



**Office of the Ohio
Consumers' Counsel**

"Your Residential Utility Consumer Advocate"

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**HOUSE FINANCE AND
APPROPRIATIONS COMMITTEE**

**AGRICULTURE AND
NATURAL RESOURCES SUBCOMMITTEE**

Budget Testimony

Submitted by:

**Janine L. Migden-Ostrander
Consumers' Counsel**

March 30, 2011

**House Finance and Appropriations Committee
Agriculture and Natural Resources Subcommittee**

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Overview of The Office of the Ohio Consumers' Counsel

Good afternoon Chairman Balderson, Ranking Member Slesnick and members of the Agriculture and Natural Resources Subcommittee to the Finance and Appropriations Committee. I am Janine Migden-Ostrander, the Ohio Consumers' Counsel. With me today are Bruce Weston, Deputy Consumers' Counsel, and directors Amy Gomberg, government affairs, Chuck Repuzynsky, operations, Dr. Aster Adams, analytical services and Beth Gianforcaro, communications.

I am here today to testify on behalf of the Office of the Ohio Consumers' Counsel's (OCC) biennial budget that currently faces a more than 50 percent budget cut – the largest cut ever proposed for the OCC a non-General Revenue Fund (GRF) agency. OCC's current budget of \$8.5 million would be reduced to \$4.1 million. In the current biennium, the OCC has saved customers \$54.8 million in direct savings and \$1.9 billion in shared savings. Thus, our savings have well exceeded our costs. Any budget reduction to the OCC would not go back to taxpayers, but would go to the utility companies.

Before I address the important issue related to the proposed budget cut, I would like to present you with an overview of the OCC and highlight its importance to Ohio.

Introduction

The OCC is a statewide agency created in 1976 by the General Assembly to represent the interests of Ohio's residential utility customers in matters relating to their public utility services – electric, natural gas, water, and telephone. The OCC is governed by a bipartisan, nine-member Board with members appointed by the Ohio Attorney General and confirmed by the Senate. The OCC serves as the lawyer for residential utility customers. In contrast, the Public Utilities Commission of Ohio (PUCO) serves as the judge. The OCC advocates for residential consumers, while the PUCO balances the interests of the utility companies, shareholders and each customer class when it makes rules and renders decisions.

In 2004, I was appointed Consumers' Counsel by the OCC Governing Board and sworn into office by then Attorney General and now Chancellor of the Ohio Board of Regents Jim Petro and I took an oath to represent the interests of Ohio's residential customers. Today, I bring 34 years of experience in utility law to the job, and have long been a dedicated advocate for both customers and the OCC.

The OCC employs a highly skilled staff of attorneys, accountants, economists, engineers, investigators and others, who participate in legal proceedings, analyze utility issues, educate customers and resolve informal complaints relating to utility services.

We at the OCC believe we have a great story to tell regarding the benefits we provide to all Ohioans. While we advocate for Ohio's 4.5 million residential customers, when we save money for residential customers it benefits business customers as well. For example, in electric cases where we are successful in arguing for the reduction of the revenue increase request, typically 40 percent of the savings go to residential customers while the other 60 percent benefits business customers. Moreover, new businesses seeking to locate in Ohio will likely examine energy costs as one of the drivers in their decision making. To the extent that the OCC can help keep rates down, this makes Ohio more attractive for job retention and business development.

The primary role of the OCC is to participate in legal proceedings in both state and federal courts and administrative agencies, such as the PUCO, the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC). There are additional services that our agency provides to Ohioans that are of great importance, including but not limited to:

- 1) Monitoring utility companies' compliance with rules and regulations;
- 2) Taking legal action against utility companies that do not comply with the law;
- 3) Analyzing utility rates and company earnings to ensure that customers are paying reasonable rates and receiving credits on their utility bills when appropriate;
- 4) Advocating for policies and regulations that protect the affordability, reliability and quality of utility service for residential customers;
- 5) Developing and proposing policies to provide value to customers with respect to their utility services;
- 6) Resolving complaints from residential customers about utility services, including cooperatively working with the utility companies on these issues to avoid drawn-out regulatory proceedings; and
- 7) Conducting statewide educational programs to inform customers about changes in their utility services and advising them of new services and options to compare prices.

