

PLAN OF ACTION

FOR

OFFICE OF CONSUMERS' COUNSEL

STATE OF OHIO

PRESENTED TO

CONSUMERS' COUNSEL GOVERNING BOARD

BY

WILLIAM A. SPRATLEY

FEBRUARY 16, 1977

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I. CHALLENGE: WHY OHIOANS NEED A CONSUMER COUNSEL

A. UTILITY RATE INCREASES

Requests for rate increases by utility companies have besieged America's regulatory commissions during the "energy crisis" and inflated economy of recent years.

***Electric and gas utility rates were boosted by a record of \$22.2 billion in 1974 and 1975 by investor-owned utilities in the United States. This \$22.2 billion is more than twice as much as all the rate increases in the previous years. ELECTRIC AND GAS UTILITY RATE AND FUEL ADJUSTMENT CLAUSE INCREASES, 1975, U.S. Senate Committee on Government Operations, 1976.

Ohio, like many other states, was ill-prepared to cope with the overwhelming flood of utility company rate increase requests.

***"For decades, the PUC [Public Utilities Commission] had languished in the backwaters of the state bureaucracy. Few rate cases were brought before the Commission, and in the 1960's several utilities had requested the Commission's approval to decrease rates. For example, in 1967, only five rate change applications were filed with the PUC. In 1975, 77 rate increase applications were filed with the Commission, an increase of 1,540 percent. During that time, the Commission's staff had not expanded sufficiently to accommodate the sharp increase." TWO YEARS OF PROGRESS & ACCOMPLISHMENT, 1975-1976, PUBLIC UTILITIES COMMISSION OF OHIO, 1977, p. 1.

Residential consumers feel buried by their utility bills as evidenced by the rapid rate hikes where:

***Gross intrastate revenues of all Ohio utility companies jumped from \$4.4 billion in 1974 to \$5.3 billion in 1975 - a 20% increase in one year. ASSESSMENT REPORTS, PUCO FISCAL OFFICE, 1977.

***Rate increases from automatic fuel adjustment clauses of Ohio electric and gas utilities

grew from \$507 million in 1974 to \$622 million passed on to consumers in 1975. PUCO REPORT TO U.S. SENATE COMMITTEE ON GOVERNMENT OPERATIONS, 1977.

***The \$200 million rate hike granted to Ohio Bell Telephone Co. in 1976 represented the largest rate increase in the history of Ohio. PUCO Case No. 74-761-TP-AIR.

***By comparison for 1976:

- Ohio's personal income tax generated \$511.6 million in state revenues. EXECUTIVE BUDGET FOR 1977-79 BIENNIUM, p. 4.22.
- All state taxes in Ohio amounted to \$2.7 billion or \$350 per capita for each Ohioan. OHIO PUBLIC EXPENDITURE COUNCIL, February, 1977.

***\$892,650,170 in utility rate requests were pending before the Commission during 1976. RATE CASE STATUS REPORT, PUCO, (January 1, 1976).

The "tax" effect of utility rates is a compelling reason for assuring greater consumer participation in the utility rate-making process. As one observer noted:

The PSC [Public Service Commission] has approved rate increases in the recent past which were no doubt justified by rising costs and the inflationary spiral. But since the consumer's demand for basic services is inelastic (i.e., the opportunity for the consumer to compensate for the increased costs of utility service by cutting down on his use of the service is virtually nil) in terms of available income, the effect is no different than the effect of a legislative increase in the effective sales tax. The anomaly is that when the PSC authorizes such increases, it raises the "tax" which the citizen must pay for quasi-governmental services. But this "tax" has been raised without any debate or political ventilation of the merits of the increase, which are the ordinary and inevitable preconditions to any other raise in taxes used to support governmental services. DAVIS, THE MISSOURI PUBLIC SERVICE COMMISSION, 42 UMKC L. Rev. 279, 280 (1974).

B. RESIDENTIAL CONSUMERS DEMAND CHANGE

The enormous drain of utility charges on the pockets of Ohio citizens has resulted in public demands to reform the State's public utility regulation and rate making processes.

***The 111th Ohio General Assembly spent seven months during 1975 reviewing the operation of the PUCO and its statutory authority. The Joint Select Committee on Energy initiated dramatic changes in Ohio's public utility law. The 1912 RCN (Reconstruction Cost New) rate base statute in Ohio was the last such law anywhere in the United States. After 28 previously unsuccessful attempts to repeal this statute in the face of the powerful utility lobbyists, sweeping regulatory reforms were enacted in:

- Amended Substitute Senate Bill 94
 - * adopting Original Cost rate base upon phased-in repeal of the RCN statute;
 - * establishing the Consumers' Counsel to represent residential utility consumers in rate increase cases and complaint cases before PUCO and the Courts.
 - * authorizing consideration of consumer service complaints in rate cases and ordering of improvements in service included in rate of return;
 - * disallowance of operating expenses reflecting imprudent utility management policies or practices with consideration of management efficiency in rate case hearings;
 - * permitting PUCO discretion to allow: Construction Work In Progress (CWIP); income tax normalization; projected test years in rate cases, cost of service in setting rates, and hearings for new service offerings;
 - * forcing a 9 month deadline for rate increases to become effective under bond if PUCO has not issued a final order;
 - * referencing a fair and reasonable rate of return by utilities on the actual embedded cost of debt of the utility;
 - * applying the new Original Cost law to all rate cases filed after January 1, 1976.

- Substitute House Bill 1465
* appropriated \$750,000 budget for the first six months operation of the Consumers' Counsel.
- Amended Substitute House Bill 579
* requires hearings by PUCO every 6 months to review electric utility fuel adjustment clause operation;

* mandates monthly reports, annual audits and burden of proof on utility to demonstrate reasonableness of fuel charges;

* establishes PUCO authority to create management efficiency incentives to reduce fuel costs.
- Amended Substitute House Bill 1213
* protects Ohio residential consumers from roll-in pricing of emergency gas purchased to provide gas to curtailed industrial and commercial users.
- Amended House Bill 1251
* limits circumstances in which gas or electric service to a residential consumer may be shut off during the winter.
- Amended Substitute House Bill 155
* provided 76% increase in PUCO biennial budget (FY1976-FY1977) to \$14.2 million to provide additional technical staff to reduce rate case lag to 9 months.

***The extent of legislative changes made to Ohio statutory public utility law during 1975-76 in response to widespread public resistance to rising utility rates includes:

NEW LAW ENACTED	BILL'S SUBJECT	NO. OF REVISED CODE SECTIONS AFFECTED
S.B. 94	Original Cost RCN Repeal	36
H.B. 579	Electric Fuel Adjustment	16
H.B. 1251	Gas & Electric Shut-Offs	3
H.B. 1213	Emergency Gas Pricing	1
H.B. 155	PUCO Budget - \$14,200,000	1
H.B. 1465	Consumer Counsel Budget - \$750,000	1

The numerous changes in Ohio's public utility law wrought by the 111th Ohio General Assembly must now be refined by establishing new legal precedents favorable to Ohio's residential consumers. Past experience demonstrates the ability of utility companies to mold new laws into PUCO and Supreme Court interpretations favorable to utilities.

***Only one month after Am. Sub. S.B. 94 passed the Ohio General Assembly, the Ohio Supreme Court decision in General Telephone v. PUCO, 46 Ohio St. 2d 281 (May 26, 1976) guaranteed a higher rate of return in the last RCN rate cases by requiring PUCO to use actual cost of equity on the inflated RCN rate base, instead of "discounting" to provide a fair rate of return. A deluge of rate increases followed the General Telephone decision, led by the largest rate hike in Ohio history - \$200,000,000 granted to Ohio Bell Telephone.

- The PUCO, itself, estimated the impact of the General Telephone decision on the last 78 RCN rate cases as potentially costing an additional \$417,000,000 to Ohio's utility customers. SWEET & BLOOMFIELD TESTIMONY ON SENATE BILL 563, SENATE WAYS & MEANS COMMITTEE, August 25, 1976, p. 7.

***While Ohio utility lobbyists reported spending \$134,000 in attempting to influence the 75-76 legislative session, mammoth financial resources are poured into rate increase cases at PUCO, where reports show the following cost estimates of Ohio utilities in filing rate applications:

Company	Cost Est.	Case No.	Filing Date
Cleveland Elec. Illum.	\$774,999	74-571-Y	8/28/74
Toledo Edison	\$250,000	75-758-Y	9/30/75
E. Ohio Gas	\$880,000	74-826-GA-AIR	12/04/74
W. Ohio Gas	\$122,000	73-780-Y	10/31/73

SOURCE: PUCO SECRETARY'S REPORT FOR EACH CASE

The residential consumers' demand for utility rate reform continued past the 111th Ohio General Assembly and onto the November, 1976 Ohio ballot in the form of four constitutional issues, including a "lifeline" rate structure proposal. Again, the utility industry's financial resources were the decisive factor in defeating the ballot initiatives.

