



**MINUTES OF THE  
TWO HUNDRED SIXTY-THIRD MEETING  
OF THE CONSUMERS' COUNSEL GOVERNING BOARD  
January 17, 2007**

**Members Present:** Randy Beane  
Gene Krebs  
John Moliterno  
Dorothy Leslie  
Jerry Solove  
John Steinberger  
Mark Totman  
Roger Wise

**Members Absent:** Michael Murphy

**Guests:** Kent Shimeall, Attorney General's Office

**Call to Order**

Chairman Solove called the meeting to order at 9:05 a.m.

**Approval of Minutes**

The minutes of the September 20 and November 15, 2006 meetings were approved with Mr. Wise abstaining.

Chairman Solove introduced and welcomed Roger Wise to the Board. Mr. Wise resides in Fremont Ohio and represents family farmers.

**Election of Officers**

Mr. Krebs made a motion to retain Chairman Solove and Vice Chairman Moliterno for another year. Mr. Steinberger seconded the motion and Mrs. Knight called the roll. The motion passed unanimously.

**Consumers' Counsel Report**

Ms. Migden-Ostrander welcomed Mr. Wise and congratulated Chairman Solove and Vice Chairman Moliterno on their re-election.

Ms. Migden-Ostrander reported on case activity. OCC Staff are actively involved in a number of cases such as: the American Electric Power Reliability and Columbia Gas of Ohio Gas Cost Recovery proceedings. In addition, Ms. Migden-Ostrander has been participating in the Midwest Energy Efficiency Alliance and the National Coal Council. We have submitted comments to the PUCO in the American Electric Power and FirstEnergy remand cases. We were asked by Governor Strickland's office to provide information on a variety of topics and provided the Governor's office with our transition report. A discussion ensued regarding renewable energy. The Board asked for a presentation on the subject.

September's Governing Board Meeting will be held on Wednesday, September 12.

### **CASE OUTCOMES – Bruce Weston**

#### **Universal Service Fund Rider Adjustment**

##### **Case No. 06-751**

All electric utility consumers pay into a universal service fund to help balance the difference between what PIPP customers pay and the charges for their actual usage. The Ohio Department of Development, Ohio Partners for Affordable Energy and industrial groups filed an amended agreement to adjust the riders. OCC did not sign the amended agreement. The PUCO issued an Opinion and Order that approved the rider adjustments. A lengthy discussion ensued regarding how the riders are calculated and the need to audit the costs.

#### **FERC Transmission Pricing Incentives**

##### **RM06-4**

The Energy Policy Act of 2005 gave incentives to companies to build transmission lines. OCC filed comments on behalf of NASUCA. Our position is that FERC incentives to companies who build transmission lines should only be decided on a case by case basis.

#### **PUCO Rules of Practice**

##### **Case No. 06-685**

The PUCO issued an Entry containing the staff's evaluation of the rules and proposed changes. The law requires state agencies to conduct rule review every five years. Our position is that the PUCO rules need to be brought into conformance with the Ohio Revised Code and Ohio Rules of Civil Procedure. A lengthy discussion ensued regarding rules of practice.

#### **FirstEnergy Shopping Credits Increase**

##### **Case No. 06-1335**

Based on an agreement among the company and other stakeholders the PUCO approved a "rate certainty plan" for FirstEnergy. The plan included a PUCO requirement that shopping credits (being the charges that customers could avoid by switching to a competitor) would be increased in 2007 to reflect FirstEnergy's higher fuel costs. OCC's position was that the PUCO clarify that approval of the shopping credit increase would not be considered approval to collect the higher fuel costs from FirstEnergy's consumers or a determination that the costs were reasonable. The reasonableness of the fuel costs and recovery of those costs should be determined in a different case. To expedite the review process, OCC should receive the Company's monthly reports of actual fuel costs.