The Landscape Affecting Utility Services and the Rates Customers Pay

The utility industry has constantly evolved since the OCC was formed 35 years ago, and the need for the services our office provides is more important today than ever before. We are engaged in an environment that has restructured from traditional regulation to competition and the OCC has demonstrated the flexibility to advocate for its customers as the utility industry has become increasingly more complex. For example, the electric industry is both regulated and deregulated as a result of SB 221 (the 127th General Assembly). Smart grid technologies being implemented around the state are the harbingers of further changes that could dramatically alter how customers consume electric services. There is gas choice and more changes potentially on the horizon with Sub. HB 95. Telephone service has become more complicated with the explosion of new technologies but there are still too many areas in the state where broadband and cell phone service are unavailable. Throughout this period of change, the OCC has been there to guide and educate customers and to be their stalwart advocate.

All of these events signaled a new era in the utility industry as well as for the OCC and residential customers. It remains imperative that the OCC continue to advocate for the development of a competitive market to ensure that customers have choices in services at reasonable rates. However, where competitive markets are not possible due to natural monopolies in some areas of the utility industry, the OCC plays an important role in advocating for customers in regulatory proceedings.

Further, as you well know, Ohio's economy continues to struggle with unemployment at a statewide average of 9.2 percent¹ (through February 2011), with 15.2 percent of Ohio's citizens living at or below the federal poverty level² and more than 85,000 new foreclosures³ reported statewide during 2010. One in 10 households has been disconnected for non-payment of either their natural gas or electric bills in the past year. The latest available data shows that in October 2010 more than 880,000 gas or electric customers had arrearages of 60 days or more. The OCC plays a key role in contributing toward making Ohio an affordable place to live and keeping utility bills manageable and affordable.

Many challenges lay ahead for utility customers in the next biennium, challenges that could translate into significantly higher rates for an already struggling state.

In the electric industry, we will be faced with the electric security plans and or market rate offer plans of American Electric Power Company (AEP), Duke Energy-Ohio and the Dayton Power and Light Company. These are highly complex proceedings involving multiple issues that could commit Ohio utility customers to higher rates for many years to come. AEP has also filed for a distribution rate increase that could result in rate increases for its Ohio customers. As a final matter some of the electric utilities may be seeking to legislatively move the utilities away from a market approach to a more regulated approach. Typically, the OCC would participate in that debate and would continue its support for free-market approaches when they produce better results for customers than regulation.

In the gas industry, should Sub. HB 95 become law, if history is any lesson from the experience with SB 221 on the electric side, gas customers could expect frequent rate increases as the natural gas companies create multiple riders and file frequently to increase the cost of those riders and pass that on to their customers. In fact, should Sub. HB 95 pass, we anticipate that the case load for the OCC would increase significantly for our gas industry team.

In the water industry, we are aware of the plans for at least one large company to request additional rate increases while another may file for system improvement charges. While this affects a smaller group of Ohioans than in energy cases, the impact is very dramatic for those customers as many struggle to afford water service. This was addressed last week in testimony by customers in the House Public Utilities Committee where the OCC is working with legislators to pass HB 87 and help provide some relief from the high cost of water service. If the OCC's budget is cut by 51.3 percent, the OCC may have to discontinue its advocacy for these customers because of the smaller number of customers affected.

In the telecommunications area, Amended Substitute SB 162 (128th General Assembly) has largely deregulated landline telephone service. However, the OCC is charged to participate in a task force to assess the effectiveness of the legislation. Moreover, there are issues on the federal level at the FCC such as the universal service fund and the extent to which it can support broadband. The universal service fund is used to help fund the broadband service expansion to rural customers. The OCC wants to be sure that Ohioans pay and receive their fair share to help increase broadband and make sure that economically challenged customers have access to basic service.

