



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

January 17, 2023

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. Connie Skinner
Mr. Josh Yoder

Members Absent: Ms. Jan Shannon

Ms. Grossman joined the meeting at approximately 10:25 A.M. 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 10:07 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 November 15, 2022 Board meeting. A motion was made by Ms. Skinner to approve the minutes. Mr. Fleetwood seconded the motion. Mr. Sauer called the roll. The motion was approved unanimously by members present (prior to Ms. Grossman's arrival).

RECOGNITION:

Consumers' Counsel Weston announced Angela O'Brien as Employee of the Third Quarter of 2022. He described Angela as a very hard-working attorney who has been involved in a lot of active cases recently. Deputy Sauer also emphasized Ms. O'Brien's hard work for consumers and commended her as deserving of this recognition. Consumers' Counsel Weston read the poem that was shared at a staff meeting regarding this recognition.

Mr. Weston next shared the Agency's updated Mission and Vision with the Board. He explained that the Mission and Vision had been modernized to reflect the work of the agency in these times. He commented that the previous vision was established when the agency's work especially included the developing consumer choices and competition that were developing in Ohio.

The updated Mission is: The Ohio Consumers' Counsel advocates and educates to secure for Ohioans affordable, reliable and equitable residential utility services that are essential to their well-being.

The updated Vision is: To be an independent voice of Ohio residential consumers, including at-risk communities, for achieving justice, equity and regulatory reform regarding their utility services.

Chair Watkins discussed that Ms. Grossman has a prior commitment on Tuesdays (when most Board meetings are scheduled). He pointed out that Executive Session is often scheduled for the latter part of the meeting and it would be best if Ms. Grossman could be present for that. He also noted that State holidays at times fall on the Monday prior to the meeting, which puts additional burden on OCC staff to prepare for Board meetings. He asked the Board about possibly moving the meetings to the third Wednesday of each month, or any other day. After a brief discussion, it was decided to keep the schedule as it currently is, due to various conflicts with other dates. Chair Watkins noted that if an executive session is needed at a meeting, it could be scheduled earlier in the agenda. Ms. Grossman joined the meeting during this discussion.

Consumers' Counsel Weston introduced Merrilee Embs, who he recently promoted to manager of the Public Affairs Department. He explained that Merrilee had been with the agency for about four years. He noted that Merrilee had recently received her Masters' Degree in Mass Communications from Murray State University. The Board congratulated Ms. Embs on her promotion.

Consumers' Counsel Weston informed the Board that Mike Haugh, the Director of the Analytical Department, had accepted a position in the private sector. He stated that Mike, who is an expert in energy supply, had been hired (and re-hired) for several stints at the agency over the years. He appreciated that Mike recently took on the duties of the Analytical Director upon Daniel Duann's retirement.

EXECUTIVE SESSION:

Ms. Skinner made a motion to enter executive session to consider the appointment, employment or compensation of two public officials. Seconded by Ms. Moore.

Deputy Sauer called the roll:

Mr. Brown – Yes

Mr. Fleetwood – Yes

Mr. Hager – Yes

Ms. Moore – Yes

Ms. Skinner – Yes

Mr. Yoder – Yes

Vice-Chair Grossman – Yes

Chair Watkins – Yes

Chair Watkins asked for the Consumers' Counsel, Deputy Consumers' Counsel, and Assistant Attorney General to stay for Executive Session. The Board went into Executive Session at approximately 10:32 A.M.

(The Board returned from Executive Session at approximately 11:22 A.M.)

After Executive Session, Consumers' Counsel Weston then made the following announcement of his intention to retire:

“At some point in the coming months, at a time that works for the Board, the agency, and consumers, I will be retiring from this job that I love. Thanks to all of you Board members and to your predecessors over nearly half a century, for volunteering for this public service. In this regard, I've been fortunate to serve 12 years with Chair Watkins, 7 years with Ms. Moore and with all of you. And thanks to Chairs Jerry Solove, John Moliterno, Gene Krebs, Mike Watkins, and the Boards for appointing me twice, as Deputy and then as Consumers' Counsel.

