



Office of the Ohio Consumers' Counsel

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

September 29, 2021

Members Present: Mr. Michael Watkins, Chair
Mr. Stuart Young, Vice-Chair
Mr. Tim Callion
Ms. Cheryl Grossman
Mr. Dorsey Hager, Jr.
Ms. Connie Skinner

Members Absent: Ms. Kelly Moore, Mr. Charles Newman, Ms. Jan Shannon.

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.

MEETING MINUTES:

Chair Watkins asked for a motion to approve the minutes of the July 27, 2021 Board meeting. A motion was made by Ms. Grossman to approve the minutes. Mr. Young seconded the motion. Mr. Sauer called the roll. The July 27, 2021 Board meeting minutes were approved unanimously.

RECOGNITION:

Consumers' Counsel Bruce Weston congratulated Vice-Chair Young, Ms. Moore, and Mr. Hager on having been re-appointed to the OCC Governing Board with their new terms ending in September 2024. Mr. Weston thanked the members for their continued public service and extended thanks to the Attorney General for the reappointments. He noted that Mr. Young has now been serving since 2012, which is very helpful to the Board to retain this historical knowledge.

Mr. Weston announced the recent hiring of Susan Loe as Operations Director for OCC. Mr. Weston explained that, as a small agency, OCC had been seeking an individual with a background in both fiscal and human resources. He briefly outlined Ms. Loe's experience, which includes 14 years with State Medical Board of Ohio and eight years with the Ohio Ethics Commission serving as HR/Fiscal administrator. Mr. Weston added that Ms. Loe had worked in private law firms, serving as office administrator, which is also relevant experience to the operations of OCC.

Mr. Weston reported that OCC recently celebrated its 45th anniversary. In response to an OCC tweet announcing the anniversary, several organizations responded with congratulatory remarks and expressions of appreciation for the work of the agency. He shared several of those tweets which included a nice comment from NASUCA (OCC's national association) that OCC was one of the founding members of that organization and that the first Ohio Consumers' Counsel (Bill Spratley) had served as their first president. There was also a note from former Governing Board Chair Gene Krebs and a tweet from the Ohio Poverty Law Center thanking OCC for our work on behalf of low-income households. Additional supportive tweets shared included one from Greg Lawson at the Buckeye Institute and another from journalist Kathiann Kowalski.

Mr. Sauer reported that OCC staff members are participating in the State of Ohio 2021 Combined Charitable Campaign which runs through October 22. He added that this charity is an annual event, that this year's OCC coordinator is Jennie Long, and that the OCC appreciates the employees who generously give to help others every year.

REPORT BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston discussed OCC Chair Watkins' August 2021 letter to the PUCO Nominating Council Chair (Michael Koren). By law, the OCC Board Chair is a member of the Nominating Council. Mr. Weston briefly outlined the 40-year history and role of the Nominating Council, and he showed the list of current Council members. He explained that the creation of the Nominating Council was in part a legislative response to deter passage of a ballot initiative in 1982 that would have resulted in the election of PUCO commissioners. He added that the Council only meets when there is a need to select a commissioner, and there has always been a concern about whether the process is effective for consumers. In OCC's view there is not enough transparency about the Nominating Council.

Mr. Weston explained that Chair Watkins, in his recent letter, requested Chair Koren to call a meeting of the Nominating Council. The requested meeting was to consider reforms to the Nominating Council's process for evaluating applicants for the position of PUCO commissioner. Chair Watkins' recent letter follows his November 2020 letter asking that the Nominating Council meet to consider electing a new chair. Mr. Weston explained that, pursuant to statute, the Council Chair must call a meeting if at least two of the 12 members of the Council request a meeting. However, no other Council member joined in either of Chair Watkins' requests, and Chair Koren declined to call a meeting.

Mr. Weston said he is aware that the Ohio State Bar Association will be holding a meeting of its public utilities committee. The committee will hear member input and consider whether to recommend that the Ohio State Bar Association join Chair Watkins' request. Mr. Weston noted that he is a former chair of the Bar Association's public utilities committee.

Chair Watkins commented that sometimes it seems there is not enough information about the applicants in order for the Nominating Council to make a proper selection of commissioner nominees. He would like to have the ability to gather more information about applicants.

Vice-Chair Young (who served at times on the Council) compared the PUCO Nominating Council process to entry-level employment at his dairy farm business. He commented "We [the Nominating Council] spend less time interviewing PUCO candidates than we do to hire a 15-year-old to dip ice cream." He added that the Nominating Council spends only about 15 minutes with each candidate for them to talk about themselves and to answer one or two questions.

Referencing the OCC Governing Board Resolution from August 25, 2020, Mr. Weston said OCC continues to seek reform and transparency for the Nominating Council.

WHAT'S UP WITH OHIO UTILITIES:

Mr. Weston introduced a new segment for Board meetings to discuss current issues with utilities, and how those issues affect consumers. It's called "What's Up with Ohio Utilities."

