



February 9, 2022

Via Email: governor@governor.ohio.gov
The Honorable Mike DeWine, Governor
77 South High Street, 30th Floor
Columbus, Ohio 43215

Re: Appointment of a PUCO Commissioner

Dear Governor DeWine:

We hope you, your family and staff are well. Thank you for your leadership regarding the pandemic.

On Monday the PUCO Nominating Council nominated four applicants for your consideration to appoint a PUCO commissioner. All four of the nominees have worked for the utility industry. None of the nominees are consumer advocates. The state Nominating Council process is failing the people of Ohio.

Respectfully we recommend, for serving the public interest, that you *reject* the PUCO Nominating Council's slate of four nominees. And we recommend that you ask for the *reopening* of the application process for a second slate of nominees. You invited the Nominating Council to reopen the process last year, leading to the appointment of the current PUCO chair.

https://content.govdelivery.com/attachments/OHOOD/2021/01/20/file_attachments/1663658/PUCO%20Nominating%20Council_2nd%20List_1.20.21.pdf

In this regard, it was recently reported that you will not appoint someone to the Public Utilities Commission of Ohio who has "background and connections" to the industry. <https://www.occ.ohio.gov/Governor-Seeks-Independence-with-Next-PUCO-Pick-Gongwer.pdf> All four of the nominees have a background and connections to the utility industry. We think it's unfortunate for the public that utility personnel were ever nominated, appointed and confirmed to regulate utilities as PUCO commissioners.

A key reform we recommend is nominating and appointing bona fide consumer advocates to the PUCO and not appointing any more utility personnel. During the time of former Chair Randazzo, there even was a *majority* of PUCO commissioners (three of five) who had worked for the very industry they regulated. Attached is a Consumers' Counsel Board Resolution for reforming the PUCO commissioner selection process.

Your recent (and welcomed) announcements for selection process change came later in the commissioner application period. Reopening the application period with those changes could encourage consumer representatives to apply for the commissioner position. The sparse history of consumer appointments to the PUCO has discouraged consumer advocates and others from applying, as seen with the current applications.

The real measure for reforms of the PUCO and the PUCO Nominating Council must be appointments of bona fide consumer advocates as PUCO commissioners. Thank you for your consideration.

Respectfully,

/s/ Bruce Weston
Bruce Weston, Ohio Consumers' Counsel
Office of the Ohio Consumers' Counsel

/s/ Susan Jagers
Susan Jagers
Ohio Poverty Law Center



Resolution

Office of the Ohio Consumers' Counsel Governing Board

In Favor of Reform of the Process for Selecting People to Serve the Public as PUCO Commissioners

- WHEREAS,** Electricity, natural gas, telephone, and water services provided by public utilities are essential for Ohioans; and
- WHEREAS,** The public utilities providing those essential services are regulated by the Public Utilities Commission of Ohio for the protection of Ohio consumers; and
- WHEREAS,** The regulation of utilities by the Public Utilities Commission is administered by five commissioners who serve staggered five-year terms; and
- WHEREAS,** There was an initiative on the Ohio ballot, in 1982, for amending the Ohio Constitution to change the process of selecting PUCO commissioners from gubernatorial appointment to direct election by the public; and
- WHEREAS,** The 1982 ballot initiative was defeated, due in part to the enactment that same year of legislation that was alleged to be a reform of the selection process for PUCO commissioners; and
- WHEREAS,** The 1982 legislation, which became effective in 1983, created a PUCO Nominating Council to nominate applicants for the governor's appointment of PUCO commissioners; and
- WHEREAS,** The Ohio Consumers' Counsel Governing Board, in 1982, passed a Resolution about the new Nominating Council and called for the Council to publicly interview individuals possessing qualifications that include, among other things, "a sensitivity to consumer interests and an ability to make independent-minded judgements and an ability to stand up to special interest pressures;" and
- WHEREAS,** Nearly four decades after passage of the alleged reform law for commissioner selection, three of the five current PUCO commissioners have worked for the special interests of public utilities that the PUCO regulates; and

WHEREAS,

A recent example of utility influence was revealed in a Criminal Complaint filed by the U.S. Attorney on July 23, 2020, with allegations of extraordinary expenditures by an entity not identified in the Complaint but believed to be FirstEnergy, to influence the outcome of House Bill 6 for subsidizing nuclear power plants formerly owned by FirstEnergy Solutions (though to date FirstEnergy entities and personnel have not been charged with a crime).

THEREFORE, BE IT RESOLVED, that the Ohio Consumers' Counsel Governing Board urges the Ohio General Assembly to:

- I. Reform, for the protection of the Ohio public, the process for selection of PUCO commissioners by enacting a law to select PUCO commissioners through direct election by the public; and
- II. Deter undue utility influence and undue influence from others and promote transparency in legislation for elections of PUCO commissioners by: (A) banning or strictly limiting utility and utility affiliate spending on commissioner elections, including but not limited to spending by utility-related individuals, corporations, political action committees, and non-profit organizations to the maximum extent allowed by law; (B) strictly limiting spending by others on commissioner elections, including but not limited to spending by individuals, corporations, political action committees, and non-profit organizations to the maximum extent allowed by law; (C) establishing a modest limit on campaign spending by each commissioner candidate; (D) requiring detailed pre-election and post-election reporting of direct and indirect spending for election of commissioner candidates; and (E) severely penalizing violations of election spending bans or limits and reporting requirements.

THEREFORE, BE IT FURTHER RESOLVED, that the Ohio Consumers' Counsel Governing Board urges the Ohio General Assembly to enact comprehensive reforms of the PUCO Nominating Council specifically and the PUCO commissioner selection process generally in the event that legislation is not enacted for public election of PUCO commissioners.

I verify that this Resolution has been approved by the Governing Board of the Office of the Ohio Consumers' Counsel, this 25th day of August 2020:



Michael Watkins, Chair

Governing Board of the Office of the Ohio Consumers' Counsel