I cannot emphasize enough my admiration and gratitude that the Board has defended the agency's most key attribute that was established by its legislative founders –the agency's *independence*. The Board's courage was never more needed than when its independence was threatened by legislation, House Bill 246, after the Consumers' Counsel opposed House Bill 6. The Board was undaunted in passing a resolution to defend its service to millions of Ohioans.

Please know that you have a great Deputy in Larry Sauer. I've been so fortunate to work with him. More than I can express. And I appreciated working with his predecessor as Deputy, Melissa Yost. Thanks also to OCC's partners in consumer advocacy. It's good to have friends in this business.

Retiring Chief Justice Maureen O'Connor recently called upon new attorneys to be heroes for disadvantaged Ohioans. I have known hundreds of OCC heroes seeking justice for the Ohio public over the years. I am fortunate to still be working with some of them that I've known for decades. I was hired in 1978 by the original OCC hero, first Consumers' Counsel Bill Spratley. And I had the honor of serving with the third Consumers' Counsel, Janine Migden-Ostrander.

Dr. Martin Luther King Jr. said that “the arc of the moral universe is long, but it bends toward justice.” Of course, people are needed to make justice happen – people like you, OCC staff and all of our predecessors.

I've been asked about my retirement plans. I look forward to the usual things – like life away from utility influence and crony-capitalism. Best wishes to all of you. And thanks so much.”

Consumers' Counsel Weston briefly left the meeting to hold a video meeting with OCC staff to personally inform them about his upcoming retirement. (A resolution honoring Consumers' Counsel Weston is anticipated at a future Board meeting.)

ELECTION OF OFFICERS:

Earlier in the meeting Chair Watkins noted that the Board elects its Chair and Vice Chair at the January Board meeting each year. Chair Watkins now called for nominations for Chair. Mr. Hager nominated Mr. Watkins as Chair, seconded by Ms. Grossman. Ms. Skinner nominated Ms. Grossman as Chair. Ms. Grossman declined to accept the nomination (and there was no second). Ms. Skinner next nominated Ms. Moore, who also declined to accept the nomination (with no second). Chair Watkins asked if there were any further nominations. Hearing none, Chair Watkins asked the Deputy to call the roll. Deputy Sauer called the roll. Chair Watkins abstained. All other members voted yes, and the motion passed to elect Mr. Watkins for another term as Chair.

Chair Watkins thanked the members for their confidence. Chair Watkins complimented the bi-partisan board for working together. He added that everyone is dedicated to do what is best for Ohio consumers. He stated that the Board will work together to find a new Consumers' Counsel (given Consumers' Counsel Weston's announced intention to retire soon). Chair Watkins complimented Consumers' Counsel Weston on his work over the many years. The Chair noted that the Board had never even considered replacing him during that time, which he said speaks a lot for Mr. Weston's abilities.

Chair Watkins called for nominations for Vice-Chair. Mr. Hager nominated Ms. Grossman, seconded by Ms. Skinner. Chair Watkins called for any further nominations, and there were none. Deputy Sauer called the roll. Ms. Grossman abstained. All other members voted yes, and the motion passed to elect Ms. Grossman as Vice Chair. (Mr. Fleetwood was briefly absent for this vote.) Ms. Grossman thanked the members for their faith in her ability, and noted there was a lot of work to be done.

OVERVIEW OF AGENCY ACTIVITY FOR CONSUMERS:

Deputy Consumers' Counsel Larry Sauer discussed soaring energy prices that impact consumers. He stated that energy price increases had resulted from rising demand during the economic recovery related to the pandemic, as well as tightening of energy supply due to the war in the Ukraine, among other factors. He reviewed the results of recent energy auctions for FirstEnergy and AEP and explained the methodology for the auctions.

Regarding fallout from rising energy prices, Deputy Sauer next discussed an issue at the PUCO regarding NOPEC's return of its many electric customers to the standard offer of the utility (mainly FirstEnergy). He explained that NOPEC (a government aggregator) made this move to benefit its electric consumers with the much lower price of the utility's standard offer (compared to NOPEC's higher price). Mr. Sauer added that certain suppliers challenged this move, and that the PUCO is now reviewing whether or not NOPEC should be recertified as an aggregator in Ohio. He explained that typically these certificates are renewed every two years, and that NOPEC has been an aggregator since 2000. He added that NOPEC has worked with OCC on a number of cases to protect consumers. He stated that OCC has questioned the fairness of the claims against NOPEC.

