

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.

05-0946

Appeal from the Public
Utilities Commission of Ohio
Case Nos. 03-93-EL-ATA, 03-2079-
EL-AAM, 03-2081-EL-AAM,
03-2080-EL-ATA

NOTICE OF APPEAL
OF

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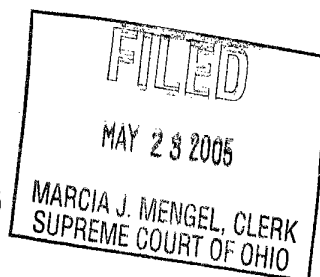
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PUCO

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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 September 29, 2004; Entry on Rehearing entered in its Journal on November 24, 2004; Second Entry on Rehearing dated January 19, 2005; and additional Order on Rehearing dated April 13, 2005 in consolidated cases (each docket designation noted in the caption above) before the PUCO.

Pursuant to R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of the Cincinnati Gas and Electric Company ("CG&E" or the "Company"). Appellant was a party of record in the cases before the PUCO.

On October 29, 2004, Appellant timely filed an Application for Rehearing from the September 29, 2004 Opinion and Order pursuant to R.C. 4903.10. 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 November 24, 2004. The Application for Rehearing adopted a CG&E proposal ("Post-Order Proposal") that was raised by the Company after the Commission's September 29, 2004 Opinion and Order. The PUCO-adopted proposal was therefore not subject to the hearings held before the PUCO.

On December 27, 2004, Appellant timely filed a Second Application for Rehearing from the November 24, 2004 Entry pursuant to R.C. 4903.10 and R.C. 1.14.¹ Appellant's Second Application for Rehearing was also denied with respect to the issues raised in this appeal by a Second Entry on Rehearing entered in Appellee's Journal on January 19, 2005.

¹ Second Entry on Rehearing at 8, ¶(25) (January 19, 2005).

The PUCO's additional Order on Rehearing was entered in Appellee's Journal in Case No. 03-93-EL-ATA, *et al.* on April 13, 2005. The additional Order on Rehearing addressed matters raised in an application for rehearing submitted by the MidAmerican Energy Company.

Appellant files this Notice of Appeal, complaining and alleging that Appellee's September 29, 2004 Opinion and Order, November 24, 2004 Entry on Rehearing; January 19, 2005; Second Entry on Rehearing; and April 13, 2005 additional Order on Rehearing are unlawful, unjust and unreasonable, and that Appellee erred as a matter of law, in the following respects that were raised in Appellant's Applications for Rehearing:

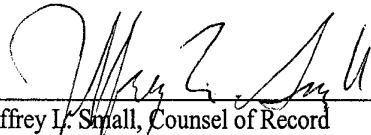
- 1) The PUCO erred, in violation of R.C. Sections 4903.082, 4903.083, 4909.15, 4909.18, 4909.19 and 4909.43, when it failed to provide and require notice, provide for discovery, and provide for a hearing on CG&E's Post-Order Proposal; and the PUCO erred, in violation of R.C. Sections 4903.09, 4928.14(A), 4909.18 and R.C. 4909.19, when it failed to adequately review the rates contained in CG&E's Post-Order Proposal.
- 2) The PUCO erred by approving a so-called "Rate Stabilization Plan" for the period starting at the end of CG&E's market development period and continuing through December 31, 2008 since there is no basis in Ohio law for such a plan. Beginning at the end of an electric distribution utility's market development period, the utility is required -- pursuant to R.C. 4928.14(A) -- to "provide consumers * * * a market-based standard service offer." The so-called "Rate Stabilization Plan" does not provide for a standard service offer that is market-based as required under R.C. 4928.14(A) and Ohio Adm. Code 4901:1-35.
- 3) The PUCO erred by approving a so-called "Rate Stabilization Plan" for the period starting at the end of CG&E's market development period and continuing through December 31, 2008 since there is no basis in Ohio law for such a plan. Beginning at the end of an electric distribution utility's market development period, the utility is required -- pursuant to R.C. 4928.14(B) -- to "offer customers * * * an option to purchase competitive retail electric service the price of which is determined through a competitive bidding process." The so-called "Rate Stabilization Plan" does not provide for a competitive bidding process as required under R.C. 4928.14(B) and Ohio Adm. Code 4901:1-35.

