

ORIGINAL

In The
SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,	:	Case No. 09-2022
	:	
Appellant,	:	Appeal from the Public Utilities Commission of Ohio
	:	
v.	:	Public Utilities Commission of Ohio Case Nos. 08-917-EL-SSO and 08-918-EL-SSO
	:	
The Public Utilities Commission of Ohio,	:	
	:	
Appellee.	:	

MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION TO SUSPEND AND MOTION TO REQUIRE ESCROW SUBMITTED ON BEHALF OF APPELLEE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Maureen R. Grady (0020847)
(Counsel of Record)
Terry L. Etter (0067445)
Richard C. Reese (0076211)
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)
grady@occ.state.oh.us
etter@occ.state.oh.us
reese@occ.state.oh.us

**Attorneys for Appellant,
The Office of the Ohio Consumers'
Counsel**

Richard Cordray
(Reg. No. 0038034)
Ohio Attorney General

Duane W. Luckey (0023557)
Section Chief
Werner L. Margard III (0024858)
(Counsel of Record)
Thomas G. Lindgren (0039210)
John H. Jones (0051913)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
614.466.4395 (Telephone)
614.644.8764 (Facsimile)
duane.luckey@puc.state.oh.us
werner.margard@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
john.jones@puc.state.oh.us

**Attorneys for Appellee,
Public Utilities Commission of Ohio**

FILED
DEC 08 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Samuel C. Randazzo (0016386)
(Counsel of Record)

Lisa G. McAlister (0069402)

Joseph M. Clark (0076377)

McNees, Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, Ohio 43215-4228

614.469.8000 (Telephone)

614.469.4653 (Facsimile)

sam@mwncmh.com

lmcalister@mwncmh.com

jclark@mwncmh.com

**Attorneys for Appellant,
Industrial Energy Users-Ohio**

Marvin I. Resnik (0005695)
(Counsel of Record)

Kevin F. Duffy (0005867)

Steven T. Nourse (0046705)

Matthew J. Satterwhite (0071972)

American Electric Power Service Corp.

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

614.716.1606 (Telephone)

614.716.2950 (Facsimile)

mjresnik@aep.com

kfduffy@aep.com

stnourse@aep.com

mjsatterwhite@aep.com

Daniel R. Conway (0023058)

Porter, Wright, Morris & Arthur LLP

41 South High Street

Columbus, Ohio 43215

614.227.2270 (Telephone)

614.227.2100 (Facsimile)

dconway@porterwright.com

**Attorneys for Intervening Appellees,
Columbus Southern Power Company
and Ohio Power Company**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

MEMORANDUM IN OPPOSITION TO APPELLANT’S MOTION TO SUSPEND
AND MOTION TO REQUIRE ESCROW

MEMORANDUM IN OPPOSITION

INTRODUCTION..... 1

ARGUMENT 1

 I. Any stay of execution of a final order of the Public Utilities
 Commission is conditioned upon the execution of an
 undertaking by the appellant. 1

 A. There is no basis for a “power to suspend” separate
 and apart from this Court’s “power to stay.” 1

 B. OCC’s Motion to Suspend should not be treated as a
 Motion to Stay..... 5

 C. Granting the relief sought by OCC would
 inappropriately require the Court to assume the role of
 a regulatory body. 8

CONCLUSION 10

PROOF OF SERVICE 11

APPENDIX PAGE

Ohio Rev. Code Ann. § 119.01 (West 2009) 1

Ohio Rev. Code Ann. § 4903.16 (West 2009) 3

TABLE OF AUTHORITIES

Page(s)

Cases

<i>City of Columbus v. Pub. Util. Comm'n</i> , 170 Ohio St. 105, 163 N.E.2d 167 (1959).....	6, 7, 8
<i>Consumers' Counsel v. Pub. Util. Comm'n</i> , 61 Ohio St. 3d 396, 575 N.E.2d 157 (1991).....	7, 8
<i>Keco Industries, Inc., v. Cincinnati & Suburban Bell Tel. Co.</i> , 166 Ohio St. 254, 141 N.E.2d 465 (1957).....	6, 8

