



**Office of the Ohio
Consumers' Counsel**

"Your Residential Utility Consumer Advocate"

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OHIO SENATE FINANCE COMMITTEE

Budget Testimony

Submitted by:

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**TESTIMONY OF
JANINE L. MIGDEN-OSTRANDER
BEFORE THE
OHIO SENATE FINANCE COMMITTEE**

Introduction

Good afternoon Chairman Widener, Vice Chair Jones, Ranking Member Skindell and members of the Senate Finance 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, Aster Adams, analytical services and Beth Gianforcaro, communications.

I appreciate the opportunity to testify regarding Amended Substitute House Bill 153, as it relates to the Office of the Ohio Consumers' Counsel (OCC). In his original budget proposal, Governor Kasich proposed a 51.3 percent cut to the OCC's biennial budget. That is the largest cut ever proposed for the OCC, a non-General Revenue Fund agency that costs customers an assessment of approximately \$1 per year, paid for through their utility bills.

The House of Representatives' Finance Committee has retained the Governor's proposed cut, which will severely restrict the benefits and protections that Ohioans receive from the OCC's advocacy of their interests with regard to their utility services. Additionally, the Committee added amendments that, by restricting the OCC's ability to advocate for customers, will expose customers to unreasonable rate increases and make it more difficult for residential customers to access the OCC's services.

Overview of The Office of the Ohio Consumers' Counsel

The OCC was created in 1976 by the General Assembly and signed into law by Governor James Rhodes to represent the interests of Ohio's residential utility customers in matters related to their public utility services – electric, natural gas, water, and telephone. The OCC is governed by a bi-partisan, nine-member board appointed by the Ohio Attorney General and confirmed by the Senate.

The OCC serves as the lawyer for residential utility customers. The Public Utilities Commission of Ohio (PUCO) serves as the regulator, or the judge. The OCC advocates for residential customers, while the PUCO balances the interests of the utility companies and each customer class when it makes rules and renders decisions.

The OCC employs a highly skilled staff which includes attorneys, accountants, economists, engineers, investigators and others. Our staff participates in legal proceedings, analyzes issues, resolves informal complaints relating to utility services and educates utility customers through outreach and education into the communities and through educational materials that are widely distributed.

I was appointed Consumers' Counsel by the OCC Governing Board in 2004 and sworn into office by then Attorney General Jim Petro. At that time, I took an oath to represent the interests of Ohio's residential utility customers and for seven years, I have done so to the best of my ability.

Since 2004, the OCC's operating budget has seen an 8.5 percent reduction while its caseload has increased more than 100 percent. During the past year, the OCC participated in 292 cases that impacted customers' utility rates. The Ohio Legislature is currently considering gas legislation that would almost certainly increase the number of utility filings before the PUCO.

Despite our reduced budget and increased caseload, the OCC has been able to achieve impressive financial savings for all utility customers. During the current budget biennium, the OCC has saved customers \$54.8 million through its individual efforts. Customers have saved an additional \$1.9 billion through the OCC's collaborative work with other stakeholders, in which the OCC played a lead role. Recently, the OCC achieved a major victory for customers of American Electric Power when the Supreme Court of Ohio upheld the OCC's arguments that the PUCO had unlawfully authorized nearly \$850 million in costs. These cases have been returned to the PUCO for further consideration, where the OCC continues to work to make sure that these costs are returned to customers.

Proposal For The OCC's Immediate Future

Despite the overwhelming evidence of the financial benefits the OCC provides all Ohioans, I am not here today to ask for the status quo. We recognize that the utility industry is on a path towards great changes and respectfully submit that since the OCC has a great track record of efficiently providing results for our clients, we should be considered as part of the solution to the challenges Ohio faces in a new era.

Through the years of the OCC's existence, the utility industry has evolved dramatically. Whereas, in the past, the industry consisted of smaller, vertically integrated, highly regulated entities, today there are fewer, larger multi-state utilities, which provide some regulated services and other services subject to competition in the marketplace. The role of advocates and regulators needs to be seen in light of this evolutionary pattern. Changes to utility infrastructures and how services are delivered will continue to occur. Where we are today is not where we may be tomorrow.

A crucial factor in Ohio's recovery and future economic growth is maintaining affordable utility services. This will encourage residents and businesses to stay in Ohio and will attract others to move here. By its work, the OCC has had a demonstrably positive impact on Ohio. In the future, we will continue to see more customer choice and control over how we use and pay for utility services.