***Consumer groups advocating the four constitutional issues were outspent 80 to 1 by the utility company opponents who amassed \$2.2 million in slick media campaign advertising compared to the \$25,424 spent by proponents.

The momentum for change has continued into the new legislative session. Apparently recognizing their lack of affirmative solutions in the past, the Ohio electric utilities are sponsoring media advertising about rate structure changes. Rate structure reform or "lifeline" appear high on the agenda of the new 112th Ohio General Assembly:

***Governor James A. Rhodes "has proposed a \$100 million state and federal fund over the next two-year budgeting period that he estimated would help 500,000 persons. He also said he may introduce some kind of "lifeline" legislation that would set standard utility rates for the elderly and needy." Schneider, "Rhodes Plan Helps Elderly on Utilities," Dayton Daily News December 17, 1976, p. 3.

*** "Ohioans for Utility Reform (OUR), sponsors of four ill-fated ballot issues, may yet see one of the proposals become law...

"Electric company officials met privately with representatives of interest groups, including the AFL-CIO, the Farm Bureau and the League of Women Voters...

"The meeting did not provide many specifics but there was sentiment for rate relief geared to the needs of individual customers and financed by state and federal sources..." Associated Press, "Defeated Utility Issue May Still Become Law," Akron Beacon Journal, December 22, 1976, p.B5.

In its first six weeks, the 112th Ohio General Assembly has continued investigation of utility regulation and critical energy shortages with introduction of the following bills:

SENATE

- S.B. 22 PUCO (Carney) Requires election of PUCO Commissioners on a nonpartisan basis.
- S.B. 32 UTILITY BILLS (Hall) Reduces gas and electric bills for elderly.
- S.B. 33 RATE BASE (McCormack) Limits allowances for construction work in progress in determining utility rates.
- *S.B. 51 SCHOOL CLOSINGS (Jackson) Provides for 15 special calamity days for energy shortage school closings during the 1976-1977 school year.
- S.B. 67 NUCLEAR FUEL (Zimmers) Requires the Power Siting Commission to find a safe technology for the re-processing of nuclear fuel rods and the disposal of spent nuclear fuel.
- S.B. 70 UTILITY SERVICE (McCormack) Imposes certain requirements before gas, electric and water service may be discontinued.
- S.B. 72 GAS RATES (Mussey) Repeals law prohibiting gas utilities from passing on to all customers the cost of emergency gas purchases.
- S.B. 77 UTILITY SERVICE (Freeman) Prohibits utilities from stopping individual service between October 1 and May 1 for nonpayment of bills.

HOUSE

- *H.J.R. 1 ENERGY EMERGENCY (Carney) Supports Governor's Jan. 23, 1977 declaration of a statewide energy emergency for natural gas.
- H.J.R. 6 GAS USAGE (Hughes) Requests the PUCO to order companies distributing natural gas under the emergency to place schools in the "human needs" category of consumers.

- H.B. 14 ELECTRIC RATES (Bowers) Prohibits electric companies from passing through the costs of coal acquired outside Ohio unless approved by a joint resolution of the legislature.
- H.B. 18 UTILITY BILLS (Eckart) Provides a credit to certain persons for payment of utility bills funded by utility excise tax.
- H.B. 19 SALES TAX (Branstool) Exempts from sales tax, coal, artificial gas and fuel oil when purchased to heat a residence.
- H.B. 35 RATE BASE (Carney) Limits allowances for construction work in progress indetermining utility rates.
- H.B. 44 TELEPHONE RATES (Stinziano) Prohibits a telephone company from charging for directory assistance under certain circumstances.
- H.B. 45 PUCO (Stinziano) Replaces PUCO with an 11-member, elected Public Service Commission.
- H.B. 49 PUCO (J. Thompson) Extends Civil Service status to various unclassified state employees, including PUCO.
- H.B. 59 LIFELINE (McLin) Establishes an energy certificate program, alters purpose of certain utility excise taxes.
- H.B. 81 PUCO (I. Thompson) Provides for election of PUCO members.
- H.B. 108 CONSERVATION (Karmol) Requires most businesses to close between 9 p.m. Saturday and 6 a.m. Monday to conserve energy.
- H.B. 109 PROPERTY TAX (Panehal) Grants a five-year property tax exemption for home improvements.
- H.B. 127 TAX INCENTIVES (Colonna) Provides tax incentives to private industry to encourage the recovery of energy from solid waste.
- H.B. 139 FARM FUELS (Branstool) Allows ERDA to reallocate fuels for the production of field crops.
- H.B. 148 ENERGY EMERGENCY (Fauver) Creates enforcement powers during energy emergencies and provides incentives for energy-saving home improvements.
- *H.B. 157 UNEMPLOYMENT COMPENSATION (Camera) Permits OBES

to expedite unemployment benefit applications during energy crisis.

- H.B. 170 OIL AND GAS (Maddux) Provides for forfeiture and cancellation of an oil and gas lease upon failure of the lessee to use due diligence in operating a well and marketing the product.
- H.B. 175 SCHOOL CLOSINGS (Netzley) Provides 22 closing days for Ohio schools for weather or other "calamity".
- H.B. 192 UTILITY SERVICE (S. Brown) Imposes certain requirements before gas, electric and water service may be discontinued.
- H.B. 197 TELEPHONE LISTINGS (Tranter) Requires telephone companies to also list spouse's name without charge in telephone directory.
- H.B. 201 UTILITY SERVICE (Orlett) Establishes procedures utilities must follow before terminating service.
- H.B. 230 GAS USAGE (Eckart) Establishes priorities and procedures for curtailment of natural gas.
- H.B. 233 GAS USAGE (Eckart) Bans the sale of new gas appliances equipped with pilot lights on and after July 1, 1979, and bans use of decorative gas lamps.
- H.B. 237 GAS RATES (McEwen) Repeals law prohibiting gas utilities from passing on to all customers the cost of emergency gas purchases.
- H.R. 16 COAL INCENTIVES (Bowers) Requests LSC to study methods for encouraging the use of coal mined in Ohio for electricity generation.
- H.R. 17 ARCTIC GAS (Carney) Memorializes Congress to support FPC recommendations regarding a Canadian route for Alaskan natural gas.
- H.R. 40 GAS USAGE (McLin) Urges PUCO to approve OBES application for relief from gas curtailments affecting local Bureau offices.

* Approved by both houses and signed by Governor.

C. CONSUMER ADVOCACY IN OHIO RATE MAKING PROCEDURES

Apart from municipal regulation, the PUCO sets rates of Ohio's utilities by means of an adversary process.

***The PUCO hearing procedure attempts to insure fairness in determining the just and reasonable rates to be charged residential consumers and business customers of the utility. Any person may intervene in the rate case hearing procedure and any formal party may appeal the PUCO decision to the Ohio Supreme Court.

Upon filing of the utility company's rate increase application, public notice is given and PUCO evaluates the rate request. Engineers, accountants, rate analysts, economists and attorneys review the rate increase application for compliance with Ohio law. The utility's property valuation, or rate base, is calculated along with operating expenses during a specific time period or test year.

***The Secretary's Report is issued by the PUCO staff of experts and assigned to the PUCO Attorney Examiner for hearing. All interested parties, including the utility company, PUCO staff represented by the Attorney General, and intervenors, may then contest or clarify the financial data provided in the Secretary's Report. The Attorney Examiner conducts the hearing to develop the case record by including all relevant facts and information. The record is then forwarded to the three Commissioners who finally decide the issues in the case raised at the hearing in the form of an Opinion and Order. This final order of the PUCO may then be appealed to the Ohio Supreme Court by any party in the case.

While the PUCO was designed to represent the "public interest" in balancing fair rates and adequate service for consumers with fair returns on public utility company capital investments, the crush of rate increase cases before the Commission in recent years has too often resulted in under-represen-

tation of residential consumers.

***Rate case records considered by PUCO often contain evidence presented by well-paid utility experts sponsored by utility companies sometimes spending over half a million dollars to present a single rate case. Commission staff, industrial, commercial and municipal intervenors cannot match this case presentation. Worst yet, consumer groups or individual consumers are at the most disadvantage.

