



Office of the Ohio Consumers' Counsel

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

May 18, 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
Ms. Jan Shannon
Ms. Connie Skinner

Members Absent: Mr. Charles Newman

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 March 16, 2021 Board meeting. A motion was made by Mr. Callion to approve the minutes. Ms. Skinner seconded the motion. Mr. Sauer called the roll. The March 16, 2021 Board meeting minutes were approved unanimously.

RECOGNITION:

Consumers' Counsel Weston recognized Deb Bingham as employee of the quarter for the fourth quarter of 2020. Deb is an administrative assistant in the legal department and is very involved in how the Deputy Consumers' Counsel manages our caseload, which includes many cases and many filings. Deb's work for the public has been magnificent. She has been an integral part of our successful transition to remote work allowing OCC to provide continuity of services to the public. Deb has been with OCC for sixteen years.

Mr. Sauer echoed Mr. Weston's comments. He said Deb's work is so important for legal filings, coordinating matters with staff to stay organized and on task and making sure deadlines are met. He said this is a well-deserved recognition.

GUEST SPEAKER – GINA WILT, ADVOCACY DIRECTOR, COALITION ON HOMELESSNESS AND HOUSING IN OHIO (COHHIO):

Mr. Sauer introduced Gina Wilt, who leads COHHIO's advocacy efforts at both the state and federal levels. Prior to joining COHHIO, she managed the lobbying efforts for the Home Matters to Ohio campaign to expand the Ohio Housing Trust Fund in the state budget. She served over 12 years as senior legislative aide in the Ohio Senate and the Ohio House, staffing Finance, Health and Judiciary committees. She also worked for the Ohio Association for Justice and the Centers for Independent Living.

Ms. Wilt spoke about the issues of homelessness and housing in Ohio before and after COVID, sources of funding for rental assistance and other resources, and the challenge of affordable housing for low income households.

She said COVID highlighted the existing problem of the lack of affordable housing noting it was not uncommon for low-income households to spend 50% - 60% of their income on housing. For these families, already living paycheck to paycheck, the pandemic hit them hard and things quickly fell apart. Low-income jobs, typically in the service sector, such as cleaning houses or working in restaurants, were gone. This led to evictions and then an increase in use of homeless shelters.

Ms. Wilt said prior to COVID more than 100,000 evictions occur each year and around 76,000 Ohioans experience homelessness. Of the households that met eligibility requirements and asked for help, only one in four households received it.

She said those numbers increased significantly with COVID and she is pleased with the response of the approximately 300 shelters of varying sizes around Ohio, that are available for those finding themselves without shelter.

Ms. Wilt discussed how the funding from the American Rescue Plan Act (ARPA), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the Tax Relief Act, for emergency rental assistance and utility assistance was available to help those in need. And she discussed how it was distributed to states and then to communities. She also spoke about collaborating with other organizations including realtors' associations and hotels to address the immediate need for emergency housing and shelter.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston reported that OCC's 2020 Annual Report was issued on April 1st, which covers OCC activities for the past calendar year. He said utility consumer issues in 2020 were framed in part by the pandemic and by the H.B. 6 scandal. The information in the annual report serves current and historical purposes, and can connect current consumer issues with something the agency or Board did decades ago. For example, the 2020 OCC Board issued a resolution calling for the reform of the PUCO Commissioner selection process, as did the OCC Governing Board in 1982.

Mr. Weston discussed Senate Bill 117 sponsored by Senator Mark Romanchuk. This bill would repeal the largest remaining bailout from H.B. 6, the coal plant subsidy for AEP, Duke and DP&L for the Ohio Valley Electric Corporation (OVEC) power plants (one in Indiana and one in Ohio).

GUEST SPEAKER – REPRESENTATIVE DAN TROY, 60TH HOUSE DISTRICT:

Mr. Weston introduced Dan Troy who is the state representative for Ohio's 60th House District which includes Eastlake, Mentor on the Lake, Painesville, Wickliffe, Willoughby, Willowick, Mentor (Ward 4 only), and various other villages. Rep. Troy previously served seven terms in the House. Bi-partisanship has been very important to him. He also served for many years on the Northeast Ohio Public Energy Council (NOPEC) Board.

