



Office of the Ohio Consumers' Counsel

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

January 26, 2022

Members Present: Mr. Michael Watkins, Chair
Ms. Cheryl Grossman, Vice Chair
Mr. Tim Callion
Mr. Dorsey Hager, Jr.
Ms. Kelly Moore
Ms. Jan Shannon
Ms. Connie Skinner

Members Absent: None

CALL TO ORDER BY CHAIR:

Chair Watkins called the meeting to order at approximately 12:00 noon. Interim Board Secretary (Deputy Consumers' Counsel) Larry Sauer called the roll, with members present as shown above.

The Chair advised that Vice Chair Young and Board member Newman resigned (in the week before the meeting). Vice Chair Young resigned as a result of receiving an appointment by the Governor to the PUCO Nominating Council (as the business community representative).

MEETING MINUTES:

Chair Watkins asked for a motion to approve the minutes of the November 16, 2021 Board meeting. A motion was made by Ms. Skinner to approve the minutes. Ms. Grossman seconded the motion. Mr. Sauer called the roll. The November 16, 2021 Board meeting minutes were approved unanimously.

SCHEDULING OF MEETINGS:

The Chair noted that Ms. Shannon has a scheduling conflict between meetings of another Board and certain of the OCC Governing Board's scheduled meetings. After discussion it was determined that the scheduling issue could be resolved by changing meetings to begin at 10:30 A.M. A motion was made by Ms. Grossman, seconded by Ms. Shannon, to change the start time for future Board meetings to 10:30 A.M. Mr. Sauer called the roll. The motion was approved unanimously.

Chair Watkins asked about a schedule for taking the annual Board and OCC photo. Mr. Weston suggested the file photos could be used, which was deemed acceptable.

Consumers' Counsel Weston stated that Nick Stallard, OCC's legislative liaison, had informed that HB51 included an amendment which would allow for virtual meetings again. Mr. Weston will keep the Board informed of the outcome of that bill. He added that a similar bill, H.B. 538, also included similar language that the agency was tracking.

GUEST SPEAKER:

Deputy Sauer introduced Commissioner Mark Christie of the Federal Energy Regulatory Commission. The Deputy informed that the Commissioner took office January 4, 2021, after being nominated by President Trump, and confirmed by the U.S. Senate in November 2020. Immediately before joining FERC, Commissioner Christie was the Chairman of the Virginia State Corporation Commission, on which he served for nearly 17 years. Commissioner Christie taught regulatory law for a decade as an adjunct faculty member of the University of Virginia School of Law. He is a magna cum laude graduate of Wake Forest University and earned his law degree at Georgetown. He served as an officer in the U.S. Marine Corps.

Commissioner Christie expressed his thanks to OCC for submitting Comments in the Minimum Offer Pricing Rule proceeding at FERC. He stated that the initial comments were outstanding, saying: "this is some of the best I've seen from a consumer group." He added that the reply comments were also very good, and he wished that: "all consumer advocates were as articulate and as clear and as blunt." He stated that the headings are clear as to where OCC stands. He said that there would likely be further opportunity to comment and encouraged OCC's continued participation.

Commissioner Christie also stated that he appreciated OCC raising the issue of the amount of money that is being charged to consumers for local transmission projects. These projects are not being thoroughly vetted for need or cost. He noted the costs of these projects are almost 80% of PJM transmission costs now, as the OCC has pointed out. He believes these projects need to be subjected to scrutiny and relayed his experience as a state regulator in Virginia, where such projects were subject to their review and approval.

He encouraged the OCC to stay vigilant because there is a massive effort by many very powerful interest groups to shift potentially trillions of dollars of development onto consumers. He also encouraged OCC to stay vocal and active at NASUCA.

Consumers' Counsel Weston introduced the Chair, Board members and himself to the Commissioner, and described the general makeup of the Board and OCC. Mr. Weston added that OCC devotes resources to the issues at FERC. He thanked the Commissioner for his kind words about OCC and noted that the first Ohio Consumers' Counsel was the first president of NASUCA.

Mr. Weston asked if the Commissioner could discuss how these Federal issues affect retail consumers in Ohio. Commissioner Christie shared his perspective that FERC's regulation does affect retail rates; what affects wholesale flows through to retail. He added that he has been on the receiving end as a state regulator for years as to the effects of what FERC does. Transmission is a perfect example, flowing through a separate rider, and affects retail consumers in Ohio. And that is why the local transmission projects are so important to be vetted properly.

