



## Office of the Ohio Consumers' Counsel

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

**March 15, 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 10:30 a.m. Interim Board Secretary (Deputy Consumers' Counsel) Larry Sauer called the roll, with all members answering as present as shown above. [As of this meeting date, the Board has seven members.]

#### **APPROVAL OF PRIOR MEETING MINUTES:**

Chair Watkins asked for a motion to approve the minutes of the January 26, 2022 Board meeting. A motion was made by Ms. Skinner to approve the minutes. Ms. Shannon seconded the motion. The January 26, 2022 Board meeting minutes were approved unanimously by roll-call vote.

#### **RECOGNITION:**

Consumers' Counsel Weston began with a recognition of former Vice-Chair Stuart Young for his Board service, given that Mr. Young resigned in January upon being appointed to the PUCO Nominating Council by the Governor. A draft resolution was provided to the members. Mr. Weston explained that Mr. Young served approximately 10 years on the Board, including five years as Vice-Chair. Ms. Skinner made a motion to accept the resolution, seconded by Mr. Callion. Ms. Moore moved to include in the resolution an appreciation for Mr. Young's witticisms, and Ms. Skinner and Mr. Callion agreed to so amend the motion and second. Mr. Watkins added that he really appreciated Mr. Young's service to the Board as Vice-Chair and his willingness to voice his opinions, including speaking to the media. Mr. Sauer called the roll. The motion adopting the resolution to honor Mr.

Young was approved unanimously. Mr. Weston expressed his appreciation for Mr. Young's contributions to consumer advocacy over the years.

Consumers' Counsel Weston next announced that Lisa Lyman had been chosen Employee of the Third Quarter for 2021. He explained that Lisa had been with the agency for about seven years. He noted that part of her work includes contract management (which is important for OCC's advocacy) and assessments (which is how the agency receives its operating revenue). Mr. Weston added that Lisa is being honored in part for assuming additional responsibilities during the time the Operations Director position was vacant.

Mr. Weston stated that the second honoree was Maureen Willis, for the fourth Quarter, 2021. Ms. Willis is a long-standing OCC counsel, who currently serves as Senior Counsel. Maureen was first hired as a legal intern in the early 1980's by the first Consumers' Counsel. She has tremendous knowledge and expertise in utility regulation in the public interest. She has had a number of successful appearances in the Ohio Supreme Court. Mr. Weston noted that we are grateful to have her working with us.

**WORK ACTIVITY OVERVIEW:**

Consumers' Counsel Weston began by discussing the agency's continued efforts toward reform of utility regulation. He stated there was a long history of the Board seeking reform for the process of selection of PUCO commissioners. He reviewed the Board's resolution of 2020, the Chair's letter requesting a special meeting of the Nominating Council, and the letter from OCC, Pro Seniors and Legal Aid of Southwest Ohio seeking reform. He next shared media reports. And he noted that despite talk of reform, all four nominees of the Nominating Council for the recent vacancy on the PUCO had ties to the utility industry.

Chair Watkins added that this most recent meeting of the Nominating Council did include questions being asked of the prospective appointees by numerous members. He found this to be refreshing, although disappointing that there were no members of the academic or consumer world to consider. He added that perhaps consumer advocates and others believe it is futile to apply, because they believe the choice will be made on a political basis. Mr. Weston noted that the OCC Board expressed concern over this issue 40 years ago. His view is that the Nominating Council has been a failure and it's time to try something else for the people of Ohio.

Mr. Weston added that a few years ago an attorney from Advocates for Basic Legal Equality (ABLE) applied for a Commissioner seat. This individual has worked for the public interest for a couple of

decades including work in PUCO cases. He has devoted his career to public service. Yet, he was not even given an interview by the Nominating Council.

Mr. Weston reported on the PUCO Nominating Council's most recent meeting. He noted that, at the Nominating Council's meeting, OCC Chair Watkins (who also serves on the Nominating Council) made a motion to nominate Mr. Young as Chairman of the Nominating Council. But there was no one on the Nominating Council who would second the motion. Additionally, Mr. Young made a motion for the Council's interviews of commissioner applicants to be held in the public domain instead of in a secret executive session. While there was some receptiveness among some Council members to hold public interviews, there seemed to be resistance to making the change at the current meeting. Accordingly, Mr. Young withdrew his motion and the interviews were held in secret, as usual. Mr. Weston emphasized that, while improvement in Nominating Council processes would be important, the ultimate objective for reform is to bring more balance to the PUCO through actual appointments of consumer representatives. That's how reform should be judged.