Rep. Troy began his remarks by expressing his appreciation to the Board members for the good work being done by OCC and for the support and the resources that the Ohio Consumers' Counsel office provides in terms of information. He said he would like the General Assembly to make sure the Consumers' Counsel has the resources needed to do what it was established to do, which is to look out for consumers. He is an advocate for restoring some budget cuts and noted the funding for the OCC does not come from taxpayers but from utility assessments. He added that if \$61 million found its way into a process to get a piece of legislation passed, then certainly \$700,000 should be readily available to help the Consumers' Counsel.

Rep. Troy said when the H.B. 6 scandal broke in July 2020 it revealed the strong "stranglehold" large utilities have over public policy. This stranglehold is the reason for House Bill 260 that he and Rep. Laura Lanese are co-sponsoring. It addresses the issue of utilities charging and collecting improper assessment fees or not properly using them, but not being required to refund those if it is determined by an authoritative entity that they are improper. He gave an example of the grid modernization riders that FirstEnergy received, approximately half a billion dollars, for a service that was never provided. He said it is time for the General Assembly to give consumers the money that was improperly taken from them.

Rep. Troy said there has been some thought that the Public Utilities Commission should be more balanced in the interest of consumers as there are some who think they are more of an advocate for the utilities.

GUEST SPEAKER – REPRESENTATIVE LAURA LANESE, 23RD HOUSE DISTRICT:

Mr. Weston introduced Laura Lanese who is the state representative for Ohio's 23rd House District which includes Grove City, Jackson Township, Urban Crest, and portions of Hilliard, Norwich township and Columbus and a few other townships. She currently serves as the Assistant Majority Whip and serves on the Public Utilities Committee and the Higher Education and Career Readiness Committee. Previously she was on Grove City Council. Before her elected work, she was an attorney with the United States Department of Justice.

Rep. Lanese began her remarks saying that although she knew very little about public utilities until H.B. 6., she knew enough to know there were many bad things in that bill and resisted the pressure to vote in favor of the bill. During the last General Assembly, after the H.B. 6 scandal unfolded, she introduced the first bill that would fully repeal it. She expressed her appreciation to Consumers' Counsel Weston, thanking him for providing her with information and helping her learn about public utilities law.

Rep. Lanese commented on H.B. 260, which she is co-sponsoring with Rep. Troy to allow for refunds to utility consumers. She believes it has the greatest likelihood of passing, due in part to being a bi-partisan bill and that the utilities committee chair, Chair Jim Hoops, is interested in it.

She noted that Sen. Romanchuk introduced S.B. 117 in the Senate which would repeal the legacy generation resource provisions of H.B. 6 (that make consumers subsidize coal power plants) and would provide refunds to customers for the subsidies paid. She is also working on a bill in the House that would address this issue.

Rep. Lanese said she is also working on a bill to address community solar, which is the gap between large scale solar and rooftop solar, and on another bill addressing the wind and solar referendum bill.

Mr. Young asked Rep. Lanese if she is working on legislation for electing PUCO Commissioners. She replied no but said there is talk about a proposal for that. Mr. Young offered his assistance in addressing this saying there are ways to fix the problems other than making those elected positions.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON (CONTINUED):

Mr. Weston discussed the agency's recently issued 2020 Annual Report. He described a feature in the Annual Report entitled "anatomy of a consumer rip-off," related to energy marketing. He said consumers need more protections with regard to energy marketing, including regarding a smaller subset of marketers that are unscrupulous. He described OCC's efforts in 2020 to protect consumers from some marketers who took advantage of Ohio consumers to their detriment. He noted the Wall Street Journal ran a series of articles in March 2021, reporting that consumers of energy marketers nationally had been charged more than \$19 billion above the standard offer available from their utility.

Mr. Weston provided an update on legislative activities including H.B. 110, the state budget bill. He said over the years a number of Board members had expressed an interest in a budget increase for the agency. OCC proposed an increase of \$700,000 for the budget beginning July 1, 2021, and Mr. Weston testified twice in the House and twice in the Senate for an increase. The budget should be passed by the end of June.

