

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

The Office of the Ohio Consumers' Counsel,	)	Case No. 08-0367
	)	
Appellant,	)	Second Appeal from the Public
	)	Utilities Commission of Ohio
v.	)	Case Nos. 03-93-EL-ATA,
	)	03-2079-EL-AAM,
The Public Utilities Commission	)	03-2081-EL-AAM,
of Ohio,	)	03-2080-EL-ATA
	)	
Appellee.	)	

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**AMICUS CURIAE BRIEF OF**  
**OHIO PARTNERS FOR AFFORDABLE ENERGY**  
**IN SUPPORT OF APPELLANT**

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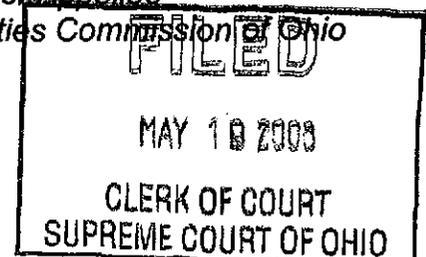
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## I. INTRODUCTION

Ohio Partners for Affordable Energy ("OPAE") is a non-profit Ohio corporation with the stated purpose of advocating for affordable energy policies for low- and moderate-income Ohioans. OPAE includes as members non-profit organizations located in the service territory of The Cincinnati Gas & Electric Company ("CG&E"), now known as Duke Energy Ohio, Inc. ("Duke"). OPAE members advocate on behalf of Duke's low- and moderate-income customers and manage bill payment assistance programs to ensure customer access to electric service from Duke. OPAE members also provide weatherization and energy efficiency services to those same customers. Finally, many of OPAE's nonprofit members are also ratepayers of Duke. OPAE was an intervener at the Public Utilities Commission of Ohio ("PUCO") in these cases, which were remanded by the Court to the PUCO for correction of errors identified by the Court. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 2006-Ohio-5789. Because the PUCO has issued an order on remand that fails to address the Court's concerns, OPAE files this brief *amicus curiae* in support of the appellant, the Office of the Ohio Consumers' Counsel ("OCC").

## II. STATEMENT OF FACTS

On May 19, 2004, CG&E filed in these cases before the PUCO a stipulation and recommendation that was signed by several parties, including parties whose interests were addressed by off-the-record side agreements to the stipulation. The PUCO issued on September 29, 2004 an Opinion and Order, which approved the stipulation but made significant changes to it. In response, CG&E filed an alternative proposal, styled as an application for rehearing. Most signatory parties to the stipulation supported the

alternative proposal. The PUCO approved the alternative proposal with minor changes on November 23, 2004. OCC appealed the PUCO's decision to the Court. The Court reversed and remanded the PUCO's decision for further consideration of matters addressed in this brief. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 2006-Ohio-5789.

First, the Court questioned whether the existence of side agreements supported the PUCO's finding that the PUCO-approved stipulation and recommendation was the product of serious bargaining among the parties. *Id.* The Court found that the PUCO had erred in denying discovery requested by OCC of the side agreements as relevant to the first test of reasonableness of stipulations, i.e., whether the settlement is a product of serious bargaining among capable, knowledgeable parties. The Court found that the existence of side agreements could be relevant to a determination that the stipulation was not the product of serious bargaining. *Id.* If CG&E and one or more of the signatory parties to the stipulation agreed to a side financial arrangement or some other consideration to sign the stipulation, that information would be relevant to the PUCO's determination of whether all parties engaged in serious bargaining. The existence of side agreements between CG&E and the signatory parties entered into around the time of the stipulation could be relevant to ensuring the integrity and openness of the negotiation process. *Id.*

The Court also found that the issue whether there was serious bargaining could not be resolved solely by reviewing the proposed stipulation. The PUCO could not rely merely on the terms of the stipulation but rather must determine whether there exists sufficient evidence that the stipulation was the product of serious bargaining. Any

concessions or inducements apart from the terms agreed to in the stipulation have relevance when deciding whether the settlement negotiations were fairly conducted. The existence of concessions or inducements is particularly relevant in the context of open settlement discussions involving multiple parties, as is the case here. If there were special considerations in the form of side agreements among the signatory parties, one or more parties may have gained an unfair advantage in the bargaining process, and the open settlement discussions were compromised. *Id.*

Thus, the Court reversed and remanded the PUCO's orders to allow discovery of the side agreements. The PUCO was to determine if the side agreements compromised the settlement discussions so that the stipulation approved by the PUCO was not the product of serious bargaining among the parties.

