



Janine L. Migden-Ostrander  
*Consumers' Counsel*

**MINUTES OF THE  
TWO HUNDRED SIXTY-EIGHTH MEETING  
OF THE CONSUMERS' COUNSEL GOVERNING BOARD  
January 16, 2008**

**Members Present:** Gene Krebs  
Dorothy Leslie  
Joe Logan  
John Moliterno  
Jerry Solove  
Roger Wise

**Members Absent:** Randy Beane  
David McCall  
Michael Murphy

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

**CALL TO ORDER**

Chairman Solove called the meeting to order at 9:10 a.m.

**CONSUMERS' COUNSEL REPORT**

New employees were introduced:

- Sarah Watkins – Analytical
- Daniel Duann – Analytical
- Angel Goliday – Consumer Services Division
- Mary Seltzer – Operations

Ms. Migden-Ostrander reported that a settlement was reached with Columbia Gas resulting in a \$35 million refund to customers and the largest energy efficiency program for a gas company. The negotiations involved Columbia Gas, OCC, the PUCO Staff, the suppliers, the Ohio Farm Bureau and local governments.

**LEGISLATIVE REPORT – Dennis Stapleton**

Mr. Stapleton reported that there was a Senate hearing scheduled today and Ms. Migden-Ostrander would be presenting testimony. The topic is transparency, special contracts and side deals. Consumers' Counsel remains very involved in this process. Public testimony is scheduled

for the first week in February and will likely take a couple of weeks due to the number of interested parties.

#### **ELECTION OF NEW OFFICERS**

Mrs. Leslie made a motion to retain Chairman Solove as Chair of OCC's Board for another year. Mr. Krebs seconded the motion and Mrs. Knight called the roll. The motion passed unanimously.

Mr. Wise made a motion to retain Vice Chairman Moliterno as Vice Chair of OCC's Board for another year. Mrs. Leslie seconded the motion and Mrs. Knight called the roll. The motion passed unanimously.

#### **CASE OUTCOMES – Bruce Weston**

##### **Vectren Energy Delivery of Ohio Gas Risers, Case No. 07-294**

In March 2007, the Company filed an application to defer expenses related to the investigation of the installation, use and performance of natural gas risers.

Consumers' Counsel's position is that customers have already paid for these expenses in base rates. Also deferrals based on expenses incurred in the past should not be allowed because they constitute single-issue and retroactive ratemaking

It was determined by the Commission that the deferrals are an accounting procedure and do not increase rates or charges; also, according to the Commission these deferrals do not constitute single-issue ratemaking.

##### **Embarq Request for Basic Telephone Service Alternative Regulation, Case No. 07-760**

Embarq filed an application for basic local service alternative regulation in July 2007. Approval of this application would result in allowing for monthly increases of \$1.25 per year for basic local service.

Consumers' Counsel's position is that Embarq failed to meet the statutory requirements: no barriers to competition; basic service be subject to competition or have reasonably available alternatives in each exchange; and, alternative regulation to be in the public interest.

The Commission's Opinion and Order granted alternative regulation which allowed Embarq to raise their monthly rates as much as \$1.25 each year.

##### **FirstEnergy Fuel Costs, Case Nos. 07-1003 and 07-1004**

Elyria Foundry and WPS appealed the 2005 fuel cost settlement involving \$391 million, known as the Rate Certainty Plan. In its opinion the Supreme Court stated that deferred fuel costs related to generation cannot be collected through distribution rates.



Consumers' Counsel's position is that fuel costs should be subject to an audit, after which the PUCO would issue a staff report and an evidentiary hearing should be held. Lengthy discussion ensued.

The Commission allowed FirstEnergy to collect current costs and required the Company to file an alternative method within 30 days to propose how to collect earlier fuel costs.

**Winter Disconnection Moratorium, Case No. 07-938**

The Commission issued its standard winter disconnection order in September 2007. Among other things, this order allows consumers who have been disconnected or are facing disconnection to have their service restored or continue to receive service by paying \$175 and a reconnection fee of no more than \$20.