***Since local consumer groups usually are unable to gather adequate financial resources to oppose utility rate requests, there is a clear inability of Ohio's residential consumers to intervene effectively in rate increase or complaint cases before PUCO. Effective intervention is lacking in terms of:

- staff research
- timely intervention
- access to company information
- skilled technical expertise
- consistent, accountable representation
- independent regulatory studies
- constructing coalitions of consumer interests

***"The very nature of the adversary system of our common law jurisprudence requires that there be a spokesman for the consumer. Where there is no consumer's advocate, the rate increases requested by regulated industries follow as a matter of course, whether justified or not. Without a consumer's advocate, all that need be done by counsel seeking a rate increase is to make the necessary filing requesting the increase and introduce a bare minimum of evidence necessary to back up the request.

"Enlightened self-interest dictates that the evidence to be used by the industry should be marshalled in a light most favorable to the industry. Without an adversary, counsel representing regulated industries was quite possibly the happiest man engaged in the practice of law. His witnesses and evidence went unchallenged. His victories were as regular as clockwork. The consumer was possibly the unhappiest man around. He paid the higher rates and had to pay, in addition, the legal fee of his adversary's counsel.

"Within the context of the adversary system, is it proper for the regulatory board itself to act as a consumer's advocate? The regulatory board has the function of sitting as an impartial

tryer of facts. If the only facts in evidence are on the side of the regulated industry, then the regulatory board must grant the relief requested.

"The consumer's advocate has the opportunity of giving the other side of the picture, of presenting a different viewpoint, backed up by other evidence. There is also the benefit to the consumer of cross-examination of the utility's witnesses, which should measurably increase the regulatory board's capacities to view the matter from a balanced perspective.

"In theory, the resulting decisions from truly adversary proceedings should be fair both to the industry and to the public for both sides of the matter will have been presented. It is felt that an added dividend will be the restoration of public confidence in the adversary regulatory system." Attorney General Robert B. Morgan, "The People's Advocate in the Market Place", Wake Forest Intramural Law Review (1970).

D. CONSUMERS' COUNSEL STATUTES IN BRIEF

The legislative response to public demands for reform was Am. Sub. S.B. 94. Effective on September 1, 1976, the legislation greatly changed the laws governing the ratemaking method for Ohio public utilities. The Act also created the Consumers' Counsel in Chapter 4911. of the Revised Code, granting several powers and duties to the Consumers' Counsel including authority:

1. to enter any proceeding before the PUCO at the request of a consumer, municipal corporation or on its own initiative;
2. to examine witnesses or present evidence before the PUCO;
3. to institute or intervene in state or federal courts on behalf of residential consumers;
4. to make long-range studies concerning rates charged to residential consumers;
5. to take appropriate action concerning consumer complaints;

6. to contract for services;
7. to have full access to all books and papers at the PUCO;
8. to sue and be sued;
9. to request information or services (at cost) from universities or municipal corporations;
10. to furnish information to individuals or units of government upon request and;
11. to remain responsible to the Consumers' Counsel Governing Board.

The Consumers' Counsel Governing Board began operation on January 1, 1977, as follows:

***Board appointed by Attorney General with advice and consent of the Senate to consist of 9 members, no more than 5 of the same political party, with 3 members from the following groups: Labor, Residential Consumers and Family Farmers.

***Staggered, eventual 3-year terms, although original Board appointments serve with 3 members for 3 years, 3 members for 2 years and 3 members for 1 year.

***Board meets monthly with majority necessary for quorum.

***First Board meeting must be within 30 days after appointments and Chairman and Vice-Chairman must be selected.

***Board appoints Consumers' Counsel to serve at Board's pleasure.

***Meetings may be held more often at request of majority or call of Chairman.

***Consumers' Counsel at all times remain responsible to the Board.

***Board Members serve without compensation but are reimbursed for actual and necessary expenses incurred in performing duties.

***Board shall submit to General Assembly no later than April 1st each year a report outlining:

-Expenditures of Consumers' Counsel Office;

- Full record of participation in any and all proceedings;
- Other relevant activities of Consumers' Counsel.

The Open Meeting (Sunshine) Law applies to the Board under which most meetings are required to be public meetings and the Board must establish a rule giving public notice of meetings. (Sec. 121.22, Ohio Rev. Code).

The Consumers' Counsel is to be appointed by the Governing Board to serve at the pleasure of Board at a salary fixed by the Board between \$30,638.40 to \$41,059.20 annually (State Pay Range 46). The statutory qualifications require the Consumers' Counsel to be:

- ***resident of Ohio;
- ***admitted to practice of law in Ohio;
- ***knowledgeable and experienced in public utility proceedings;
- ***without pecuniary interest in public utilities;
- ***full-time in position of Consumers' Counsel;
- ***holding no other public office or be a candidate for public office;
- ***a "state officer" taking oath and giving bond;
- ***situated in a Columbus office.

The Ohio Ethics Law and Canons of Professional Responsibility apply to the Consumers' Counsel as a public official and attorney.

Although the Consumers' Counsel was fully authorized in Am. Sub. S.B. 94, the manner and amount of funding was not provided for in the Act. To pay for all expenses of the Consumers' Counsel, \$750,000 is assessed in Sub. H.B. 1465 against

public utilities in the state as defined in Section 4911.01. This appropriation is for the period of January 1, 1977 through June 30, 1977. The following utilities are excluded from assessment:

- ***motor transportation
- ***messenger
- ***street railway
- ***suburban railroad
- ***interurban railroad
- ***railroads
- ***sewage disposal
- ***not-for-profit utilities
- ***utilities owned and operated by municipalities.

The assessment against each utility is in proportion to its Ohio gross earnings or receipts, except that each utility must pay at least the minimum fee of \$50. The assessments are required to be made by the Auditor, are collected by the Treasurer and paid into the special fund entitled the "Consumers' Counsel Fund." This Fund may only be used for the expenses of the Consumers' Counsel. Amounts remaining in the Fund at the end of the fiscal year which are not disbursed or encumbered reduce proportionately the next assessment for those companies paying more than the minimum assessment.

Sub. H.B. 1465 appropriates \$750,000 and taxes \$750,000. The taxes are paid initially by the utilities, but Am. Sub. S.B. 94, as well as previous law, permits utilities to fully include taxes in their rate bases so that consumers ultimately bear the full amount of the tax.

Sub. H.B. 1465 does not breakout the appropriations for the expenses of the Consumers' Counsel agency among personal service, maintenance, and equipment operational budget line

items. However, for the first six months of the \$750,000 Consumers' Counsel budget, the average residential consumer would pay 17¢ on an average (based on \$900 per year roughly-estimated residential consumer's annual utility bill).

II. CHALLENGE: WHY GOVERNING BOARD MUST REPRESENT A CONSENSUS OF CONSUMERS' VIEWS

A. REPRESENTATION TO ASSURE CONSENSUS OF VIEWPOINTS

The monopoly status of public utilities makes Ohio residential consumers feel powerless in effectively challenging rate requests. The residential consumers have too often been viewed as one of many "publics" with many "interests" with none representing the overall "public interest". Hard questions need new answers:

***Do consumers have a unitary interest that can be represented by a single consumer advocate?

***Unless a separate point of authority and responsibility in representing consumers is vested in a consumer advocate, will consumer representation be detrimentally splintered and fragmented?

***Can a 9-member governing board representing residential consumers, labor and family farmers effectively reach a consensus in directing the policy of a statewide consumers' counsel?

The legislature answered these three questions affirmatively by creating the Consumers' Counsel responsible to a representative Consumers' Counsel Governing Board. In legal theory the Ohio General Assembly has delegated to the PUCO the legislative authority to impartially set utility rates by balancing the competing public interests. To the new Governing Board of the Consumers' Counsel the legislature has delegated the ongoing function of finding by consensus of constituent consumer groups, a unitary interest that can be represented by a responsible Consumers' Counsel empowered to act

effectively on a statewide basis.

The representative role of the Consumers' Counsel Governing Board can be viewed as three broad functions inherent in the statutory provisions of Am. Sub. S.B. 94 as follows:

***Accountability to Public, General Assembly and Attorney General;

***Policy-Making in Directing Consumers' Counsel;

***Oversight of Consumers' Counsel Office.

The broad functions will need active interest and participation by Governing Board Members to make the Consumers' Counsel effective in exercising both clear statutory powers and necessarily implied authority in challenging the powerful public utilities.