Without the restoration of our budget, the OCC's ability to represent utility customers will be significantly impacted and this could result in substantive rate increases to all customers as well as increased customer confusion as customers struggle to make sense of these layers of complexity. Clearly, Ohioans need an effective residential utility consumer advocate in the 21st century just as they did when the General Assembly created the OCC in 1976.

We bring a lot of value to customers. Attached to this testimony is a summary highlighting many of the benefits that the OCC has provided to customers (*see Attachment A*).

The Proposed Budget Cut will Harm Ohioans by Severely Limiting OCC's Operations and Services

The OCC currently has approximately 75 employees, but with a 51.3 percent cut, we would need to lay off approximately two-thirds of our staff. We run a lean agency with a budget that is 8.4 percent less than when I first started at OCC in 2004. Yet, our caseload has increased by more than 100 percent during that time period and we have still

produced high quality work which is demonstrated by our results – that is, how much we have saved customers collectively and how we have helped customers individually. We would still have to cover fixed costs like rent and utility services – which can be expected to go up – and essential office supplies and maintenance. Because unemployment is employer funded, the impact of covering large layoffs compounds problems by forcing a significant number of further layoffs just to cover our unemployment obligations of approximately \$12,000 per employee.

I have not yet embarked on the difficult task of figuring out who among the OCC's dedicated, hardworking, highly skilled staff of employees would have to be terminated. However, I do know that whatever decisions are made, it will leave us with a staff that is far too small to work on the playing field with the goliath utilities and all the resources and staffing they bring to bear. For instance, the OCC's consulting budget would be zeroed out. We use consultants sparingly, but necessarily when the OCC is confronted with issues that require highly technical and specialized areas of expertise in new frontiers.

The OCC's in-house staff would be a shadow of its former self. Hard decisions would have to be made as to which cases we can be involved in – leaving too many Ohioans underserved. We would have to let a lot of matters pass, resulting in potentially greater increases in rates. Intervention in cases that have dramatic impacts but only to a small group of customers – like certain water rate cases - would probably fall by the wayside. At a time when roughly 450,000 customers are struggling with affordability of their utility services in a crushing economy, increases in essential utility services may push many more families over the edge into lost services. Public education would largely go undone by OCC. Individual advocacy on behalf of customers would have to be substantially limited.

And to what purpose? The OCC's non-GRF budget cut will not solve this state's budget deficit. The OCC's savings to customers more than pay for the agency and keeps money in the pockets of all customers, residential and business customers alike. We provide concrete value to customers. We are an outstanding investment.

Conclusion

In concluding my testimony, I ask you to consider the following facts:

- The OCC is the only statutory entity representing the interests of residential utility customers. No other party fulfills the functions of the OCC as envisioned by the General Assembly when our office was created. We are unique.
- In the current fiscal biennium, the OCC has saved customers \$54.8 million that would not have occurred but for our efforts. In collaboration with other parties, where we took the lead, we saved customers \$1.9 billion. In contrast, our annual budget is \$8.5 million, meaning that our direct savings from this fiscal biennium

could fund the OCC at our current level for more than six years. We are cost effective.

- Since 2004, the OCC has directly saved utility customers more than \$171 million and an additional \$6.4 billion in shared savings with other parties, where the OCC played a major role. Over its 35-year history, the OCC has saved customers \$10 billion dollars. We have a proven track record of success. We are a reliable benefit to Ohioans.
- The OCC's savings provide benefits not only to residential customers, but also to commercial and large industrial customers. It is a collateral benefit from the standpoint that the reductions in utility revenue increases that the OCC achieves are shared by all customer classes. We are a benefit to Ohio businesses, both small and large.
- Cutting the OCC's budget does not help the budget deficit since we are entirely non-GRF. Any cut in our budget will be returned to the utilities, not the taxpayers. In fact, since the savings the OCC generates through its involvement in utility cases are returned to taxpayers through lower rates, Ohio's economy is made stronger through our efforts. We are a valuable service.
- If the OCC's budget is cut, no other entity that is exclusively concerned with protecting residential customers will be able to step in and provide the advocacy that we do. We are needed by Ohioans.

