



Office of the Ohio Consumers' Counsel

MINUTES OF THE THREE HUNDRED AND SIXTY-NINTH MEETING OF THE OHIO CONSUMERS' COUNSEL GOVERNING BOARD JUNE 8, 2016

Members Present: Mr. Gene Krebs, Chair
Mr. Michael Watkins, Vice-Chair
Ms. Kelly Moore
Mr. Roland Taylor
Mr. Fred Yoder

Members Absent: Mr. Jason Clark, Mr. Frederick Cooke, Ms. Sally Hughes, Mr. Stuart Young

CALL TO ORDER BY CHAIRMAN:

Chairman Krebs called the meeting to order at approximately 9:10 A.M. Chairman Krebs reminded Board members that they are required to meet every 90 days.

APPROVAL OF MINUTES:

Chairman Krebs asked for a motion to approve the minutes from the March 15, 2016 Board meeting. A motion was made by Mr. Taylor to approve the March 15, 2016 Board meeting minutes. The motion was seconded by Ms. Moore. Ms. Hunyadi called the roll. The minutes were approved unanimously.

Chairman Krebs stated that by statute, the Board Chair sits on the Public Utilities Commission Nominating Council. Because the Ohio Revised Code allows for a designee, Chairman Krebs called for a motion to delegate to the Vice-Chair the duties of the Chair whenever the Chair is unable to perform the duties. Mr. Yoder made a motion to delegate the responsibilities of the Chair to the Vice-Chair pursuant to Revised Code 4911.17 whenever the Chair is unable to perform his responsibilities. Ms. Moore seconded the motion. Ms. Hunyadi called the roll. The motion was unanimously approved.

Chairman Krebs asked that a memo be prepared to Mike Koren, Chairman of the Public Utilities Commission Nominating Council, to inform him of the delegation of duties.

Chairman Krebs shared that there would be an Executive Session at the end of the meeting.

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RECOGNITION OF STAFF:

Consumers' Counsel Bruce Weston recognized Gina Brigner as the 2015 employee of the year. Gina was chosen by OCC Staff as the employee of the year after being awarded employee of the quarter for July-September 2015 by management. The Consumers' Counsel expressed his appreciation for her eagerness to assist with projects.

Mike Haugh, Assistant Director of the Analytical Department, introduced a new Principal Regulatory Analyst, Mohammad Harunuzzaman, who holds a Ph.D. in Nuclear Engineering from the Ohio State University.

Deputy Consumers' Counsel Larry Sauer introduced two new legal interns that began their employment on May 23: Michael Alsharaiha who is attending the University of Toledo, College of Law and Daniel McDonald who is attending the University of Mississippi School of Law.

Monica Hunyadi, Chief of Staff - Non-Case Services, congratulated Public Affairs interns, Emma Hedges and Molly McGuire, on their graduation from the Ohio State University in May.

Mr. Weston introduced Assistant Attorney General Halli Watson and congratulated her on the birth of her new daughter. The Consumers' Counsel also congratulated Assistant Consumers' Counsel Kyle Kern on the birth of her daughter.

BOARD PRESENTATIONS:

Consumers' Counsel Weston introduced PUCO Commissioner Asim Haque, who was recently named PUCO Chair by Governor Kasich.

Chairman Haque began by stating that he appreciated the opportunity to speak at the meeting. He then asked for introductions from the Board members present as this was his first time meeting them.

Chairman Haque briefly spoke about his background before discussing his goals as a Chairman. He stated that when he is reviewing dockets, setting policies, etc., his decisions are based on facts, research, analysis and data. Chairman Haque stated that he wants to ensure the Commission has the interests of the people in mind when making a decision. He also stated that when we talk about the concept of public service, we have to keep in mind that first and foremost, we have a duty to the people of this state.

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Chairman Haque said that our electric industry is at a crossroads, and we have a couple different paths we can select. If we choose correctly, he thinks that we could forge a wonderful path forward for the State of Ohio. If we choose incorrectly, Chairman Haque believes it could take years to unwind, and that is not where we want to be.

Chairman Haque stated that his primary goal is to solve the ESP/PPA cases in as fair and intelligible fashion as possible. The renewable and energy efficiency mandates need to be solved by the legislature. Then, from there, Chairman Haque would like to have a broader discussion about where this industry is headed. He said that there is an opportunity to interact with national thought leaders in all the regulated industries to address this question.

Mr. Yoder commented how Ohio compares poorly to other states in terms of renewable energy. Mr. Taylor then asked Chairman Haque about Ohio's position on the carbon emissions rule. Chairman Haque indicated that the decision has been made to litigate the Clean Power Plan, by the AG. He stated that the PUCO and the Ohio EPA are working together to decide what intelligible compliance looks like for the state of Ohio. He added they are using modeling and related costs are being evaluated.