B. ACCOUNTABILITY TO PUBLIC, GENERAL ASSEMBLY & ATTORNEY GENERAL

In striking a consensus for molding a unitary residential consumer interest to be represented by the Consumers' Counsel, the independent Governing Board was designed in legislation to include broad representation from Ohio's average utility users who have too often received the least representation before PUCO, the Courts and the General Assembly, itself. The three broad groupings consist of 9 Board Members, no more than 5 of the same political party, with 3 members from the following groups (Secs. 4911.01(B) and 4911.17 Ohio Rev. Code):

***Residential Consumers
***Labor
***Family Farmers

Accountability to each of these "publics" was envisioned by the legislature. Each "interest" of residential consumer groups should receive representation by Members appointed to the Board, who in turn act as policy-makers and overseers of the Consumers' Counsel in seeking legal representation in the various forums of public utility regulation. An annual report on April 1st to the General Assembly requires accountability of the Governing Board to publicly explain to the elected representatives (Sec. 4911.17, Ohio Rev. Code):

***Expenditures of Consumer's Counsel Office;

***Full Record of Participation in Any and All Proceedings;

***Other Relevant Activities of Consumers' Counsel

The appointive authority of the Attorney General creates an accountability to the chief legal officer of the State (Sec. 4911.17, Ohio Rev. Code).

Independence of the Governing Board is established by "checks and balances" such as (Sec. 4911.17, Ohio Rev. Code):

***Review of the Attorney General's appointments to the Governing Board by requiring advice and consent of the Senate;

***Staggered, eventual 3-year terms of Board Members;

***Authority to meet independently and appoint and oversee a Consumers' Counsel to serve at the Board's pleasure.

A thorough study, understanding and articulation of consumer interest by the Governing Board can actually result in representation, accountability, and independence. Only time and degree of effort can assess performance of these functions.

C. POLICY-MAKING IN DIRECTING CONSUMERS' COUNSEL

If representatives on the Governing Board can reach a consensus of consumer viewpoints, the Board must clearly enunciate policy positions to direct the Consumers' Counsel in converting consensus policy into legal options before PUCO, the Courts or the General Assembly. In one sense the Board is acting as client for its lawyer, the Consumers' Counsel. The decision process for policy directives of Governing Board flows from statutory provisions requiring (Sec. 4911.17, Ohio Rev. Code):

- ***Ongoing Board Meetings Each Month
- ***Consumers' Counsel Responsible to Board
- ***Part-time Board Members Serving Without Compensation.

Policy choices should originate from Board Members, Consumers' Counsel and others, but the policy-making function must reside finally in the Governing Board. The result must be legal representation by the Consumers' Counsel that is responsible, consistent and continual. A properly staffed Consumers' Counsel Office should provide a catalyst for assisting in the policy-making function by evaluating legal options within policy choices open to the Board. Information and data pertinent to policy-making must be provided to the Board by the Consumers' Counsel.

Policy issues in need of immediate attention by the Governing Board and Consumers' Counsel are enumerated later in Part III. When informed policy-making cannot be performed promptly by the Governing Board, the law provides the Consumers' Counsel with authority to make long-range studies con-

cerning rates charged to residential consumers and to hire staff experts and private and state university consultants. (Sec. 4911.02(B)(2)(d); 4911.12 and 4911.13, Ohio Rev. Code.)

D. OVERSIGHT OF CONSUMERS' COUNSEL OFFICE

Review of administrative and legal performance of the Consumers' Counsel is the function clearly set forth in statutory provisions where the Governing Board:

***Appoints Consumers' Counsel to Serve at Governing Board's Pleasure; Sec. 4911.02(A), Ohio Rev. Code;

***Establishes Salary of Consumers' Counsel; Sec. 4911.07, Ohio Rev. Code;

***Makes Consumers' Counsel Responsible to Governing Board at All Times; Sec. 4911.17, Ohio Rev. Code;

***Annually Reports to Legislature the Results of the Continual Oversight, Sec. 4911.17, Ohio Rev. Code.

Responsible and consistent performance of the Consumers' Counsel can be measured as a client would evaluate his lawyer:

***Does he listen and keep my interests uppermost in mind?

***Is he aggressive, effective, and does he use good judgment?

***Does he get results?

Administrative review of the Consumers' Counsel should focus on keeping bureaucracy a means to effective legal representation, rather than a self-perpetuating end in itself. Monthly review by the Governing Board should include:

***Expenditures, personnel actions, contracts, etc.;

***Case processing reports and results;

***Consumer complaints and services provided.

Measurement of management efficiency of the Consumers' Counsel must be coupled to clear administrative objectives and tasks consistent with policy-making of the Governing Board.

E. FORGING A NEW CONSUMER CONSENSUS

The infinite mass of detailed information in a utility rate case is overwhelming to the average consumer. Inasmuch as the Governing Board must represent residential consumer interests, the Board must also provide leadership in building an effective consumer consensus of opinion toward utility regulation issues. The danger of splintered and fragmented consumer representation can only be overcome by establishing the high priority policy issues common to a consensus of Ohio consumers and directing effective legal representation towards favorable remedies. If the Consumers' Counsel is to become a clearinghouse of consumer information and a spearhead for legal action on behalf of consumers, the Governing Board must accept leadership in their functions of accountability, policy-making and oversight and forge a new consumer consensus toward utility regulation in Ohio. Never before has such a diverse group of Ohio citizens faced the challenge of finding a common interest to organize by means of legal representation armed with experts to do battle with the multi-billion dollar public utilities of Ohio.

III. CHALLENGE: POLICY ISSUES & METHODS OF CONSUMER REPRESENTATION

A. POLICY ISSUES FOR CONSUMERS' COUNSEL GOVERNING BOARD

A consensus of the Governing Board determining broad policy positions is necessary before the Consumer's Counsel can convert the policy into legal options before the General Assembly, PUCO, Courts or Federal agencies. While not exhaustive, the following policy issues list provides an initial review:

1. Industry-Wide Regulatory Problems:

- (A) Lifeline - Is a legislative enactment possible which seeks to accomplish one or more of these goals:
 - (1) Essential utility service at a rate based upon the consumer's ability-to-pay?
 - (2) Essential utility service for all consumers at relatively low cost?
 - (3) Energy conservation?
 - (4) Rate structure reform?
- (B) Weatherization - Is a legislative enactment possible which conserves residential fuel by means of a government or utility program providing materials and services for home winterization at reduced or no cost to all or some homes in the program area?
- (C) Rate Structure Reform - Is legislative or administrative action possible to lower consumer utility bills by rate structures based upon:
 - (1) Flattened rates?
 - (2) Marginal cost pricing?
 - (3) Peak load or Time-of-day rates?
 - (4) Inverted rate structure?

- (D) Transfer Payments - Is legislative enactment possible which transfers utility revenues or public monies directly in payment of utility bills of needy consumers in the form of:
- (1) Energy stamps?
 - (2) Welfare allotments?
 - (3) Credits on utility bills?
- (E) Senate Bill 94 - The new original cost rate base law contains numerous opportunities for pro-consumer legal positions directed at establishing legal precedents in all future rate cases. Major policy issues involve:
- (1) Utility rates based on cost of service?
 - (2) Justification of new service offerings?
 - (3) Proper and adequate reserve for depreciation?
 - (4) Construction Work In Progress?
 - (5) Income Tax Normalization?
 - (6) Management efficiency studies?
 - (7) Construction financing issue justification?
 - (8) Adequacy of service in rate case hearing?

2. Gas Industry Problems:

- (A) Gas Supply Shortage - The current "energy crisis" in Ohio has raised numerous questions:
- (1) Is Ohio getting its fair share of gas nationally?
 - (2) Apart from severe weather, have some Ohio gas utilities been mismanaged at the expense of the consumers?
 - (3) Can the State of Ohio remove the monopoly of a gas utility that fails to provide adequate service?
 - (4) Can excess revenues received by Ohio gas companies be refunded to consumers?
- (B) Rate Structure - Is flattening of gas rates, incremental pricing or roll-in pricing of gas in the best interest of residential consumers?

3. Electric Industry Problems

- (A) Capacity - In the face of recent annual reports of little or decreasing growth of electric demand in Ohio have electric companies overbuilt new power plants? What is the effect on rates?
- (B) Rate Structure - Can flattening, marginal cost or inverted rate structures lower consumer utility bills?
- (C) CWIP - Is inclusion of CWIP in electric company rate bases transferring cost of new construction from company investors to company consumers?
- (D) Nuclear Fuel Costs - What costs are includable for the automatic pass-through the electric utility's fuel adjustment clause?
- (E) Pass-Through of Coal Costs - What is the effect on residential consumer fuel adjustment clause charges each month due to:
 - (1) Electric utility coal purchase contracts?
 - (2) Captive or controlled coal mines of the utility?
 - (3) Low sulfur coal versus scrubbers?