- 4) The PUCO erred by approving a so-called "Rate Stabilization Plan" that permits discriminatory treatment of customers in violation of R.C. 4928.02(A), 4928.14(A), 4905.33, 4905.34 and 4905.35.
- 5) The PUCO erred, in violation of R.C. 4909.18 and 4928.15 as well as R.C. Chapters 4905 and 4909, by approving charges that are non-bypassable by customers switching to competitive suppliers without requiring a rate case and without statutory authorization for the non-bypassable charges.
- 6) The PUCO erred, in violation of R.C. 4928.17, by permitting CG&E -- if the so-called "Rate Stabilization Plan" is implemented -- to violate the Company's corporate separation obligations and to violate the Company's obligation to transfer its generation assets to a separate affiliate under the electric transition plan stipulation that was approved by the PUCO in the electric transition plan for CG&E.
- 7) The PUCO erred when it did not permit discovery of side agreements, pursuant to Ohio Adm. Code 4901-1-16, that were admissible as evidence, and erred when it did not permit such discovery that was reasonably calculated to lead to the discovery of other admissible evidence.

WHEREFORE, Appellant respectfully submits that the Appellee's September 29, 2004 Opinion and Order; November 24, 2004 Entry on Rehearing; January 19, 2005 Second Entry on Rehearing; and April 13, 2005 additional Order on Rehearing are unlawful, unjust and unreasonable and should be reversed, vacated or modified. Pursuant to R.C. 4903.13, these cases should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
OHIO CONSUMERS' COUNSEL

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

Jeffrey L. Small, Counsel of Record

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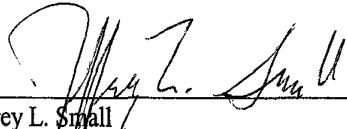
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CERTIFICATE OF SERVICE

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 record by hand-delivery or regular U.S. Mail this 23rd day of May 2005.


Jeffrey L. Small
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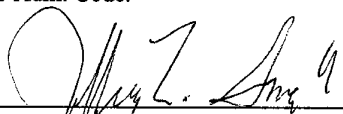
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Cincinnati, OH 45202

Cognis Corp.

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 Adm. Code.



Jeffrey L. Small
Counsel or Record
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. Public Utilities Commission of Ohio	Case No.:
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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: 16 Ohio St. 3d 9 (1985) and 72 Ohio St. 3d 1 (1995)

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

Ohio Constitution: Article 1, Section 16 Court Rule: _____

United States Code: Title _____, Section _____ Ohio Admin. Code: O.A.C. 4901:1-35

* Amendment 14

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: OCC v. PUCO, Maumee v. PUCO, OCC v. PUCO

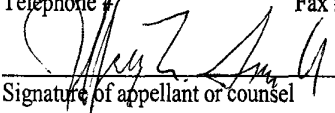
Case No.: S. Ct. Case No. 04-1993, S. Ct. Case No. 05-118, S. Ct. No. 05-767

Court where Currently Pending: Ohio Supreme Court (all)

Issue: Interp. of R.C. 4928.14 and R.C. 4928.17 (all)

* OCC v. PUCO; S. Ct. Case No. 05-0518 (same issues)

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City	State	Zip Code	Counsel for

R.C. 4903.082
R.C. 4903.083
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R.C. 4905.33
R.C. 4905.34
R.C. 4905.35
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R.C. 4909.43
R.C. 4928.02
R.C. 4928.14
R.C. 4928.15
R.C. 4928.17