He began with a review of AEP and the PUCO's audit of pre-H.B. 6 OVEC coal subsidies. OCC submitted a public records request which returned some concerning emails. These emails, between the audit firm and the PUCO staff, show discussion about changing the content and wording for the final audit report [in PUCO Case 18-1004-EL-RDR]. In one email the PUCO staff is asking the auditor to use a "milder tone and intensity of language." That PUCO staff request was in reference to one of the best sentences for consumers in the draft audit report which was "Therefore, keeping the plants running does not seem to be in the best interest of the ratepayers." Unfortunately, that draft sentence for consumer protection is not found in the final audit report. In an email a few days later from the auditor to the PUCO, the auditor says it will consider further edits after receiving input from AEP. That email reflects another concern that the utility being audited is also being allowed to review the draft audit report and recommend changes.

Mr. Weston also discussed the AES (DP&L) rate increase case. OCC filed a motion for the PUCO to dismiss the case, based on the utility having previously agreed to a rate freeze. Also in the AES rate increase case, Mr. Weston discussed an OCC motion requesting the PUCO to allow consumers to testify virtually rather than in person – the same as expert witnesses and utility witnesses are allowed to do in the case. The PUCO recently ruled that it will allow this opportunity for consumers to testify virtually (online). Mr. Weston noted that OCC is making available a Consumer Alert that explains the case to consumers.

He briefly noted a presentation slide regarding Duke's electric utility and stated there would be future updates.

Mr. Weston reviewed the ongoing case with FirstEnergy regarding its significantly excessive profits. OCC has been actively involved for consumers.

GUEST SPEAKERS – SENATOR MARK ROMANCHUK, 22ND SENATE DISTRICT AND SENATOR HEARCEL CRAIG, 15TH SENATE DISTRICT:

Mr. Weston introduced Senators Craig and Romanchuk and thanked them for their support of the OCC. He invited them to speak to the Board about Senate Bill 117, which they co-sponsor. The bill would repeal coal subsidies to AEP, AES and Duke. OCC supports the bill.

Senator Craig said this bill would repeal the subsidies [related to AEP, AES and Duke] for two coal-fired plants owned by the Ohio Valley Electric Corporation, otherwise known as OVEC. He said he and Senator Romanchuk believe that consumers should not have to pay for the bad decisions of this investor-owned utility. And consumers should not have to cover the losses on these economic and environmentally expensive coal plants, noting one of the plants is not even in Ohio.

Senator Romanchuk expressed his appreciation to Mr. Weston, OCC staff and the Board for the work they do on behalf of Ohio consumers. He said everyone has been helpful and informative and are good advocates for the residential consumers. Regarding hearings for Senate Bill 117, he said he found it interesting that opponents, including some committee members, do not have a legitimate argument to keep this subsidy on the books. Each time they have offered one it has been contradicted. He said he and Senator Craig are working to possibly amend the bill or roll it into another bill, to get it passed.

He said the subsidy has now doubled in size from what was the original estimate on a yearly basis. And he said it is now costing ratepayers \$150 million per year, which is very concerning. He added it was known that the plants would always be unprofitable, and it was known that they would always receive the subsidy. But now that subsidy has doubled in size in a pretty short period of time.

Mr. Weston noted his understanding that the subsidy to be charged to consumers is over a billion dollars in total.

Senator Romanchuk agreed, saying this is money that's leaving the pockets of our constituents, in Ohio. He added that it's money leaving the businesses that drive Ohio's economy and that hopefully make us competitive against businesses located in other parts of the world.

Mr. Weston commented that Senator Romanchuk has really been a consumer champion for letting the competitive power plant markets work, and these subsidies run contrary to that effort. Senator Romanchuk replied that is why he is a proponent of competitive markets, because they work. That construct leads to savings and choice for all ratepayers and that is a good thing. He said there are still other parts of consumers' electric bills that need to be worked on. He said even though the electric bill itself has not been lowered, parts of the electric bill have been lowered because of the competitive market.

Vice-Chair Young asked whether the Senate looks forward or if most of the actions taken are reactive. He noted the Ohio Power Siting Board has over 100,000 acres of proposed solar fields in the state of Ohio on their docket which is going to influence markets.

Senator Romanchuk replied that legislative bodies in general are reactive. When something happens, it becomes a political hot button, and the legislature will react to that. He said the legislature is not as proactive as it could be, but that is the nature of a legislative body. Senator Craig said it's important to work with constituents, the public and all stakeholders, when crafting meaningful legislation with long-lasting impact, and to avoid unintended consequences of that legislation.

Mr. Watkins thanked the Senators for their participation in the meeting and for the work they do on behalf of Ohio consumers.

Senator Craig thanked Mr. Weston, the Board and staff for their good work that is done with due diligence for Ohio consumers.