4. Telephone Industry Problems:

- (A) Usage Sensitive Pricing - What is in the best interest of residential consumers regarding:
 - (1) Time and distance charging?
 - (2) Directory assistance charging?
- (B) Extended Area Service - Can consumers receive better representation under the new EAS rule proposed by PUCO?
- (C) Competition - Do private telephone manufacturers competing with telephone utilities produce higher or lower residential telephone rates?

B. METHODS OF CONSUMER REPRESENTATION

Active Representation. The statutory power of the Consumers' Counsel to represent Ohio residential consumers must be viewed as an "active" function, rather than a "reactive" role:

***"The question might be asked to why the People's Counsel does not wait to see which interest is unrepresented in a proceeding, and then form her arguments accordingly. Simply, this is too much of a re-active stance. A People's Counsel must be active in forming the policy and doing the research which goes into the adversary process. Proceedings do not occur in a vacuum, but are the result of months of data collection and evaluation which must have a focus to be meaningful. Furthermore, the People's Counsel is involved in investigations, complaint procedures, and public information functions which never reach the level of being a 'proceeding'." WELCH, ANALYSIS AND PROPOSAL: OFFICE OF PEOPLE'S COUNSEL, DISTRICT OF COLUMBIA, D.C. Public Interest Research Group (1975).

Levels of Representation. The art of communication, as well as adversary skills, are required for an effective Consumers' Counsel. Every Ohio residential consumer must receive at least minimal representation within a system of priorities. The Consumers' Counsel must provide representation within four levels:

- (1) Responsive, continual communication with Ohio consumers;
- (2) Informal legal advice and advocacy in resolving consumer utility complaints and problems at PUCO;
- (3) Formal legal advice and advocacy in prosecuting formal complaints; intervention in rate cases or investigations at PUCO and other forums;
- (4) Interaction with Ohio's consumer community to develop a coalition of interests in residential utility services.

1. Responsive, Continual Communication:

The transitory nature of local consumer group information gathering and legal actions are often limited to rallying support for a single bill before the legislature or a single case before PUCO. Too many consumers feel no government official or agency is responding to their utility problems.

The Consumers' Counsel must become a "clearinghouse" of utility information that has a reasonable likelihood of having a significant impact on the residential consumer interest. While the PUCO is the daily repository of data, reports, and trends from the utilities, the Consumers' Counsel must evaluate the impact of this information in anticipating and preparing for formal proceedings before PUCO, responding to residential consumer complaints, and conducting long range policy studies. To provide responsive and continual communication for effective consumer advocacy, a program must be established to:

***Immediately request PUCO to provide Consumers' Counsel, without cost, all books, maps, charts, and such other items:

- "as may be necessary for carrying out the purposes of Chapters 4909. and 4911. of the Revised Code." Sec. 4911.09, Ohio Rev. Code;
- that have a reasonable likelihood of having significant impact on the residential consumer interest;
- including hearing transcripts;
- and maintenance of continual notice to the Consumers' Counsel of specified information.

***Assign one staff person with responsibility of:

- evaluating utility information filed at PUCO and other forums;
- apprising other Consumers' Counsel staff members of nature of information;
- maintaining personal contact with PUCO and liaison with other agencies;

- preparing the information to be included in a monthly newsletter to be circulated to consumer groups apprising them of new utility developments affecting their interests and future plans of Consumers' Counsel.

***Assign one person to plan and implement a Consumer Services program. The program would initially provide the following services on a continuing basis:

- Consumer problem assistance:

- * provide factual and prompt responses to consumer inquiries;
- * facilitate prompt referral services to consumers seeking resolution of problems through the Public Interest Center of PUCO or through municipal or co-op utility service;
- * collect consumer complaint information which may indicate utility pattern of abuse which needs attention and possible formal legal action by the Consumers' Counsel;
- * collect quality of service information of consumer complaints for use by the Consumers' Counsel in rate-making or formal complaint proceedings; and,
- * provide informal investigation and screening of consumer complaints so that consumers can be advised of appropriate action to take.

- Public Information:

- * provide factual information regarding services and actions of Consumers' Counsel using all forms of media, including newspaper, radio stations, television stations, magazines and other appropriate mediums.

- Consumer Self-Help Information:

- * establish appropriate format for conveying helpful and factual information to consumers to help them become more adequately involved in ratemaking and

- * explain to consumers their role in proceedings before the PUCO;
- * establish and maintain a consumers information library for use by individual consumers or consumer groups;
- * prepare and distribute a monthly newsletter to all interested parties outlining information:
 - about the PUCO;
 - useful to individual consumers or groups;
 - about Consumers' Counsel activities or successes;
 - explaining utility actions or filings affecting the consumer interest.
- Consumer Group Assistance:
 - * provide assistance to groups interested in consumer viewpoints throughout the state and to help them organize and participate in a meaningful manner in cases before PUCO;
 - * assist groups interested in consumer viewpoints which are working to change or alter existing utility policies or procedures by providing information regarding all pertinent laws, rules and regulations which may apply to specific situations.

2. Informal Legal Advice and Advocacy:

The administrative process of adjudication is largely informal in resolving utility matters. The Consumers' Counsel must provide informal legal advice to residential consumers upon request and assert legal positions on behalf of consumers at informal meetings, discussions and activities at the PUCO and other forums. The authorization for informal methods of legal representation by the Consumers' Counsel appears in the broad statutory provision that the Consumers' Counsel:

"may take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission." (Sec. 4911.02 (B)(2)(b)).

Informal legal services must be provided within a case screening system based upon established priorities where:

***All consumer complaints, inquiries and contacts are initially processed by Consumer Service staff investigators trained to:

- provide immediate information sufficient to satisfactorily resolve the consumer's problem;
- establish as many facts as possible in the consumer's case;
- seek legal review by Consumers' Counsel and staff lawyers who will be assigned a continual weekly time and/or case load to insure:
 - * constant contact of legal staff with consumer utility problems;
 - * immediate recognition of consumer problems likely to have a significant impact on the residential consumer interest;

***Methods of informal legal representation should be standardized in the internal regulations of the Consumer Counsel Office.

3. Formal Legal Advice and Advocacy:

The Consumer Counsel must be prepared to enter any formal proceeding before a variety of forums on behalf of consumers. These "forums" include the PUCO, Ohio Supreme Court, Ohio General Assembly, and Federal courts and agencies. The statutory legal duties and powers of the Consumers' Counsel must operate in the following formal proceedings:

(A) PUCO Proceedings - The formal participation of the Consumers' Counsel in PUCO matters can be viewed in four general ways:

- (1) Standing
- (2) Discovery
- (3) Adjudication & Rulemaking
- (4) Selective Intervention

The Consumers' Counsel Office should standardize in internal regulations the actual operation of these formal legal modes of advice and advocacy.

1. Standing. At any PUCO proceeding in which

he enters an appearance, the Consumers' Counsel has:

- * all the rights and powers of any party in interest appearing before PUCO including:
 - examination of witnesses;
 - cross-examination of witness;
 - presentation of evidence;
 - other rights and powers of parties; (Sec. 4911.02 (B)(2)(a), Ohio Rev. Code)
- * standing to sue and be sued; (Sec. 4911.02 (B)(1), Ohio Rev. Code)
- * jurisdiction to enter any PUCO case:
 - filed by a public utility for a change in rates (Sec. 4911.15, Ohio Rev. Code)
 - filed by a residential consumer a complaint about public utility service; (Sec. 4911.15, Ohio Rev. Code).
 - as appropriate action with respect to residential consumer complaints concerning:
 - quality of service;
 - service charges;
 - operation of PUCO. (Sec. 4911.02 (2)(b), Ohio Rev. Code).

The full opportunity to formally participate in PUCO cases will allow the Consumers' Counsel to represent residential consumers with the adversary skills and tools of:

- * shaping issues in the proceeding;
- * presenting evidence by calling expert witnesses;
- * testing evidence of utilities by cross-examination;
- * factfinding by means of compelling discovery;
- * argument of significant evidence and legal precedent.

Wherever possible, testimony of residential consumers should be used by the Consumers' Counsel in presenting cases. Public meetings explaining rate cases and complaint cases should be considered prior to public hearings to elicit facts, witnesses and generally describe Consumers' Counsel approach to the case.