Statutes

Ohio Rev. Code Ann. § 119.01 (West 2009).....	3
Ohio Rev. Code Ann. § 119.12 (West 2009).....	2
Ohio Rev. Code Ann. § 4903.10 (West 2009).....	4
Ohio Rev. Code Ann. § 4903.11 (West 2009).....	7
Ohio Rev. Code Ann. § 4903.12 (West 2009).....	2, 4
Ohio Rev. Code Ann. § 4903.16 (West 2009).....	<i>passim</i>
Ohio Rev. Code Ann. § 4903.17 (West 2009).....	2, 4, 9
Ohio Rev. Code Ann. § 4903.18 (West 2009).....	2, 4
Ohio Rev. Code Ann. § 4903.20 (West 2009).....	4

**In The
SUPREME COURT OF OHIO**

The Office of the Ohio Consumers' Counsel,	:	Case No. 09-2022
	:	
	:	Appeal from the Public Utilities Commission of Ohio
	:	
v.	:	Public Utilities Commission of Ohio Case Nos. 08-917-EL-SSO and 08-918-EL-SSO
The Public Utilities Commission of Ohio,	:	
	:	
Appellee.	:	

**MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION TO SUSPEND
AND MOTION TO REQUIRE ESCROW
SUBMITTED ON BEHALF OF APPELLEE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Public Utilities Commission of Ohio, pursuant to Supreme Court Practice Rule XIV, Section 4, files this Memorandum in Opposition to the Motion to Suspend and Motion to Require Escrow filed by the Office of the Ohio Consumers' Counsel on November 30, 2009. The relief sought by Appellant is not authorized by law, and should be rejected. To the extent that the flaws in Appellant's motion could be cured by treating it as a motion for stay, Appellant has failed to meet the statutory requirements for a stay, and its request should be denied. Appellant has an adequate remedy at law, and has elected not to pursue it.

This Memorandum in Opposition explains why the Appellant's Motions to Suspend and to Require Escrow should be denied.

Respectfully submitted,

Richard Cordray (0038034)
Ohio Attorney General

Duane W. Luckey (0023557)
Section Chief



Werner L. Margard III

Thomas G. Lindgren

John H. Jones

Assistant Attorneys General

180 East Broad Street, 6th Floor

Columbus, Ohio 43215

614.466.4395 (Telephone)

614.644.8764 (Facsimile)

werner.margard@puc.state.oh.us

thomas.lindgren@puc.state.oh.us

john.jones@puc.state.oh.us

**Attorneys for Appellant,
The Public Utilities Commission of Ohio**

MEMORANDUM IN OPPOSITION

INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC) has asked the Court to suspend the Commission's order pending resolution of its appeal. The Court should decline to grant this extraordinary relief. As will be shown, OCC has not demonstrated that the Court has the authority to "suspend" an order other than by a stay of execution granted pursuant to R.C. 4903.16. And OCC has not met the statutory requirements for granting a stay of execution.

OCC's motion should be denied and the Commission's order allowed to stand while the Court reviews the merits of the appeal.

ARGUMENT

I. Any stay of execution of a final order of the Public Utilities Commission is conditioned upon the execution of an undertaking by the appellant.

A. There is no basis for a "power to suspend" separate and apart from this Court's "power to stay."

OCC purports to invoke this Court's "authority" to suspend an order of the Public Utilities Commission based on "a power referenced" in three provisions of the Ohio Revised Code. OCC Motion at 2. It is, according to OCC, "a power separate and apart from the power to stay." *Id.* But OCC has failed to demonstrate that any such separate remedial authority exists, or justify that it should be applied in this case.

