



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

**November 15, 2022**

The members present were:

Mr. Michael Watkins, Chair  
Ms. Cheryl Grossman, Vice-Chair  
Mr. Randy Brown  
Mr. David Fleetwood  
Mr. Dorsey Hager  
Ms. Kelly Moore  
Ms. Jan Shannon  
Ms. Connie Skinner

Member absent: Mr. Josh Yoder

Assistant Attorney General Brian Lee was in attendance at the meeting.

**CALL TO ORDER BY CHAIR:**

Chair Watkins called the meeting to order at approximately 10:30 A.M. Chair Watkins welcomed the Board members to the meeting and asked Interim Board Secretary (Deputy Consumers' Counsel) Larry Sauer to call the roll. The members answering as present were as shown above.

**MEETING MINUTES:**

Chair Watkins asked for a motion to approve the minutes of the September 20, 2022 Board meeting. A motion was made by Ms. Shannon to approve the minutes. Mr. Hager seconded the motion. Mr. Sauer called the roll. The motion was approved unanimously.

**RECOGNITION:**

Consumers' Counsel Weston announced Amy Carles as Employee of the Quarter. He described Amy as an enthusiastic, energetic and empathetic employee. He explained that she originally joined OCC about 18 years ago, then left the agency during budget cuts, and then returned in 2014. He described that Amy's job was to help people, both directly and indirectly (through train the trainer events), with utility issues, disconnections, medical certifications, etc. He read the poem that was written to present Amy with her recognition at a staff meeting. Mr. Weston also noted that Chair Watkins met with Amy this year during the Allen County Fair at the OCC display booth. Chair Watkins added that Amy is very good at her job and is able to get people to engage. He recommended that other board members take the opportunity to visit their nearby county fairs when OCC is in their area.

Mr. Weston next recognized the recent promotion of Mike Haugh as Director of Analytical. He explained that over the years Mike Haugh had joined the agency several times and had hoped to be the analytical director. He explained Mike's history with the utilities industry. He explained that Mike was currently attending the NASUCA meeting in New Orleans.

Mr. Weston next recognized the promotion of Andy Tinkham. He explained that Andy had originally been employed in the (now closed) OCC call center many years ago and had been most recently serving as an outreach and education specialist in OCC Public Affairs. He explained that Andy expressed an interest in developing skills as an analyst in the Analytical Department. He stated the OCC was fortunate to have Andy as an employee.

Larry Sauer discussed the state's Combined Charitable Campaign and thanked Merrilee Embs for serving as chairperson this year. He explained that the agency had exceeded the Campaign's \$9,000 goal for OCC by nearly \$1,000. He thanked OCC staff for their generous contributions.

Mr. Weston next shared that the third Consumers' Counsel, Janine Midgen-Ostrander, had been honored with an outstanding service award at NASUCA's annual meeting this year. He shared a photo of her from the NASUCA meeting.

**2023 MEETING SCHEDULE:**

The Board considered meeting dates for 2023. A motion was made by Vice-Chair Grossman to approve a schedule of meeting on the third Tuesday of every other month beginning in January 2023. Mr. Fleetwood seconded the motion. Mr. Sauer called the roll. The motion was approved unanimously.

**AGENCY ACTIVITY FOR CONSUMERS/OVERVIEW:**

Deputy Consumers' Counsel Larry Sauer reviewed recent ratemaking cases affecting consumers, beginning with the settlement regarding Columbia Gas. Mr. Sauer explained that Columbia Gas covers a large portion of Ohio (and nearly 1.5 million consumers). Consumers' Counsel Weston reviewed the history behind traditional utility regulation and rate cases versus recent regulations, such as riders, subsidies and other various charges. Vice-Chair Grossman congratulated OCC in reaching this very significant settlement.

Mr. Sauer discussed some of the details of the settlement, including an annual reduction of \$153 million in distribution charges from Columbia's original proposal. He discussed better (lower) limits on rider charges, the elimination of a proposed rider, the elimination of the company's non-low-income energy efficiency programs (originally proposed for a subsidy exceeding \$100 million), and the creation of a \$3.5 million bill payment assistance program for at-risk consumers, with two-thirds

being funded by Columbia's shareholders. Mr. Fleetwood asked if not for OCC, what other group would have derailed the high rates? Consumers' Counsel Weston explained that OCC was instrumental in the settlement, but there were multiple parties that contributed to the result. He complimented the work of PUCO staff on the case, as well as NOPEC and others. He noted that Columbia ultimately had to agree to proposals in order to reach a settlement. Ms. Moore asked where the other third of the \$3.5 million comes from in the payment assistance program. Mr. Sauer explained that it was repurposed money from the \$70 million low-income weatherization program that resulted from the negotiations and that all consumers fund.

