



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

January 14, 2020

Members Present: Mr. Stuart Young, Vice-Chair
Ms. Cheryl Grossman
Ms. Kelly Moore
Mr. Charles Newman
Ms. Jan Shannon
Ms. Andra Troyer
Mr. David Wondolowski

Members Absent: Chair Michael Watkins and Mr. Tim Callion.

CALL TO ORDER BY CHAIR:

Vice-Chair Young (acting as Chair in Chair Watkins' absence) called the meeting to order at approximately 10:00 A.M. Ms. Hunyadi called the roll, with members answering as present as shown above.

RECOGNITION OF NEW MEMBER:

Vice-Chair Young welcomed new Governing Board member Ms. Cheryl Grossman, who was appointed as a representative of consumers (for the seat formerly held by Mr. Moormann). Ms. Grossman introduced herself and each of the new members shared information about themselves for their introductions. Consumers' Counsel Bruce Weston welcomed Ms. Grossman, and OCC staff in attendance introduced themselves.

REMARKS BY DAN SHIELDS, OCC ANALYTICAL SERVICES DIRECTOR:

Consumers' Counsel Weston introduced Mr. Shields for remarks. He formerly was the PUCO's liaison with the Federal Energy Regulatory Commission (FERC), as the PUCO's Federal Energy Advocate. Mr. Shields provided a lead-in for Dr. Joseph Bowring's presentation to follow.

Mr. Shields provided an overview of the December 19, 2019 FERC decision on power plant pricing and PJM, saying the decision is very complex. PJM oversees markets in 13 states and the District of Columbia. It maintains the transmission grid and determines whether there is enough transmission capacity to serve customers, in addition to making a market for generation. He said PJM has three markets for generation: capacity market, energy market and ancillary services. The capacity market (so-called iron in the ground) exists to ensure long-term reliability by

arranging for appropriate amounts of power supply resources (power plants) needed to meet predicted demand in the future.

Mr. Shields said FERC wants to safeguard the competitiveness of the PJM wholesale market by removing subsidized generation from the capacity market. Mr. Shields continued saying an uneconomic power plant is one that cannot compete in the market without above-market subsidies. There are two uneconomic nuclear power plants in PJM, Davis-Besse and Perry, both located in Ohio and both in FirstEnergy's service territory.

Mr. Newman asked about subsidized renewables. Mr. Shields replied that renewables comprise a very small part of the capacity market, as the market requires that energy be available around the clock. Renewables are an intermittent resource.

GUEST SPEAKER – DR. JOSEPH BOWRING, PRESIDENT, MONITORING ANALYTICS:

Mr. Weston introduced Dr. Bowring (who joined via phone) to the Board members and noted that Dr. Bowring is the independent market monitor for PJM.

Dr. Bowring discussed the December 2019 FERC decision imposing PJM's minimum offer price rule (MOPR) on any generation plant that receives, or is entitled to receive, state subsidies, minus a few exceptions. He said the only two nuclear power plants in the PJM footprint that have economic problems are Perry and Davis-Besse, which are both owned by FirstEnergy Solutions (subsequently renamed "Energy Harbor" as a result of the FirstEnergy Solutions bankruptcy). He added that Ohio has chosen to subsidize the nuclear plants through House Bill 6 (HB6). Dr. Bowring said that if these plants do not clear the capacity market, by meeting the minimum offer price rule, they would possibly want to collect those dollars from the taxpayers of Ohio. This could send FirstEnergy Solutions (now Energy Harbor) back to the General Assembly for seeking additional subsidies.

Dr. Bowring commented that federal regulators have said there is an immediate threat to the competitiveness of the PJM capacity market, saying some states employ out-of-market subsidies to prevent or delay the retirement of state-preferred resources that are unable to compete with more efficient generation.

Mr. Weston asked Dr. Bowring to explain why subsidies are a problem for the market. Dr. Bowring replied when economists or anyone thinks about the way markets work, markets work best when everyone is on a level playing field. Competitors would buy equipment to build a power plant, but if one is being paid for by taxpayers on the side then the market isn't competitive. The company getting the subsidy, which covers its costs, has an unfair advantage because it can enter the market at a lower rate as it does not need to recover the costs from the market.

Dr. Bowring added that FERC Chairman Neil Chatterjee issued a statement highlighting the price-distorting impact of resources receiving out-of-market support, while affirming states' exclusive authority to subsidize certain generation technologies as a matter of public policy. "But the commission has a statutory obligation, and exclusive jurisdiction, to ensure the competitiveness of the markets we oversee."