Mr. Taylor asked Chairman Haque about the transition from coal to natural gas and other programs to support the grid. Chairman Haque indicated that there will be a shift in the future where natural gas and renewables will proliferate. He added that there should be conversations about what the modernized grid looks like.

Mr. Yoder asked about net metering in Ohio. Chairman Haque indicated that it is a big issue across the country and an open docket item to which he doesn't know the answer. He added that this is an important issue that we have to "get it right." He said he looks forward to having the discussion on the issue.

Chairman Krebs commended Chairman Haque on his response (concurring opinion) on the PPAs and noted it as humble. Chairman Krebs thanked Chairman Haque for coming to the meeting. Chairman Haque closed his presentation by stating that he looks forward to working with the OCC in the future.

Chairman Krebs called for a brief break.

Consumers' Counsel Weston spoke about the Board's past interest in the outcome of consumer choices for energy and the challenges for consumers relating to making good choices between utility standard service offers and marketer offers. Mr. Weston discussed the April 5, 2016, Columbus

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Dispatch story about natural gas choice. The news story related in part to testimony submitted by Mike Haugh in a PUCO case, where he expressed concerns that consumers need more protections to effectively participate in that market. Mr. Weston then introduced the next presenter, Lance Schneier, Owner of Agent Do, a web-based service designed to help consumers shop for the best utility rates.

Mr. Schneier stated that the current choice system is difficult for customers to meander through. He stated that Apples to Apples is a good resource for comparing offers, but that it is not complete. He also stated that the number of offers on any given day in Ohio is 1,361 for electricity and natural gas.

Mr. Schneier spoke about the complexity of choosing an offer and how consumers could have difficulty making such a decision. He suggested that in order to get the best deal, consumers should research offers and check them every day. He also suggested that consumers need to understand the energy market in order to avoid getting stuck in a fixed contract when the market is going down.

Mr. Schneier is proposing a solution (for consumers) to the complexity of choosing an offer – agents who work for an independent shopping, switching, and monitoring service. This service helps customers eliminate the confusion they face when choosing a supplier. Mr. Schneier spoke about his company and how the process works from initial sign up.

Chairman Krebs stated that Mr. Schneier's presentation was closely related to the ideas discussed in the novel, *Nudge*, by Cass Sunstein and Richard Thaler. Consumers' Counsel Weston then introduced OCC attorney Andrew Garver who delivered a report on the book, *Nudge*.

Mr. Garver stated that the book is about basic behavioral economic principles with psychology and social sciences mixed in to the message. The book covers a broad spectrum of policies and decisions that consumers make on an everyday basis. Mr. Garver stated that the book aims to cover decision making tools for policy makers so that they may design policies in ways that will help consumers make decisions and better their lives. Mr. Garver said the authors acknowledge that the same principles that can be used to help nudge consumers to make good decisions could also be used to lead consumers to make bad decisions as well.

Mr. Garver stated that the authors want to help consumers make the right choice without taking away their freedom to choose. The main premise underlying *Nudge* is that free choice is affected by the way the options are presented to decision makers. The authors believe that choices should be designed in ways that nudge people into making the right choice.

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Chairman Krebs thanked Mr. Garver for the presentation and encouraged others to read the book.

Consumers' Counsel Weston noted how the price to compare (being the utility's gas price) is not presented to consumers on natural gas bills in Ohio. The price to compare helps electric consumers compare choices when they consider marketer offers.

Deputy Consumers' Counsel Larry Sauer presented an update on the Power Purchase Agreement (PPA) cases. He noted that in January of 2016, the OCC's efforts in those cases moved to the Federal Energy Regulatory Commission. OCC participated for consumers at FERC in the complaint case filed by the Energy Power Supply Association and others, against FirstEnergy and AEP. The intent of participating in the FERC case was to protect electric consumers from exploitation.

Consumers' Counsel Weston commended Deputy Consumers' Counsel Sauer on his hard work and humility. Mr. Weston went on to recognize and thank the OCC staff for their hard work on these cases.

Deputy Consumers' Counsel Sauer shared that on March 31, 2016, the PUCO approved charging consumers for the FirstEnergy and AEP PPAs. He added that the OCC estimated the cost of those charges to consumers at between \$1.9 and 3.1 billion dollars for AEP and 3.6 and 5.15 billion dollars for FirstEnergy.

Mr. Sauer shared that, on April 27, 2016, FERC preempted the PUCO's decision, which stopped the PPAs and required FirstEnergy and AEP to submit their PPAs to FERC for review. He shared the following from the FERC order "Rather, this Commission has an independent role to ensure that wholesale sales of electric energy and capacity are just and reasonable and to protect against affiliate abuse. The Commission's affiliate sales restrictions protect against captive customers of franchised public utilities cross-subsidizing market-regulated power sales affiliates. The Affiliate PPA raises the potential for cross-subsidization from FE Ohio Regulated Utilities' retail customers—who are captive in the sense that they cannot avoid the non-bypassable charge—to FE Ohio Market Affiliates."

