



**MINUTES OF THE  
THREE HUNDRED AND SEVENTIETH MEETING  
OF THE OHIO CONSUMERS' COUNSEL GOVERNING BOARD  
JULY 19, 2016**

Members Present: Mr. Gene Krebs, Chair  
Mr. Michael Watkins, Vice-Chair  
Mr. Jason Clark  
Mr. Fredrick Cooke  
Ms. Sally Hughes  
Ms. Kelly Moore  
Mr. Fred Yoder  
Mr. Stuart Young

Members Absent: Mr. Roland Taylor

**CALL TO ORDER BY CHAIRMAN:**

Chairman Krebs called the meeting to order at approximately 9:10 A.M. Chairman Krebs shared that there would be an Executive Session at the end of the meeting.

**RECOGNITION OF STAFF:**

Deputy Consumers' Counsel Sauer recognized attorney Bill Michael as the employee of the quarter, for first-quarter 2016. Mr. Michael joined the staff in April 2015. Deputy Sauer thanked Mr. Michael for his work and leadership on the case involving AEP's request for a power purchase agreement (to charge more than a million consumers to subsidize AEP).

**APPROVAL OF MINUTES:**

Chairman Krebs asked for a motion to approve the minutes from the June 8, 2016 Board meeting. A motion was made by Vice-Chair Watkins to approve the June 8, 2016 Board meeting minutes. The motion was seconded by Ms. Moore. Ms. Hunyadi called the roll. The minutes were approved unanimously.

**BOARD PRESENTATIONS:**

Chairman Krebs asked Vice-Chair Watkins to speak about his experience on the PUCO Nominating Council.

The Vice-Chair stated there were many very qualified candidates who had applied for the position of PUCO Commissioner. He said the council voted via email to pare down the number of applicants to the top eight choices. The Council then interviewed the applicants prior to voting for a second time on what candidates they would recommend to the Governor.

Chairman Krebs stated it is being reported that for the first time since 1976 a nominee of the Governor for a position at the PUCO is under duress in the Senate because the Senate President has said that many of his members have concerns about this appointment.

Consumers' Counsel Bruce Weston introduced the first speaker to the Board, Mr. Roger Geiger, with the National Federation of Independent Business (NFIB). Mr. Weston thanked Mr. Geiger for coming to speak to the Board, and the Chairman noted that Ms. Moore volunteers her support to NFIB's board. Mr. Geiger is the Vice President and Ohio Executive Director. He manages public policy, political member activism and communication programs throughout the state. NFIB is a national association with chapters in all fifty states with over 25,000 members in Ohio, the largest state membership in the organization.

Ms. Moore shared that NFIB has benefitted from Mr. Geiger's leadership over the years in a number of cases including one against an electric utility.

Mr. Geiger stated the primary focus of the organization is to be the voice of small businesses in state capitals and in Washington D.C. The typical member of the organization employs twenty-five or fewer people and makes a million dollars or less in gross revenue.

Mr. Geiger talked about what he sees in terms of utility costs in Ohio, which he stated is a huge cost of doing business. When he compared the cost of utilities in Ohio to other states he found that Ohio is relatively in the middle of the pack. He said that Ohio is disjointed when it comes to infrastructure – rural Ohio is dramatically under-served with internet service.

There are three things that are critical to small business owners when it comes to utilities. First is price, second is reliability; and third is ease of access.

Mr. Geiger complimented OCC's work for the residential consumers of Ohio. Mr. Geiger recognized that large corporations have the lawyers and means to help them negotiate rate concessions, but at the

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end of the day the small commercial class is grossly under-represented resulting in cross-subsidization.

Mr. Geiger stated that we need to figure out a way collectively to broaden the advocacy mission to reduce small, commercial rates in Ohio. He finished by saying that he believes there is a stronger role for a better voice for the small, commercial class.

Chairman Krebs spoke about how businesses have changed since the 1950's. The lines between large corporations and independent businesses are more blurred than they used to be. The Chairman said that what Mr. Geiger may be looking for is a change at the statutory level. Chairman Krebs continued by stating Consumers' Counsel Weston would need to consider staffing and resource implications before making a formal commitment. The Chairman said it was a testament to the work of Consumers' Counsel Weston and his staff that others want to formally partner with him.

The Chairman said that the farmers on the Board might like to have further discussions with Mr. Geiger about utility companies changing their rates from residential to commercial without any due process. The Chairman finished by inviting continued discussions between Mr. Geiger and Consumers' Counsel Weston. Mr. Geiger thanked the Board for their time.

The Chairman called for a quick break.

Mr. Weston introduced the next speaker, Dr. Douglas Jones. Dr. Jones has a Ph.D. in Economics from the Ohio State University. He is the Harold L. and Audrey P. Enarson Professor Emeritus of Regulatory Economics, John Glenn School of Public Affairs and Director Emeritus National Regulatory Research Institute (NRRI). Beginning in 1978, Dr. Jones served for many years as the Director of NRRI, which was an institute at Ohio State. It provided research to the National Association of Regulatory Utility Commissioners.

Dr. Jones thanked the Board for having him. He reminded the Board that in the origins of the public utility concept it was never contemplated that commissioners should sit exactly in the center weighing the interests of the utilities and the shareholders on one hand and interests of consumers on the other. The intent when public utility commissions were created in the 1900's was that commissions would sit approximately in the middle, but tilt towards the interests of the public.