Mr. Weston mentioned that he favored competition, markets over monopolies, and asked the Commissioner to comment on competition versus subsidies. The Commissioner referenced a recent podcast with Glen Thomas, who represents one of the competitive power generators in PJM. He stated that he spent a good amount of time in the podcast talking in great detail about the PJM capacity market. He added that what began as a market in 2006, where winners and losers were going to be determined by competition, by cost-based bids, has become a battle of subsidies – whoever gets the biggest subsidy wins.

Mr. Weston asked the Commissioner about FERC's role in renewable energy. The Commissioner responded that the Federal Power Act requires just and reasonable rates and non-discriminatory rates. FERC is required to be neutral on fuel source, and that is a guiding principle. He added that he is extremely concerned about reliability. He stated that the electric grid has to be balanced at every second of every day, which requires resources that are available all of the time. Resources that are only available when the wind blows or when the sun shines are not going to be the sole source for balancing the grid. He stated that the North American Electricity Reliability Council has repeatedly stated that gas is going to be the balancing fuel of choice for years to come. The more wind and solar are fed into the grid, the more dispatchable resources are needed to keep the system balanced.

Deputy Sauer thanked Commissioner Christie for his time and added it was great to hear his perspectives. Commissioner Christie again thanked the OCC for filing public comment and encouraged OCC to continue throughout the proceeding. He added that it was incredibly important to get the consumer perspective. Mr. Weston stated that the OCC was fortunate to have Deputy Sauer, Mike Haugh, Dan Shields, and others, as resources for these issues.

ELECTION OF OFFICERS:

Chair Watkins stated that the Board elects the Chair and Vice Chair at the January meeting each year. The Chair called for nominations. Mr. Callion nominated Mr. Watkins as Chair, seconded by Ms. Grossman. Mr. Hager moved that the nominations be closed, seconded by Ms. Shannon. Deputy Sauer called the roll. Chair Watkins abstained. All other members voted yes, and the motion passed to close nominations. As to the motion on the nomination of Mr. Watkins for Chair, 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 support.

Chair Watkins called for nominations for Vice-Chair. Ms. Shannon nominated Ms. Grossman, seconded by Mr. Hager. Mr. Hager moved to close the nominations, seconded by Ms. Moore. Deputy Sauer called the roll, and Ms. Grossman abstained. All other members voted yes, and the motion passed to close nominations. As to the motion on the nomination of Ms. Grossman for Vice Chair, Deputy Sauer called the roll. Ms. Grossman abstained. All other members voted yes, and the motion passed to elect Ms. Grossman as Vice Chair. Ms. Grossman thanked the members for their faith in her ability.

Chair Watkins briefly discussed Ms. Grossman's previously mentioned concern about a plan for succession, in the event that Consumers' Counsel Weston and/or Deputy Sauer decide at some point to retire. Chair Watkins explained that the process is not to simply promote from within the agency, but rather to advertise for people to submit applications. The Chair said that generally the way the process would work is a subcommittee of Board members would review applications and determine those that meet the legal requirements. That subcommittee would then bring back to the entire Board the list of applicants who meet the legal requirements. The Board would then conduct interviews, followed by its public vote for a Consumers' Counsel or Deputy.

RECOGNITION:

Consumers' Counsel Weston shared an update on the Governor's appointment of Mr. Young to the PUCO Nominating Council (as the representative of the business community). Mr. Weston stated that he would like to see the Nominating Council reopen the commissioner application process. He added that the Governor was reported to have said in an interview that he is not going to appoint someone connected to the industry. He informed the Board members that in the current process there were not applications from university professors, academia, and consumer advocates, as had occurred at times in the past.

Mr. Weston shared his concern that the lack of these applicants reflect a perception that applying for a commissioner appointment is futile for those working in the public interest. He recounted with dismay how a previous applicant with experience advocating for utility consumers (Ellis Jacobs at Advocates for Basic Legal Equality) was not even given an interview by the Nominating Council. Mr. Weston stated he is hoping there will be more applicants from the public interest, if the application process is reopened.