Dr. Bowring said unlike nuclear and coal generation, combined-cycle natural gas plants have flourished without government subsidies. Mr. Weston asked Dr. Bowring if his reference to gas plants is in reference to the most modern types of power plants that run on natural gas, including the natural gas that is for sale in Ohio from Ohio gas fields. Dr. Bowring said one of the most remarkable things that has happened in energy markets generally, has been the rise of shale gas. So even though economists who seem to know everything were forecasting, fifteen years ago, high gas prices at \$15 - \$20, these days costs are significantly lower, in the \$2 range. Very efficient power plants run on less expensive natural gas which benefits customers through lower prices.

Mr. Weston commented that he's heard Ohio natural gas prices might be among the very lowest in the world. Dr. Bowring said he thinks that is correct. The cost of shale gas is well below the world price, which is now somewhere between \$7 - \$12. In the U.S., in Ohio and Pennsylvania, it's been in the \$2-\$3 range. The cost of gas is absolutely, super competitive with the rest of the world.

Dr. Bowring said that, when he was discussing the possible scenario of the Davis-Besse and Perry nuclear plants not clearing the market, it means those plants would get no revenue from the competitive market for capacity. Primarily, nuclear plants are running every hour of the year. They receive between 10% and 20% of their total revenue from the capacity market. But if they did not clear in the capacity market, they would not receive any revenue from the capacity market.

Dr. Bowring said that a loss of capacity revenues for the Ohio-based nuclear plants could mean that the owners of those power plants might seek more subsidies or might consider not operating the plants. Dr. Bowring said there could be three options that the nuclear plant owners would consider. One is to convince him (the market monitor) that their going-forward costs are low enough they clear in the market (receive capacity revenues). The second is going back to the taxpayers for subsidies and the third is shutting down the units.

Dr. Bowring concluded by saying FERC has given PJM ninety days from its December order to impose minimum capacity pricing on subsidized generating plants. Parties in the case have until Tuesday, Jan. 21, to request a rehearing or clarification of its ruling. Dr. Bowring said PJM plans to submit a request for clarification.

Vice-Chair Young noted that OCC is a proponent of the competitive market and that the Board-appointed a pro-market Consumers' Counsel (Mr. Weston).

REMARKS – VICE-CHAIR YOUNG:

Vice-Chair Young noted for the Board members that the information needed to file their 2019 Financial Disclosure Statement with the Ohio Ethics Commission is in their meeting folders.

MEETING MINUTES:

Vice-Chair Young asked for a motion to approve the minutes of the November 19, 2019 Board meeting. A motion was made by Ms. Troyer to approve the minutes. The motion was seconded by Mr. Newman. Ms. Hunyadi called the roll. Ms. Grossman and Mr. Wondolowski abstained. The November 19, 2019 Board meeting minutes were approved.

BOARD MEETING DATES FOR 2020:

Due to a possible member attendance conflict with the July 21, 2020 Board meeting, the Board talked about other possible dates for the meeting. The discussion was tabled until the March 17, 2020 meeting.

ELECTION OF GOVERNING BOARD CHAIR AND VICE-CHAIR:

Ms. Moore nominated current Chair, Mr. Watkins, to continue as Chair of the OCC Governing Board. The nomination was seconded by Mr. Wondolowski. Ms. Hunyadi called the roll. Mr. Watkins was elected Chair unanimously.

Ms. Troyer nominated current Vice-Chair, Mr. Young, to continue as Vice-Chair of the OCC Governing Board. The nomination was seconded by Mr. Wondolowski. Ms. Hunyadi called the roll. Mr. Young was elected Vice-Chair unanimously, with Mr. Young abstaining from the vote.

RECOGNITION:

Mr. Weston recognized Lisa Lyman, Contract and Fiscal Administrator, as the Employee of the Quarter for the 2nd quarter of 2019. Ms. Lyman was selected for her work for OCC in support of its consumer protection activities. That work included ensuring that OCC receives its budget funds, which involves calculating and collecting assessments from utility companies, and managing the hiring of contractors for OCC's consumer activity.

Mr. Weston announced to the Board the retirement of Terry Etter, Assistant Consumers' Counsel, after 23 years of service, on December 31, 2019. Mr. Etter worked for consumers on telecommunications and energy issues.

Mr. Weston introduced Laurie Knight, Operations Coordinator, for an update on the 2019 Combined Charitable Campaign. Ms. Knight reported that the agency's goal was \$10,000 and that OCC staff raised \$12,347 for charity to help others. Mr. Weston thanked Ms. Knight for her efforts on the Charitable Campaign and noted how OCC staff has helped others over the years through this charity.