There is no public benefit to cutting our budget by more than 50 percent and much public detriment. With a cut this deep, the OCC will have to make drastic choices regarding which cases we intervene in and how many resources we put into those cases. As the consumer watchdog, with our resources so severely depleted, it will open the door for more utility rate increases.

We would like to work with the Governor's office and the General Assembly to address workable solutions to restore most if not all of the OCC's budget.

Thank you Chairman Balderson, Ranking Member Slesnick and members of the Agriculture and Natural Resources Subcommittee to the Finance and Appropriations Committee, for allowing me to testify before your committee today. I welcome your questions.

Endnotes

¹ Unemployment numbers, <http://jfs.ohio.gov/releases/unemp/201103/unemppressrelease.asp>

² Poverty percentages, Hannah News Service, Sept. 28, 2010 (based on U.S. Census data-American Community Survey)

³ Foreclosures,
http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/ForeclosureFiling2001_2010.xls

Office of the Ohio Consumers' Counsel

Accomplishments During SFY 10-11, to Date

This document highlights some of the Office of the Ohio Consumers' Counsel's (OCC) key accomplishments for residential utility customers for the **SFY 10-11 (July 1, 2009-June 30, 2011), to date.**

Electric Customers

► **Saving Money for American Electric Power's (AEP) Columbus Southern Power and Ohio Power Customers:** The OCC advocated for refunds of up to \$156 million to customers due to the significantly excess earnings of AEP's Columbus Southern Power operating company. The OCC partnered with other groups representing industrial, commercial and low-income clients to advocate for these refunds and was successful in getting refunds for customers. On January 11, 2011, the Public Utilities Commission of Ohio (PUCO) decided the case and ordered Columbus Southern Power to refund approximately \$43 million to customers.

In another case before the Federal Energy Regulatory Commission, the OCC participated in an agreement with AEP which sought to change how transmission costs are allocated among its subsidiaries in Ohio and other states. The OCC believed the new methodology was a more stable way to address winter/summer peak variability. The OCC's advocacy resulted in saving AEP Ohio customers \$26.6 million over the next three years.

In the applications for the establishment of reasonable arrangements between the electric companies and Ormet Primary Aluminum Corporation and Eramet Marietta Inc., the joint efforts of the OCC and its partners saved customers more than \$160 million a year from 2010 to 2018 by advocating to cap the rate discounts offered to Ormet and Eramet at reasonable levels and to limit the amount of lost revenues to be collected from all customers of Columbus Southern and Ohio Power.

► **Saving Money for FirstEnergy Customers:** The OCC reached an agreement with FirstEnergy in its Deferred Distribution Cost Recovery Case providing accelerated payments to FirstEnergy that saved customers \$178 million in avoided interest charges. Also as a result of

this agreement, an additional \$2.5 million of shareholder dollars were added to a low-income fuel fund.

► **Advocating for FirstEnergy's All-Electric Residential Customers:** In response to the large public outcry after FirstEnergy removed a previously available discount for all-electric customers, the OCC worked vigorously to protect FirstEnergy's all-electric customers. The OCC worked with legislators, the PUCO staff, members of Citizens for Keeping the All-Electric Promise and other customers to advocate for a permanent, affordable and fair solution for all of FirstEnergy's residential customers. The OCC educated thousands of customers through local town hall meetings, its customer services division and distribution of educational materials. The OCC is currently litigating this case and anticipates an outcome in the spring of 2011.

► **Saving Money for Duke Energy Customers:** In the Duke Energy Distribution Rate Case, the OCC's advocacy helped achieve a settlement which resulted in a savings of \$30.3 million less than the \$85.6 million Duke had requested.

In another case, the OCC's in-house expert testimony was instrumental in achieving a Commission decision that saved Duke customers from paying \$35 million to cover lost generation revenues resulting from decreased energy consumption.

