

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

The Office of the Ohio Consumers' Counsel,)	Case No. _____
)	
Appellant,)	
)	Appeal from the Public
v.)	Utilities Commission of Ohio
)	Case Nos. 03-2144-EL-ATA, AAM
The Public Utilities Commission)	and UNC
of Ohio,)	
)	
Appellee.)	
)	

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

Janine L. Migden-Ostrander
(Reg. No. 0002310)
Consumers' Counsel

James Petro
(Reg. No. 0022096)
Attorney General of Ohio

Kimberly W. Bojko, Counsel of Record
(Reg. No. 0069402)
Jeffrey L. Small
(Reg. No. 0061488)
Colleen L. Mooney
(Reg. No. 0015668)
Assistant Consumers' Counsel

Duane Luckey
(Reg. No. 0023557)
Chief, Public Utilities Section
Public Utilities Commission of Ohio

180 East Broad Street
Columbus, Ohio 43215-3793
(614) 644-8698

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574

Attorneys for Appellant
Office of the Ohio Consumers' Counsel

Attorneys for Appellee
Public Utilities Commission of Ohio

Appellant, the Office of the Ohio Consumers' Counsel, pursuant to R.C. 4903.11 and 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 June 9, 2004; Entry on Rehearing entered in its Journal on August 4, 2004; and Second Entry on Rehearing dated September 29, 2004 in the above-captioned case.

Pursuant to R.C. Chapter 4911, Appellant is the statutory representative of the residential customers of the following electric distribution companies: The Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company (collectively, "FirstEnergy"). Appellant was a party of record in the above-captioned PUCO case.

On July 9, 2004, Appellant timely filed an Application for Rehearing from the June 9, 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 August 4, 2004.

On August 18, 2004, Appellant timely filed a second Application for Rehearing that was supplemented on August 24, 2004 pursuant to R.C. 4903.10. 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 September 29, 2004.

Appellant complains and alleges that Appellee's June 9, 2004 Opinion and Order, the August 4, 2004 Entry on Rehearing and the September 29, 2004 Second Entry on Rehearing are unlawful or unreasonable, and the 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 approving a so-called “Rate Stabilization Plan” for the period from January 1, 2006 through December 31, 2008 in that there is no basis in Ohio law for such a plan. Beginning January 1, 2006, an electric distribution utility is required, pursuant to R.C. 4928.14, to “provide customers *** a market-based standard service offer” and an “option to purchase electric service the price of which is determined through a competitive bid.” The PUCO’s approval of the so-called “Rate Stabilization Plan” did not meet the requirements for electric service offers set forth at R.C. 4928.14.
- 2) The PUCO erred in approving a so-called “Rate Stabilization Charge” in that there is no basis in Ohio law for such a charge. The PUCO approved the so-called “Rate Stabilization Charge” without evidence as to what costs the charge was designed to recover and without evidence to justify the amount of the charge. The lack of evidentiary basis for the “Rate Stabilization Charge” violated R.C. 4903.09, which requires that, in contested cases, the PUCO’s opinions be based upon findings of fact established on the record of an evidentiary hearing. The so-called “Rate Stabilization Charge” also violated R.C. 4928.40, which requires that the recovery of any Generation Transition Charges (“GTC”) end on December 31, 2005; given that the amount of the Rate Stabilization Charge is the same as the GTC for each FirstEnergy operating company, the Rate Stabilization Charge allowed unlawfully for the continuation of the GTC after December 31, 2005. The so-called “Rate Stabilization Charge,” which is not avoidable by shopping customers, is also anti-competitive in violation of R.C. 4928.17.
- 3) The PUCO erred when it approved a so-called “Rate Stabilization Plan” that permits discriminatory treatment among the same class of residential customers by establishing different shopping credits based upon the date at which the customers shopped. Nothing in R.C. Chapter 4928 permits such undue discrimination; in addition, such discrimination is unlawful pursuant to R.C. 4905.32, which requires that the same charge be extended to all persons under like circumstances for like services; R. C. 4905.33, which requires that no utility charge any person more or less than another person for like service; and 4905.35, which prohibits discrimination in the provision of public utility service.
- 4) The PUCO erred when it authorized FirstEnergy to renege on the terms of the April 17, 2000 Stipulation and Recommendation in *The Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, which the PUCO approved in its July 19, 2000 Opinion and Order, by permitting FirstEnergy to collect interest on shopping credit deferrals.

- 5) The PUCO erred by granting FirstEnergy a financial separation waiver if the so-called Rate Stabilization Plan is implemented in violation of FirstEnergy's corporate separation obligations set forth in R.C. 4928.17.

WHEREFORE, Appellant respectfully submits that the Appellee's June 9, 2004 Opinion and Order; August 4, 2004 Entry on Rehearing and September 29, 2004 Second Entry on Rehearing are unreasonable or 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
OHIO CONSUMERS' COUNSEL

By: _____
Jeffrey L. Small
Colleen L. Mooney
Attorney for Appellant
Ohio Consumers' Counsel

Kimberly W. Bojko, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (telephone)
(614) 466-9475 (facsimile)

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 1st day of October 2004.