On remand, the side agreements provided overwhelming evidence that serious bargaining did not take place at the settlement negotiations so that the PUCO's criteria for the reasonableness of settlements had not been met. This evidence is set forth in the testimony of OCC witness Beth Hixon. Appellant's Supplement ("App. Supp.") 1-495. Unfortunately, much of this testimony was shielded from the public view and the public record on grounds advanced by representatives of parties to the side agreements that they were confidential.

After the remand hearing, much of which was conducted outside the public record and the public view, the PUCO found that the existence of the side agreements in which several of the signatory parties agreed to support the stipulation raised serious doubts about the integrity and openness of the negotiation process related to the stipulation. Based on the PUCO's review of the side agreements, the PUCO reached

the “inevitable conclusion” that there was a sufficient basis to question whether the parties engaged in serious bargaining; and therefore, the PUCO concluded that it should not have adopted the stipulation. The stipulation was expressly rejected on such grounds. Appellant’s Appendix (“App. App.”) 9; Order on Remand at 27. In short, the previously approved stipulation was now recognized by the PUCO to be a sham.

When the PUCO decided on remand on October 24, 2007, that the stipulation was not the product of serious bargaining and should not have been adopted, the PUCO also found itself “compelled” to consider CG&E’s original application, filed on January 26, 2004, and subsequently modified. The PUCO found that it would review the reasonableness of the application in light of the record evidence developed at the initial hearing and the hearing on remand. *Id.* Thus, the PUCO rejected the stipulation and then moved on as if no stipulation had ever been signed and submitted and as if nothing related to the tainted settlement process had ever happened.

The PUCO did not further consider the evidence presented at the hearing of the side agreements. The PUCO did not consider whether the evidence presented at the hearings was affected by the bilateral bargaining among some of the parties or whether the various modifications to the original application were also a product of the tainted negotiations. Nor did the PUCO consider the implications of its finding that certain of the parties had engaged in a negotiation process without serious bargaining, that the openness and integrity of the negotiating process had not be ensured, that the negotiations were not fairly conducted, and that certain parties gained an unfair advantage in the bargaining process. While the PUCO was compelled to reject the stipulation, it provided CG&E-Duke with the outcome it sought as if the stipulation had

not been rejected. *Id.* This outcome does not resemble CG&E's original application but is virtually identical to the rejected stipulation as modified by CG&E's alternative proposal. The PUCO ignored the factor that defines the terms of the stipulation and the alternative proposal – the lack of serious bargaining – and adopted essentially the same outcome that it had previously adopted.

Second, in addition to the remand on the question of side agreements, the Court also found that the PUCO had approved CG&E-Duke's infrastructure maintenance fund ("IMF") charge, which first appeared in CG&E's alternative proposal, as a component of a provider of last resort ("POLR") charge without reference to record evidence and without explanation. The Court could not even determine what the IMF charge was. The Court found that the PUCO had not sufficiently set forth its reasoning for the IMF charge but had merely asserted, without further justification, that its orders would provide rate certainty for consumers, ensure financial stability for CG&E, and further encourage the development of competitive markets. The Court was not satisfied with this justification. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 2006-Ohio-5789.

The Court found that the PUCO violated R.C. §4903.09 when it approved the IMF charge without record evidence and without setting forth any basis for the decision. App. App. at 154. The Court also reiterated its legal precedent that PUCO orders, which merely make summary rulings and conclusions without developing the supporting rationale or record, are reversed and remanded. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, ¶¶26-36, 2006-Ohio-5789.

The evidence presented at the hearing on remand demonstrates that the IMF charge should be eliminated as a new and duplicative charge. OCC witness Neil Talbot confirmed the suspicions of the Court that the IMF charge may be “some type of surcharge and not a cost component.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 308. App. Supp. 496.