Mr. Weston added that OCC had also called for a reopening of the application process, which has been done in the past. This did not occur, and ultimately Commissioner Conway was reappointed, despite his industry connections. Mr. Weston reviewed additional editorials and tweets asking for reform and reviewed OCC's seven points for PUCO reform.

Ms. Moore commended OCC for "staying in the game." She added that, with the media favorably reporting on OCC's reform efforts, timing is critical and OCC should keep applying pressure. She stated she appreciated the efforts that OCC is making.

Next Mr. Weston shared information about the four investigations of FirstEnergy at the PUCO. He stated that the Hearing Examiner assigned to the cases, Gregory Price, had withdrawn from the cases. Mr. Weston noted this withdrawal occurred after news stories were published about Mr. Price's prior involvement with House Bill 6. Mr. Weston added that a withdrawal like this was highly unusual. Mr. Weston also discussed various difficulties with discovery experienced by OCC in the PUCO cases. He also explained an OCC's effort at a prehearing to seek clarification of the specific terms of Mr. Price's withdrawal.

Deputy Sauer discussed OCC's nominations (via a 1/5/22 letter by Director Weston) to the Governor for appointment of the public member to the Ohio Power Siting Board. The law requires that the public member of the Power Siting Board must be an engineer. Mr. Sauer added that OCC would like the same role in nominating public members to the PUCO. Chair Watkins asked if there had been any

action by the Governor and Mr. Sauer responded that there had not been as of the current date. Mr. Weston explained that there is not a deadline in the statute, but there is a practical consideration given that the Power Siting Board continues to meet without a public member.

Deputy Sauer next discussed the legislature's requirement, in HB 128, for the Power Siting Board to submit a report to the General Assembly as to whether the planning of transmission systems is cost effective and in the best interest of consumers. Mr. Sauer referenced FERC Commissioner Christie's comments (at the January Board meeting) about OCC raising these important concerns at FERC. The issue involves a regulatory gap over local transmission projects. PJM and FERC are not regulating these local transmission projects. Also, no Ohio agency is reviewing these projects for prudence. Mr. Sauer continued that the utilities are spending astronomical amounts of money on transmission.

Mr. Sauer stated that the Power Siting Board had filed a draft report on utility supplemental transmission projects in September and that OCC had commented again on the regulatory gap. OCC noted that, over the last four years, utility transmission spending had reached \$5.8 billion dollars in Ohio. This will ultimately be reflected in Ohio utility consumers' bills. OCC recommended that the Ohio Power Siting Board should assume oversight for these projects. Mr. Weston added that the Ohio Power Siting Board's position in the draft report was baffling and does not adequately address the issue for consumers.

Deputy Sauer next provided an overview of OCC's activities at FERC. He began with the audit of FirstEnergy and the some of the disturbing findings of that audit. Mr. Sauer noted that the FERC audit includes the following statement: "...several factual assertions agreed to by FirstEnergy in the Deferred Prosecution Agreement and the remedies FirstEnergy agreed to undertake, point towards internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature, and purpose of the lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates."

Deputy Sauer next reviewed a PUCO case where OCC is seeking documents that FirstEnergy provided to FERC for its audit. OCC is attempting to obtain the same documents. PUCO Attorney Examiner Gregory Price had stated he would consider revisiting his previous denial of OCC's motion to compel after FERC filed its public report. At a recent hearing (before a different Attorney Examiner after Mr. Price withdrew), it was ruled that FirstEnergy needed to provide some of those documents to OCC within 30 days.

Consumers' Counsel Weston shared another FERC matter that involves an OCC filing to seek an end to utilities charging consumers for a profit "adder." He explained that FERC has allowed the adder charge as an incentive for utilities to participate in PJM. OCC's view is that, since electric utility participation in an organization like PJM is required by Ohio law, the utilities should not get paid extra (at consumer expense) to do what the law already requires them to do.