Governor Strickland strongly urged the Commission to consider a moratorium on electric and natural gas disconnections for this winter. The Commission issued an income-based moratorium on energy disconnections.

The Consumers' Counsel commended the Governor for his leadership and concern for residential consumers facing disconnection and called for raising the income eligibility in the Commission's moratorium from 175% to 200% of the federal poverty guideline. Lengthy discussion ensued.

The Board recessed at 10:40 a.m. and reconvened at 11:00 a.m.

**PJM Demand Response Payments, Case No. EL08-12-000**

PJM Industrial Customer Coalition is an ad hoc coalition of 31 companies with large commercial, industrial and institutional facilities in the PJM area. In November 2007 they filed a complaint against PJM under the Federal Power Act which involved incentive payments from PJM for demand response and load reduction. Customers alleged that it would be unjust and unreasonable for FERC to allow the program to expire simply because PJM stakeholders could not agree about what program should take its place.

Consumers' Counsel's position is that payments should not be allowed to expire until an effective replacement program is approved because all customers can benefit from reducing the need for generation of electricity.

**Universal Service Fund Riders, Case No. 07-661**

In October 2007 the Ohio Department of Development filed an application to adjust the USF riders of all investor-owned electric utilities. Consumers' Counsel's positions included a rate design issue and that the agreement failed to ensure that low income customers of all (and not just some) of the electric utilities would be made aware of alternative programs to help pay utility costs after the customer's participation in the percentage of income payment plan ended.

The Commission approved the adjustments to the USF riders but did not address the concerns of the Consumers' Counsel. New riders became effective in December 2007 and will appear in the January billing cycle.

**NEW CASES – Aster Adams**

Mr. Adams gave a brief overview of the rate cases that have been filed so far.

**Dayton Power & Light PJM Rider, Case No. 07-1287**

Dayton Power & Light filed an application on December 21, 2007 for accounting authority to defer on its books the PJM Transmission Enhancement Charge (TEC) until authority is granted to adjust in the future for those costs within the transmission rates charged to Ohio retail customers.

**East Ohio Gas Exit, Case No. 07-1224**

On November 28, 2007, Dominion East Ohio filed a letter notifying the Commission of its intent to file an application to request exemption of DEO's commodity sales service from regulation under Ohio Revised Code 4929.04. This application will be DEO's expected request to "exit the merchant function" through Phase 2 of its two-phase exit plan which began under Case No. 05-474-GA-ATA.

**Vectren Energy Exit, Case No. 07-1285**

Vectren filed an application for approval of a general exemption of certain natural gas commodity sales services or ancillary services on December 21, 2007. This application seeks approval for two phases in which VEDO will transition from the provision of commodity services to an environment in which VEDO exits the merchant function and all VEDO customers receive commodity from non-utility commodity suppliers.

**AT&T, Case No. 07-1312**

AT&T Ohio filed its third basic service alternative regulation application for eleven of its exchanges. Consumers' Counsel's objections are due February 11, 2008.

**Columbus Southern Power Company and Ohio Power Company, Case No. 01-1278**

In Case No. 04-169 the Commission approved Rate Stabilization Plans (RSP) for Columbus Southern Power and Ohio Power. In that proceeding, the Commission approved fixed generation service rate increases for Columbus Southern Power and Ohio Power of 3% and 7% per year, respectively, for each of the years 2006, 2007, and 2008. The Commission approved the portion of the Companies' application regarding limits on additional generation rate increases during the rate stabilization period.

Consistent with the Companies' intent to continue making monthly filings in new dockets until such time as the Commission approves the monthly adjustment mechanism proposed in Case No. 07-1132, the Companies' present application is filed to address additional generation rate revenue requirements based on actual additional costs incurred in November 2007 and expenditures made through November 2008.