2. Discovery. The Consumers' Counsel must actively compel public utilities to provide information which they have not otherwise offered in cases. Motions for discovery by deposition or interrogatories should be filed by the Consumers' Counsel at the earliest point in many cases. If necessary, the Consumers' Counsel should request the PUCO to subpoena public utility witnesses or production of documents. Should the PUCO, in practice, deny or delay the Consumers' Counsel requests to discover information, legislation amending Chapter 4911. of Revised Code should be considered to clearly grant subpoena and deposition powers to the Consumers' Counsel.
3. Adjudication and Rulemaking. Administrative law resolves disputes by operation of a case-by-case determination of facts, or a "quasi-judicial" function, known as adjudication. Most cases before PUCO are adjudicative and resemble adversary cases in the court system. Rule-making, on the other hand, is a "quasi-legislative" function of implementing statutes by promulgating administrative guidelines or regulations which become substantive "rules" for adjudicative proceedings. The Consumers' Counsel must participate in both adjudicative and rulemaking proceedings of PUCO, since both are likely to have significant impact on the residential consumer interest. Both types of proceedings involve public hearings, extensive technical information and expert witnesses.
4. Selective Intervention. The Consumers' Counsel is not mandated by statute to enter every PUCO case affecting the residential consumer interest. While the law states that the Consumers' Counsel "shall have all the rights and powers of any party in interest", Sec. 4911.02 (B)(2)(a), the use of the word "may" gives the Consumers' Counsel the ability to selectively intervene where he:

"...may sue or be sued...." Sec. 4911.02(B)(1).

"...may take appropriate action with respect

to residential complaints...." Sec. 4911.02 (B)(2)(b).

"...may institute, intervene in, or otherwise participate in proceedings...." Sec. 4911.02 (B)(2)(c).

"...whenever in his opinion the public interest is served, may represent those consumers or [municipal] corporations...." Sec. 4911.15.

"...may appear...as a representative of the residential consumers...when a complaint has been filed...." Sec. 4911.15.

While a selective intervention policy is applicable to both informal and formal legal processes, it is largely a problem of wisely allocating scarce resources. The Montana Consumer Counsel was originally mandated to attend every regulatory commission hearing, but since then this statutory requirement has been repealed, as the Montana Consumer Counsel explains:

"The statutory mandate proved to be self-defeating, because its effect was to burden the Consumer Counsel with attending many hearings [not relevant to the consumer interest]...necessitating the expenditure of time and travel money to observe hearings which were almost perfunctory in nature." Annual Report of the Montana Consumer Counsel to the Montana Legislative Consumer Committee for the Year 1974, at 12.

The Consumers' Counsel in Ohio is not the exclusive representative of residential consumers. Individual consumers, consumer groups and municipalities will continue to intervene in cases which also do or do not include the Consumers' Counsel. However, every residential consumer requesting assistance of the Consumers' Counsel should obtain at least minimal representation, even if established priorities of resource allocation restrict the Consumers' Counsel from exhausting every legal remedy. See following discussion of C. Priorities of Representation, p. 38.

(B) Judicial Review - The appeal procedure of PUCO cases directly to the Ohio Supreme Court provides legitimacy and public accountability for the administrative process. The Consumers' Counsel is clearly authorized to seek judicial review of administrative decisions or lack of decisions by PUCO. This authority extends to state and federal courts and administrative agencies where the Consumers' Counsel:

"...May institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission." Sec. 4911.02 (B)(2)(d).

(C) Legislative Advocacy - In exercise of authority delegated by the Ohio General Assembly, the Consumers' Counsel must necessarily appear before state legislative committees in various matters. The Governing Board will be assisted by the Consumers' Counsel in submitting the annual report to the legislature each April. Sec. 4911.17, Ohio Rev. Code. The biennial or supplemental budget requests require informed presentations to House and Senate Finance Committees. Many of the legislative functions of the Consumers' Counsel will be in response to requests for information by legislators or their constituents. Legislators will look to the Consumers' Counsel to provide expert analysis of legislation regulating public utilities. Upon request or where the Governing Board directs a policy position, the Consumers' Counsel should testify before legislative committees on specific bills or investigations.

Capacity for legislative representation of residential consumers requires the Consumers' Counsel to:

***Obtain, analyze and monitor bills affecting residential consumers

-Obtain copies of relevant bills on a regular basis from the House or Senate Bill room or from legislative sponsors, usually after introduction in either chamber.

-Analyze legislation based upon:

* legal research

- * interpretation by Consumers' Counsel
- * stated purpose of sponsor or interest group
- * analysis by Legislative Service Commission

-Monitor progress of each bill by means of:

- * contact with sponsor & interest group lobbyists
- * attending or testifying at committee hearing
- * consultation with leadership & committee chairman
- * reading Journal, Bulletin, Gongwer Reports & Newspaper clippings

***Prepare, draft and lobby for bills supported by Governing Board Policy position established by Consumers' Counsel Governing Board regarding legislative proposals.

-Draft or support bill to create, amend or repeal existing state statute.

-Lobby for passage of bill by:

- * Selecting effective sponsor & co-sponsors
- * Consult with interested lobbyists
- * Coordinate committee hearings testimony
- * Consult with leadership of both chambers
- * Obtain favorable positions from legislators
- * Inform Governor of bill's benefits

***Inform & respond to requests of legislators

-Provide a constant flow of positive information to legislators by means of:

- * Instructional notebook about Consumers' Counsel activities
- * Personal letters initiated by Consumers' Counsel
- * Notice of entry into cases affecting legislator's district

* Educational seminars for legislators and staff

- Provide information for legislative investigating committees upon request

***Annual Report and Consumers' Counsel Budget

- Assist Governing Board in preparing April report to legislature.
- Develop budget summary for presentation to House and Senate Finance Committees and lobbying for budget request.

(D) Federal Advocacy - The recent natural gas "energy crisis" in Ohio demonstrates the need for Consumers' Counsel intervention in Federal regulatory actions. Ohio's critical gas supply has become largely a function of Federal Power Commission decision-making and subject to large corporations, like Columbia Transmission, also regulated by the Securities and Exchange Commission, in addition to F.P.C. The Federal Communications Commission affects interests of Ohio's residential telephone consumers. The U.S. Supreme Court and other federal courts provide forums for judicial review of Ohio Supreme Court decisions and cases from federal regulatory agencies.

An office in Washington staffed by Consumers' Counsel lawyers should be considered in view of these facts and challenges:

***The 1976 Federal Energy Administration Authorization Act, (H.R. 12169), Title II, co-sponsored by Senator John Glenn, provides \$2,000,000 for independent state consumers' counsels.

- If appropriated during the spring of 1977, a \$250,000 grant to Ohio could finance Washington office to actively and effectively intervene in federal cases on behalf of Ohio residential consumers.
- New York and other states have maintained such effective legal representation before the F.P.C. and other agencies.

***Federal intervention should be considered before:

- Federal Power Commission concerning
 - Columbia Transmission's failure to provide adequate gas supply to Ohio including:
 - management policies;
 - storage capacity;
 - failure to buy Ohio-drilled gas;
 - evidence of withholding.
 - Pricing of interstate natural gas;
 - Pricing of artificial gas;
 - Ohio's gas supply for next winter;
 - Emergency gas pricing and availability.
- Federal Energy Administration concerning
 - Availability of propane and fuel oil for residential use;
 - Applications for:
 - Consumers' Counsel funding;
 - Expert witnesses on rate structure;
 - Residential conservation demonstration projects.
- Community Services Administration concerning:
 - Availability of funds for Ohio's needy to winterize and pay utility bills;
 - Securities and Exchange Commission;
 - Federal Communications Commission;
 - National Regulatory Commission.

***The entire federal energy bureaucracy will be reorganized during the current session of Congress and will require a close scrutiny to protect Ohio's residential consumers and to return the maximum federal tax dollars to Ohio.

(E) Community Interaction - Frequent meetings around Ohio should be conducted by the Consumers' Counsel and Governing Board in order to inform residential consumers, interested groups, and municipalities of:

***Issues before PUCO affecting residential consumer interest;

***Effects on consumers of PUCO decisions;

***Nature of utility regulation and utility industry;

***Ways for consumers to participate effectively in utility regulation;

***Methods of consumer energy conservation.

A coalition of residential consumers must be built upon a public information system institutionalized by the Consumers' Counsel reflecting the policy of the Governing Board. The Board members should assist with the monthly newsletter and provide feedback from the groups which the Board members represent. A mailing list should be made of individuals and organizations who will receive the newsletter and such other reports as may be desirable to publicize. Interested persons could be placed upon the list simply by request. The Consumers' Counsel could classify groups of citizens by the nature of their residential consumer interest in particular proceedings, and include in the newsletter a statement of the effect various cases are likely to have on these groups.