The PUCO approved FirstEnergy's shopping credit increase without modification and ordered that the increases be trueed-up based on audited fuel costs and deferrals. The Commission agreed with OCC that the reasonableness and eligibility of FirstEnergy's recovery of the fuel costs would be determined at a later time.

OCC's intervention was granted; however, our request for monthly fuel costs reports was denied.

### **Cincinnati Bell Telephone Alternative Regulation**

#### **Case No. 06-1002**

In August 2006, the Company filed an application to operate under alternative regulation rules for its basic local telephone service in the Cincinnati and Hamilton exchanges. OCC filed objections to the Company's application in September and the Commission granted the application in November. Our position is that there is not enough competition in those exchanges to warrant price increases for basic local telephone service.

The PUCO ruled that the Cincinnati and Hamilton exchanges have the required number of alternative providers that offer an equivalent service to basic local telephone service. The Commission allowed the Company to annually increase monthly basic rates up to \$1.25 and Caller ID rates up to \$.50.

### **AT&T Alternative Regulation**

#### **Case No. 06-1013**

In August 2006, AT&T filed an application to operate under alternative regulation rules for its basic local telephone service in 145 of its 192 exchanges in Ohio. OCC's position in this proceeding is that AT&T failed to pass the competitive tests that are required before being granted the ability to raise rates for basic local telephone service.

The PUCO determined there were competitive options for basic local service; alternative providers that have bundled services are considered competition for stand alone service; and services such as broadband that only service a portion of the exchanges are considered a competitive option for the entire exchange. The company was granted the ability to increase rates in 136 of the 145 exchanges it requested and the PUCO allowed AT&T to annually increase monthly basic rates up to \$1.25 and Caller ID rates up to \$.50.

### **Cincinnati Gas & Electric Rate Plan**

#### **Supreme Court Case Nos. 2005-946 and 2005-518**

The PUCO issued an Opinion and Order in September 2004 that approved CG&E's rate plan. OCC filed an appeal at the Supreme Court in March of 2005. OCC's position in this case is that the plan approved by the PUCO violated Ohio's electric choice law. The Supreme Court found that the PUCO erred by failing to provide evidence in the record to support its approval of certain charges; and by failing to order Duke to disclose side agreements to OCC. This case was returned to the PUCO for further consideration.

**FirstEnergy and DP&L Transmission Charge Deferral  
Supreme Court Case Nos. 2005-1621 and 2005-1679**

OCC's position in this case is that FirstEnergy and DP&L should not be able to defer transmission expenses for future collection from customers which were incurred during a legislated rate cap. The deferral and resulting rate increase violates Ohio's electric choice law. The Supreme Court recognized that Ohio law provides for a rate cap; determined that the change in accounting procedures to defer the transmission charges was an exception to the rate cap; and ruled that the PUCO abused its discretion when it refused to allow OCC intervention in the case.

The meeting recessed at 10:50 a.m.

The meeting reconvened at 11:10 a.m.

Chairman Solove circulated a resolution for Jim Petro for the Board's consideration.

**NEW CASES – Aster Adams**

**Embarq Service Quality**

**Case No. 06-1354**

This case was opened at the PUCO with the filing of an agreement between the PUCO and Embarq. The agreement indicated that company personnel failed to comply with the disclosure requirements of the minimum telephone service standards. The Commission issued a Finding and Order on December 13, 2006 that approved the agreement and dismissed OCC's objections to the agreement. OCC filed a motion to reopen the pending MTSS rulemaking case so that the agreement could be included. Embarq claimed that its service quality problems were irrelevant to the MTSS rulemaking.

**Commission Telephone Rules**

In November 2006, the PUCO issued a request for comment on two sets of rules: Competitive retail service rules and carrier to carrier rules. OCC filed comments on January 5, 2007 focusing on the implications of detariffing.

**Federal Telecom Activities**

On November 21, 2006, OCC filed a brief on behalf of NASUCA in the appeal by a number of VoIP providers of an FCC decision that would require VoIP providers to contribute to the federal universal service fund.