Dr. Jones shared his opinion that public utility regulation has been wrongly criticized much of the time on several grounds. On the matter of creation of consumer counsel offices Dr. Jones shared he did not enthusiastically welcome that initially. He admittedly later had a conversion on that matter because he saw the great thing that consumer counsel offices can do is to strengthen the record. A

crucial thing consumers' counsels can provide is analysis. He referenced the Board report, "Everyone is Unhappy." He said it was a courageous piece to put out.

On that point, it should be remembered that originally in the concept of public utility regulation the staff analytical resources of commissions should be the match of public utility staffs. However, this still underscores the crucial importance of analysis. The crucial importance of analysis means adequate funding and support. For advocacy to go well you need the complementary analysis.

Dr. Jones said there are three areas of inquiry he would like to see happen in our future. One is a matter of security expenditures and how commissioners allow them to be handled. The second inquiry he has is making sure that commissions do a good job when a utility sells assets producing a capital gain making sure that those dollar amounts get reflected in the interests of consumers. The third inquiry is who pays for fines that are awarded against the utilities. Dr. Jones wants to make sure that shareholders and not consumers are paying such fines.

Consumers' Counsel Weston asked Dr. Jones to speak to the Board about the "Averch-Johnson Effect" and what the first Consumers' Counsel used to refer to as "utility gold-plating at consumer expense." The issue is about utilities having an incentive to over-invest in plants because they could earn a return (profit) on the plant investment.

Deputy Sauer provided an update on the FirstEnergy power purchase agreement (for charges to consumers). On April 27<sup>th</sup> the Federal Energy Regulatory Commission (FERC) preempted the PUCO's granting of the FirstEnergy and AEP subsidy proposals. FirstEnergy then asked the PUCO for another hearing (a rehearing). On June 3, the PUCO granted another hearing on FirstEnergy's subsidy proposal, and that hearing began on July 11. This is FirstEnergy's third related proposal and 1.9 million FirstEnergy consumers are at risk for paying above market generation subsidies on their electric bills.

The PUCO staff has proposed its latest position in the aftermath of the FERC preemption. The PUCO's staff is opposing FirstEnergy's new proposal; however, the PUCO staff has proposed its own plan for bailing out FirstEnergy. The OCC has calculated that the PUCO's new subsidy proposal could cost consumers between \$400 million and \$875 million and OCC is estimating that FirstEnergy's new proposal could cost consumers between \$1.9 and \$3.6 billion.

Chairman Krebs commented that Ohio State professor, Ned Hill, estimated that the first power purchase agreement proposals would have a cost that is nearly equal to the entirety of the cost savings that are generated from the Governor's tax cuts of the past six years.

OCC staff will be preparing legislative packets for the incoming legislators telling them about the agency and what we do.

Consumers' Counsel Weston spoke about the OCC's advocacy at the Supreme Court. The Court issued a decision in a case affecting consumers of Dayton Power and Light. The Court decided that the transition to competition ended years ago under Ohio law—so utilities should not be given subsidies from consumers at this point. The Supreme Court issued its decision within approximately one week of the oral argument. The OCC and another party are currently looking to the PUCO to stop further collection of money from Dayton-area customers.

Mr. Weston shared that OCC staff is analyzing a filing by Aqua Ohio that could result in between a 9.5 % and 11.16% revenue increase. There is an evidentiary hearing expected in early 2017.

He then discussed charts based on AEP's own data. The charts showed that AEP charges residential consumers in Ohio higher bills than it charges consumers in other states where it provides service. There is a case pending at the PUCO right now on service and reliability. At this point it does not appear AEP is looking to increase its targets for improved reliability.

Mr. Weston spoke about the Ohio Energy mandates (regarding energy efficiency and renewable energy). Senate Bill 310 as passed by the legislature froze the standards. Under the workings of that bill, the standards will resume next year unless the legislature acts to continue the freeze.

Mr. Weston recognized the agency's 40<sup>th</sup> anniversary. He thanked the Board for their service to consumers. Cake, decorated for the occasion, was provided to celebrate. A slideshow featuring photos from the agency's history was shown for the Board to enjoy.

A discussion was had about the date of the next meeting. It was decided to keep the meeting on September 27, 2016.

Chairman Krebs indicated the Board would go into executive session. Mr. Yoder made a motion to enter executive session to consider the employment and compensation of two public employees. The motion was seconded by Mr. Young. Ms. Hunyadi called the roll and the motion to move into executive session was unanimously approved.

The Board returned from executive session. Chairman Krebs asked for a motion to consider compensation for employees. Mr. Yoder made a motion to consider a 5% increase in the base salary for the Deputy Consumers' Counsel and the Consumers' Counsel. Mr. Watkins seconded the motion. Mr. Watkins said he would like it noted that he thinks they are worth far more than that, but it would be prudent for the Board to grant no more than 5% at this time. Ms. Hughes agreed with that

statement. Ms. Hunyadi called the roll and the motion was approved to increase the base salary of the Consumers' Counsel and Deputy Consumers' Counsel by 5%. The Board acknowledged that rounding of the salary adjustment calculations is acceptable, if needed, to implement the increases. Chairman Krebs asked the Consumers' Counsel to stop working so hard.

The meeting adjourned at 12:45 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on September 27, 2016.



Gene Krebs, Chairman  
Ohio Consumers' Counsel Governing Board



Monica Hunyadi, Interim Secretary  
Ohio Consumers' Counsel Governing Board