Mr. Sauer outlined the next steps, including a hearing at the PUCO. Consumers' Counsel Weston explained the process of pre-filed testimony and cross-examination. Mr. Fleetwood asked about the duration of the settlement, and Mr. Weston responded it was a five-year settlement. Mr. Weston further explained that there is an expectation that Columbia will file another rate case in five years.

Mr. Sauer next discussed the earlier AEP rate case, which resulted in a rate decrease for residential consumers. He further explained the elimination of a rider that had been used to collect about \$20 million per year from consumers to decouple or disassociate AEP's profits from its lost sales (e.g., due to energy efficiency). And he described OCC's success in negotiating a requirement for AEP to produce shadow billing (which shows what consumers have paid to electric marketers in the aggregate). Mr. Sauer explained regarding shadow billing that Columbia Gas has tracked over \$2 billion in higher billings to customers by energy marketers compared to Columbia's standard offer (since the beginning of retail customer choice in 1997). Mr. Weston reviewed various reforms that OCC would like to see with regard to energy marketing.

Mr. Sauer then reviewed the Aqua rate case settlement that was approved in September, and a related news article. He explained the agreement contained consumer protections. Those consumer protections included a reduction of \$3 million from the utility's proposed revenue increase, a \$20,000 bill payment assistance program for at-risk consumers, and required public reporting of information about Aqua's disconnection of consumers.

Mr. Sauer next reviewed the Duke Rate Case where there was a settlement in September that OCC opposes and will be litigating. He stated that OCC believes the agreed upon rate increase and Duke's allowed profit are too high. He described that money was dangled in front of low-income groups to induce signatures on the settlement. (OCC has proposed other ways to ensure funding for low-income consumer protection.) And he discussed concerns that certain settlement signatories benefit more than other similarly situated groups that did not sign (or were not in the case). Mr. Weston added that there can be unequal bargaining power in negotiations where utilities can have more leverage than other parties. He discussed PUCO Commissioner Roberto's separate dissenting opinion years ago saying the utilities have more (unequal) bargaining power than others in negotiations for electric security plans.

Ms. Moore asked if there is a requirement to report the money transactions. Mr. Weston explained that the 2008 utility law requires electric utilities to disclose side deals in electric security plan cases, if asked in discovery. He added there is information (discussed in a PUCO ruling) to suggest that there was an undisclosed side deal in a FirstEnergy matter. Vice-Chair Grossman asked if Duke and FirstEnergy were being more cautious in light of the recent controversies. Mr. Weston said FirstEnergy publicizes that it has re-invented itself, but OCC is not seeing all the needed transparency. He noted that FirstEnergy did have an internal investigation, that employees were fired, and that FirstEnergy is apparently not lobbying as much as it once was. He noted that their new CEO did serve at FirstEnergy in the past. Shortly after OCC submitted subpoenas to the PUCO for depositions, FirstEnergy announced their new CEO was leaving the very next day. Vice-Chair Grossman noted that the lack of consequence for their past activities continues to be a huge disappointment.

Mr. Weston then discussed the June AEP outages and that there still has not been a case opened at the PUCO to investigate the matter. He stated there has been a lack of transparency on the investigation and shared a WBNS news report on the lack of updated information. Mr. Weston discussed a motion to compel discovery that OCC filed back in September (in a reliability-related case) that had not yet been ruled on. AEP also filed a protective order with the PUCO, against OCC's inquiries.

Mr. Weston briefly discussed the pending House Bill 317, which was originally characterized as a consumer bill to end electric security plans. But multiple utility-friendly provisions have been added to the bill. He noted the bill included a provision for no more depositions of utilities in certain cases at the PUCO, among other anti-consumer language. Vice-Chair Grossman asked if the OCC would be reaching out to Senator Romanchuk when it gets to the Senate, and Mr. Weston responded yes. He explained that in OCC's most recent testimony (on the same day as the Board meeting), OCC submitted written-only testimony (without an oral presentation) due to staffing conflicts with the Board meeting etc. Vice-Chair Grossman expressed a preference that OCC submit testimony with an oral presentation on significant legislation. Chair Watkins commented that some of the draft anti-consumer language in the bill looks like it was written by a utility attorney.