The OCC's advocacy led to a recent PUCO decision which saved Duke's customers an addition \$14 million. On Jan. 11, 2011, the PUCO disallowed about half of Duke's \$28.5 million request to recover the costs related to the 2008 Hurricane Ike windstorm. The PUCO's decision was based on a number of the OCC's recommendations.

► **Saving Money for Dayton Power & Light Customers:** The OCC and other parties negotiated an agreement in a case resolving Dayton Power & Light's proposed Electric Security Plan, which froze the company's current distribution rates until 2012 and attained additional savings amounting to \$309 million over the period 2009 to 2012.¹



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- ▶ **Developing Cost-Effective Energy Efficiency Programs:** Through a stakeholder process, the OCC assisted in the development of energy efficiency programs administered by Ohio's major electric and gas utilities that will allow customers to save money on their bills. These programs are local, reduce energy imports and put more Ohioans to work.

Additionally, the OCC helped ensure that Ohio's energy law, SB 221 (127th G.A.), was upheld when FirstEnergy submitted out-dated and irrelevant transmission and distribution energy efficiency improvements to meet its 2009 energy efficiency requirement. The PUCO agreed with the OCC's arguments and rejected FirstEnergy's proposal.

Natural Gas Customers

- ▶ **Encouraging a Competitive Market and Saving Money for Columbia Gas Customers:** The OCC negotiated a settlement with Columbia Gas of Ohio requiring the company to set its gas prices through a wholesale auction. The OCC estimated the savings resulting from the first wholesale auction would range from approximately \$38 million to \$50 million. The OCC has supported competition through a wholesale auction as the most cost-effective way to provide natural gas to residential customers.

- ▶ **Exposing Misleading and False Marketing Information:** The OCC filed a formal complaint against Dominion East Ohio Energy, an independent retail supplier, for distributing a marketing postcard with misleading statements to potential customers. The PUCO staff supported the OCC's position and the parties reached a settlement requiring Dominion East Ohio Energy to forfeit \$50,000 to the State's General Revenue Fund. The company must forfeit an additional \$100,000 if it violates PUCO rules regarding marketing practices during a one-year period.

- ▶ **Holding Gas Marketing Companies Accountable:** In addition to advocating on behalf of Dominion East Ohio Energy's customers, the OCC participated in an agreement involving unfair and deceptive practices used by another gas marketer, Just Energy. After numerous complaints from customers about the company's door-to-door solicitation practices, the OCC agreed with the PUCO staff, the company and others to set conditions on a two-year renewal of Just Energy's certification. The company was required to forfeit \$111,000 to the Ohio General Revenue Fund, commit to further forfeitures if similar complaints are received by the OCC or PUCO,

implement stringent training guidelines for its contracted sales staff, and have all of its sales agreements verified by a third party throughout the term of the agreement.

- ▶ **Saving Money for Customers of Dominion East Ohio:** In Dominion East Ohio's application to replace its current Standard Service Offer and Standard Choice Offer rates, the PUCO approved a joint stipulation among the OCC and other parties regarding the terms and conditions of the company's retail and wholesale auctions. As a result, the OCC estimated customer cost savings of approximately \$41.3 million for Dominion's residential customers.

In another case, the OCC joined with the PUCO Staff to argue against the inclusion of some operations and maintenance costs in Dominion East Ohio's application to adjust its rider rates for the pipeline infrastructure replacement program. Subsequently, the PUCO excluded \$6.52 million in costs that would have otherwise been passed on to customers.

- ▶ **Saving Money for Customers of Vectren:** In Vectren Energy Delivery of Ohio's application, an auction was held to replace its current Standard Service Offer (SSO) rates with Standard Choice Offer (SCO) and Default Sales Service (DSS) rates, pursuant to the PUCO-approved joint stipulation among the OCC and other parties about the company's retail and wholesale auctions. As a result of the Jan. 13, 2010 SCO auction, the OCC estimated customer cost savings of approximately \$10.1 million for Vectren's residential customers for the 12 months from April 1, 2010 to March 31, 2011. A subsequent Jan. 18, 2011 auction resulted in further savings for SCO and DSS customers estimated at \$13.6 million for the period from April 1, 2011 to March 31, 2012.