**FERC Inquiry Into Gas Electric Coordination**

Two proceedings were initiated by FERC Order dated October 25, 2006. The Commission was concerned that the scheduling practices of RTOs were not effectively coordinated with the scheduling of natural gas purchase and transportation transactions. A result of such ineffective coordination could be that gas-fired must-run generators would be unable to obtain gas during periods when gas transportation is constrained or gas prices are volatile.

PJM and MISO were ordered by FERC to make a filing by January 16, 2007 in which they would either propose necessary changes to scheduling and competition or explain why such changes are unnecessary.

These issues directly impact Ohio's residential consumers who rely on PJM and MISO to provide reliable grid operation at a reasonable cost.

**FERC Long Term Transmission Rights**

**Case No. ER06-1218**

FERC's November 22, 2006 Order accepted PJM's proposal for a system of Long Term Transmission Rights (LTTRs). LTTRs are designed to permit market participants to hedge against congestion costs that affect the locational marginal pricing calculations for their zones. FERC's Order set this matter for settlement. In the settlement, issues are being considered that now affect Ohio, like forcing AEP and DP&L customers to pay a portion of the congestion costs.

**Natural Gas Service Risers**

**Case No. 05-463**

The Commission issued an Entry that ordered an investigation to review the causes of riser failures. This issue came about due to riser failures that caused one fatality. A riser connects a building's natural gas meter to the pipes that run from the building to the company's pipelines. The Board raised concerns about the timeframe of the case and whether or not comments that were filed on February 9, 2007 could be shared at the next Board Meeting.

Discussion ensued as to who is responsibility for the risers. Risers are installed by contractors; those installed in cold weather are more prone to failure. Staff stated that the PUCO has authority over gas distribution. This issue will be addressed in our comments.

By letter dated January 2, 2007, the PUCO requested that companies start an inventory and discuss taking over responsibility for customer owned service lines. Currently the customer is responsible for the service lines.

**COMMUNICATIONS REPORT – Maureen Miller**

**Media Relations**

OCC issued 14 news releases, topics include:

- Opposed rate increases for basic local telephone service
- Reacted to Supreme Court decision on the FirstEnergy, DP&L and CG&E cases
- Request for investigation into Buzz Telecom operations
- Requested an auction to be held to potentially lower rates for Columbia customers

OCC initiated a campaign to promote the public hearings in the Ohio American Water and AEP cases by posting information on the website, mailings to consumers and organizations, and news releases and media interviews.

Consumer Protection week begins February 5 with a news conference. This year's theme is Read Up, Reach Out Be an Informed Consumer.

Mr. Krebs left at 12:10 p.m.



**LEGISLATIVE REPORT – Dennis Stapleton**

House Bill 441 introduced by Rep. Clyde Evans is the bill that would allow boards to meet via conference call. The bill passed out of the House but was substituted in the Senate.

Vice Chairman Moliterno made a motion to enter executive session to discuss pending and/or imminent litigation. The motion was seconded by Mrs. Leslie and Mrs. Knight called the roll. Executive Session began at 12:30 p.m.

Mr. Krebs returned at 1:30 p.m.

Mr. Totman and Mr. Beane left at 1:50 p.m.

The Governing Board returned to open session at 2:05 p.m.

Vice Chairman Moliterno moved to pass the Resolution in honor of Jim Petro. Mr. Krebs seconded the Motion and it passed unanimously.

Chris Verich gave a presentation to the board entitled "Making Sense of Your Telephone Choices." This presentation outlines the choices that are available to consumers and provides them with the information necessary to make informed decisions regarding their telephone service.

The meeting adjourned at 3:10 p.m.

I verify that the above meeting minutes have been approved and ratified by the OCC Governing Board on this 21st day of March 2007.

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

  
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Laurie C. Knight, Secretary  
Ohio Consumers' Counsel Governing Board