Deputy Sauer then provided an update on continuing PPA activity at the PUCO. He reported that, on May 2, 2016, FirstEnergy applied for rehearing to ask the PUCO to accept a new proposal. The new proposal would provide a similar bailout to FirstEnergy without using the power purchase agreement that concerned FERC. OCC projects about \$3.6 billion in costs to consumers. Mr. Sauer also shared that, on May 2, 2016, AEP applied for rehearing to request a downsized power purchase agreement charge for consumers to pay. And on May 12, 2016, AEP made a filing and suggested that it would want to make a new proposal similar to the one that FirstEnergy made, if the PUCO gives approval to

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FirstEnergy. Mr. Sauer concluded by stating that, on June 3, 2016, the PUCO scheduled a rehearing for July, on the FirstEnergy rate proposal.

Mr. Yoder asked Consumers' Counsel Weston, "What will happen next? Mr. Weston indicated that we don't know what will happen. He added that utilities see a price decrease as an opportunity for a rate increase. OCC thinks the market will go down and that can be seen in the PJM market. The trend shows power production is coming from natural gas generation and the cost of natural gas is lower. The market data are telling us to stay away from these kinds of arrangements and let the market dictate the price.

Chairman Krebs added that, per Ned Hill, these PPA agreements wipe out the tax cuts implemented by the current administration. The Chairman added that there should be a discussion of the impact of these cuts with the National Federation of Independent Business ("NFIB"). Mr. Yoder expressed frustration with these PPA plans given high prices. Ms. Moore agreed and suggested a presentation by Mr. Roger Geiger, of the NFIB, in July. Chairman Krebs agreed with the suggestion and indicated there should be a presentation at the next Board meeting. Chairman Krebs then suggested a video be created with Ms. Moore to discuss the impact of these arrangements. Consumers' Counsel Weston noted that these cases are about Ohioans, the people who are affected by these charges.

Chairman Krebs reminded the group that there would be an executive session at the end of the meeting. And the meeting would conclude by 12:15 PM including executive session.

Consumers' Counsel Weston provided an update on electric issues affecting Ohioans. He said that AEP issued a report. The report seems to favor regulation (over market pricing). He then presented charts that are based on AEP fact books. AEP's data show that in recent years Ohio consumers paid the highest residential bills and highest AEP profit among any state where AEP operates an electric utility business.

Consumers' Counsel Weston went on to explain that, following the 2008 law where market rate offers were made available, there has never been a market rate offer implemented in Ohio. Only Electric Security Plans have been implemented in Ohio. That is the source for the PPAs. He noted other information according to the AEP fact book. In 2010, AEP Ohio residential consumers had the second highest rates of consumers in any area in states where AEP operates.. Then, from 2011 to 2015, residential consumers in Ohio paid the highest bills among AEP customers in states where AEP operates.

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Mr. Yoder noted the rate facts about AEP are embarrassing. Chairman Krebs stated while in the Ohio House he voted for Senate Bill 3 (SB3) because this office told him that Ohio rates would go lower. Ohio is in 32nd place for higher residential electric rates, meaning most states have lower electric rates for residential consumers. He sees this as a gubernatorial campaign issue. He asked the OCC send these charts over to the Governor's office, with a note detailing the lack of progress and percentage and rank changes along with his comments on why he voted for SB3.

Consumers' Counsel Weston updated the Board on outcomes in the pro-market decision by the Supreme Court of Ohio. In 1999, utilities were ordered to transition by 2005 to market-driven pricing for generation. And after that time, the utilities' charges for the transition would cease. He noted in the recent AEP ESP case heard on appeal by the Ohio Supreme Court, the Court ordered the PUCO to recalculate how much of the utility's previous retail stability rider is an unlawful "transition" charge. He noted a distinction between this decision and an earlier decision where the Court found AEP had collected inappropriate charges. In the earlier decision AEP was not required to refund the \$400 million it had collected from customers. But the new Court decision could protect consumers regarding their money because the Court required the unlawful transition charge to be netted against a deferral account, thereby negating the charges that would otherwise be collected from customers.

Chairman Krebs noted that the OCC fiscal report shows that 89% of the budget has been expended. Consumers' Counsel Weston pointed out that the budget figures include encumbrances for future expenditures.

Chairman Krebs indicated the Board would go into executive session. Vice-Chair Watkins made a motion to enter executive session to discuss the investigation of complaints against a public employee. The motion was seconded by Mr. Yoder. Ms. Hunyadi called the roll and the motion to move into executive session was unanimously approved.

The Board returned from executive session. Chairman Krebs stated no decisions were made in executive session.

With no further business, the meeting adjourned at approximately 12:15 P.M.

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I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on June 8, 2016.



Gene Krebs, Chairman

Ohio Consumers' Counsel Governing Board



Monica Hunyadi, Interim Secretary

Ohio Consumers' Counsel Governing Board