GUEST SPEAKER – DAVID BECK, PARTNER, CARPENTER, LIPPS & LELAND:

Deputy Consumers' Counsel Larry Sauer introduced Mr. Beck who is OCC's outside counsel (assigned by the AG) for the bankruptcy case involving FirstEnergy Solutions. Mr. Sauer provided some background on the FirstEnergy Solutions' bankruptcy case saying that the bankruptcy court approved FES's rejection of the OVEC (Ohio Valley Electric Corporation) contract. That meant Ohioans could end up paying FES's share of subsidies for OVEC's two uneconomic coal power plants.

OCC and FERC appealed the bankruptcy court's decision, asserting that the public interest must be considered before FES could be allowed to walk away from its obligations to pay OVEC. The appeals went to the U.S. Sixth Circuit Court of Appeals. In the decision rendered by the Appeals Court, Judge Alice Batchelder criticized the U.S. Bankruptcy Court for unilaterally forgiving FES's financial responsibility for legacy coal plant costs that could saddle Ohio ratepayers with increased charges. And the Appeals Court overturned the bankruptcy court's decision.

Leading up to OCC's appeal, Mr. Beck argued on behalf of OCC before the bankruptcy judge in Akron that the public interest and impact on Ohio consumers must be considered before allowing FES to walk away from its OVEC coal plant obligations. The judge disagreed and held that all FES needed to do was show it made a sound business decision and that it was losing money under the contract. Based on FES's assertions, the bankruptcy court allowed FES to walk away from its coal plants costs.

OCC and others appealed the decision. Arguments were held in June 2019. In December 2019 the appellate decision was issued. The three-judge panel agreed with OCC that the bankruptcy judge should have considered the public interest before making any decision about FES walking away from the contract. The panel also agreed with an argument FERC made that FERC needed to be allowed to follow its normal process of considering the facts and finding the public interest. These are good outcomes for consumers. Unlike the bankruptcy court, FERC is far more equipped to analyze the impact on consumers in utility markets generally.

Mr. Weston asked Mr. Beck if this decision may have any significance nationally on how bankrupt utility matters are handled. Mr. Beck said yes, the bankruptcy judge in Akron was the first to say that the public interest did not have to be considered. After the bankruptcy judge in Akron entered this order, a similar request was filed in California by PG&E. The ruling was like the one from Akron and that case is pending in the Ninth Circuit Court of Appeals. He said this has become a hotly contested issue and will likely be contested in the future as there may be more utility bankruptcies around the country.

Vice-Chair Young asked if this might be the beginning of the dissolution of OVEC. Mr. Beck replied that it is difficult to determine, and said if FES walks away, the other utilities in OVEC may re-negotiate their arrangement with each other.

OCC FISCAL REPORT:

Vice-Chair Young reviewed the fiscal report and noted that six months into the year OCC has committed 49% of its \$5.54 million annual budget.

REMARKS BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston discussed the appointment process for PUCO commissioners, which has been a subject of interest to the Board over the years. In 1982 there was a referendum on the ballot to elect commissioners. It failed to pass. Part of the effort to defeat the referendum was based on legislation at the time that was said to be a reform of the commissioner appointment process. The General Assembly enacted legislation to create the PUCO Nominating Council and specified that the chair of the OCC Governing Board (or a designated Board member) would be a standing member of the Nominating Council.

Mr. Weston noted that the OCC Governing Board, in a Resolution (No. 82-13) dated November 17, 1982, resolved that the PUCO Nominating Council should publicly interview individuals having "a sensitivity to consumer interests" and "an ability to stand up to special interest pressures."

For an expiring commissioner seat, the Council's process typically begins in December and is finalized with the governor's appointment of a commissioner by April 10th of the following year, when a new commissioner term begins.

Vice-Chair Young described the Nominating Council process to the Board. He commented that: "It's the lamest thing I think I've ever been involved in." He added that the Council interviews a person for 10 to 12 minutes and asks maybe two or three questions. He said there are 12 people on the Council and last year he asked a question and another person asked a question and then maybe another person asked a question. Next, he shared they would then go into a room with no discussion among the group and then vote for four names to send on to the governor. He went on to add "To think that we are putting people on a board; that it's a disheartening procedure so to speak, to think that's all it amounts to."

Mr. Weston commented it appears that a fast-food restaurant may have longer interview times with job applicants than the PUCO Nominating Council has with commissioner applicants.

