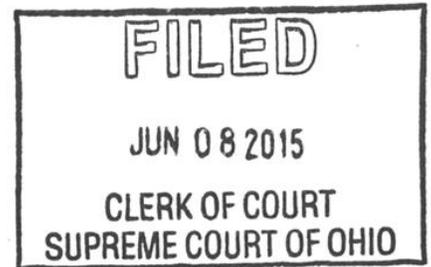


**IN THE SUPREME COURT OF OHIO**

In re the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	) ) )	Supreme Court Case No. 14-1505
In re the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	) ) )	Second Appeal from the Public Utilities Commission of Ohio
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In re the Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	) ) )	
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**MOTION TO EXPEDITE RULING ON APPEAL  
BY  
THE INDUSTRIAL ENERGY USERS-OHIO  
AND  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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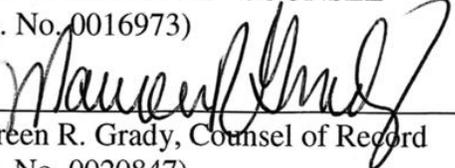
**MOTION TO EXPEDITE RULING ON APPEAL  
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THE INDUSTRIAL ENERGY USERS-OHIO  
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THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE INDUSTRIA**

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On behalf of the residential, commercial, and industrial retail electric customers of Dayton Power and Light Company (“DP&L”) which Ohio Consumers’ Counsel (“OCC”) and Industrial Energy Users-Ohio (“IEU-Ohio”) (collectively “Appellants”) represent, Appellants move the Court for an order to set this matter for oral argument and decision, as required by R.C. 4903.20. While this matter remains pending, the customers of DP&L are paying and will continue to pay an illegal rate stability charge to support the competitive generation services of DP&L—a charge authorized by the Public Utilities Commission of Ohio (“Commission”). By expeditiously deciding this appeal, the Court can mitigate the damage caused by the Commission’s Opinion and Order below.

Respectfully submitted,

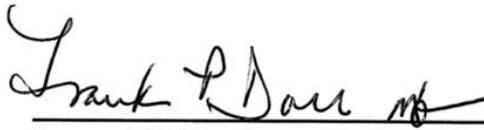
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**IN THE SUPREME COURT OF OHIO**

In re the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	) ) )	Supreme Court Case No. 14-1505
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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

In the Opinion and Order below, the Public Utilities Commission of Ohio authorized DP&L to bill and collect \$330 million over three years, beginning January 1, 2014, through non-bypassable generation-related “stability charges.” *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, *et al.*, Opinion and Order at 25 (Sept. 4, 2012), available at <http://dis.puc.state.oh.us/TiffToPdf/A1001001A13I04B40214I63475.pdf>. IEU-Ohio and OCC sought a stay of the Commission’s authorization of the stability charges, but the Commission denied the motion. *Id.*, Entry (Oct. 1, 2014). Then OCC and IEU-Ohio sought a stay of the Commission’s order authorizing the collection of the “stability charges” from the Court on

October 14, 2014. But the Court denied the stay. See S.Ct. Opinion, 2015-Ohio-554 (Feb. 18, 2015). Separately, IEU-Ohio sought a writ of prohibition from the Court to suspend authorization of the unlawful stability charges, but the Court dismissed the action. *State of Ohio, ex rel. Industrial Energy Users-Ohio v. The Public Utilities Commission of Ohio, et al.*, Sup. Ct. Case No. 2014-711, Entry Dismissing Complaint (Oct. 22, 2014).

Because the orders authorizing the “stability charge” have not been stayed or suspended, DP&L has billed and collected approximately half of the \$330 million. And customers face the prospect that DP&L will collect the remaining amount before the Court rules on the lawfulness of the “stability charges.” By this motion, Appellants request the Court to set this matter for oral argument and decision, as provided by R.C. 4903.20, to mitigate the injury to customers of DP&L.

## **II. ARGUMENT**

The Court has exclusive jurisdiction over appeals from PUCO orders. R.C. 4903.12. If an appealing party cannot secure a stay of the Commission’s order, the order remains in effect until the Court rules on the appeal. R.C. 4903.16. The execution of a stay by this Court, however, requires the posting of an undertaking with surety to the satisfaction of the Clerk of the Court of all damages caused by the delay in the enforcement of the order stayed. *Id.* Because of the large dollar amounts at issue in Commission proceedings, this surety requirement renders the stay of little assistance to the consumer parties seeking to overturn an unlawful Commission order.

The General Assembly, however, has also provided in R.C. 4903.20 that “actions and proceedings in the supreme court” under the Revised Code Title 49 “shall be taken up and disposed of by the court out of their order on the docket.” By expeditiously reviewing appeals of Commission proceedings, the Court can mitigate the effects of the Commission’s unlawful order.

While this matter is pending, DP&L continues to bill and collect the “stability charge” at a monthly rate of nearly \$10 million (\$110 million annually). Based on recent decisions, customers may not be permitted refunds of the windfall afforded DP&L by the Commission’s unlawful order authorizing non-bypassable generation-related “stability charges” even if the Court determines that the Commission’s authorization was unlawful. *In re Columbus S. Power Co.*, 138 Ohio St.3d 448 (2014). Absent prompt Court action reversing the Commission’s unlawful decision, DP&L will continue to subsidize its generation business with customers’ dollars.

The parties have completed the pleading cycle to prepare this case for the Court’s review. The last permitted brief was filed on March 15, 2015. Further, the Court is familiar with many of the issues presented in this appeal, which are similar to those presented in the recent appeal concerning the Commission’s authorization of a “stability charge” and rate plan for the Ohio Power Company. *In the Matter of the Application of Columbus Southern Power Company for Authority to Establish A Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Sup. Ct. Case No. 2013-521 (argued May 19, 2015). Thus, there is a benefit to the Court in addressing the related issues in the same basic time frame.

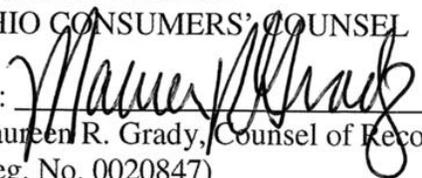
Further, this motion presents the Court an opportunity to mitigate the damage to consumers caused by the Commission’s order that does not require Appellants to jump the impossible hurdle presented by the surety requirement of R.C. 4903.16. By expediting a decision on the merits of the Appellants’ appeals, the Court can mitigate the potential harm to consumers. Appellants, therefore, request the Court take up and dispose of this case out of its order on the docket, on an expedited timeline, as provided in R.C. 4903.20.

### III. CONCLUSION

For the reasons urged above, Appellants request that the Court grant an order setting this matter for oral argument and decision.

Respectfully submitted,

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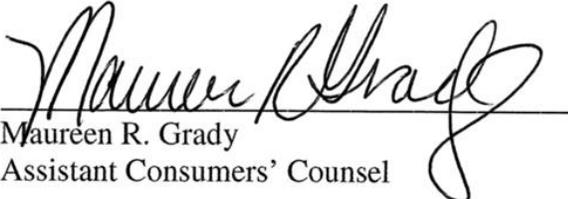
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*Counsel for Appellant*

*Industrial Energy Users-Ohio*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion of Appellants* has been served upon the below-named persons via electronic transmittal this 8th day of June 2015.

  
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Assistant Consumers' Counsel

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