- ▶ **Supporting Low-Income Programs to Assist Ohio's Residential Utility Customers:** The OCC negotiated settlements in several cases resulting in natural gas utilities such as Columbia, Dominion and Vectren providing more than \$4 million for low-income natural gas bill payment assistance programs.

Water Customers

- ▶ **Reducing Water Rate Increases for Ohio American Water (OAW) Customers:** The OCC helped achieve significant improvements for customers through the reduction in OAW's proposed revenue increase from 23.4 percent overall to 7.12 percent. The OCC successfully



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convinced the PUCO to direct OAW to respond to water quality complaints in a timely fashion.

► **Reducing Water Rate Increases for Aqua Ohio**

Customers: The OCC helped negotiate settlements in rate cases with the Lake Erie and Masury Divisions of Aqua, reducing proposed rate increases. As part of the Masury agreement, the OCC negotiated a commitment from Aqua to contribute \$5,000 to help low-income customers.

Additionally, after receiving multiple complaints from Aqua customers, the OCC asked the PUCO to fine Aqua for failing to resolve billing issues that affected thousands of residential customers throughout its service territory. The PUCO ordered its staff to complete an investigation that upheld the OCC's concerns and resulted in Aqua being ordered to pay a \$132,000 forfeiture to the General Revenue Fund and an additional \$25,000 to help low-income customers pay their water bills.

Telecommunications Customers

► **Bringing Broadband to Rural Ohio:** As a condition for its participation, the OCC negotiated an agreement with Frontier Communications that resulted in a commitment from Frontier to deploy broadband facilities in 85 percent of its territory (located in southeast Ohio) acquired as part of a merger with Verizon Communications. The broadband deployment is to be completed by 2013. This will foster economic development and competition.

► **Seeking Telephone Customer Protections and Affordable Rates:** The OCC provided leadership in working with more than 60 other customer, senior and low-income advocacy groups to negotiate changes in landmark legislation that would further deregulate the telecommunications industry in Ohio. Through their joint efforts, the OCC successfully restored some customer protections for Ohioans with basic local telephone service and temporarily protected Lifeline customers from annual rate increases permitted by the legislation. A two-year pilot voicemail program for low-income customers without access to telephone service was also established at the suggestion of the group. The OCC will participate in an eight-member select committee to review the impact of the legislation.

Outreach, Education and Consumer Services

► The OCC's Customer Services Division assists individual customers through a toll-free hotline addressing complaints, questions and concerns regarding their utility services. The Consumer Services Division responds to 3,500 to 5,500 customer contacts per month. These interactions include complaint handling, assisting customers facing service disconnection and customer education.

► The OCC provides customers with up-to-date information about their utilities, including changes in rates and services, new opportunities for switching to competitive providers and how to protect themselves against telephone scams.

► During the past biennium, the OCC's outreach and education staff participated in more than 2,600 events with nearly 90,000 customers in attendance. These events include speeches, training programs for Ohio's social service providers and community visits. At these events and through other methods, the OCC distributed approximately 500,000 pieces of educational materials to utility customers.

► The OCC's Communications staff also responded to media inquiries, issued news releases about key utility customer issues and issued its popular Consumers' Corner newsletter to nearly 100,000 subscribers 12 times during the past biennium. The agency also educated customers with fact sheets and other publications.

► The OCC's web page consistently receives positive feedback from users for its ease of use and content. During the past two years, approximately 123,000 unique visitors (76 percent of them new to the page) used the OCC's website for information.

► In each of Ohio's five regions, the OCC has a well-established Consumer Advisory Panel whose members provide insight and feedback to the agency about issues of particular concern or interest to residential utility customers in their region. The OCC is fortunate to have this key connection to Ohioans via these dedicated professionals.

Endnotes:

1. Although the PUCO issued its order in this case on June 24, 2009, the new tariffs and rates became effective June 30, 2009 and remain in place for this fiscal biennium and beyond.



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