**Distributed Generation, Case No. 05-1500 and subsequent cases**

In this case the Commission required that all Ohio electric utilities file in subsequent cases revised tariffs consistent with the new federal requirements in the Energy Policy Action of 2005. Follow up cases have been opened pertaining to interconnection, net metering, and standby rates. Consumers' Counsel will intervene in these follow up cases.

Mr. Adams had copies of Consumers' Counsel's Objection to the Staff Report distributed to the Board. He cited a few of the objections so the Board could get a better understanding.

**APPROVAL OF MINUTES**

The minutes of the November 30, 2007 meeting were approved.

The Board recessed at 12:30 p.m. and reconvened at 1:15 p.m.

**COMMUNICATIONS REPORT – Beth Gianforcaro**

There were seven news releases issued since the last Governing Board Meeting. Highlights include:

- Opposition to FirstEnergy distribution rate increase
- FirstEnergy green energy option
- Reaction to winter disconnection moratorium
- Commending Governor Strickland for moratorium request
- Calls for rate protection for Aqua Ohio Customers
- Alerts consumers to Cincinnati Bell basic rate increase
- Arguments against telephone pricing decisions at Supreme Court of Ohio
- OCC advocacy for telephone customers helps lead to penalty against UMCC

Outreach and Education has sent out the following mailings:

- Utility assistance brochures
- Energy policy updates
- Green pricing newsletter article
- Reintroduction of call center

Consumers' Counsel's web page received over 8,500 unique visitors to our site since the last Board Meeting, of which 80% were new visitors to the site.

A new section has been added which is dedicated to energy legislation issues.

**OHIO BROADBAND COUNCIL AND CONNECT OHIO INITIATIVE – Karen Hardie**

The Ohio Broadband Council was created by Governor Strickland; the Council consists of various state agencies, Chamber of Commerce, AT&T, and Ohio Farm Bureau. The Council first met on December 4, 2007 and the next meeting is scheduled for March 3, 2008.



Governor Strickland announced the Connect Ohio Initiative on December 17, 2007. This three-year initiative will accomplish bringing affordable broadband availability to all Ohio.

**FEDERAL TELECOM ISSUES – David Bergmann**

Issues on the federal level include:

- Universal service, high cost fund, and Joint Board recommended decision
- Forbearance
- Do-Not-Call Issues

Customers pay for the Universal Service Fund through an assessment on interstate and international revenues.

The Federal-State Joint Board on Universal Service was created by the Telecom Act of 1996; its members consist of four state commissioners; 3 FCC commissioners; and 1 NASUCA member. Kathy Hagans is on the staff of the Joint Board.

The Joint Board recommended proposal for the high-cost fund is to create three funds:

- Broadband fund – focus on infrastructure in unserved areas
- Mobility fund – focus on infrastructure in unserved areas; support for service where uneconomic
- Provider of last resort fund – wireline carriers

Congress passes the law that the FCC works under. Part of the Telecom Act of 1996 requires the FCC to “forbear” from any law or regulation if there is a showing that:

- Enforcement is not necessary to ensure rates are just and reasonable and not discriminatory
- Enforcement is not necessary for protection of consumers
- Forbearance is in the public interest

Broadband regulation is an example of a case where forbearance has been sought.

In March 2003 the Do-Not-Call Implementation Act was passed which required the FCC and the Federal Trade Commission to establish a Do-Not-Call Registry.

Currently there are 145 million consumers on the Do-Not-Call Registry.

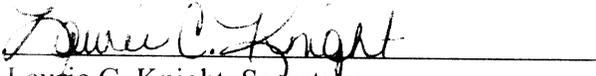
There being no other business, the meeting adjourned at 2:45 p.m.



I verify that the above meeting minutes have been approved and ratified by the OCC Governing Board on this 19th day of March 2008.

A handwritten signature in black ink, appearing to read "Jerome G. Solove", written over a horizontal line.

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

A handwritten signature in black ink, appearing to read "Laurie C. Knight", written over a horizontal line.

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