In its order on remand, however, the PUCO found that the terms proposed by CG&E-Duke for its IMF charge were reasonable for determination of a market-based charge to compensate for the pricing risk incurred by CG&E-Duke in its provision of POLR service. Remand Order at 37; App. App. at 9. The PUCO conceded that the IMF charge is not cost based, but claimed that it is not necessary, under R.C. §4928.14, for components of a market price to be based on cost. *Id.* As a charge to recover for “pricing risk”, the PUCO found that the IMF charge was not duplicative of other charges. Entry on Rehearing at 7. App. App. at 54.

Thus, the PUCO found, exactly as it had when the now rejected stipulation was approved, that an analogous outcome should be affirmed. After rejecting the stipulation, the PUCO paid no attention to the evidence of the side agreements, the harm done by the submission of a sham stipulation, and the previous approval of a stipulation that was not the product of serious bargaining. The IMF charge was justified as compensation for pricing risk but not as compensation for any particular incurred cost. CG&E-Duke’s rate plan, modified only slightly on remand, was approved as if CG&E-Duke had not engaged in deceptive settlement negotiations, signed and submitted a sham stipulation or proposed duplicative charges without relation to any costs incurred. Remand Order at 43. App. App. at 54.

## II. ARGUMENT

### Proposition of Law No. 1

**The Public Utilities Commission of Ohio acts unreasonably and unlawfully when, having found that side agreements mean that serious bargaining does not take place at settlement negotiations and that a previously-approved stipulation must now be rejected, it provides essentially the same outcome without regard to the damage done under the side agreements, the tainted settlement process and the lack of evidentiary support for the outcome; the Court should reverse the PUCO's order on remand and require new terms for the provision of standard service electric generation in the utility's service territory.**

On remand, the PUCO showed no concern for the fact, confirmed by its own finding, that the stipulation and recommendation previously approved was not the product of serious bargaining. Instead of showing outrage for the behavior of CG&E and certain of its large customers who together signed and recommended a sham stipulation to the PUCO in expectation (on the part of CG&E-Duke) that a stipulation would facilitate PUCO approval and (on the part of the large customers) that the terms of the stipulation would not apply to them, the PUCO on remand astonishingly affirmed an analogous outcome as if the sham stipulation had not been rejected.

After the PUCO rejected the sham stipulation on remand, it treated it as irrelevant and ignored the evidentiary record of the side agreements and the damage done to its process. Thus, the sham stipulation, previously approved and now rejected, became a matter best ignored and forgotten.

In rejecting the stipulation, the PUCO failed to consider whether the evidence of the side agreements and whether the evidence before it had been tainted by the corrupted settlement process. Rejection of the stipulation allowed the PUCO to avoid

the mountain of evidence that the process and outcome of these cases have been unfair and the PUCO's orders reliant on such unfairness.

The brief presented by the appellant OCC will provide the detail to demonstrate to the Court the damage done in these cases and the PUCO's failure to consider the evidence and the damage. At this point, much of this evidence remains under seal because of excessive claims of confidentiality on the part of the parties to the side agreements. This evidence is presented in the testimony of OCC witness Beth Hixon. App. Supp. 1-495. While it is expected that much of this evidence will eventually be released into the public record, at this time, OPAE refers the Court to the appellant OCC's brief and supplement filed under seal in this case.

Ohio's electric restructuring law envisioned the development of a fully competitive retail electric generation market where consumers would choose from a number of competitive providers to supply their electric generation. This retail market for electric generation service has not developed, even though the market development period ended on December 31, 2005. R.C. §4928.14(A) states that after the market development period, an electric distribution utility shall provide consumers a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, and R.C. §4929.14(B) states that consumers shall also be provided an offer determined by a competitive bidding process.

Given the absence of customer choice in retail markets, the standard service offer set pursuant to R.C. §4928.14(A) is not, as the statute intends, a "fall back" option for customers who are in the process of finding a competitive supplier or switching from

one competitive supplier to another. It is the only price available to the vast majority of customers. Customers cannot bargain with a deregulated monopoly. Customers simply have no leverage to control their bills.

Because the market did not develop as the law anticipated it would, the PUCO created rate stabilization plans ("RSP"), whose goals, according to the PUCO, were rate certainty, the financial stability of the utility and the development of a competitive market. Although the RSPs did not conform to R.C. §4928.14 for the post-market development period, this Court affirmed the RSP concept on the basis of stipulations made by diverse interested parties. In *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, the Court affirmed the PUCO's approval of an RSP on the basis of the reasonableness of a stipulation. *Constellation* is based almost entirely on the Court's affirmation of the PUCO's approval of a stipulation to which parties from all customer classes agreed. *Id.* The stipulation provided cover for the PUCO's actions, which were not expressly authorized by statute.