Mr. Weston said OCC has been seeking reforms to the 1982 law. Reforms should include the adding of more public transparency to the process. And reforms should include having more balance on the PUCO. As an example, Mr. Weston noted that three of the five current commissioners have previously represented public utilities. He suggested that former public utility representatives should not be regulating public utilities for the public. Mr. Weston also noted that OCC would like to see some changes to the qualifications for commissioners that would ensure more consideration of applicants with backgrounds in social sciences.

Mr. Weston reported he has had several good meetings with Rep. Nino Vitale regarding H.B. 246, which is intended to modernize and reform OCC and the PUCO. (Per invitation, Rep. Vitale spoke to the Board at its public meeting in November 2019.) The direction of H.B. 246 is not yet publicly known. Mr. Weston added that OCC continues to be interested in ending Ohio's denial of refunds to consumers (such as when the Supreme Court overturns a PUCO-approved charge on an appeal).

Mr. Weston said OCC recently filed comments, jointly with other consumer organizations, in a PUCO rulemaking case, to recommend that the PUCO provide for refunds to consumers. Included in the filing was a quote from a 2014 dissent of former Ohio Supreme Court Justice Paul Pfeifer, *"It boggles the mind that this court would ever countenance such a proposition: that a public utility should be allowed to fatten itself on the backs of Ohio residents by collecting unjustified charges. Allowing AEP to retain the \$368 million that it collected based on charges that were not justified is unconscionable. Doing so because of a 50-year-old case that is not supported by the statute on which it is based is ridiculous. The ratepayers of Ohio deserve better."*

PRESENTATION BY DEPUTY CONSUMERS' COUNSEL SAUER:

Mr. Sauer talked about the 2008 energy law that brought about single-issue ratemaking and other problems for consumers. Utilities, through so-called riders, are allowed to add charges to consumers bills for specific costs they want to collect. Since that law, some utilities have as many as 30 riders in their tariffs. Mr. Sauer discussed the considerable amount of money that, through riders, utilities are being allowed to collect from consumers for spending on capital investments for distribution systems. To date, AEP, FirstEnergy, Duke and DP&L have spent \$4.6 billion on their electric grids and are charging their customers varying monthly rates for the expenditures (ranging between \$4.65 and \$10.43 monthly).

Mr. Sauer also discussed the electric utilities' distribution modernization riders (sometimes under the catchy names of "grid modernization" or "smart grid.") Combined, these utilities have been authorized by the PUCO to collect \$2.3 billion from consumers in the name of distribution modernization. To date \$1.19 billion has been spent to modernize their systems. Mr. Weston added that utilities' have stepped up their efforts, for example, in at least one piece of legislation to increase their authority to invest in their distribution system and their ability to charge customers.

Ms. Moore asked if it is correct that not all funds collected for distribution modernization are being used for that purpose. Mr. Weston replied that is correct. He said an auditor for the PUCO, around 2019, documented that the funds FirstEnergy collected for the so-called distribution modernization rider went to shareholders and not for plant modernization (essentially transferring money from consumers to utility shareholders). Even though the rider was called a distribution modernization rider, the PUCO did not require it be used for that.

Ms. Moore then asked about the PUCO cases involving energy marketers PALMco and Verde, involving marketer rip-offs of consumers, and a reference in a news story to a related inquiry by the Attorney General. Mr. Weston noted that the AG can seek to protect Ohioans under the Consumer Sales Practices Act, while OCC is pursuing consumer protection from those marketers under regulatory law at the PUCO. He said the PUCO staff settled with Verde and PALMco for consumer protections. However, he said OCC is recommending that Verde and PALMco should be kicked out of the state and not allowed to operate in Ohio again -- which unfortunately is not a term in the PUCO Staff's settlement with the marketers. Mr. Weston commented that the PUCO staff conducted an excellent investigation, prior to settling with the marketers.

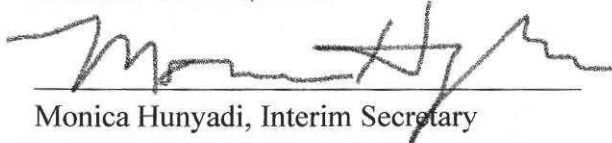
Ms. Shannon made a motion to adjourn the meeting. It was seconded by Ms. Grossman. Ms. Hunyadi called the roll. The motion was unanimously approved.

The meeting adjourned at 12:10 P.M.

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



Michael Watkins, Chair



Monica Hunyadi, Interim Secretary
Ohio Consumers' Counsel Governing Board