



**MINUTES OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL GOVERNING BOARD**

September 15, 2020

Members Present: Mr. Michael Watkins, Chair
Mr. Stuart Young, Vice-Chair
Mr. Tim Callion
Ms. Cheryl Grossman
Mr. Charles Newman
Ms. Jan Shannon
Ms. Troyer

Members Absent: Ms. Moore and Mr. Wondolowski.

CALL TO ORDER BY CHAIR:

Chair Watkins called the meeting to order at approximately 10:00 A.M. Deputy Consumers' Counsel and Interim Board Secretary Larry Sauer called the roll, with members present as shown above. The meeting was held by conference call, as allowed by law during the coronavirus crisis.

MEETING MINUTES:

Chair Watkins asked for a motion to approve the minutes of the August 25, 2020 Board meeting. A motion was made by Ms. Grossman to approve the minutes. Ms. Shannon seconded the motion. Mr. Sauer called the roll. The August 25, 2020 Board meeting minutes were approved unanimously.

RECOGNITION:

Mr. Weston recognized J.P. Blackwood, Public Affairs Liaison, as Employee of the Quarter for the 1st quarter of 2020. J.P. joined the agency in March 2018. In his position he responds to media inquiries, interacts with consumers who contact OCC, is involved with content on the OCC website and with some educational materials for consumers. Prior to joining OCC, he served for 20 years with the city of Columbus.

GUEST SPEAKER – JEFF JACOBSON, STRATEGIC INSIGHT GROUP:

Consumers' Counsel Bruce Weston introduced Mr. Jacobson. He is a strategist, consultant, lobbyist and policy expert for a range of business and non-profit clients (including OCC). He served in the Ohio House and Senate from 1992 - 2008, including as Senate President Pro Tempore.

Mr. Jacobson provided an update on activity in the legislature since the House Bill 6 (H.B. 6) scandal broke in July. Notably, the activity included that Rep. Cupp (R-Lima) was elected as the new Speaker of the House, to replace Speaker Householder who was arrested. And several bills to repeal H.B. 6 were introduced and are pending in the General Assembly.

Mr. Jacobson reported that Speaker Cupp has created and named the House Select Committee on Energy Policy and Oversight to consider the H.B. 6 repeal legislation and to seek an acceptable solution. (H.B. 6 was originally considered in the House Energy and Natural Resources Committee.) He noted that members of this Select Committee are not on the Public Utilities Committee. Rep. Hoops is the chair of the Select Committee and was involved in the Public Utilities Committee deliberations over Senate Bill 3 (electric deregulation) in 1999.

Mr. Jacobson said the bills introduced to repeal H.B. 6 have some support in both chambers, but it is recognized it may be difficult for them to reach a conclusion. He said it is hard to make complicated decisions in a short period of time made even shorter by the election and the lame duck nature of the post-election session.

Mr. Jacobson added that just a week after OCC testified in opposition to a new provision in the budget bill (H.B. 166) that benefited FirstEnergy and only FirstEnergy, House Bill 246 was introduced which promised to “modernize” the Consumers’ Counsel and the PUCO. Though H.B. 246 would not eliminate the Consumers’ Counsel, it would eliminate the Consumers’ Counsel’s independence. It would allow the legislature to appoint most of the Consumers’ Counsel Board members. He continued by saying the fact that the introduction of H.B. 246 was connected with OCC’s opposition testimony, by timing if nothing else, makes H.B. 246 tainted in today’s environment.

Mr. Weston asked if Mr. Jacobson was saying H.B. 246 was tainted because it was connected in time with our testimony opposing H.B. 6 or for some different things? Mr. Jacobson responded: “because it [H.B. 246] appears retaliatory to or at least can be characterized as retaliatory to us having testified about something that did not reflect well on the then current leader of the House.”

Mr. Jacobson added it is worth noting that until the date of the H.B. 6-related arrests by the FBI, H.B. 246 was still being promoted by the House, but has not been since the arrests.

GUEST SPEAKER – ASHLEY BROWN, EXECUTIVE DIRECTOR, HARVARD ELECTRICITY POLICY GROUP, JOHN F. KENNEDY SCHOOL OF GOVERNMENT:

Mr. Weston introduced Mr. Brown, highlighting his work for the public. He was a Commissioner of the Public Utilities Commission of Ohio from 1983-1993, appointed twice by Governor Richard F. Celeste. Prior to that he was the coordinator and counsel for the Montgomery County [Ohio] Fair Housing Center, managing attorney for the Legal Aid Society of Dayton, Inc. and legal advisor to the Miami Valley Regional Planning Commission. He served as Chairman of the NARUC Committee on Electricity, while Commissioner. Mr. Brown has been an advisor on

infrastructure regulatory issues to more than 25 governments around the world, as well as The World Bank, Inter-American Development Bank, and Asian Development Bank. He is the co-author of The World Bank's "Manual for Evaluating Infrastructure Regulation."

