

**DRAFT**

**MINUTES OF THE  
TWO HUNDRED FORTY FIRST MEETING  
OF THE CONSUMERS' COUNSEL GOVERNING BOARD  
October 28, 2003**

Members Present: Mark Gehri  
Rhonda Johnson, Vice Chair  
Herman Kohlman  
Dorothy Leslie  
Helen Mac Murray  
Jerome Solove, Chair  
John Steinberger

Members Absent: James Rarey

The meeting was called to order by Chair Solove at approximately 10:02 a.m. Chair Solove stated the purpose of this informational meeting is to discuss recent public concerns brought to the Governing Board's attention regarding the Ohio Consumers' Counsel's retention of records. Chair Solove stated he and Vice Chair Rhonda Johnson have discussed the preferred sequence for the meeting and developed the following schedule:

1. Opening comments by Chair Solove;
2. Comments by the Inspector General;
3. Informational report from Director of Operations, Monica Hunyadi, of the Ohio Consumers' Counsel, and from the Consumers' Counsel, Robert Tongren;
4. Questions by members of the Governing Board;
5. Closing comments by Chair Solove and
6. Adjournment

Chair Solove stated he wanted to reiterate that this is solely an informational meeting for the purpose of better informing the Governing Board. Chair Solove asked Board members to hold their questions until staff of the Ohio Consumers' Counsel had the opportunity to complete their informational reports.

Chair Solove stated some of the Governing Board's questions may raise questions with the public as to the authority and activities of the Governing Board. As Chair of the Governing Board, he wanted to make very clear the reason this is an informational meeting is because the Governing Board's authority is very limited. Providing advice and comments to the Consumers' Counsel is permitted, but the authorizing statute states that the purpose of this Governing Board is only to hold periodic meetings, and to report to the legislature on the activities of the Consumers' Counsel. Furthermore, the Consumers' Counsel holds office at the pleasure of the Governing Board. The Governing Board, however, does not have the right to direct or compel the Consumers' Counsel as to the manner in which he fulfills his position, and therefore is not involved in the day-to-day matters of the Ohio Consumers' Counsel.

Chair Solove asked if the representative from the Inspector General would like to make a statement and the representative respectively declined the opportunity.

Mr. Tongren was then asked to make a statement. Mr. Tongren stated he welcomed this opportunity to discuss the FirstEnergy case. He stated that both he and the staff of the Ohio Consumers' Counsel (OCC) had the best interests of the residential customers of FirstEnergy in mind and the decision of negotiation or litigation was one of the most difficult decisions he and the staff have had to make.

Mr. Eric Stephens discussed the internal process for the FirstEnergy case. He stated that OCC had two teams working on a two-track system one track for litigation and the other for negotiation. When it was clear that key players in the case were opting to participate in negotiations, OCC had to decide whether to be a part of the resolution or risk losing benefits through the litigation process. Mr. Stephens discussed the benefits customers received through the negotiation process.

Mr. Joseph Bower presented a summary of the FirstEnergy transition costs. Mr. Bower stated that LaCapra was used to analyze the generation transition costs and OCC calculated the regulatory transition costs. The total of those calculations was \$2.6 billion and that was OCC's preliminary litigation position. It was noted that some very aggressive assumptions were made to develop this calculation.

Mr. Randy Corbin reviewed the process LaCapra followed to develop their calculation. OCC wanted an aggressive position so aggressive, credible assumptions were made. Mr. Corbin stated the assumptions were credible but OCC had to decide if they were they winnable. He noted that in a case in Pennsylvania LaCapra had a very credible case, but did not win. Also, Mr. Corbin noted that FirstEnergy was very aggressive in its testimony.

Mr. Tongren stated that these were some of the factors and challenges OCC weighed in making this very critical decision. He stated that this was one of the most difficult decisions that he and the staff of the OCC made during the past 10 years. OCC wanted to move the promise of Senate Bill 3 forward, which was the creation of a competitive marketplace for energy customers in Ohio and this proposal was designed to do that. In the FirstEnergy service territory, approximately 44% of residential customers have participated in the competitive marketplace.

Ms. Hunyadi reviewed materials compiled for the Governing Board members in response to her investigation into the OCC records retention policy and the LaCapra documents.

At this point in the meeting Chair Solove had an open forum for Board members to ask questions of the Consumers' Counsel and staff. The Board asked questions regarding the retention policy of the Ohio Consumers' Counsel and the handling of the FirstEnergy case.

After Chair Solove discussed with each Board member their opinion on the agenda for November 5, 2003 meeting, it was agreed to continue the public discussion of the retention schedule issue if Board members have new questions or staff have new information to share. This will be the first item on the agenda and will be constrained to one hour. The Board will then proceed with the regular agenda.

Mr. Kohlman thanked the OCC staff for their presentations and also thanked the guests for their attendance.

Chair Solove made a closing statement in which he remarked that as a Board member, he appreciates the Inspector General and the Attorney General's inquiries into the allegations regarding the Ohio Consumers' Counsel. He stated that it is important to continue information gathering.

Chair Solove asked that if a Board member has further questions for the OCC staff prior to the November 5<sup>th</sup> meeting, to please contact Ms. Hunyadi who will obtain the information from the appropriate staff member and then share it with all Board members.

At approximately 1:45 p.m., on a motion by Mrs. Leslie, seconded by Mr. Gehri, the Board voted unanimously to adjourn the meeting.

I verify that the above meeting minutes have been approved and ratified by the OCC Governing Board on this \_\_\_\_\_ day of January of 2004.

---

Jerome G. Solove, Chairman  
Ohio Consumers' Counsel Governing Board

---

Donna Mucci, Secretary  
Ohio Consumers' Counsel Governing Board