None of the statutory provisions relied upon by OCC support an independent power to “suspend” a Commission order. OCC begins its rationalization with R.C. 4903.12, which states that:

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Ohio Rev. Code Ann. § 4903.12 (West 2009), OCC App. at 5. A simple reading of R.C. 4903.12 demonstrates that it is intended not to empower this Court, but to limit the jurisdiction of other courts with respect to orders of the Public Utilities Commission.

OCC further relies on the references in R.C. 4903.17 and 4903.18 to instances where the Court “stays or suspends” a Commission order. But neither statute authorizes the Court to “suspend” an order. Indeed, both statutes direct that specific actions be taken by the *affected public utility or railroad* in the event of a stay. Both statutes provide ways to implement R.C. 4903.16.

In a footnote, OCC likens these provisions to R.C. 119.12, which it claims to be in accord. Under R.C. 119.12, a court may suspend an agency order denying a license or suspending or revoking a license if “it appears to the court that an unusual hardship to the appellant will result from the execution of the agency’s order pending determination of the appeal.” Ohio Rev. Code Ann. § 119.12 (West 2009), OCC App. at 2-4. There is specific statutory authority for this remedy. But that provision does not apply to the Public Utilities Commission. Chapter 119 provides that “sections 119.01 to 119.13 of the

Revised Code do not apply to the public utilities commission.” Ohio Rev. Code Ann. § 119.01(A)(1) (West 2009), App. at 1. There is no separate remedy of suspension in Chapter 4903. The reference is completely inappropriate.

The comparable provision relating to the Public Utilities Commission is R.C. 4903.16, a section totally disregarded by OCC. R.C. 4903.16 provides:

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days’ notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

Ohio Rev. Code Ann. § 4903.16 (West 2009), App. at 3. The General Assembly authorized the Court to issue a *stay* of a Commission order, not a *suspension*.

This is not mere semantics. These sections, R.C. 4903.10 to 4903.20, inclusive, specify the appellate practice in matters involving the Public Utilities Commission. R.C. 4903.17 and 4903.18 cannot be understood outside the context of the authority granted by R.C. 4903.16. OCC’s reading of R.C. 4903.12, for instance, would contemplate yet another remedy in the form of a “delay,” somehow distinguishable from a review or suspension. But R.C. 4903.16 specifically contemplates “delay” as either synonymous with or the natural consequence of a stay. There is simply no reason to believe that the Gen-

eral Assembly intended to grant this Court a right to “suspend” a Commission order distinct from its authority to stay such an order.

Nor, other than this semantic ploy, does OCC offer any such rationale. Indeed, all of the cases that it cites with respect to suspensions relate to court-ordered *stays* of orders. OCC notes that it provided the Commission with the required three days’ notice of a request for a *stay*. The standard of review that OCC advances is one relating to a request for a *stay* of an order. OCC itself acknowledges the lack of difference when it argues that “the companies will suffer no substantial harm as a result of this Court’s *stay* of the orders.” OCC Motion at 17.

R.C. 4903.17 and 4903.18 cannot be understood outside the context of the authority granted by R.C. 4903.16. R.C. 4903.17 does not give this Court a power to suspend. Rather, R.C. 4903.17 gives the Court the authority to order an affected utility to pay certain sums to a trustee after an order has been stayed or suspended, pursuant to R.C. 4903.16. This Court has said that “Sections 4903.17 and 4903.19, Revised Code relate back to Section 4903.16.” *City of Columbus v. Pub. Util. Comm’n*, 170 Ohio St. 105, 109, 163 N.E.2d 167, 171 (1959). By its very terms, R.C. 4903.18 grants this Court the authority to require that certain accounts be kept “upon the execution and approval of the *suspending bond* required by section 4903.16 of the Revised Code.” Ohio Rev. Code Ann. § 4903.18 (West 2009), OCC App. at 8 (emphasis added). There simply is no power to suspend separate and apart from the power to stay.