Mr. Weston added Mr. Brown recently had an opinion article published in the Plain Dealer about what is the appropriate regulatory response to the H.B. 6 scandal.

Mr. Brown began his discussion with H.B. 6 and the crisis it presents from not only ethical and legal standpoints, but from the standpoint of regulation and regulatory institutions. He said most national observers of electricity from outside Ohio found H.B. 6 to be a very difficult bill to understand. Those who advocate for competition in the generation market view this as a step away from competition, by subsidizing plants that were not competitive in the wholesale market.

Mr. Brown continued saying the efforts put into passing this bill seemed like an attempt by one utility to bypass the normal regulatory process and bypass the expertise that goes into protecting ratepayers and being fair to investors in utilities. That should pose an existential question for regulators of whether there is going to be a bypass around regulation and consumer protection.

By law and policy in Ohio, Mr. Brown said consumer dollars cannot be used for lobbying. To find out the source of the money FirstEnergy used on House Bill 6, he said forensic accounting research needs to be conducted. He also said a financial audit with the forensic angle would provide much needed transparency. If determined money was used improperly, consumers should be entitled to remediation or compensation. If determined there was no improper use of money, then the public needs to know there was no improper accounting for the money.

Mr. Weston said the 1982 law created the nominating council (for nominating PUCO commissioners) but did not change the fact that the Governor of the state would make the appointment. He asked Mr. Brown how much reform is accomplished with a nominating council process considering that ultimately, there is a political process that involves appointments of PUCO commissioners.

Mr. Brown said the basic principle should be if the nominating council is going to operate as an independent entity, then nobody owns the appointments. The law in Ohio diffuses the authority of the nominating council by having the Governor appoint commissioners from the names submitted by the nominating council. The Governor's appointment is then subject for Senate confirmation, which the Senate can veto but it is after the fact.

He added in some states the legislature selects the commissioners with the Governor having no say in who is selected. In other states commissioners are elected by the public. For Ohio he said the focus should be on reform of the nominating council itself. If there are no political appointees on the nominating council, then the discretion of the appointing authority, the Governor, becomes more limited.

Mr. Weston asked if there should be more transparency in terms of any communications from outsiders with nominating council members during the process. Mr. Brown replied that the formal processes need to be transparent, such as who is coming in for appointments and public sessions. He said professional people on the council could have informal communications among themselves without it unduly influencing them.

RECOGNITION:

Mr. Weston informed the Board that David Bergman recently passed away. Dave had a 30-year career with OCC. He was hired by the first Consumers' Counsel Bill Spratley in 1982. Dave retired when the OCC budget was slashed in 2011. He rejoined OCC more recently for about a year and retired again in mid-July.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston provided an update on the Coronavirus and financial crisis given how significant it is to the people of Ohio. OCC and other advocate organizations recommended Ohioans not be disconnected from their energy services in the middle of a pandemic, but those recommendations were not accepted by the PUCO. Utilities are maintaining service to customers who can join payment plans and make some payment for service. OCC still wants to protect people with their connection to service. OCC is now working to advance the date the winter reconnect order is effective. The winter reconnect order is a program in Ohio where for \$175 consumers can be reconnected to their energy service during the winter heating season. The PUCO did issue an order that has advanced the date of when the order goes into effect, into earlier in October, but OCC is asking the PUCO to advance it to an earlier date for Ohioans who are at risk.

Mr. Weston said there are people struggling with food insecurity, energy insecurity and housing insecurity. According to a recent statistic nearly half a million people were potentially not going to be able to pay their June rents. He shared the positive news that the federal government has temporarily halted evictions for renters in the country. This will help ease their burden.

Mr. Weston discussed OCC's motion filed with the PUCO for a management audit of FirstEnergy, which is a regulated utility. Ohio law enables the PUCO to conduct review of management actions of regulated utilities. Though utilities do not appreciate having their management techniques being scrutinized, they are subject to regulation.

He said beginning with the first Consumers' Counsel, Bill Spratley, and continuing throughout the existence of OCC, utility company management audits are viewed as an important regulatory tool. He noted the OCC Governing Board, in January 1981, passed a resolution that the PUCO should conduct an independent management audit of the Davis Besse nuclear power plant. He added that interestingly, nearly 40 years later, OCC is asking for a management audit of activities related to Davis Besse.

Mr. Weston added there is a similar scandal happening in Illinois, involving subsidies for nuclear power plants. The Illinois Governor is talking about tightening utility regulations to fight the taint of excessive clout and political contributions from the utility industry, which related to legislation involving the scandal over subsidies for nuclear power plants.

Mr. Weston said in addition to the OCC motion for a management audit, there also are OCC motions for an independent auditor, a motion to reopen the distribution modernization charge case and a motion for FirstEnergy to show it did not improperly use consumer money and did not violate regulatory laws regarding its H.B. 6 activities.

