



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

March 16, 2021

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

CALL TO ORDER BY CHAIR:

Chair Watkins called the meeting to order at approximately 10:00 A.M. Interim Board Secretary (Deputy Consumers' Counsel) Larry Sauer called the roll, with members present as shown above. The meeting was held by conference call, as allowed by law during the coronavirus crisis.

MEETING MINUTES:

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

RECOGNITION:

Consumers' Counsel Weston recognized the day as the one-year anniversary of the agency's transition to remote work for Ohioans, due to the pandemic. He expressed his gratitude to the Board and everyone in the agency who worked to implement remote services. He thanked the Governor for his recognition of the occasion in his message sent to all state workers.

Mr. Weston thanked the OCC team for the significant and demanding effort that was mounted for protecting consumers in reaching a settlement in a major rate case with AEP, PUCO and others. There were some rather heavily debated and tough negotiations about the rates, on behalf of more than a million AEP consumers. He also noted that even in various cases where OCC may not be able to reach a settlement, there is still a lot of effort expended by the agency in negotiations.

Mr. Weston reported he made a presentation on consumer protection to the Circleville Sunrise Rotary Club at the request of OCC Board Member Jan Shannon. He appreciated the invitation and event.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston reported that on February 25, 2021, he testified before the House Finance Subcommittee on Agriculture, Development and Natural Resources, regarding House Bill 110 (state budget). He testified on the subject of OCC's budget and OCC's services to the public. OCC's budget proposal included a budget increase of \$700,000, deleting a reference in the statute to "in person" Board meetings (given the recent state allowance of virtual meetings), and reinstating an OCC consumer call center for limited purposes, among other things. The Ohio Manufacturers' Association and the Northeast Ohio Public Energy Council both submitted testimony supporting OCC's request.

GUEST SPEAKER – FORMER U.S. ATTORNEY DAVID DEVILLERS:

Mr. Sauer introduced Mr. DeVillers, who served as the U.S. Attorney for the Southern District of Ohio from 2019 – 2021. He was involved in the filing of the criminal complaint related to tainted House Bill 6 (H.B. 6) regarding nuclear bailouts and other power plant subsidies.

Mr. DeVillers could not talk about specifics of the case due to the ongoing investigation. However, he did generally describe the federal grand jury process that could lead to a plea deal, jury trial, conviction, appeal, corporate suspension and restitution.

Mr. DeVillers said that, under federal law, the crime of bribery, for which former Speaker Householder and others are charged, can also implicate a business or a corporation. For public officials, public servants and politicians, bribery is called theft of honest services. He said "It's basically taking kickbacks or quid pro quo bribes in return for things."

Mr. Weston asked how the federal indictment of a person differs from the federal indictment of a corporation. Mr. DeVillers replied the only difference is a corporation cannot go to prison. Corporations can be charged and penalties can be imposed varying from paying fines, making restitution, having assets liquidated, being suspended from practicing, or conducting business, having its corporation status being taken away, and being closed permanently. A jury decides whether the corporation is guilty beyond a reasonable doubt and the judge in the case imposes sentencing.

Mr. Weston asked if there was a process for the public to comment on possible outcomes in the criminal process related to corporations. Mr. DeVillers said victims have the right to be heard and, with victim impact laws, at sentencing victims can attend the court hearing and tell the judge what the impact of a case has had on their lives and the judge can consider it.

GUEST SPEAKER – JOHN SERYAK, FOUNDER OF RUNNERSTONE, AND FOUNDER AND CEO OF GO SUSTAINABLE ENERGY

Mr. Weston introduced Mr. Seryak to the Board and said he would be discussing a topic related to H.B. 6. Mr. Seryak began his remarks commenting on the high regard he has for the work of the Office of the Ohio Consumers' Counsel. He said this agency has served as competent stewards of the trust put in it to protect Ohio consumers.

Through his work at Runnerstone and with the Ohio Manufacturers' Association (OMA), Mr. Seryak said he has come to understand how important good energy policy and regulation is to businesses and consumers. He noted the failure to achieve good energy policy has been dramatically apparent this past year with the scandal that surrounds H.B. 6.

Mr. Seryak talked about information in a memo Runnerstone prepared for the OMA on H.B. 6's bailout for the two OVEC coal plants (to subsidize AEP, Duke and DP&L at public expense). The memo outlines how the OVEC coal plants have been selling electricity (uneconomically) for less than it costs them to generate it for nearly a decade. Under H.B. 6, Ohioans will be forced to continue to subsidize these uneconomical plants through 2030 at an estimated cost of \$700 million, possibly more. (Prior to H.B. 6, consumers were paying subsidies ordered by the PUCO.) And because OVEC has a power agreement and debt through 2040, OVEC owners will likely seek more subsidies beyond 2030. The plans for these coal plants should be considered to determine if Ohio consumers and businesses will be paying these subsidies beyond 2030.

Mr. Seryak pointed out the subsidies in H.B. 6 are specifically for two coal plants owned by monopoly utilities in Ohio with one of the plants located in Indiana. Ohio consumers and businesses will be forced to pay more for electricity with no corresponding benefit. The subsidies are a cost on electric bills, and consumers and businesses would save significant money if the subsidies were eliminated.