B. OCC's Motion to Suspend should not be treated as a Motion to Stay.

It would be tempting to consider Appellant's caption to be a semantic aberration and to treat it as a motion to stay. But this Court should resist such a treatment. OCC knows very well how to file a motion for stay, having already filed one in its earlier pre-mature appeal of the underlying order. It chose not to do so in this appeal. The Court should honor that election.

OCC did not file its motion pursuant to R.C. 4903.16. In fact, OCC assiduously avoided any mention of R.C. 4903.16 altogether. It beseeches the Court to "exercise its power of suspension, independently," OCC Motion at 3, relying entirely on three fleeting references to suspension, and no other precedent or statutory authority. OCC claims that its request for injunctive relief should be granted because there is no other adequate remedy at law.

But OCC has an adequate remedy at law. An appellant may seek a stay of a final Commission order during the pendency of an appeal. Ohio Rev. Code Ann. § 4903.16 (West 2009), App. at 3. OCC had, and still has, the right to request a stay pursuant to R.C. 4903.16, the very power vested in this Court. Appellant has an adequate remedy to challenge the Commission order through the appellate process, by filing both a notice of appeal and a motion for a stay. It has very specifically chosen not to pursue a stay.

This decision was made solely to evade the statutory requirement of posting a bond. OCC acknowledges as much in its motion, noting that a bond is required for a stay. OCC Motion at 3.

And OCC posted no bond. Even if its motion were to be treated as a motion for a stay of the Commission's order, it fails to meet the statutory requirement of posting a bond. OCC has failed to commit to the financial undertaking that is required by R.C. 4903.16. Ohio Rev. Code Ann. § 4903.16 (West 2009), App. at 3. By failing to tender the required financial assurance, OCC has failed to satisfy the statutory procedural requirements for the issuance of a stay.

This Court has determined “that there is no automatic stay of any [PUCO] order, but that it is necessary for any person aggrieved thereby to take affirmative action, and if he does so he is required to post bond.” *City of Columbus v. Pub. Util. Comm'n*, 170 Ohio St. 105, 109-110, 163 N.E.2d 167, 171 (1959); *Keco Industries, Inc., v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 258, 141 N.E.2d 465, 468 (1957). To obtain a stay of a Commission order, a party must

execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

Ohio Rev. Code Ann. § 4903.16 (West 2009) (emphasis added), App. at 3.

The statute provides without exception that an appellant seeking to stay the execution of a Commission order must execute an undertaking for the potential payment of damages if the Commission order is upheld. *Id.* The Court has strictly applied this requirement. In rejecting a stay application on mootness grounds, the Court noted that

the OCC “did not follow the statutory procedure of asking the Supreme Court to stay an order of the Commission, *including posting a bond.*” *Consumers’ Counsel v. Pub. Util. Comm’n*, 61 Ohio St. 3d 396, 403, 575 N.E.2d 157, 162 (1991). Similarly, the Court has also imposed the bond requirement on a municipal appellant. *City of Columbus v. Pub. Util. Comm’n*, 170 Ohio St. 105, 109-110, 163 N.E.2d 167, 171 (1959) (finding that the statutory procedures control the process for appealing final Commission orders and “any stay of an order of the Commission is dependent on the execution of an undertaking by the appellant”). In the *City of Columbus* case, the Court held that: (1) appeals of final orders of the Commission are governed solely by statute; (2) there is no automatic stay of a Commission order; and, (3) a government appellant seeking to stay a Commission order must furnish the undertaking required under R.C. 4903.16. *Id.*

This Court’s jurisprudence has consistently found that both the right to appeal a Commission order (R.C. 4903.11) and to seek a stay of execution of that order (R.C. 4903.16) are statutory and that the requirements of applicable statutes must be followed. OCC has invoked its statutory right to appeal the Commission’s decision. It has not invoked its right to request a stay. OCC should be required to fully comply with the statutes that create this right before it is granted the relief that the law provides.