Chair Watkins asked if other aggregators would follow NOPEC's suit. Deputy Sauer responded that so far that had not occurred (where aggregator customers were returned to the utility prior to the end of the aggregation term). Mr. Yoder asked if OCC had tracked to see how competitive the auctions are over time. Deputy Sauer explained that OCC generally watches what is going on. He explained that the PUCO conducts the auctions, and there is a market review performed to make sure the auctions are being competitively operated. He noted that the OCC recently asked the PUCO to delay FirstEnergy's January auction due to the uncertainty with NOPEC's certification, which could cause prices to rise.

Deputy Sauer next discussed the recent winter storms and issues with the electric grid. He stated that PJM had asked for OCC's assistance around the year-end holidays to notify consumers to take voluntary steps to conserve electricity. OCC promptly posted the need to conserve on its website. Deputy Sauer explained to the Board that there were a number of generators who were unexpectedly offline during this heightened need. These generators had been paid capacity prices to be up and running when they were needed. He explained that there were up to \$2 billion in penalties being contemplated by PJM regarding generators that didn't deliver during this timeframe. Deputy Sauer further explained that PJM was forced to pay exorbitant prices to other generators to produce the electricity.

Deputy Sauer next explained that it was time for a new PUCO commissioner to be appointed. He reminded the Board of the August 2020 resolution of the Board to reform the methodology for selecting commissioners. He also noted that Board Chair Watkins (who, as OCC Board Chair, is also a standing member of the Nominating Council) sent a letter to the PUCO Nominating Council seeking reform. (It was the Chair's third letter in three years to seek reform since the FirstEnergy scandals became known.) Mr. Sauer listed the current Nominating Council members. He noted that Commissioner Trombold resigned her commissioner position a few months early, a week before the nomination period closed. Deputy Sauer shared the public list of commissioner applicants. Chair Watkins explained that four individuals would be nominated and sent to the Governor for selection.

Deputy Sauer explained to the Board that the PUCO Chief of Staff position was to be filled by Anne Vogel who was an energy policy advisor to the Governor. The Deputy added it was next announced that Ms. Vogel was appointed by the Governor as Director of the Ohio EPA. There had not yet been an update about the PUCO Chief of Staff position.

Deputy Sauer next reviewed the AES (DP&L) rate case. He explained that OCC had opposed the rate increase, in part because AES had previously agreed (in a settlement with OCC and others) to a distribution rate freeze. A brief video clip of OCC's oral argument by OCC attorney Maureen Willis was displayed.

Consumer's Counsel Weston returned to the meeting at this time, after meeting with OCC staff to inform of his retirement announcement.

Deputy Sauer continued that the PUCO stayed the AES rate increase, as OCC sought. However, the PUCO did not adopt OCC's position on such items as the rate of return and approved a \$75 million rate increase to be charged to consumers once the rate freeze has expired. That rate increase and the rate of return was above the PUCO Staff's recommendation (and above OCC's recommendation). Consumers' Counsel Weston added that it was OCC attorney Maureen Willis who originally advised that the rate increase should be disallowed due to the prior settlement. Eventually the PUCO Staff and others agreed with OCC's position. Consumers' Counsel Weston displayed an example of an OCC Consumer Alert to make consumers aware of the recent local public hearing in the AES rate case.

Deputy Sauer reviewed PJM's report of its review of the AEP outages during June 2022. He stated that PJM found that the causation of the outages was a result of vegetation coming into contact with lines as a result of a storm. He noted that this finding was provided to PJM by AEP itself. Consumers' Counsel Weston noted that consumers had paid AEP a great deal of money for vegetation management (tree trimming). He stated that it was disappointing to hear that the lack of vegetation management was the cause of the outages that were disruptive to so many consumers. Consumers' Counsel Weston noted that AEP even has charges for "enhanced" reliability. He added that AEP's recent case has a request for even more money for vegetation management.

Consumers' Counsel Weston and Deputy Sauer also reviewed the conclusions and recommendations of the PUCO regarding the AEP outages in June 2022. The PUCO's report stated that the utility had not broken the law, but the expectation was for better vegetation management and communication with consumers. Consumers' Counsel Weston next described a motion filed by the OCC, the Ohio Poverty Law Center and Pro Seniors, seeking an investigation into the AEP outages. This investigation was never opened by the PUCO, which limited OCC's and the public's ability to get answers to the many questions that remain.

