ordered;
 - c) The PUCO Erred When It Approved The Illegal Violation Of The Market Development Period Extension Stipulation And Order Because Charges Do Not Appear In Approved Open Access Transmission Tariffs;
- 3) The PUCO Erred When It Granted DP&L Increased Rates To Collect Deferred PJM Administrative Costs Without Abiding By Procedural Requirements Contained In R.C. Chapter 4909 and 4903 That Require a Hearing And An Order Explaining The PUCO's Decision Based Upon A Record;
 - 4) The PUCO Erred When It Denied The OCC's Motion To Intervene Pursuant to R.C. 4903.221.

WHEREFORE, Appellant respectfully submits that the Appellee's January 25, 2006 Opinion and Order and March 7, 2006 Entry on Rehearing are unreasonable and unlawful, and should be reversed. This case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

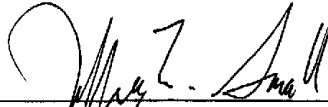
JANINE L. MIGDEN-OSTRANDER
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CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to all parties to the proceeding before the Public Utilities Commission and pursuant to section 4903.13 of the Ohio Revised Code on March 14, 2006.



Jeffrey L. Small
Counsel for Appellant
Office of the Ohio Consumers' Counsel

**COMMISSION REPRESENTATIVES
AND PUBLIC UTILITIES COMMISSION OF OHIO SERVICE LIST**

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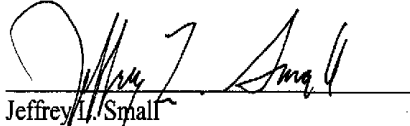
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CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal of the Office of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

Jeffrey L. Small
Counsel for Appellant
Office of the Ohio Consumers' Counsel

APPENDIX E. CASE INFORMATION STATEMENT

In The Supreme Court of Ohio

Case Information Statement

Case Name: Office of the Ohio Consumers' Counsel, Appellant v. Public Utilities Commission of Ohio, Appellee	Case No.: Appeal of PUCO Case 05-844-EL-ATA
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I. Has this case previously been decided or remanded by this Court? Yes No

If so, please provide the Case Name: _____

Case No.: _____

Any Citation: _____

II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? Yes No

If so, please provide the Case Name and Citation: (see attached page) _____

Will the determination of this case involve the interpretation or application of any particular constitutional provision, statute, or rule of court? Yes No

If so, please provide the appropriate citation to the constitutional provision, statute, or court rule, as follows:

U.S. Constitution: Article _____, Section _____ Ohio Revised Code: R.C. (see attached page) _____

Ohio Constitution: Article _____, Section _____ Court Rule: _____

United States Code: Title _____, Section _____ Ohio Admin. Code: O.A.C. _____ - _____ - _____

III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g., jury instructions, UM/UIIM, search and seizure, etc.):

- 1) Statutory interpretation (R.C. Chapters 4903, 4909, and 4928)
- 2) Administrative law
- 3) Regulatory law, authority of the Public Utilities Commission of Ohio

IV. Are you aware of any case now pending or about to be brought before this Court that involves an issue substantially the same as, similar to, or related to an issue in this case? Yes No

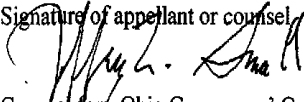
If so, please identify the Case Name: (see attached page) _____

Case No.: _____

Court where Currently Pending: _____

Issue: _____

Contact information for appellant or counsel:

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Jeffrey L. Small _____	0061488 _____	614-466-8574 (P) 614-466-9475 (F)
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10 W. Broad Street, Suite 1800 _____		
Columbus, OH 43215 _____		
City State Zip Code	Counsel for: Ohio Consumers' Counsel	

Appendix E, Section II (cont.)

Ohio Supreme Court Cases:

Canton Storage and Transfer Co. v. Pub. Util. Comm. (1995), 72 Ohio St. 3d 1.

Cleveland Elec. Illum. Co. v. Pub. Util. Comm. (1996), 76 Ohio St.3d 521.

Constellation NewEnergy v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767.

Consumers' Counsel v. Pub. Util. Comm. (1984), 10 Ohio St.3d 49.

Consumers' Counsel v. Pub. Util. Comm. (1985), 16 Ohio St.3d 9.

Grafton v. Ohio Edison (1996), 77 Ohio St.3d 102.

Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm. (1994), 68 Ohio St.3d 559.

Migden-Ostrander v. Public Util. Comm., 102 Ohio St.3d 451, 2004-Ohio-3924.

Spercel v. Sterling Industries (1972), 31 Ohio St. 2d 36

Superior's Brand Meats, Inc., v. Lindley (1980), 62 Ohio St. 2d 133.

Tongren v. Pub. Util. Comm. (1999), 85 Ohio St. 3d 87, 89.

Ohio Revised Code Sections:

R. C. 1.47

R. C. 4903.09

R. C. 4903.221

R. C. 4909.18

R. C. 4928.34

R. C. 4928.35

Appendix E, Section IV (cont.)

Related Pending Cases:

Office of the Consumers' Counsel v. Pub. Util. Comm., Case No. GEN-2005-1679. Court where Currently Pending: Ohio Supreme Court. Issue: Whether PUCO's Finding and Order was unreasonable and unlawful by granting DP&L accounting authority to defer for subsequent recovery transmission related charges;

Office of the Consumers' Counsel v. Pub. Util. Comm., Case No. GEN-2005-1621. Court where Currently Pending: Ohio Supreme Court. Issue: Whether PUCO's Finding and Order was unreasonable and unlawful by granting FirstEnergy accounting authority to defer for subsequent recovery transmission related charges;

Office of the Consumers' Counsel v. Pub. Util. Comm., Case No. GEN-2005-0945. Court where Currently Pending: Ohio Supreme Court. Issue: Whether PUCO's Finding and Order was unreasonable and unlawful by granting DP&L authority to increase distribution rates in a manner that conflicted with earlier PUCO orders;

City of Maumee, City of Northwood, City of Oregon, City of Perrysburg, City of Sylvania, City of Toledo, Village of Holland, Board of County Commissioners of Lucas County v. Pub. Util. Comm., Case No. GEN-2005-0118. Court where Currently Pending: Ohio Supreme Court. Issue: Whether the PUCO violated the provisions of Ohio law by approving a Rate Stabilization Plan for FirstEnergy Corp. that conflicted with an earlier PUCO order;

Office of the Ohio Consumers' Counsel v. Pub. Util. Comm., Case No. GEN-2004-1993. Court where Currently Pending: Ohio Supreme Court. Issue: Whether the PUCO violated Ohio law by approving a Rate Stabilization Plan for FirstEnergy Corp. that conflicted with an earlier PUCO order.