With this and the future of the OCC in mind, I propose the following:

1. Allow the OCC to operate for the next two years as it is currently constructed, with a minimal cut to our budget for the services we provide;
2. During this time period, allow the State Auditor to conduct an independent performance audit of the OCC to determine what, if anything, we can do more efficiently, what we can change, and whether or not any of our services are duplicative. We would welcome such an audit because we believe it will support our contention that we are operating in a lean and efficient manner and also because it will allow us to explore areas where we can improve.
3. Convene a task force to study and make recommendations about how to make Ohio a nationwide leader in innovation and development of the utility industry in the 21st century. There are a great number of areas such a study might examine, such as:
 - a. Addressing the barriers to broadband development that have crippled economic development in predominantly rural areas of the state;
 - b. Addressing how to economically provide cell phone service statewide – what my Board member Gene Krebs frequently refers to as “cell-free Ohio;”
 - c. Reviewing and expanding upon statutes and rules that are intended to promote distributed generation and combined heat and power – which will help manufacturers reduce their energy costs;

- d. Exploring non-traditional ways to utilize existing structures to create win-win projects that benefit energy suppliers and their customers;
- e. Exploring how new technologies in energy and telecommunications can provide benefits to residential and business customers and what this state can do to facilitate their implementation;
- f. Reviewing the state's energy infrastructure, in light of new regulations and an aging fleet of power plants, to determine least cost options that will ensure that Ohio's energy rates are competitive when compared to other states;
- g. Reviewing Ohio's various state agencies involved in the utility industry to explore where efficiencies could be made; and,
- h. Making recommendations as to how to ease impediments and increase competition for suppliers to create a robust free market in Ohio.

4. Give the OCC the statutory authority to obtain grant funding. There are 39 other state agencies including the Office of the Ohio Attorney General and the PUCO that have this ability. Our Governing Board supports the OCC having access to additional funding to accomplish our mission of "advocating for Ohio's residential utility customers through representation and education in a variety of forums." We strongly believe that the ability to supplement our budget when necessary will allow us to provide better advocacy and results for Ohioans toward keeping utility services affordable and reliable.

I encourage you to give this proposal serious consideration and allow for a two-year period while the OCC is audited and the task force sets about its work. With research-based information, the Governor and the General Assembly can decide within two short years from now about their vision for utility regulation in Ohio and how the OCC can help fulfill that vision.

We are confident that the audit will verify the great story we have to tell about our value as an agency and give us even more tools to do our jobs more efficiently.

Consequences Of The Proposed Budget Cut And Amended Statutory Language

1. The Budget Cut

Within the four walls of the OCC is the equivalent of centuries of expertise in utility issues. It would be a serious blow to Ohioans if that expertise were lost when it can be harnessed for the public good. That loss is what we—and the Ohioans we serve—will face if the proposed 51.3 percent cut is passed and approximately 50 or more highly skilled and knowledgeable staff members are terminated. The OCC has been, and will continue to be, ready to help policymakers develop a plan for Ohio that works for all customers, residential as well as business.

The current 51.3 percent budget cut recommendations will significantly reduce the OCC's traditional ability to intervene in cases. This lack of advocacy will result in higher utility bills for customers at precisely the time they can least afford it. Difficult decisions will have to be made. In some important cases, the OCC would not be able to represent the public at all. This is a painful prospect that contradicts the very principle upon which our agency was founded. As their advocate, it is the OCC that presents evidence to the PUCO to help them render balanced decisions. Without that evidence, the scales will be tilted towards the utilities. This was the reason the Ohio Legislature created the OCC in the first place.

The impact of the proposed cut runs deeper than many may realize. In the next biennium, the OCC will face unique and significant costs, such as paying out the cost of unemployment compensation, a 27th payroll period during FY 2012, and the required lump sum payments of 32 hours to each employee. These costs further reduce the proposed \$4.1 million the OCC would

have available if this cut becomes law. In addition, we are legally required to offer an early retirement plan to staff members affected by such a large layoff. At the end of the day, the OCC may have approximately \$2.5 million out of the proposed \$4.1 million to fulfill its statutory obligations. This is a cut of approximately **70 percent** from our current operating budget, rather than the 51.3 percent that was originally proposed. *(Please see attached chart).*

Statutory Changes in Amended Substitute HB 153

1. The OCC Call Center Restriction Should be Removed

Since the OCC was first established, our call center has provided assistance to many thousands of residential customers. The PUCO also operates a call center that provides services to residential, commercial, industrial and transportation customers. The work of the two agencies is not redundant because, based on data from both call centers, different customers seek assistance from each agency and not from both. Our call center staff has contacts with representatives for each utility and works with them to informally resolve customer issues. This is a quick and efficient way to address customer concerns and reduces the amount of time and money that results whenever a customer issue is escalated to formal complaint status under ORC Sec 4905.26. A formal complaint involves legal proceedings before the PUCO which has to decide the matter in its role as judge. Given the time and cost not only for government officials or the utilities, but the customer as well, it benefits all parties when we are able to handle these matters with as little regulatory red tape as possible. It is accurate to say that that the PUCO is the sole agency with the authority to decide a formal complaint. However, this is only in relation to those few cases which become formal complaints. It is also worth noting that there is no legal time limit by which the PUCO must decide a case, meaning that customers with formal complaints may have to wait an indeterminate amount of time for their issue to be resolved.