Proof of the importance of a stipulation was emphasized by the Court when it stated in a subsequent case involving the RSP of FirstEnergy Corp., as follows:

The absence of a stipulation signed by customer groups factually distinguishes this case from *Constellation*. In *Constellation* we also noted that "no entire customer class was excluded from settlement negotiations and that the following classes were represented and signed the stipulation: residential customers, low-income customers, commercial customers, industrial customers, and competitive retail electric service providers." When it enacted R.C. 4928.14, the General Assembly anticipated that at the end of the market-development period, customers would be offered both a market-based standard service as required by R.C. 4928.14(A) and service at a price determined through a competitive-bidding process as required by R.C. 4928.14(B); one very narrow exception

contained in R.C. 4928.14(B) permits the commission to determine that a competitive-bidding process is not required. In *Constellation*, the customer groups, by stipulation, agreed to accept a market-based standard service offer and waive any right to a price determined by competitive bid. Those facts are not present in this case.

*Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-2110 ¶18.

The Court made it clear that the stipulation signed by a wide range of parties was the determining factor that allowed the Court to affirm the PUCO's RSP orders in spite of the failure to adhere to the statute. The Court made a strong distinction between RSP orders that could be approved pursuant to a stipulation supported by a wide range of parties and RSP orders that could not be approved absent such a stipulation. In the same opinion, the Court also stated:

In contrast to the customer groups in *Constellation*, the customer groups here did not agree to the FirstEnergy rates, and most customer groups, including the OCC, which represents all residential customers, opposed them. Under these circumstances, the PUCO had no authority to adopt the rate-stabilization plan without also ensuring that a reasonable means for customer participation had been developed.

Id. ¶19.

Reliance on a stipulation was also central to the Court's decision in *Elyria Foundry v. Pub. Util. Comm.*, 2007-Ohio-4164 (August 29, 2007), which the PUCO cited in its Remand Order. In *Elyria*, the Court stated as follows:

¶64. Moreover, several parties representing divergent groups of ratepayers signed the stipulation on the rate-certainty plan. Those include IEU and the Ohio Energy Group (consortia of large industrial customers); the cities of Akron, Cleveland, Parma, and Toledo; Ohio Consumers' Counsel; and Ohio Partners for Affordable Energy and the Neighborhood Environment Coalition (low-income and energy-efficient customer programs). In addition, the

Northeast Ohio Public Energy Council and the Northwest Ohio Aggregation Coalition (northern Ohio residential customer aggregators) pledged not to oppose it.

Extra-legal rate plans can only be achieved through stipulations. CG&E-Duke and certain of its large customers presented a sham stipulation to the PUCO to facilitate PUCO and Court approval by implying that there was support for the stipulated outcome among customers. In fact, the customers who signed the sham stipulation had side agreements with CG&E-Duke under which they were exempt from the terms of the stipulation – the rate increases under the RSP. (Parties not representing customers also signed the agreement but are unaffected by the rates produced by the stipulation.)

The evidence of the side agreements shows that consideration was provided to gain the support of certain large users of electricity to the RSP. App. Supp. 1-495. In its order on remand, contrary to the Court's numerous opinions cited above, the PUCO failed to require any support for the RSP from any customer group actually affected by its terms. App. App. 9.

For the low-income and small commercial consumers that OPAE represents, there is no difference in the outcome of these cases between the PUCO opinions approving the now-rejected stipulation and the rate plan approved by the PUCO on remand. In its order on remand, the PUCO provided the outcome CG&E-Duke sought through the now-rejected sham stipulation. While the PUCO made some changes to what charges are "avoidable" by shopping customers, such "avoidability" has no relevance to residential customers or small commercial customers. No shopping choices are available to these customers, and it is unlikely that making a few charges avoidable by shopping customers will make any impact at this point on the failure of

competitive markets to develop. There is little likelihood that customers represented by OPAE will ever shop for electric generation service.