C. PRIORITIES OF REPRESENTATION

1. Survey of "Residential Consumer" Interests.

The statutory directives for the Consumers' Counsel provide that representation exist for the "residential consumer" defined as:

***urban, suburban, and rural
***patrons of public utilities
***insofar as their needs for utility services are limited to their residence. Sec. 4911.01 (B), Ohio Rev. Code.

The public utilities within the scope of this residential consumer interest are:

***telegraph company;
***telephone company;

***electric light company;
***gas company;
***natural gas company;
***pipe-line company;
***water-works company;
***heating or cooling company;
***all telephone companies.
Secs. 4911.01 (A); 4905.03 (A),
Ohio Rev. Code

In ascertaining the needs for utility service limited to residences of Ohio consumers, one definition of "residential sector" includes:

"SIC 88, Private Households; specifically, all family residences, including mobile homes, multi-family low rise structures (condominiums, etc.), and multi-family high rise structures (high rise apartment buildings), and farm residences. Specifically included are the following end uses: space heating, space cooling, water heating, cooking, lighting, clothes drying, refrigeration, other appliances. Specifically excluded is any fuel used for transportation such as the family automobile. "STANDARD INDUSTRIAL CLASSIFICATION MANUAL, Office of Management and Budget, Executive Office of the President, 1972.

A survey of residential consumer uses of utility services should be an initial and continuing function of the Consumers' Counsel. The survey would show, among other things, exactly how varying changes in rate structure would affect the "average consumer", the all electric home consumer, the central city consumer or the rural consumer among others.

2. Broad Representation. Every residential consumer requesting assistance of the Consumer Counsel or residential consumers of a class or group seeking assistance, should receive the most representation possible by the Consumers' Counsel. This policy is based upon factors apart from the statutory provisions including the facts that residential consumers:

***compose the broadest class of users, in terms of numbers;

***are least able of all groups to organize effectively and financially support intervention;

***are most unable to absorb the increased costs of utility service (unlike commercial, industrial and governmental intervenors);

***were inadequately represented in past history of utility regulation.

In many instances, informal legal advice and advocacy by the Consumers' Counsel will resolve complaints regarding utility service. However, where formal legal proceedings are necessary, the financial resource allocation of the Consumers' Counsel Office may deter exhaustion of all legal remedies. Formal cases before PUCO will include the following:

***Rate cases filed by utilities;

***Fuel adjustment clause cases required by law;

***Complaint or Investigation initiated by:

- Consumers' Counsel;
- Consumers;
- Utilities;
- PUCO;
- Other intervenors

3. Factors Determining Formal Intervention

In view of the limited financial resources of the Consumers' Counsel, the Governing Board should establish a policy regarding factors for determining formal case intervention by the Consumers' Counsel. The survey of residential utility service usage should give the Governing Board a broad perspective in considering such factors as:

***Significance of issue in case;

***Pattern of abuse by a public utility;

***Effect of Consumers' Counsel intervention on outcome of case;

***Quality of any existing legal representation;

***Number of consumers represented;

***Number of consumers potentially benefitting from representation;

***Ability or inability of that class of consumers to support the challenge financially themselves.

Since Ohio law allows municipal corporations to negotiate ordinance rates with gas and electric utilities subject to appeal to PUCO and the Ohio Supreme Court, municipal corporations frequently represent residential consumers within their corporation limits. The statutory law establishes that:

"The Consumers' Counsel at the request of one or more residential consumers residing in, or municipal corporations located in, an area served by a public utility or whenever in his opinion the public interest is served, may represent those consumers or corporations whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, change, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental. Sec. 4911.15, Ohio Rev. Code.

While cities often employ legal counsel in utility rate cases, the sharing of expenses for expert consultants by municipalities and the Consumers' Counsel should be considered where residential consumers may effectively be represented by both. This will stretch the financial resources available for such consultant fees and remove duplication of effort.

IV. CHALLENGE: EIGHTEEN WEEKS TO ESTABLISH AN EFFECTIVE CONSUMERS' COUNSEL

A. MOVING THROUGH THE STATE BUREAUCRACY

After appointment of the Consumers' Counsel on February 23, 1977, only 18 weeks remain until June 30, 1977 when the current Consumers' Counsel budget of \$750,000 lapses. Clear administrative objectives must be established in order to organize an effective Consumers' Counsel in a deliberate, yet prompt manner. There is no appropriation in the Executive Budget for the 1977-79 Biennium providing for the Consumers' Counsel after June 30, 1977.

The annual report to the legislature due on April 1, 1977 should detail organizational efforts of the first 5 weeks of actual operation of the Consumers' Counsel. However, the annual report must of necessity be a prospective document summarizing the policy, program and budget priorities for the next biennium. Based upon the annual report, a \$2 million assessment and appropriation should be planned for the Consumers' Counsel during the 1977-79 Biennium. This budget proposal should then be offered to the General Assembly and Governor for inclusion in the appropriation bill which must be enacted before July 1, 1977.

In order to establish capability to represent residential consumers in a matter of weeks time under the current appropriation, the Consumers' Counsel should:

***Request Governing Board at February 23, 1977 meeting to:

- approve plan of action to begin organizing Consumers' Counsel Office with authority in Consumers' Counsel to:
 - * contact all appropriate persons interested in establishment of office
 - * hire initial personnel with duties established in plan of action
 - * advertise and begin interviews for additional personnel
 - * establish temporary office space, begin negotiation for permanent space
 - * prepare detailed budget and management objectives
 - * prepare initial program for consumer, legal and technical services
- send a letter requesting cooperation with Consumers' Counsel in promptly establishing an effective program, signed by all Governing Board Members to:
 - * Attorney General
 - * Governor
 - * Legislative Leaders
 - * Auditor
 - * Treasurer
 - * Secretary of State
 - * Lieutenant Governor

***Assign one person the administrative functions of:

- planning budget and management policy objectives for the current and next biennium;
- providing fiscal and administrative control of Consumers' Counsel organizational establishment of:
 - * assessment fund;
 - * personnel actions;
 - * office space;
 - * supply purchases;
 - * contracts for services:

- estimate budget line items for current and next biennium with provisions for inflation projections, performance indicators, and revenue sources with detail budgeting for:

- * office space
- * overhead expenses:

- Initial purchases:

- desks
- tables
- chairs
- bookshelves
- typewriters
- dictaphones
- library books

- Annual costs:

- automatic typewriters
- mailing
- printing
- supplies
- OBAR computer
- telephone costs
- xeroxing
- case expense
- library maintenance
- other

- * Personnel expenditures

- Governing Board expenses
- Initial salaries:

- * Consumers' Counsel
- * Administrator
- * Consumer Services
- * Legal Services
- * Technical Services
- * Secretarial

- Additional salaries:

- * Attorneys
- * Paralegal
- * Economist
- * Engineers
- * Accountants
- * Administrative

- PERS, insurance, etc.

* Experts & Consultants

- Private, University

* Special investigations

* Rate cases

* Fuel adjustment cases

* Complaint cases

- Municipal assistance

- Federal assistance

***Establish an 18-week plan of objectives for organizing Consumers' Counsel at February 23, 1977 Governing Board Meeting, subject to continuing review at future meetings and detailed weekly progress reports by Consumers' Counsel to Governing Board.

The ability of Consumers' Counsel to perform effectively requires employment of a qualified legal and technical staff. An aggressive, competent, and professional staff can be assured by salaries adequate to attract and keep qualified employees with opportunities for a long term public service commitment. The time has come in Ohio to employ the best possible individuals on the side of residential consumers instead of the public utilities side. The immediate challenge now is how promptly, yet deliberately an effective Consumers' Counsel Office can be established in the face of critical utility issues for Ohio.

B. IMMEDIATE ACTION NEEDED

1. OVER \$150 MILLION IN PENDING RATE INCREASE REQUESTS CURRENTLY BEFORE P.U.C.O.
2. SENATE BILL 94 NOW IN EFFECT.
3. P.U.C.O. AND SUPREME COURT CHANGING COMPLEXION.
4. CONTINUING FUEL ADJUSTMENT HEARINGS.
5. APRIL 1ST REPORT TO LEGISLATURE AND BUDGET FOR NEXT BIENNIUM.
6. APPLICATION FOR FEDERAL FUNDS.
7. GAS CRISIS.
8. TIME AND DISTANCE TELEPHONE CHARGES.
9. LEGISLATIVE PROPOSALS.
10. LEGISLATIVE SERVICE COMMISSION STUDY.
11. EAS RULE.