Thus, the OCC's call center, with its track record for excellence, saves Ohio resources and benefits Ohioans.

The current system of representing residential utility customers is neither broken nor is it a duplication of services. However, if the General Assembly wishes to consolidate both call centers into one agency, the OCC recommends that the Legislature withhold a final decision until receiving the results of a performance audit. We believe that once the Legislature has more information in hand, it will be in a better position to make a decision. As a final note on this subject, the OCC would point out that residential customers are our client and so it is fitting that they be able to contact their statutory representative rather than the judge, the PUCO. Therefore, the new language in ORC Sec. 4911.021 should be deleted.

2. Removal of the OCC's Contact Information from Utility Bills and Other Information

It would be equally appropriate to remove the changes proposed in ORC Secs. 4927.17, 4928.10(C)(4) and 4929.22. Even if the Legislature decides the OCC can no longer handle complaint calls, informational language about the OCC should remain on customer bills and notices. Customers may want to contact the OCC, their advocate, for information, regarding positions that the OCC is taking in cases. Removing the OCC's name from billing statements and other information serves no reasonable public policy purpose and actually penalizes customers by removing a simple resource. Further, there is a cost to the utilities to remove information from billing. Thus, this amendment would require that money be spent to deliberately deny customers information about how to contact their advocate.

3. New Language Restricting the OCC from Exercising its Judgment to Advocate for Lower Rates Would Harm Customers and Should Not be Placed Into Law.

A new provision to ORC Sec. 4911.02 addresses the following with respect to the OCC's duties:

“The Counsel shall not advocate or otherwise promote any position contrary to the development of competitive markets in this state, including any position contrary to natural gas retail auctions, merchant function exit or the policies of this state relating to competitive natural gas markets as set forth in Chapter 4929 of the Revised Code.”

This language is overreaching and has no place in the budget bill. I must apologize upfront for addressing a technical gas issue which more appropriately belongs in gas legislation considered before the Public Utilities Committee, but as it has been included in a budget bill, I am forced to address it here before the Finance Committee.

The proposed language is an attempt to silence the OCC, and prevent the PUCO from rendering a decision on the transition to a competitive market with the benefit of a full and complete record from **all** interested parties. The reality is that a transition towards a retail competitive market while eliminating the wholesale market is not without risks and concerns. Those risks and concerns should be fully explored in transparent proceedings with all decisions reached on the merits of the cases.

Gas deregulation, or Choice, has evolved over the years. Initially, gas marketers offered aggressive rates that guaranteed savings compared to the gas company's rate charged for procuring gas supply (the GCR rate). In those early years, residential customers saw some real savings. However, in the more recent years, gas marketers' offers have often mirrored each other with customers having limited options of fixed term and price contracts or variable contracts. These fixed term contracts, when combined with automatic renewal clauses and

unseen price increases, have resulted in customers paying hundreds of millions of dollars more than if they would have stayed with the gas company rates, the bulk of which are established through a wholesale auction that the OCC supports.

Examples of the higher costs paid by customers can be seen in news stories carried by the *Columbus Dispatch*, which reported \$796 million in customer losses as of May 2009.¹ The most recent Management/Performance Auditor for Columbia Gas of Ohio also reported, “Since the inception of the CHOICE Program, participating customers have paid nearly \$545 million more for gas than they would have paid if they had remained GCR customers. Of this amount, \$348 million occurred during the audit period.”²

The OCC has fully supported the development of competitive markets for all customers. This has been evidenced by the development of the wholesale Standard Service Offer and Standard Contract Offer auctions for gas companies that have saved customers \$282,031,883 since 2006. These auctions have produced real benefits for customers. However, the OCC has not supported the further move to retail Standard Contract Offer auctions because these auctions have not produced quantifiable benefits over the wholesale Standard Service Offer auctions and have, in fact, resulted in some higher quantifiable costs.

Moreover, the wholesale Standard Service Offer auction which the OCC supports currently acts as a check against unbridled rate increases because it provides customers with a lower cost option and allows customers who do not understand or do not want to be bothered with dealing with choosing a natural gas supplier to have a lower cost alternative.

¹ “Taking heat,” by Dan Gearino, *Columbus Dispatch* (May 3, 2009) at A-7.

² *In the Matter of the Columbia Gas of Ohio Management Performance Audit for the Period November 1, 2008 through March 31, 2010*, Case No. 10-221-GA-GCR, Management Performance Audit Report at 6-4 (November 18, 2010). The CHOICE Program is in reference to retail choice.