Consumers' Counsel Weston next reviewed comments that OCC filed with FERC to protect consumers from paying for certain costs, such as association dues, civic, political and related expenses. In its comments OCC stated that FERC ought to consider the words of the Ohio Supreme Court in a City of Cleveland decision about 40 years ago. This Court standard requires that certain types of expenses cannot be charged to consumers unless they have a direct and primary benefit to consumers.

Consumers' Counsel Weston discussed national Consumer Protection Week and OCC's efforts to educate consumers through its website. He also referenced the three OCC Outreach and Education Specialists and their regions in the state for educating consumers. Chair Watkins asked about OCC's participation in county fairs and whether or not OCC was looking to resume participation this year. The Chair noted that he felt attendance at fairs was well received. Mr. Weston stated that OCC was re-evaluating and looking at a resumption of those activities. The Chair asked that the Board be informed of these events so that Board members could possibly stop by and express appreciation to the OCC staff.

Consumers' Counsel Weston next discussed a news story from New York. It was reported in the story that a consumer advocate in New York did not seem to be offering enough real consumer advocacy. Mr. Weston explained that OCC was created by the Ohio legislature with independence in mind, so that the agency's allegiance would be to Ohio consumers. He then shared a Toledo Blade editorial that specifically supported OCC's efforts for consumer protection related to House Bill 6. He also reviewed a Columbus Dispatch editorial defending OCC against legislation that proposed to restructure the OCC Governing Board. The bill would have given the legislature six of the nine Board appointments, meaning a majority of the Board. He noted that the bill (H.B. 246) was one of former Vice-Chair Young's greatest concerns.

Deputy Sauer discussed a case involving AES Ohio's rate increase filing, to raise rates for Dayton-area consumers. AES's proposed increase was contrary to a rate freeze that it had agreed to with OCC and others in a settlement. He explained the OCC alone filed a motion to dismiss the rate case, without support from other groups. The PUCO denied OCC's motion but did favorably note that it would still

consider whether to freeze (not increase) rates. The case has gone to trial. Ultimately the PUCO staff (and others) supported OCC's position for a rate freeze. The PUCO will now have to decide that case. Mr. Weston added that statistics show the Dayton area has had significant challenges for people with poverty and food insecurity, and that has been worsened by the pandemic.

**LEGISLATION:**

Deputy Sauer described House Bill 317, which would repeal electric security plans. He noted that OCC presented opponent testimony. Repealing electric security plans could be good on its own. But the bill raises new concerns about problematic results for consumers. The bill also continues the use of riders (add-on charges) in the ratemaking process and has a very unfavorable provision limiting refunds for consumers.

Consumers' Counsel Weston next updated the Board on the huge subsidies consumers are paying under HB 6 for the AEP/Duke/AES OVEC coal power plants. This part of HB 6 has not been repealed. Mr. Weston shared two counters posted on the OCC website that track in real-time the amount of subsidies paid by consumers and the amount of pollution caused by the two coal plants. There are two legislative bills (SB 117 and HB 351) pending to repeal these subsidies, but they are not progressing in the legislature. He added that the Clifty Creek plant in Indiana is under review by the U.S. EPA regarding its potential non-compliance with pollution-control requirements for coal ash ponds. Chair Watkins asked for clarification about the ownership of Clifty Creek, and Mr. Weston confirmed that it is an OVEC plant. He added that at the next meeting he will provide more information regarding the corporate structure for ownership.

**FISCAL UPDATE:**

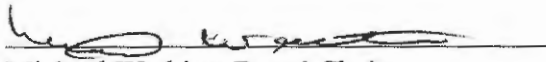
Mr. Weston discussed the current challenges of finding experienced and qualified personnel for consumer advocacy. He stressed that expertise really does matter, and that the utilities have a large staff of people to present their side of things. He added utility companies also can pay more than OCC is able to pay personnel. He stated that OCC had been using temporary staffing and other alternatives including consultants to supplement staff while it continues to recruit qualified staff.

Chair Watkins asked the members if they had any comments or questions. Ms. Shannon thanked OCC staff for putting the presentation together for the Board and noted she found it very helpful.

Mr. Callion made a motion to adjourn the meeting. It was seconded by Ms. Shannon. Mr. Sauer called the roll. The motion was unanimously approved. (Mr. Hager & Vice Chair Grossman were absent.)

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 May 17, 2022.



Michael Watkins, Board Chair



Larry Sauer, Interim Board Secretary