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

**COMMISSION REPRESENTATIVES
AND PARTIES OF RECORD**

Alan R. Schriber, Chairman
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Duane C. Luckey, Section Chief,
William Wright, Asst. Attorney General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793
william.wright@puc.state.oh.us

Ivan L. Henderson
WPS Energy Services, Inc.
Bank One Center
600 Superior - Suite 1300
Cleveland, OH 44114
ihender@wpsenergy.com

M. Howard Petricoff
Vorys, Sater, Seymour & Pease
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vssp.com

Judith B. Sanders
Barth E. Royer
Bell, Royer & Sanders
33 South Grant Avenue
Columbus, OH 43215
jsand21552@aol.com
barthrover@aol.com

Michael L. Kurtz
David Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, #2110
Cincinnati, OH 45202
mkurtzlaw@aol.com
dboehmlaw@aol.com

Jim Burk
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
burkj@firstenergycorp.com

Helen Liebman
Jones Day
41 South High Street, #1900
Columbus, OH 43215
hlliebman@jonesday.com

Glenn S. Krassen
Bricker & Eckler
1375 East Ninth Street, Suite 1500
Cleveland, OH 44114
gkrassen@bricker.com

Samuel Randazzo
Lisa G. McAlister
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
srandazzo@mwncmh.com
lmcalister@mwncmh.com

John Bentine
Bobby Singh
Chester, Wilcox & Saxbe
65 East State Street, Suite 1000
Columbus, OH 43215
jbentine@cwslaw.com
bsingh@cwslaw.com

Subodh Chandra
William T. Zigli
City of Cleveland
City Hall, Room 106
601 Lakeside Avenue
Cleveland, OH 44114-1015
bzigli@city.cleveland.oh.us

Leslie Kovacic
City of Toledo
One Government Center, #2250
Toledo, OH 43604
leslie.kovacic@ci.toledo.oh.us

Sheilah H. McAdams
Law Director
March & McAdams
204 West Wayne Street
Maumee, OH 43537
sheilahmca@aol.com

Paul S. Goldberg
Law Director
4853 Monroe Street, Suite 400
Toledo, OH 43623-4353
gwh@buckeye-express.com

Lance Keiffer
Assistant Prosecutor
Lucas County Courthouse
711 Adams Street, 2nd Floor
Toledo, OH 43624
lkeiffer@co.lucas.oh.us

Paul Skaff
Assistant Village Solicitor
Leatherman, Witzler, Dombey & Hart
353 Elm Street
Perrysburg, OH 43551
naulskaff@iustice.com

Brian J. Ballenger
Law Director
Ballenger & Moore
405 Madison Ave., 20th Floor
Toledo, OH 43604
ballengerlaw@aol.com

James E. Moan
Law Director
Lydy & Moan
4930 Holland-Sylvania Road
Sylvania, OH 43560
jimmoan@hotmail.com

William Ondrey Gruber
Attorney at law
2714 Leighton Road
Shaker Heights, OH 44120
GruberWL@aol.com

Evelyn R. Robinson
Green Mountain Energy Company
5450 Frantz Road, Suite 240
Dublin, OH 43016
Evelyn.Robinson@GreenMountain.com

Franklin C. Lewis
City Hall, Room 106
601 Lakeside Avenue
Cleveland, OH 44114
flewis@city.cleveland.oh.us

Paul T. Ruxin
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
paultruxin@jonesday.com

W. Jonathan Airey
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
wjairey@vssp.com

Peter D. Gwyn
City Law Director
110 West Second Street
Perrysburg, OH 43551
pgwyn@toledolink.com

Sally Bloomfield
Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
sbloomfield@bricker.com
tobrien@bricker.com

Bruce J. Weston
Attorney at law
169 W. Hubbard Avenue
Columbus, OH 43215-1439
bjwlo@columbus.rr.com

Craig G. Goodman
333 K Street Northwest
Suite 110
Washington, D.C. 20007
cgoodman@energymarketers.com

Joseph P. Meissner
Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, OH 44113
jpmeissn@lasclev.org

Michael D. Smith
Vice President-Origination
Constellation Power Source, Inc.
111 Marketplace, Suite 500
Baltimore, MD 21202
Michael.smith@constellation.com

David C. Rinebolt
Ohio Partners for Affordable Energy
337 South Main Street, 4th Floor, Suite 5
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com

Joseph Condo
Senior Counsel
Calpine Corporation
250 Parkway Drive, Suite 380
Lincolnshire, IL 60069
icondo@calpine.com

Robert N. Fronck
President Local 270
U.W.U.A., AFL-CIO
4205 Chester Avenue
Cleveland, OH 44103-3615
fronek@local270.org

William S. Newcomb, Jr.
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, OH 43216-1008
wnewcomb@vssn.com

Shawn P. Leyden
Vice President & General Counsel
PSEG Energy Resources & Trade LLC
80 Park Plaza, 19th Floor
Newark, NJ 07102
shawn.levden@nseg.com

Richard L. Sites
General Counsel
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Peter J.P. Brickfield
Malcome A. Burke
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson Street NW
Suite 800 West
Washington, DC 20007
ninh@bhrsllaw.com

Craig I. Smith
Attorney at law
2824 Coventry Road
Cleveland, OH 44120
wttplmc@aol.com

Freddi L. Greenberg
General Counsel
Midwest Independent Power Suppliers
1603 Orrington Avenue, Suite 1050
Evanston, IL 60201
flgreenberg@flglaw.com

Dennis Sobieski
Managing Director, Business Development
PSEG Energy Resources & Trade LLC
80 Park Plaza, 19th Floor
Newark, NJ 07102
dennis.sobieski@nseg.com

Barry F. Hudgin
Regional Legal Counsel
Mercy Health Partners
2200 Jefferson Avenue
Toledo, OH 43624