There is good reason why the residential class does not support the CG&E-Duke RSP. In spite of the PUCO's professed goals for RSPs, the approved plan vastly enriches CG&E-Duke at the expense of residential and small commercial customers. Rates increase dramatically; they certainly are not stabilized. The RSP offers no benefits to ratepayers; it merely sanctions charges. The RSP is not a balance of the interests of all parties, which is why no residential or small commercial customer group supports it. The RSP cannot be found to be in the public interest when it dramatically increases rates without sufficient regard to the costs incurred by the utility and exempts large customer parties from those rates. Thus, ratepayers, and especially residential ratepayers, are harmed by the RSP and the higher rates it authorizes. The RSP fails to meet the standards for approval established by the PUCO and affirmed by the Court.

The RSP also does not conform to R.C. §4928.14(A) and (B), because no competitive market has developed and no market-based offers are available. Current electric markets, both wholesale and retail, are highly concentrated and dysfunctional, making it impossible to determine a market-based retail offer. The standard service offer under R.C. §4928.14(A), however, must be filed under R.C. §4909.18, which requires a just, reasonable and non-discriminatory rate. The PUCO must assure that the R.C. §4928.14(A) standard service offer is just, reasonable and non-discriminatory pursuant to R.C. §4909.18. It is, therefore, unlawful for the PUCO to approve a standard service offer, as it did in the instant case, without proper consideration of the just, reasonable and non-discriminatory requirements of R.C. §§4928.14(A) and

4909.18 and the extensive state and federal precedent that gives meaning to R.C. §4909.18. It is well established that the PUCO is a creature of statute and has only those powers granted to it by the General Assembly. *Columbus Southern Power Co. v. Pub. Util. Comm.*, (1993), 67 Ohio St.3d 535.

OCC witness Neil Talbot noted that the various charges in the RSP are caught between a market-pricing framework and cost-based justification. OCC Ex. R-1 at 73-74. App. Supp. 496. While the PUCO found some components to be cost based, it also used in other instances an alternate justification, namely that the component is part of market-based pricing. This allowed the PUCO to claim that non-cost based components, such as the infrastructure maintenance fund (“IMF”), are reasonable because they are “market based.” In the absence of a functioning market, there is no clear evidence as to what a market-based price is. Market-based prices are anything the PUCO wants them to be. This does not result in a just, reasonable and non-discriminatory standard service offer pursuant to R.C. §§4928.14(A) and 4909.18.

Using a cost basis is the only available proxy for the market, and a precisely estimated cost-based proxy is better than an approximate one. In the absence of a functioning market, a cost basis for charges is a reasonable response to the challenge of developing a consistent and sensible framework for standard service offer pricing that provides just, reasonable and non-discriminatory rates pursuant to R.C. §§4928.14(A) and 4909.18. OCC Ex. R-1 at 72-73. App. Supp. 496; App. App. 157, 160.

The evidence on remand demonstrates that the current standard service offer is not just, reasonable and non-discriminatory pursuant to R.C. §§4928.14(A) and 4909.18. It is not consistently cost-based, and, given the failure of a market to develop,

it cannot be market-based. If the market cannot determine prices for the standard service offer (because a functioning market does not exist), then the only proxy is a consistently cost-based standard service offer determined through traditional regulatory principles designed to mimic the competitive market. The PUCO must consider cost as the basis for approved charges; it cannot justify disregarding costs on the basis that it is setting a market-based rate. The PUCO must approve just, reasonable and non-discriminatory standard service offers. R.C. §§4928.14(A) and 4909.18. App. App. at 157, 160. The PUCO's order on remand should be reversed and the case remanded to the PUCO with orders to establish a just, reasonable and non-discriminatory standard service offer and refund the difference between that price and the rates charged under the PUCO-approved RSP.

### **Proposition of Law No. 2**

**The Commission acts unreasonably and unlawfully when it approves an unavoidable distribution charge, such as the infrastructure maintenance fund (“IMF”) charge, without reference to the cost of the service supposedly provided, consideration of whether the charge is duplicative of other charges already paid by ratepayers, and the requirements of R.C. §§4928.14(A) and 4909.18.**

The Court has already found that the PUCO approved CG&E-Duke's infrastructure maintenance fund (“IMF”) charge as a component of a provider of last resort (“POLR”) charge without reference to record evidence and without explanation. The Court found that the PUCO violated R.C. §4903.09 when it approved on rehearing the IMF charge, which first appeared in CG&E's alternative proposal, without record evidence and without setting forth any basis for the decision. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789 ¶¶26-36.