Mr. Weston next discussed the topic of at-risk Ohioans. He noted that a staff member at OCC had come up with the idea that the state was not utilizing something known as categorical eligibility as much as it could. He explained this is where consumers qualifying for one program could then be considered as qualified for one or more other low-income programs. He added that helping at-risk Ohioans has been and continues to be a priority for OCC. Mr. Weston next discussed a filing that OCC made at the PUCO along with low-income advocates to protect against disconnections. Most of those requests were denied, except for an allowance of one-time reconnection for both gas and electricity services instead of the benefit being limited to one reconnection only for one service.

Mr. Weston then reviewed OCC's motion to intervene in a case that involved Duke's erroneous billing of low-income customers that was creating problems. He stated that Legal Aid of Southwest Ohio was also involved in this case and that it appears that Duke is trying to correct the issues.

Mr. Weston next discussed a motion for subpoena that OCC recently filed. OCC sought from the PUCO a subpoena to serve on AEP to obtain copies of subpoenas that the U.S. SEC had served on AEP regarding AEP's involvement in the passing of House Bill 6.

Mr. Weston discussed a public records request from the media. Under Ohio's public records law, the media sought records from OCC that OCC obtained from FirstEnergy through discovery. Mr. Weston stated that FirstEnergy has filed a motion for a protective order, asking the PUCO to determine that documents OCC obtained from FirstEnergy should be considered confidential and not disclosable by OCC under Ohio's public records law. He noted that FirstEnergy had marked mostly all of nearly a half-million documents as confidential. He explained that the media has a right to sue a government agency (such as OCC) for documents under the public records law, and that might happen in this case.

Mr. Weston stated that the trials for Mr. Householder and Mr. Borges are scheduled to go forward in January. He noted that certain other defendants had previously pleaded guilty, and that FirstEnergy had admitted to certain facts of wrongdoing in the U.S. Deferred Prosecution Agreement.

### **FISCAL REPORT**

Mr. Weston noted that the state is closing its books of account in mid-November for fiscal year 2022 and that OCC has spent about 93% of its \$5.7 million budget. He explained that state Fiscal Year 2023 started on July 1, 2022. He stated that OCC was pressing to fill vacant positions, but that it is tough to find people with this specialized utility regulatory expertise. He also confirmed that per the Board's vote, OCC had requested a \$700,000 annual increase in its Fiscal Years 2024-25 request.

Chair Watkins asked if there was a need for executive session or if there was anything else that needed to be brought before the Board. Per the Chair's inquiry at an earlier meeting, Mr. Brown asked about the possibility of expanding the time allotted for Board meetings. He noted that the Consumers' Counsel and the Deputy seem to be prepared to share more information than can be shared during the present meeting duration. Vice-Chair Grossman noted that if the Board meetings continued to be on Tuesdays, she would not be able to stay an extra hour as she has another meeting obligation on Tuesdays.

(Vice-Chair Grossman left the meeting during this discussion.)

After further discussion a motion was made by Mr. Brown, seconded by Ms. Moore, to change the Board's meeting time to allow for meetings to start at 10:00 a.m. and end by 1:00 p.m., on the same

Tuesdays as before. Mr. Sauer took the roll. The motion passed unanimously by the remaining members present.

Chair Watkins asked if there was still an option for members located out of town to drive and stay at a hotel the night before, especially during the winter. Mr. Weston responded that arrangements could be made for that.

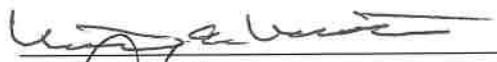
Chair Watkins asked about annual photographs. It was the preference to continue with the virtual photos for the time being to better allow everyone to be included.


Ms. Moore asked if the rate increases that OCC has stopped is part of the OCC Subsidy Scorecard and highlighted in the Annual Report. She added that OCC should point to the successes that the legal team has had, especially in view of the request for an increase in the budget. Mr. Weston explained the Scorecard is focused specifically on subsidies charged to consumers. But he said that this type of information has been shared with the government and that the budget process presents another opportunity to do so.

Ms. Shannon made a motion to adjourn the meeting. It was seconded by Mr. Fleetwood. Mr. Sauer called the roll. The motion was approved unanimously by those present.

The meeting adjourned at approximately 12:45 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on January 17, 2023.

  
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Michael Watkins, Governing Board Chair

  
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Larry Sauer, Interim Board Secretary  
Ohio Consumers' Counsel Governing Board