

FILE

IN THE SUPREME COURT OF OHIO

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06-1594
PUCO

The Office of the Ohio Consumers' Counsel,)	Case No.
)	
Appellant,)	
)	Appeal from the Public
v.)	Utilities Commission of Ohio
)	
The Public Utilities Commission)	
of Ohio,)	Public Utilities
)	Commission of Ohio
Appellee.)	Case No. 05-376-EL-UNC
)	

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

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FILED
AUG 25 2006
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

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Technician Am Date Processed 8/25/06

Notice of Appeal of Appellant The Office of the Ohio Consumers' Counsel

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 April 10, 2006 and Entry on Rehearing entered in its Journal on June 28, 2006 in Case No. 05-376-EL-UNC before the PUCO.¹

Pursuant to R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of the Columbus Southern and Ohio Power Companies (the "AEP" companies, or the "Company"). Appellant was a party of record in the case before the PUCO. On May 10, 2006, pursuant to R.C. 4903.10, Appellant timely filed an Application for Rehearing from the April 10, 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 June 28, 2006.

Appellant files this Notice of Appeal, complaining and alleging that Appellee's April 10, 2006 Opinion and Order and June 28, 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 also issued an interim entry on June 6, 2006 that granted all applications for rehearing (including those of AEP and the OCC) in order to provide the PUCO more time to consider the arguments made for rehearing.

- 1) The PUCO May Not Increase The Rates Customers Pay To A Distribution Utility So That It May, In Its Provider Of Last Resort Capacity, Construct A Generating Facility.
 - A. The PUCO may not approve the collection from customers of amounts for generation-related costs that are not within the PUCO's jurisdiction.
 - B. The PUCO may not permit the violation of the requirement contained in R.C. 4928.17 that an Ohio electric utility may not supply a competitive retail electric service.
 - C. The PUCO may not approve part of an application that did not follow requirements contained in R.C. 4928.14 and R.C. Chapter 4909 regarding the pricing of generation service.
 - D. The PUCO failed to follow its own rules as provided in Ohio Adm. Code 4901:1-35 regarding the provision of competitive retail electric services.

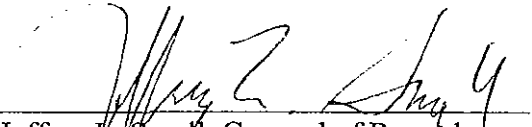
- 2) The PUCO May Not Increase The Distribution Rates Customers Pay To A Utility In Violation of Ohio Law, Including Statutes That Limit The PUCO's Authority Regarding Distribution Rate-Making.
 - A. The PUCO may not provide an *a priori* regulatory approval that violates Ohio law, including R.C. 4909.15 that limits allowances for utility plant that is not used and useful for the provision of utility service to customers.
 - B. The PUCO failed to follow the ratemaking procedures for non-competitive services required pursuant to R.C. Chapters 4905 and 4909.
 - C. The PUCO is a creature of statute and may not approve an adjustment to distribution rates that does not abide by any legislated cost recovery mechanism by which the PUCO is empowered to increase the rates that customers pay.
 - D. The PUCO may not order an increase in the distribution rates that customers pay, based upon AEP's efforts to develop a generating plant, that fails to respect the PUCO's own precedents that froze AEP's distribution rates.

- E. The PUCO may not order an increase in the distribution rates that customers pay, based upon AEP's efforts to develop a generating plant, that fails to recognize the doctrine of collateral estoppel.
- F. The PUCO may not authorize part of a proposal that the PUCO determined was not supported by the evidence, resulting in electric distribution service that is not reasonably priced.
- G. The PUCO may not authorize distribution rate increases that do not properly match customer benefits, resulting in electric service that is not reasonably priced.

WHEREFORE, Appellant respectfully submits that the Appellee's April 10, 2006 Opinion and Order and June 28, 2006 Entry on Rehearing are unreasonable and unlawful. This Court should reverse, vacate or modify Appellee's decision, and remand this case with instructions to correct the errors complained of herein.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
OHIO CONSUMERS' COUNSEL

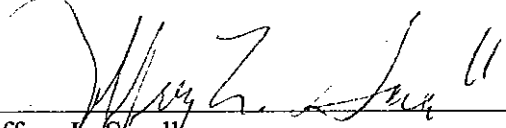


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of the Office of the Ohio Consumers' Counsel was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus and upon all parties of the proceedings before the Public Utilities Commission and pursuant to section 4903.13 of the Ohio Revised Code by hand-delivery or regular U.S. Mail this 25th day of August, 2006.


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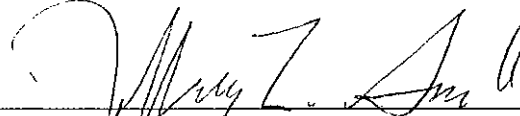
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CERTIFICATE OF FILING

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: The Office of the Ohio Consumers' Counsel v. Pub. Util. Comm.	Case No.: On Appeal from PUCO Case No. 05-376-EL-ATA
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I. Has this case previously been decided or remanded by this Court? No Yes
 If so, please provide the Case Name: _____
 Case No.: _____
 Any Citation: _____

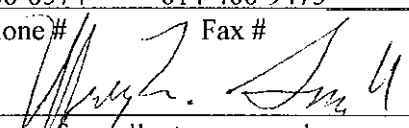
II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? Yes No
 If so, please provide the Case Name and Citation: See attached _____

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:** See attached _____
Ohio Constitution: Article _____, Section _____ **Court Rule:** _____
United States Code: Title _____, Section _____ **Ohio Adm. Code:** See attached _____

III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g., jury instructions, UM/UIM, search and seizure, etc.):
 1)Regulatory law (esp. R.C. Chapters 4903, 4905, 4909, and 4928) _____
 2)Collateral estoppel _____
 3) _____

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 _____
 Case No.: _____
 Court where Currently Pending: _____
 Issue: _____

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Address		Signature of appellant or counsel	
Columbus Ohio	43215	Counsel for: Office of the Ohio Consumers' Counsel	
City State	Zip Code		

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. (1975), 42 Ohio St.2d 403.

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

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

Consumers' Counsel v. Pub. Util. Comm. (1979), 58 Ohio St.2d 449.

Pike Natural Gas v. Pub. Util. Comm. (1981), 68 Ohio St.2d 181.

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

Ohio Revised Code Sections:

R.C. 4903.09

R.C. 4905.22

R.C. 4909.15

R.C. 4909.18

R.C. 4909.43

R.C. 4928.02

R.C. 4928.05

R.C. 4928.14

R.C. 4928.15

R.C. 4928.17

Ohio Adm. Code:

Ohio Adm. Code 4901:1-35

Appendix E, Section IV (cont.)

Related Pending Cases:

Case Name: *Office of the Consumers' Counsel v. Pub. Util. Comm.*

Case No.: 2005-0946 and 2005-0518 (consolidated appeals)

Court where Currently Pending: Ohio Supreme Court

Issue: Whether PUCO's Finding and Order was unreasonable and unlawful regarding the PUCO's jurisdiction over competitive electric services, the separation of corporate control over the provision of competitive and non-competitive services, and proper PUCO procedures for dealing with competitive and non-competitive rate setting.