Mr. Weston noted the significance of this issue for consumers. OCC presents its legal cases, representing millions of Ohio's consumers, to be judged by the PUCO's five Commissioners. Until Chair Randazzo resigned, three of those commissioners (a majority) formerly worked for utilities. There remain two commissioners who formerly worked for utilities. OCC would like to see more balance and diversity on the PUCO.

Mr. Weston spoke well of Mr. Young's public service on the OCC Board for nearly ten years and said he will be missed. Chair Watkins added that he appreciated Mr. Young's vocalness and service as Vice-Chair.

Mr. Weston discussed several staffing changes at the agency. He stated that Jim Williams, who has been with OCC for 25 years, had announced his plans to retire at the end of the year. But fortunately, Jim then decided to continue working with the agency on a part-time basis. Mr. Weston noted that Jim previously was the manager in the OCC call center years ago. The call center later was banned by the legislature, from operating to handle consumer complaints. Jim is an expert in consumer issues regarding at-risk consumers, bill payment assistance programs, etc. Jim is also an expert in electric distribution system reliability, among other things.

Mr. Weston next provided an update on Ross Willis. Ross is a technical expert who retired from the PUCO. After retiring, he joined OCC as a senior analyst and has been with us for six years. He recently announced his intent to leave at the end of the year. But, similar to Jim, he then decided to continue as a part-time employee.

Deputy Sauer relayed that Deb Bingham retired after 16 years. Deb served as a case team coordinator for the Legal Department. She was responsible for helping legal teams stay on task and for finalizing OCC's drafts before filings. She was a valued employee. She will be missed.

Deputy Sauer introduced Alana Noward, a new hire, who joined OCC to replace Deb as Case Team Coordinator. He added that she started a few weeks before Deb left so there was an opportunity for her to train with Deb. Alana was previously a paralegal at a bank, and prior to that was an administrative assistant in state government. She already has been helpful in our consumer work.

Deputy Sauer relayed that Chris Healey, an attorney in the Legal Department, recently resigned to take a position in an energy efficiency organization as their nationwide regulatory affairs director. He explained that prior to joining OCC, Chris was a litigator with a law firm and did not previously have regulatory experience. He added that Chris was a quick learner who took on a lot of challenging advocacy and did a nice job as he expanded his knowledge base. Mr. Weston commended Chris and wished him the best.

Consumers' Counsel Weston announced that Merilee Embs had been chosen Employee of the Second Quarter for 2021. He explained that Merrilee began her work with the OCC about three years ago and has about 20 years in public relations and reporting. She works in Public Affairs and is very helpful with a busy work schedule. Mr. Weston commented that the media business is sometimes 24/7, because the news doesn't stop. Reporters have inquiries and give OCC deadlines for responses. Merrilee is great with meeting the media deadlines and helping others to meet them as well.

2021 – THE YEAR IN REVIEW:

Deputy Sauer discussed OCC's settlement with AEP and others, which was filed in March of 2021. AEP was asking for a rate increase. But instead, the ultimate result for consumers in the settlement was a slight decrease in rates. He added that corporate welfare was minimized. And OCC also negotiated the receipt of shadow billing data from AEP, which compares in the aggregate how much customers who are being served by a marketer would have paid if they had been on the utility's standard rate. AEP's first report covered January 2019 to November 2021. Unfortunately for consumers, in that time period consumers paid \$139 million more than they would have paid had they been using AEP's standard offer. He added that this shadow billing data can be difficult to obtain from utilities, but as part of the settlement this data will be provided to OCC on an ongoing basis.

Next Deputy Sauer discussed OCC's settlement with Duke and others, which was a resolution of several cases. Those cases included resolution of the Tax Cuts and Jobs Act case, resolved manufactured gas plant remediation cost cases, and shadow billing. He stated that there were some significant tax refunds that came back to consumers through this process and some benefits to consumers from Duke's insurance claims payouts. The shadow billing information from Duke, for January of 2019 to July of 2021, shows that Duke natural gas consumers in the aggregate overpaid \$71 million in that time period. Consumers' Counsel Weston added that these settlements are very resource-intensive and require a lot of work and expertise from OCC's staff. He noted that in order to get a good settlement you have to have a good litigation position (which also can be resource-intensive).