WHAT'S UP WITH OHIO UTILITIES (continued):

Mr. Sauer continued the "What's up" segment with a review of natural gas utilities. He discussed an issue with CenterPoint (formerly Vectren) and other utilities, related to the reduction in the corporate income tax rate from 35% to 21% that was to be passed back to consumers. There were tax cuts (not included in the September 28, 2020 Tax Cuts and Jobs Act case settlement (Case 19-29-GA-ATA)) that were litigated and have been pending with the PUCO for almost a year.

Mr. Sauer said Columbia Gas, in a settlement years ago with OCC, agreed to provide shadow billing when requested. Since around 1997 this shadow billing shows how much (in total) consumers have saved or lost as a result of buying natural gas from energy marketers instead of through Columbia Gas. Mr. Sauer reported the bad news that, since 1997, consumers have paid over \$2 billion more to marketers than they would have paid had they purchased their natural gas from Columbia Gas.

Mr. Sauer discussed issues with a couple of Dominion infrastructure cases, which include charges to consumers for the cost of capital, being the utility's return on equity (profit) and cost of debt. Utilities invest a lot of money in their infrastructure, so cost of capital is a big dollar issue for consumers. The PUCO has been using an outdated cost of capital that goes back to a 2007 rate case. As an example of the problem for consumers, in 2008 Dominion's cost of debt was 6.5%. But today Dominion's actual cost of debt is just 2.3%. Yet, the PUCO allowed Dominion to charge consumers for the outdated higher cost of debt. OCC has challenged the PUCO's decision and is awaiting a further PUCO ruling.

Mr. Sauer reported OCC settled multiple cases with Duke Energy Ohio, which resulted in significant consumer benefits. Among other things, consumers will receive a \$107 one-time bill

credit related to the Tax Cut and Jobs Act (TCJA), if approved by PUCO. He said Duke will receive, in essence, more payments from consumers for manufactured gas plant charges, but the charges will be offset by tax benefits and insurance proceeds that Duke received. There will also be a \$3.8 million Bill Payment Assistance Program for low-income and low-income senior consumers as a result of the settlement.

Duke will implement some billing system changes and will also start performing natural gas shadow billing that OCC considers important for consumer protection. OCC received the first shadow billing report from Duke recently. It shows that between January 2019 and July 2021, consumers unfortunately have paid nearly \$71 million more to marketers than they would have paid had they purchased natural gas through Duke.

Mr. Sauer discussed the Suburban Gas rate case. He explained that Suburban is a small gas company with about 17,000 customers around Delaware County, Ohio and that OCC advocated for those customers when Suburban filed for a rate increase. A large component of Suburban's case had to do with a 4.9-mile gas pipeline. OCC argued that 2.9 miles of the pipeline were not "used and useful" for utility service, and thus consumers could not legally be charged for that pipe. Ross Willis was OCC's expert witness. After losing the issue at the PUCO, OCC appealed the case to the Ohio Supreme Court. The Court then overturned the PUCO's decision. Mr. Sauer said the headline in Energy Daily summed it up with "Court slams Ohio PUC for lax need review of new gas pipeline." Mr. Weston commented that OCC's first reversal of a PUCO violation of the used and useful standard was in the Supreme Court in 1979. Mr. Weston added that the OCC advocates for consumers, whether it involves little utilities or big utilities.

Mr. Sauer next explained that Aqua is a water utility that serves 150,000 consumers in Ohio. It filed a rate case proposing between a \$3 and \$10 monthly increase in residential consumer water bills. He noted that OCC filed a motion for the PUCO to require Aqua to publicly file its disconnection information. Mr. Sauer stated that, with water being an essential utility service, there should be similar requirements as with electric and natural gas for public reporting of its disconnections of consumers. Mr. Sauer explained some funding is available to assist low-income consumers to avoid disconnections. Current research has indicated that many low-income households are required to pay an average of 10.6% of their monthly household income on basic water and sewer services. Mr. Sauer explained a one-time benefit of up to \$600 for customers who are in need, to be used to reconnect or to maintain their water services.

Chair Watkins noted the annual ethics training would be available soon and would need to be completed before the end of the year, followed by financial disclosure.

Chair Watkins stated the November meeting may last a little longer than normal due to an executive session. And he said that the Board would also discuss the format of future meetings, during the November meeting.

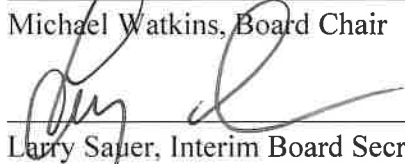
Mr. Callion made a motion to adjourn the meeting. It was seconded by Vice-Chair Young. Mr. Sauer called the roll. The motion was unanimously approved.

The meeting adjourned at 11:50 A.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on November 16, 2021.



Michael Watkins, Board Chair



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