The OCC has raised a number of risks or concerns at the PUCO regarding the retail Standard Contract Offer auctions. The first risk is that the retail Standard Contract Offer auction forces customers to pay higher costs in the form of higher taxes to local governments.

The second risk or concern is that the retail Standard Contract Offer auction can lead to customer confusion when customers see the name of a marketer on their bill even though they never signed up with a marketer. The further the transition progresses towards a completely competitive retail market with no wholesale market, the more difficult it becomes for the customer to become educated in the natural gas commodity pricing arena. As you can imagine, that is not an arena in which one easily becomes educated, and quite frankly, many customers have no desire to take on that responsibility.

Without OCC participation in these important cases, these concerns may not be raised. Instead the PUCO will potentially reach a decision based on a record dominated by only the parties that want the change that could lead to higher rates. This legislation would conflict with our statutory obligation to fight for lower rates. It would require us to support or say nothing as customers pay increasingly higher rates. It would require us to fall silent while our clients watch their gas bills rise and suffer the consequences.

4. Ordering the PUCO to Require Utilities to Refund the OCC Assessment to customers

Changes to ORC 4909.15, the ratemaking statute, would seek to refund the pennies collected from consumers to fund the OCC. While the OCC would normally support returning money to customers when possible, this plan is flawed and will not work. The majority of the entities assessed by the PUCO and OCC cannot be required to reduce their rates because the

PUCO has no regulatory authority over the prices they charge. For example, there are many telecommunications companies no longer subject to price regulation. Therefore, this new provision will not succeed in returning all the assessment funds to customers. Secondly, customers pay less than 10 cents per month to fund the OCC and this is divided among electric, natural gas, telephone and water utilities. The regulatory cost to recoup what may amount to 10 – 20 cents per customer per year at most from each company for which the PUCO does have the authority to require the refund would well exceed the benefit to customers.

On the other hand, when these small amounts collected from Ohio customers are taken in the aggregate, the OCC is able to effectively represent and provide value to its clients. With our \$8.5 million annual budget, we have provided a return of close to \$2 billion and counting to customers on their investment during this biennium. This benefits customers far more through avoided rate increases than by attempting to return this small sum to them.

Conclusion

Over the past few months, Amy Gomberg, my director of Government Affairs, and I have met extensively with members of the House of Representatives, as well as with many members of the Senate. We have presented our accomplishments, documented the value we provide to Ohioans for an extremely nominal assessment and described what we believe will be the consequences of this cut for Ohio residential customers and other customers that benefit from our work. The OCC continues to receive editorial support from Ohio newspapers and resolutions from local governments.

At the end of this process, the decision is yours. It will affect your constituents and all Ohioans. The future of this agency, which the Legislature created in 1976 during equally troubled economic times, is in your hands. Ohioans need the OCC's advocacy, its unique

services and its expertise. We are a valuable resource for all Ohioans that I hope this legislature will recognize. I ask that you take all of this into consideration as you deliberate on the appropriate level of the OCC's budget. And I ask that you have a moratorium on any significant reductions and restrictions on the OCC's program for serving Ohio customers, pending the recommendations of a performance audit and task force. Finally, the OCC requests the authority to seek grant dollars to fund some of our work. Thank you for your kind consideration.

OFFICE OF THE OHIO CONSUMERS' COUNSEL

CURRENT APPROPRIATION FY 2011	<u>\$8,498,000</u>
<u>PROPOSED FY 2012 BUDGET</u>	
51.3% REDUCTION	\$4,141,093
MINUS:	
<u>ESTIMATED UNEMPLOYMENT COST</u>	
SELF FUNDED (LIKE ALL STATE AGENCIES)	\$540,000
<u>MANDATORY RETIREMENT INCENTIVE PLAN</u>	
ESTIMATED COST (PER OBM) (1)	\$686,000
ELIGIBLE STAFF SALARIES FOR THREE MONTHS (2)	<u>\$226,300</u>
AVAILABLE FOR OPERATIONS - REPRESENTS A REDUCTION OF 68.4%	\$2,688,793
<u>MINUS ONE TIME EXPENSES IN FY 2012 (25 STAFF MEMBERS):</u>	
27TH PAYROLL	\$104,200
LUMP SUM PAYMENT	<u>\$41,700</u>
AVAILABLE FOR OPERATIONS - REPRESENTS A REDUCTION OF 70.1%	<u>\$2,542,893</u>

(1) ASSUMES ALL ELIGIBLE STAFF WOULD PARTICIPATE.

(2) A PLAN TERMINATION DATE OF JUNE 30, 2011 WOULD STILL ALLOW STAFF
TO REMAIN EMPLOYED FOR 90 DAYS AFTER THE TERMINATION DATE.