The Commission recognizes this Court’s power to stay the Commission’s order in connection with appeals, upon satisfaction of the applicable statutory process found in R.C. 4903.16. This Court has consistently held that any party seeking a stay of a Commission order must strictly comply with the statutory standards of R.C. 4903.16 and persuade the Supreme Court of Ohio to grant a stay. *Consumers’ Counsel v. Pub. Util.*

Comm'n, 61 Ohio St. 3d 396, 575 N.E.2d 157 (1991); *City of Columbus v. Pub. Util. Comm'n*, 170 Ohio St. 105, 163 N.E.2d 167 (1959); *Keco Industries Inc., v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). The Court should honor its prior decisions and uphold the plain requirements of R.C. 4903.16.

C. Granting the relief sought by OCC would inappropriately require the Court to assume the role of a regulatory body.

OCC seeks three forms of relief. First, it seeks suspension, not a stay, of the Commission's orders. Second, it seeks an order directing the Commission to issue specific orders to the AEP Companies in the underlying case. Finally, it seeks an order that the AEP Companies place certain recoveries into escrow.

There is no suspension available aside from a stay. Appellant has neither requested a stay, nor met the statutory requirements to do so. The request for suspension should be denied.

OCC submits that the Court should direct the Commission to institute rates that continue the AEP Companies' most recent standard service offer, but modified to account for any increases or decreases in fuel costs. OCC Motion at 2. While this Court has the power to reverse, vacate, or modify Commission orders upon appeal, that authority is not extended as part of the Court's power to stay an order. A stay acts only to delay; the Court has no authority to direct the Commission to modify rates in effect during the delay.

Finally, OCC asks that the Court utilize the escrow option found in R.C. 4903.17. That statute enables the Court to establish such an escrow in cases where the Court stays or suspends the order or decision of the Commission. Ohio Rev. Code Ann. § 4903.17 (West 2009), OCC App. at 7. As is evident from the text of that provision, R.C. 4903.17's escrow option is merely a particular form of stay relief available when the Court decides, pursuant to R.C. 4903.16, to stay execution of a Commission order involving customer rates. Consequently, asking for a rate escrow does not obviate or sidestep the requirements of R.C. 4903.16 but that option becomes available where R.C. 4903.16 is met and the Court decides to issue a stay order based on satisfaction of R.C. 4903.16. Because OCC fails to satisfy the statutory requirement, the Court should deny OCC's requested relief.

CONCLUSION

The Office of the Ohio Consumers' Counsel has failed to justify its request for a suspension. Furthermore, it has failed to offer the statutorily required bond. Therefore, the motion should be denied.

Respectfully submitted,

Richard Cordray (0038034)
Ohio Attorney General

Duane W. Luckey (0023557)
Section Chief

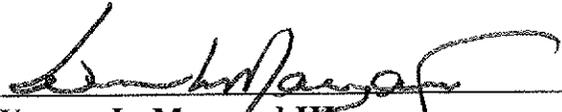


Werner L. Margard III
Thomas G. Lindgren

John H. Jones
Assistant Attorneys General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
614.466.4395 (Telephone)
614.644.8764 (Facsimile)
werner.margard@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
john.jones@puc.state.oh.us

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum in Opposition** submitted on behalf of Appellee, the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 8th day of December 2009.



Werner L. Margard III
Assistant Attorney General

Parties of Record:

Janine L. Migden-Ostrander

Consumers' Counsel

Maureen R. Grady

(Counsel of Record)

Terry L. Etter

Richard C. Reese

Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us
etter@occ.state.oh.us
reese@occ.state.oh.us

Samuel C. Randazzo

(Counsel of Record)

Lisa G. McAlister

Joseph M. Clark

McNees, Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215-4228
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Marvin I. Resnik

(Counsel of Record)

Kevin F. Duffy

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
mjresnik@aep.com
kfduffy@aep.com
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway

Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

APPENDIX

**APPENDIX
TABLE OF CONTENTS**

Page

Ohio Rev. Code Ann. § 119.01 (West 2009)	1
Ohio Rev. Code Ann. § 4903.16 (West 2009)	3

119.01 Administrative procedure definitions.

As used in sections 119.01 to 119.13 of the Revised Code:

(A)(1) "Agency" means, except as limited by this division, any official, board, or commission having authority to promulgate rules or make adjudications in the civil service commission, the division of liquor control, the department of taxation, the industrial commission, the bureau of workers' compensation, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13 of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses.