REPORT BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Mr. Sauer discussed the scope of OCC's requested management audit of FirstEnergy. OCC is asking that their corporate governance, corporate relationships, including its utility relationships with other FirstEnergy affiliated entities, be closely looked at, as well as FirstEnergy's possible use of money collected from consumers, including but not limited to distribution modernization rider (DMR) money and whether the money was improperly used for H.B. 6.

Mr. Sauer provided a recap of various subsidies that consumers are paying through H.B. 6, including subsidies for the nuclear and coal (OVEC) plants. In addition, H.B. 6 also has consumers paying a subsidy to FirstEnergy, in the tens of millions of dollars or more, for a so-called decoupling charge.

Mr. Weston added the decoupling charge did not receive the attention it should have since the bailouts of nuclear power plants and coal plants were involved. Those issues along with the amount of money involved dominated the conversation. The decoupling charge will have consumers paying to keep FirstEnergy at a certain revenue level.

Mr. Sauer said the PUCO hired an auditor to address the use of the distribution modernization funds collected from customers. The audit report made claims in a midterm audit report. Mr. Weston added the audit was never finalized and the case was closed without conclusion. Mr. Sauer said this is why OCC is asking that the case be reopened and the PUCO take a closer look at some of the concerns the auditor had raised.

Mr. Sauer said FirstEnergy, at the direction of the independent members of its board of directors, is conducting an internal investigation into the matters raised in the federal Criminal Complaint. OCC would like our state government regulator to conduct its own investigation which is why the OCC motions have been filed.

Mr. Weston added that in an editorial by the Columbus Dispatch editorial board, they said "we second OCC's motion."

LEGISLATIVE REPORT BY MAUREEN WILLIS, OCC SENIOR COUNSEL:

Ms. Willis provided an update on legislative efforts related to H.B. 6, saying the House Select Committee on Energy Policy and Oversight held its first hearing and heard sponsor testimony on three bills. Two bills were to repeal H.B. 6. Those included H.B. 746 (Lanese and Greenspan) and H.B. 738 (O'Brien).

Also, at the House hearing, Representatives Skindell and Denson testified briefly on their H.B. 740 (to repeal a provision in H.B. 166, the budget bill, favoring FirstEnergy's profits). They testified against allowing FirstEnergy's profits to be consolidated for purposes of the profits review, which was allowed in the budget bill. The Representatives mentioned OCC's testimony opposing that provision in the budget bill.

Mr. Weston noted that OCC opposed the amendment for FirstEnergy in the budget bill (H.B. 166). That amendment favored FirstEnergy and its profits calculation over the consumers who paid for the profits, which H.B. 740 would repeal.

Ms. Willis reported the Senate Energy and Public Utilities Committee held its first hearing on the repeal of H.B. 6, with testimony on Senate Bill 346. Chair Wilson indicated that the Committee would go through a deliberative process with several hearings before making any decisions.

REVIEW OF FERC CASES BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Mr. Sauer reported on three FERC Rate Cases. First, the Columbia Gas Transmission Company requested a rate increase in multi-state charges to consumers. The company owns and operates large high-pressure interstate natural gas pipelines that carry the gas to various distribution centers. The operation of those lines is regulated by the Federal Energy Regulatory Commission (FERC). Columbia is requesting an increase to collect charges from customers for an additional \$2.3 billion in infrastructure investments.

Second, Dayton Power and Light (DP&L) requested an annual formula rate increase for electric transmission services. This allows the utility to adjust annually its rates to consumers based on a complex formula. DP&L has proposed customer charges that would initially increase by approximately \$6.2 million or 15.1%.

Mr. Weston explained the annual formula rate increase is a style of ratemaking where the regulator sets a formula. In the traditional approach to ratemaking, a utility's revenues and expenses are considered together and then a decision is rendered. He said formula ratemaking is somewhat controversial among consumer advocates (including at OCC), there is skepticism of formula ratemaking.

Third, another DP&L case involves incentive rates and a request for a continuation of that incentive. He said there is a FERC-authorized charge, currently under review. The charge is intended to encourage

utilities to belong to a FERC-authorized regional transmission operator (RTO) like PJM. The incentive equates to half a percent on the rate of return that can be charged to consumers. If FERC rejects that proposal it would save customers around \$36 million per year. OCC and PUCO have both recommended utilities should not charge customers an incentive for a utility doing what Ohio law requires.

OCC FISCAL REPORT:

Mr. Weston reported that two months into the fiscal year, which began July 1, OCC has committed approximately \$900,000 or 17% of the total budget of \$5.54 million. This commitment includes both expenditures and encumbrances as well.

Ms. Troyer made a motion to adjourn the meeting. It was seconded by Mr. Callion. Mr. Sauer called the roll. The motion was unanimously approved.

The meeting adjourned at 12:05 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on November 17, 2020.



Michael Watkins, Chair



Larry Sauer, Interim Secretary
Ohio Consumers' Counsel Governing Board