CG&E proposed the IMF as one of four components of its provider of last resort ("POLR") charge, which, in addition to the IMF, was to include a rate stabilization charge, an annually adjusted component, and a system reliability tracker ("SRT"). CG&E proposed the IMF charge in its alternative proposal to compensate CG&E for committing its generation assets to serve standard service offer consumers, i.e., customers who do not shop for generation, a group that includes all residential and small commercial customers at the very least. The fact that none of these customers shops or can shop makes the rationale for the charge suspect because there is no risk to CG&E-Duke to commit generation to customers who cannot choose another generation provider.

The evidence presented at the hearing on remand demonstrates that the IMF charge should be eliminated as a new and duplicative charge. OCC witness Talbot confirmed the suspicions of the Court that the IMF may be "some type of surcharge and not a cost component." *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 308; App. Supp. 496; OCC Ex. R-1. The SRT charge and the IMF charge together amount to \$45,080,000, which is only slightly less than the \$52,898,560 original reserve margin calculation supporting the stipulation, to which the IMF is erroneously compared. The original reserve margin estimate was too high because it was based on the cost of building a new peaking unit. The cost of acquiring existing capacity in the market is far less. In Mr. Talbot's words, "the SRT . . . is the sole successor to the Reserve Margin charge." App. Supp. 496, OCC Ex. R-1 at 4. The IMF charge is a new and duplicative charge, not justified on the basis of risk, reliability or

opportunity cost; therefore, the evidence of record clearly demonstrates that the IMF should be eliminated.

In spite of the overwhelming evidence that the IMF charge is duplicative of the SRT and not justified on the basis of risk, reliability or opportunity cost, the PUCO found on remand that the terms proposed by CG&E-Duke for its IMF charge were reasonable for determination of a market-based charge to compensate for the pricing risk incurred by CG&E-Duke in its provision of POLR service. The PUCO recognized but did not care that the IMF component is not cost-based; because, according to the PUCO, it is not necessary for components of a market price to be based on cost. App. App. at 9, 54.

The PUCO must not be allowed to disregard cost and claim, as it did with respect to the IMF, that it is approving a market-based charge, not one based on cost. Functioning markets do not exist. Therefore, a claim that a charge is market based (and not cost based) is essentially a justification for any and every charge. It merely fulfills the desires of CG&E-Duke for a certain level of revenue. Moreover, POLR charges are paid by all distribution customers, and it is unreasonable to base the pricing of a component of a distribution charge on a market that does not exist. It is well established that the Commission is a creature of statute and has only those powers granted to it by the General Assembly. *Columbus Southern Power Co. v. Pub. Util. Comm.*, (1993), 67 Ohio St.3d 535. Thus, the PUCO has no authority to ignore the requirement of R.C. §4909.18 that distribution charges must be cost based, as well as just, reasonable and non-discriminatory. The Court should reverse the PUCO's remand order and require that the IMF charge be eliminated.

#### IV. Conclusion

OPAE respectfully requests that the Court reverse and remand the PUCO's order on remand issued in these cases. In light of the evidence of the side agreements that the settlement negotiations were unfairly conducted, that no serious bargaining occurred, and that the PUCO approved a sham stipulation, it was not sufficient for the PUCO simply to reject the stipulation without regard to whether the entire proceeding, including the process and the evidentiary record, has been fatally compromised by the tainted settlement negotiations. Under the circumstances, CG&E-Duke's rate plan should not have been approved as if nothing had gone wrong, nor should the outcome of these cases have been essentially the same as if such wrongs had never been committed. The Court should order the PUCO to establish a standard service offer that meets the just, reasonable and non-discriminatory standards of R.C. §§4928.14(A) and 4909.18 and eliminate the IMF charge.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Amicus Curiae* Brief in Support of the Appellant Office of the Ohio Consumers' Counsel of Ohio Partners for Affordable Energy, was served upon all parties to this proceeding by hand delivery or regular U.S. Mail this 19<sup>th</sup> day of May 2008.



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