Except as otherwise provided in division (I) of this section, sections 119.01 to 119.13 of the Revised Code do not apply to the public utilities commission. Sections 119.01 to 119.13 of the Revised Code do not apply to the utility radiological safety board; to the controlling board; to actions of the superintendent of financial institutions and the superintendent of insurance in the taking possession of, and rehabilitation or liquidation of, the business and property of banks, savings and loan associations, savings banks, credit unions, insurance companies, associations, reciprocal fraternal benefit societies, and bond investment companies; to any action taken by the division of securities under section 1707.201 of the Revised Code; or to any action that may be taken by the superintendent of financial institutions under section 1113.03, 1121.06, 1121.10, 1125.09, 1125.12, 1125.18, 1157.01, 1157.02, 1157.10, 1165.01, 1165.02, 1165.10, 1349.33, 1733.35, 1733.361, 1733.37, or 1761.03 of the Revised Code.

Sections 119.01 to 119.13 of the Revised Code do not apply to actions of the industrial commission or the bureau of workers' compensation under sections 4123.01 to 4123.94 of the Revised Code with respect to all matters of adjudication, or to the actions of the industrial commission, bureau of workers' compensation board of directors, and bureau of workers' compensation under division (D) of section 4121.32, sections 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, 4123.442, 4127.07, divisions (B), (C), and (E) of section 4131.04, and divisions (B), (C), and (E) of section 4131.14 of the Revised Code with respect to all matters concerning the establishment of premium, contribution, and assessment rates.

(2) "Agency" also means any official or work unit having authority to promulgate rules or make adjudications in the department of job and family services, but only with respect to both of the following:

(a) The adoption, amendment, or rescission of rules that section 5101.09 of the Revised Code requires be adopted in accordance with this chapter;

(b) The issuance, suspension, revocation, or cancellation of licenses.

(B) "License" means any license, permit, certificate, commission, or charter issued by any agency. "License" does not include any arrangement whereby a person, institution, or entity furnishes medicaid services under a provider agreement with the department of job and family services pursuant to Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

(C) "Rule" means any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes any appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code.

(D) "Adjudication" means the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.

(E) "Hearing" means a public hearing by any agency in compliance with procedural safeguards afforded by sections 119.01 to 119.13 of the Revised Code.

(F) "Person" means a person, firm, corporation, association, or partnership.

(G) "Party" means the person whose interests are the subject of an adjudication by an agency.

(H) "Appeal" means the procedure by which a person, aggrieved by a finding, decision, order, or adjudication of any agency, invokes the jurisdiction of a court.

(I) "Rule-making agency" means any board, commission, department, division, or bureau of the government of the state that is required to file proposed rules, amendments, or rescissions under division (D) of section 111.15 of the Revised Code and any agency that is required to file proposed rules, amendments, or rescissions under divisions (B) and (H) of section 119.03 of the Revised Code. "Rule-making agency" includes the public utilities commission. "Rule-making agency" does not include any state-supported college or university.

(J) "Substantive revision" means any addition to, elimination from, or other change in a rule, an amendment of a rule, or a rescission of a rule, whether of a substantive or procedural nature, that changes any of the following:

(1) That which the rule, amendment, or rescission permits, authorizes, regulates, requires, prohibits, penalizes, rewards, or otherwise affects;

(2) The scope or application of the rule, amendment, or rescission.

(K) "Internal management rule" means any rule, regulation, or standard governing the day-to-day staff procedures and operations within an agency.

4903.16 Stay of execution.

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.