Mr. Seryak noted that Mr. Weston mentioned H.B. 6 was promoted as a clean air bill. However, he said, the two 1950's era coal plants that are being subsidized release enough pollution (carbon dioxide emissions) to offset all of the emission-less electricity from Ohio's two nuclear plants.

Mr. Seryak summarized his remarks. He said that the subsidies for the coal plants and for Ohio utility owners AEP, Duke and DP&L, makes Ohio a less competitive, less clean, and more costly place to live and do business, while creating no benefits and doing nothing to improve the overall performance of the coal plants.

Vice-Chair Young asked how much longer the coal plants could be viable without the subsidies and without major upgrades. Mr. Seryak said that is a decision for coal plant owners but added that similar coal plants on the electric grid are shutting down because of the need for upgrades and because they are not economically viable.

Mr. Weston, noting the coal plants are uneconomical, asked if the massive subsidy was enabling the coal plants to continue operating when perhaps they shouldn't be. Mr. Seryak replied yes.

Mr. Weston asked if it could be concluded from Mr. Seryak's comments that the nuclear plants did not need the subsidy that H.B. 6 provided. Mr. Seryak replied affirmatively. He said during the debate around H.B. 6 that credible professionals raised questions whether there was proof or reason to believe the nuclear plants needed a subsidy to stay online. These questions were never addressed prior to the passage of H.B. 6. Then, after passage of H.B. 6, the owner of the nuclear plant authorized a multi-million-dollar stock buyback which indicated the company had plenty of cash on hand.

Mr. Weston asked if it would be fair to say the market should decide which new technologies should succeed and where capital should be allocated. Mr. Seryak replied that yes, with competitive pressure, new technologies are being developed and great value is placed on bringing costs down.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON (CONTINUED):

Mr. Weston reported OCC participated in Consumer Protection Week. The OCC is an official FTC partner and OCC's website provides information. He shared the groundbreaking Residential Utility Consumers Bill of Rights which was created in 1978 by the OCC Governing Board and the first consumers' counsel, Bill Spratley.

Mr. Weston discussed the decoupling charge, a component of H.B. 6, which enabled FirstEnergy to collect \$30 million before the charge was ended. OCC made a filing with the PUCO for a refund to customers. The matter is pending with the PUCO.

Mr. Weston said Senators Mark Romanchuk and Herschel Craig introduced S.B. 117. The bill would end subsidies being paid to AEP, Duke and DP&L for their share of the two coal plants.

Mr. Weston gave the fiscal report saying OCC has committed approximately \$2.8 million or 52% of the agency budget, eight months into the fiscal year.

REPORT BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Mr. Sauer discussed three motions to compel that OCC filed against FirstEnergy in each of the three ongoing investigations taking place regarding H.B. 6. OCC is endeavoring to follow the money in these various investigations to ensure that FirstEnergy did not use any portion of the money collected from consumers for the \$61 million paid to enact tainted H.B. 6.

Mr. Weston noted OCC sought these investigations. Mr. Sauer said OCC filed numerous motions and the PUCO initiated one of the investigations. The other investigations were ongoing but as a result of the H.B. 6 scandal they have gained momentum. OCC has endeavored to gather information from these investigations, but OCC have met with FirstEnergy efforts to thwart access to information.

Mr. Sauer updated the Board on bills that recently passed in the Senate or the House. S.B. 10 would repeal the FirstEnergy profit-related charge from the 2019 state budget bill (H.B. 166) and also repeals FirstEnergy's decoupling charge in H.B.6. It would provide refunds to customers for both of these charges. S.B. 44 is a partial repeal of H.B. 6's nuclear bailout. H.B. 128 is a partial repeal of H.B. 6, regarding the nuclear subsidy, the decoupling mechanism and the profits issue in H.B. 166.

Mr. Sauer provided an overview of the benefits to consumers from the rate case settlement that AEP, OCC and others negotiated and signed. This includes: a slight rate decrease of approximately .71 cents per month for consumers instead of AEP's proposed increase; an end to AEP's decoupling rider; AEP's withdrawal of its proposal for subsidies for energy efficiency programs and electric vehicles; residential customers paying a fixed monthly "customer charge" of \$10 which is 30% lower than AEP's proposed \$14 charge; and AEP performing shadow billing and providing the data to OCC. This last item of shadow billing is similar to what Columbia Gas calculates and provides to OCC. Shadow billing shows how consumers fare under energy marketer services, compared to the utility's standard offer for electricity or gas.

Mr. Sauer said Columbia Gas shadow billing has shown that customers have paid nearly \$2 billion more under market offers than what they would have paid had they been on the Columbia standard offer.

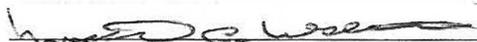
Mr. Callion asked if OCC has ever given a recommendation on consumers going through an annual process of trying to select electricity providers. Is it something worth investigating?

Mr. Sauer replied that OCC doesn't specifically make recommendations to individual customers but does inform consumers that the utility standard offer is typically the safer and more conservative approach for consumers. Mr. Weston added the OCC is very involved in educating consumers and encourages consumers to do research.

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

The meeting adjourned at 12:00 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on May 18, 2021.



Michael Watkins, Board Chair



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