Consumers' Counsel Weston showed screen shots from OCC's website regarding the applications for the PUCO Commissioner position, a Toledo Blade Editorial and more regarding the process for appointment of Commissioners and regarding the Nominating Council. He also described the Board's August 2020 Resolution which called for PUCO reform. And he noted the two letters from Chair Watkins to the Nominating Council asking for special meetings to be held for other reforms. Mr. Weston also shared a slide showing his 2021 letter to the Governor, asking him to appoint a consumer advocate. Other slides included a list of the Nominating Council members and some relevant news stories regarding the PUCO Commissioner applicants.

Consumers' Counsel Weston shared a tweet from NOPEC that references the consumer advocacy of OCC and NOPEC to settle a profits case with FirstEnergy and others, where an unprecedented \$306 million would be refunded over time to consumers of FirstEnergy. The profits issue involved the law that limits utilities from charging for significantly excessive profits. He described the process of OCC winning an appeal in the Supreme Court to overturn a PUCO decision protecting FirstEnergy and its profits. The appeal was needed to enable the large (\$306 million) refunds. Similarly, efforts at the legislature to have pro-FirstEnergy budget language repealed was needed to enable the profits refunds from FirstEnergy.

Deputy Sauer described the next matter, which dealt with H.B. 6 repeal and refunds of FirstEnergy decoupling charges. He explained the meaning of decoupling charges and how it protects utilities. Decoupling was one of the benefits to FirstEnergy in H.B. 6 and it was repealed, resulting in a \$27 million refund to FirstEnergy consumers in July of 2021.

Deputy Sauer shared text messages from FirstEnergy which have been revealed through cases at the PUCO, some regarding the PUCO certification of FirstEnergy Advisors. He explained that the FirstEnergy Advisors case was appealed by OCC and NOPEC to the Supreme Court. The Court then overturned the PUCO's decision. FirstEnergy Advisors then asked to withdraw its certificate case which was immediately granted by the PUCO, before OCC or NOPEC even had a chance to reply.

Consumers' Counsel Weston reviewed the FirstEnergy/H.B. 6 scandal, as different from the FirstEnergy/PUCO scandal. And he stated that there needs to be real and full investigations of all the various scandals, for protection of the public. He noted that FirstEnergy is charged with a Federal crime.

He further explained that OCC wanted to subpoena the auditor FirstEnergy referenced in a shocking text. He stated that currently OCC has to rely on the PUCO to sign subpoenas in order for OCC to bring in someone for questioning. He added that there should be a change in the law to give OCC subpoena power.

Consumers' Counsel Weston next reviewed a case where OCC and NOPEC filed a motion for an auditor in a corporate separation case. He explained that the OCC learned from a public records request that the PUCO staff informed the bidders for the audit contract that the H.B. 6 issues would not be part of the corporate separation audit. Thus, NOPEC and OCC filed a motion for a supplemental audit, which has not been granted by the PUCO at this point.

Mr. Weston next explained the statutory requirement for disclosure of side deals. And he noted that the PUCO has acknowledged in a ruling that OCC may have been denied side-deal information from FirstEnergy in its last electric security plan case. Unfortunately, the PUCO is delaying the matter, claiming it should not be mixed with the criminal matters that are pending.

Additional dismaying texts were reviewed as related to FirstEnergy.

Consumers' Counsel Weston highlighted a Dispatch newspaper headline that describes FirstEnergy as a giant lobbying firm that also happens to run a utility. He shared a slide regarding FirstEnergy's deferred prosecution agreement which included a \$230 million penalty, and other stipulations, and a slide showing that consumers still are paying subsidies for coal plants under H.B. 6.

Mr. Weston next shared a Cleveland Plain Dealer article regarding putting an end to coal subsidies. And he shared a number of dismaying PUCO Staff emails related to the controversial OVEC coal plants subsidy that the PUCO made consumers pay for AEP, Duke and DP&L (before the coal plant subsidy was codified in H.B. 6). The PUCO Staff's emails show that the PUCO Staff encouraged the independent auditor to delete from the audit report a consumer-protection phrase stating that keeping coal plants open is not in the best interest of ratepayers.

Ms. Skinner stated that the Board appreciated that OCC staff were on top of all these issues.

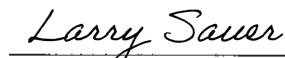
Ms. Moore made a motion to adjourn the meeting. It was seconded by Ms. Skinner. Mr. Sauer called the roll. The motion was unanimously approved.

The meeting adjourned at approximately 2:00 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on March 15, 2022.



Michael Watkins, Board Chair



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