Deputy Consumers' Counsel Sauer noted the upcoming trial in the United States vs. Householder and Borges. It is scheduled to begin in the coming week. Vice-Chair Grossman commented that it was difficult to comprehend that House Bill 6 wasn't more of an issue during the recent election, since we are still all subsidizing those decisions that were made. Consumers' Counsel Weston added that there is no investigation pending regarding FirstEnergy's payments that it later admitted were intended as bribes. He added that although there are pending PUCO investigations, they are more related to whether consumers were charged for any improper ratemaking. There are no known investigations at the PUCO about what actually happened at the PUCO with former Chairman Randazzo, regarding FirstEnergy. Deputy Sauer reminded the Board that the PUCO stayed its investigations of FirstEnergy as of August 24, 2022, for a period of at least six months, granting the request of the U.S. Attorney's Office.

Ms. Grossman left the meeting at approximately 12:30 P.M.

Consumers' Counsel Bruce Weston next reminded the Board of the July 17, 2019 letter asking the Governor to veto House Bill 6, signed by Consumers' Counsel Weston and the Ohio Manufacturers' Association President. Mr. Yoder asked about engaging other organizations to help reach their constituents since it is difficult to reach consumers directly. Mr. Weston responded that OCC regularly engages with other organizations who represent large groups of people, such as NOPEC, the legal aid organizations, and others. He noted, for example, that the Ohio Poverty Law Center and Pro Seniors recently joined OCC in the motion for an investigation regarding the AEP outages. He stated OCC often considers asking other groups to join with us in our pleadings. He encouraged Board Members to keep asking these questions. He noted that OCC and various of these groups have continued to work to repeal the remaining parts of House Bill 6 (which include a coal plant subsidy to AEP, Duke and AES). Mr. Yoder commented that it seemed the only way to combat the industry influence would be to build a coalition from smaller groups.

The Consumers' Counsel next reviewed a recent decision from FERC that granted OCC's complaint against AEP. AEP was charging consumers for a profit adder (extra profit) previously awarded for participation in an RTO (such as PJM). He stated that FERC intended for the extra profit to be an incentive for utilities to join an RTO. However, joining an RTO is otherwise mandated by Ohio law, and is therefore unnecessary to incentivize at consumer expense. He noted that Commissioner Christie, who had earlier been a guest speaker at an OCC Board meeting, referred to the profit adder as "FERC Candy" in FERC's decision to grant OCC's complaint against AEP. The Consumers' Counsel then described interesting pro-utility language in Ohio House Bill 317 (from last year) that would have protected electric utilities against OCC's complaint at FERC. He noted this bill did not pass but could be reintroduced this year.

Mr. Hager left the meeting at approximately 12:50 P.M.

The Consumers' Counsel next reviewed some ongoing electric security plan cases. He noted there was still no ratemaking reform as sought by OCC.

FISCAL REPORT:

Consumer's Counsel Weston updated the Board that, in early April, OCC staff would be returning to on-site work in the Columbus office two days a week. The return will be on a staggered basis by department, resulting in a staff presence in the office each day of the week. He added that the staff had been doing well working remotely for consumers during the pandemic.

He also reviewed that Fiscal Year 2022 had finally been closed by the state in November and that OCC had spent approximately 93% of its budget. He stressed that OCC continued to recruit to fill vacant positions. He noted that several pending hires would be detailed further at the next Board meeting.

Consumers' Counsel Weston explained that the Fiscal Years 2024-25 budget process will begin soon after the Administration releases its proposal. He also noted that the \$700,000 budget increase supported by motion of the Board was included in OCC's budget request to the Administration.

Consumer's Counsel Weston reviewed legislative testimony recently presented by OCC regarding Electric Security Plans, subsidies for electric vehicle charging, charges to consumers for water utility ratemaking, and charging natural gas consumers to subsidize infrastructure development.

Chair Watkins asked if there was anything else that needed to be brought before the Board. Ms. Moore 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 1:00 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on March 21, 2023.



Michael Watkins, Governing Board Chair



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