1. OVER \$150 MILLION IN PENDING RATE INCREASE REQUESTS CURRENTLY BEFORE P.U.C.O.

***Without a speedy appointment of a Consumers' Counsel the consumer might not receive the representation in these cases that the legislature intended and for which the money has been appropriated.

2. SENATE BILL 94 NOW IN EFFECT.

***Cases will soon be before the P.U.C.O. and ultimately before the Ohio Supreme Court in which the first precedent or interpretations of the new Original Cost law will be made. These interpretations should not be made without forceful articulation of the concerns of the consumers of this State. If not, interpretations favorable to consumers, may not be presented and the utilities might be the only party presenting a point of view. This could result in legal precedents which are not only unfavorable to consumers in the first cases decided, but would also apply to future cases. This actually happened with some aspects of the old RCN law which made it more anti-consumer than it otherwise would have been.

***Additionally, with the new nine-month deadline for rate increases many of these cases will move swiftly to Order. Delay tactics will no longer avoid rate increases and cases must be tried on the merits requiring effective legal representation on behalf of consumers.

3. P.U.C.O. AND OHIO SUPREME COURT CHANGING COMPLEXION.

***The new Commission (as it was constituted February 2, 1977) and new Court should be aggressively presented from the outset with the views and concerns of consumers.

***Additionally, it might be noted that several highly qualified professionals currently at the P.U.C.O. might become available for employment with the Consumers' Counsel.

4. CONTINUING FUEL ADJUSTMENT HEARINGS.

***The semi-annual review and annual audit hearings (held pursuant to Am. Sub. H.B. 579) which review the reasonableness of the fuel procurement policies and practices of the eight electric utilities in the state are beginning the second round. The five Orders (out of 8) which have been issued from the last round of hearings has resulted in approximately \$500,000 in reconciliation adjustments (or refunds) in favor of consumers.

***Many difficult questions remain to be resolved in this area, for example: "captive" coal mines; utilities financial backing of coal ventures; use of low-sulfur, higher priced non-Ohio coal vs. flue gas desulfurization equipment to meet E.P.A. requirements; and, treatment of costs of nuclear fuel, to name a few. These difficult questions involve hundreds of millions of dollars and the consumers of this state must have their concerns heard. These hearings begin in February of 1977 (tentative schedule attached).

5. APRIL 1ST REPORT TO LEGISLATURE AND BUDGET FOR NEXT BIENNIUM.

***Section 4911.17 Revised Code requires the Consumers' Counsel Governing Board to issue a report to the Legislature outlining the expenditures of the office, a full record of participation in any and all proceedings and an outline of other relevant activities. The statute obviously contemplates that the Board be responsible to the legislature and keep it fully informed.

***Additionally, the budget for the Consumers' Counsel must be made quickly operational. Efforts should begin immediately to insure that an adequate, full and well-reasoned budget proposal is presented and approved.

6. APPLICATION FOR FEDERAL FUNDS.

***Recent Federal legislation co-sponsored by United States Senator John Glenn has made available a limited amount of federal money for assistance in projects such as the Consumers' Counsel. In order to make the best effort possible to secure this federal funding for Ohio's consumers an investigation into this area must begin immediately.

7. GAS CRISIS.

***It appears that a severe weather will bring about gas curtailments at heretofore unheard of levels this winter. The Consumers' Counsel should begin efforts to assure residential consumers of adequate gas supplies in this state.

8. TIME AND DISTANCE TELEPHONE CHARGES.

***Cincinnati Bell introduced directory assistance charging which was soon followed by Ohio Bell and applications to do the same by several other utilities. Cincinnati Bell now appears to be the trial ballon again by proposing time and distance charging for local calls in its pending rate increase application. This policy should be investigated thoroughly as it could have an adverse effect on rural and suburban telephone customers, and might run afoul of Sec. 4909.151 Revised Code. The Consumers' Counsel should investigate this proposal thoroughly and report his findings to the Board for a policy determination.

9. LEGISLATIVE PROPOSALS.

***The 112th Ohio General Assembly is already facing many proposals relating to utility matters. The new statute provides that the office of Consumers' Counsel may make studies into these very areas, e.g., "lifeline", Section 4911.02 (B)2(d), Revised Code. These studies should be quickly begun so that the Consumers' Counsel and the Governing Board may look at the facts and determine the policies they feel are in the best interests of consumers and report those views to the legislature.

10. LEGISLATIVE SERVICE COMMISSION STUDY

***The Legislative Service Commission will soon release a report on the Public Utilities Commission. Since Am. Sub. S.B. 94 provides that the Consumers' Counsel "May take appropriate action with respect to...the operation of the Public Utilities Commission" Section 4911.02 (B)2(b), Revised Code, the Board and the Counsel should be prepared to review this report and take any action they deem appropriate as a result.

11. E.A.S. RULE

***The PUCO is about to issue rules governing E.A.S. (Extended Area Service) telephone complaint procedures. The Consumers' Counsel should be involved in these hearings to insure the rule is fair to consumers who have historically been under-represented in this important aspect of adequate telephone service.

TENTATIVE SCHEDULE FOR FUEL ADJUSTMENT CLAUSE HEARINGS
PURSUANT TO AM. SUB. H.B. 579

1977

1. OHIO EDISON
Semi-Annual Hearing 2/14/77
Annual Audit Hearing 7/18/77
2. DAYTON POWER AND LIGHT
Semi-Annual Hearing 2/28/77
Annual Audit Hearing 8/8/77
3. CINCINNATI GAS AND ELECTRIC
Semi-Annual Hearing 3/21/77
Annual Audit Hearing 8/29/77
4. MONONGAHELA POWER
Semi-Annual Hearing 4/4/77
Annual Audit Hearing 9/19/77
5. CLEVELAND ELECTRIC ILLUMINATING
Semi-Annual Hearing 10/10/77
Annual Audit Hearing 4/25/77
6. COLUMBUS AND SOUTHERN OHIO ELECTRIC
Semi-Annual Hearing 5/16/77
Annual Audit Hearing 10/31/77
7. TOLEDO EDISON
Semi-Annual Hearing 11/21/77
Annual Audit Hearing 6/6/77
8. OHIO POWER CO.
Semi-Annual Hearing 6/27/77
Annual Audit Hearing 12/12/77

RATE CASES PENDING BEFORE PUCO

(In Which Intervention Could Still Be Accomplished)

		MILLION
1.	75-665-TP-AIR Newark Telephone	\$ 1.5
2.	75-696-TP-AIR Harlan Telephone	\$ 0.01
3.	75-857-TP-AIR Chillicothe Telephone	\$ 1.0
4.	75-1035-TP-AIR Cincinnati Bell Telephone	\$35.0
5.	75-1061-WW-AIR LeSourdsville Water	\$ 0.01
6.	75-1074-TP-AIR Benton Ridge Telephone	\$ 0.01
7.	75-1111-TP-AIR Columbus Grove Telephone	\$ 0.03
8.	76-88-GA-AIR DP&L (Gas)	\$16.2
9.	76-115-HT-AIR DP&L (Steam)	\$ 1.2
10.	76-250-TP-AIR McClure Telephone	\$ 0.04
11.	76-275-EL-AIR Ohio Edison	\$ 7.6
12.	76-276-EL-CMR Ohio Edison (Mt. Gilead)	*
13.	76-302-EL-AIR CG&E (Electric)	\$ 2.0
14.	76-492-ST-AIR Woodbran (Sewer)	\$ 0.05
15.	76-600-WW-AIR Mohawk Utilities	\$ 0.08
16.	76-704-GA-CMR Columbia Gas (Columbus)	\$10.0
17.	76-823-EL-AIR DP&L (Electric)	\$28.3
18.	76-750-WW-air land Ohio (Water)	\$ 0.01
19.	76-824-EL-AIR Monogahela Power	\$ 2.7
20.	76-815-GA-AIR River Gas	\$ 1.7
21.	77-12-GA-CMR Columbia Gas	*
22.	77-13-GA-CMR Columbia Gas	*
23.	76-1015-TP-UNC Continental Telephone	*
24.	76-1061-EL-CMR Toledo Edison	*

(1)	25.	76-1157	Kalida Telephone	*
(1)	26.	76-1174	Toledo Edison	*
(1)	27.	76-1099	Ohio Cumberland Gas	*

\$107.44

*No Specific Increase Request or Figures Not Available As
Of Yet.

(1) Letters of Intent filed. (Pursuant to S.B. 94).