Mr. Weston noted an OCC word search through the budget bill that revealed a provision, likely sought by AT&T, to enable the end of printed phone directories that are currently available for Ohioans who have the least expensive and most basic type of landline service. Unfortunately, this budget-bill provision would overturn a PUCO decision that protected consumers and

resulted from consumer advocacy by OCC and other advocates. Phone directories provide, for basic service customers, emergency information along with phone numbers for the community, organizations, schools, churches and more. Many rural Ohioans do not have access to broadband and so cannot find this information online. OCC and two other advocate organizations submitted testimony to bring concern over this issue to the attention of the Senate, pointing out that this bill provision is bad for consumers and seems inappropriate to be included in a budget bill.

Mr. Young added that it is important to note that the request for the \$700,000 is for OCC to maintain the current level of consumer advocacy due to increased costs that the office has assumed over the last five years.

Mr. Weston expressed appreciation for NOPEC, the Ohio Manufacturers' Association and the Ohio Poverty Law Center, for testifying in support of OCC's budget.

In addition to H.B. 260 discussed by Reps. Troy and Rep. Lanese earlier in the meeting, Mr. Weston discussed H.B. 273, sponsored by Rep. Michael O'Brien (D), which would give OCC a \$3 million budget increase and allow an OCC call center. He also talked about S.B. 117, sponsored by Senators Mark Romanchuk (R) and Hearcel Craig (D), which would repeal coal plant subsidies for AEP, AES (DP&L) and Duke, and noted that OCC and others testified in support of this bill on May 12th.

Mr. Weston noted that in the first 10 months of the fiscal year, the agency has committed approximately \$4.5 million of the budget. He commented that OCC continues to seek to fill open positions left vacant by employees retiring or leaving the agency.

REPORT BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Mr. Sauer reported that OCC has filed for a writ of procedendo with the Ohio Supreme Court. OCC is requesting the Court to order the PUCO to rule on an OCC rehearing request that the PUCO had delayed ruling on for a long time. The consumer issue involves a PUCO order that authorized DP&L to collect a subsidy charge from consumers. He explained that the lack of a PUCO ruling is preventing OCC from appealing that charge. In the interim time, DP&L has collected about \$91 million from consumers.

Mr. Sauer provided an update on the H.B. 6 investigation. He said the FirstEnergy Board of Directors investigated the issue in relatively short order as they needed to get information but, at the PUCO, FirstEnergy has been thwarting OCC's efforts to obtain information. The PUCO attorney examiner recently suspended (stayed) further discovery, saying OCC cannot ask for additional information for 60 days.

Mr. Sauer gave an update on the refund of H.B. 6 decoupling charges. He said refunds are due to customers as a result of the General Assembly passing a law that ended FirstEnergy's ability to charge this fee to customers. OCC and FirstEnergy both filed with the PUCO for refund of this charge and are

working at the PUCO to determine how much that refund should be. It is estimated to be \$26 million to \$27 million with interest.

Mr. Sauer said OCC filed testimony in a case that for a review of FirstEnergy's profits from 2017, 2018, and 2019. OCC recommends that the PUCO require FirstEnergy to refund \$211 million to consumers, which OCC believes to be significantly excessive profits that were charged to consumers. The Ohio Energy Group also filed testimony recommending refunds of about \$130 million.

Mr. Sauer discussed the coal plant audit cases involving OVEC coal plants and the AEP and DP&L (now AES) subsidy charges collected from consumers. Initially the subsidy was authorized by the PUCO, and then later the subsidy was extended in tainted H.B. 6 where the General Assembly authorized the collection of the subsidy through 2030. In a report prepared for the Ohio Manufacturers' Association, it was estimated the H.B. 6 subsidy would cost consumers \$700 million through 2030.


After about five years of the subsidy being collected under the PUCO's authorized subsidy, the PUCO implemented an investigation of charges to consumers to determine if these charges were reasonable and prudent. It is OCC's perspective that as Ohio is a deregulated state, plants operating in Ohio should be doing so without a subsidy from consumers. And these charges should be considered neither reasonable nor prudent.

Mr. Sauer reported the PUCO conducted an evidentiary hearing to evaluate the AEP/OCC/PUCO rate case settlement. The settlement provided residential consumers a slight decrease, rather than the rate increase AEP proposed. Those opposing the settlement were offered the opportunity to give evidence against the settlement. After the briefing schedule the PUCO will issue an order on that settlement.

Ms. Grossman made a motion to adjourn the meeting. It was seconded by Ms. Moore. 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 July 27, 2021.



Michael Watkins, Board Chair



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