



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

June 17, 2020

Members Present: Mr. Michael Watkins, Chair
Mr. Stuart Young, Vice-Chair
Mr. Tim Callion
Ms. Kelly Moore
Mr. Charles Newman
Ms. Jan Shannon (joined the meeting at approximately 11:41 A.M.
to vote on the Motion to Adjourn)
Ms. Andra Troyer

Members Absent: Ms. Grossman and Mr. Wondolowski.

CALL TO ORDER BY CHAIR:

Chair Watkins called the meeting to order at approximately 9:00 A.M. Ms. Hunyadi 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 April 30, 2020 Board meeting. A motion was made by Ms. Troyer to approve the minutes. Mr. Newman seconded the motion. Ms. Hunyadi called the roll. The April 30, 2020 Board meeting minutes were approved unanimously.

BOARD MEETING SCHEDULE CHANGES:

Chair Watkins suggested the Board meet early in August. Mr. Callion made a motion for the OCC Governing Board to meet on Tuesday, August 4, 2020 at 10:00 A.M., in Columbus and in person if possible. Mr. Young seconded the motion. Ms. Hunyadi called the roll. The motion passed unanimously.

GUEST SPEAKER – TINA LYDEN, EXECUTIVE DIRECTOR, CONNECT OHIO:

Mr. Weston said the COVID-19 crisis has made it clear there are many places in Ohio where Ohioans do not have the access they need to broadband. He introduced Ms. Lyden who was invited to speak to this issue.

Ms. Lyden provided the history of Connect Ohio and its relation to Connected Nation. She said Connect Ohio is an advocacy non-profit organization. It is dedicated to improving the lives of Ohioans by providing innovative solutions that expand the access, adoption and use of broadband in Ohio.

Ms. Lyden said Connect Ohio is working on new requirements for data mapping to obtain more granular data to be able to go into rural communities and have a good understanding of what the broadband landscape truly looks like. President Trump signed the Broadband Deployment Accuracy and Technological Availability Act in March. It is intended to improve the accuracy of maps detailing where broadband is and isn't available in the U.S. Using these maps, it can be determined where to build and make the most of the money available.

Ms. Lyden noted that Cleveland, a densely populated metropolitan area, is ranked thirty-third in the country as a least-wired city. This is an example of an area where getting broadband built will create opportunities for individuals and communities.

Board Member Moore commented on the importance of this issue, not only from a family perspective but also from a business perspective. She said there are many businesses in rural communities that cannot startup because they lack broadband access and from an economic development perspective, broadband access is critical for jobs creation.

Ms. Lyden said there are opportunities for regional economic development organizations to apply for federal dollars for expansion and grant programs for broadband build-out. Connect Ohio has information on their website regarding funding resources and will help connect organizations with appropriate funding partners for grants and other funding sources.

GUEST SPEAKER – CHUCK KEIPER, EXECUTIVE DIRECTOR, NOPEC:

Mr. Weston introduced Director Keiper (with NOPEC) as a friend to OCC in consumer advocacy. NOPEC is the largest not-for-profit aggregator in Ohio for electric service. Mr. Keiper said that NOPEC serves about 935,000 individual consumers and represents many more than that when considering household members.

Director Keiper began his remarks complimenting the Board for “the most outstanding staff members you have assembled and, I think, an exceptional Consumers’ Counsel you have in front of your organization, that you have truly been our working partners and our heroes, as are you all in so many ways.” Mr. Keiper was also complimentary of the Agency’s pro-market advocacy. He also complimented Mr. Weston on OCC’s most recent Annual Report which he stated described all the work OCC is doing, reflected a strong consumer consciousness and was effective in reaching legislators with OCC’s message. He said he considers OCC an essential and congruent partner without whom consumers would have paid much, much more over the years. The efforts of the OCC over the years has saved Ohioans billions of dollars in utility bills and has educated consumers. OCC has been a strong, independent watchdog for utility consumers’ interests. Mr. Keiper said NOPEC has worked with OCC on dozens of cases before the PUCO

and the Supreme Court of Ohio. A recent example being the successful appeal of FirstEnergy's distribution modernization rider (DMR), which the Supreme Court ruled illegal.

Mr. Keiper continued saying as people work through the challenges of the coronavirus pandemic it is more important than ever to continue the OCC/NOPEC partnership. The new stay-at-home economy has led to higher usage of electricity, natural gas and water, with the potential for higher consumer utility bills. Just as Ohioans are losing their jobs, suffering wage cuts, and struggling with the economic downturn from this nightmare, there has never been a more important time for an effective, skilled utility consumer watchdog.

Mr. Keiper talked about Sub. HB246 (to reform and modernize OCC and the PUCO) and his concern with the proposed changes including appointments to the OCC Governing Board and removing authority for OCC to intervene in some cases on behalf of consumers. Currently the Attorney General makes the appointments to the Governing Board. But the bill proposal would divide the appointments between the attorney general, the House and the Senate. This opens the door for politicizing the makeup of the OCC Board, similar to what has happened with the appointment of PUCO commissioners. There was a law in 1982 that created the current PUCO commissioner nominating process. Director Keiper said that the 1982 nominating council legislation was meant to stave off the voter referendum that would have required commissioners to be elected. Director Keiper noted that three of the five current PUCO commissioners worked for or represented utilities and that it was hard to recall a truly independent consumer representative being appointed to the PUCO.

Other concerns NOPEC has about Sub. HB246 include a narrowing of the mission of the OCC to work on behalf of consumers, giving the PUCO the authority to consolidate multiple interventions into one (limiting the number of voices and perspectives at the table) and requiring the PUCO to approve rate increases based on certain conditions. All these concerns will inevitably lead to more expensive electricity costs for Ohio consumers and small businesses.

Mr. Keiper said NOPEC stands ready to join the OCC in its fight against "this potentially horrific and negatively impactful bill." He said NOPEC does not want to see one of their most important allies in that battle weakened. OCC has repeatedly taken the voice of Ohio consumers to the table in front of the PUCO, the state legislature, the Ohio Supreme Court, FERC and other venues. He said OCC has not gotten nearly enough credit for meaningful victories.

Mr. Keiper said OCC has been an exceptional partner and jointly with NOPEC they have represented the interests of millions of Ohio consumers and brought important issues to the attention of decision-makers and to the public. Mr. Keiper left Board Members with his final thoughts: NOPEC intends to join with Bruce, follow his leadership and join with other partners in a coalition to try to stop this bad piece of legislation.

Mr. Weston commented on Sub. HB246 and who might benefit from the bill by decreasing OCC's advocacy. He said the bill language is troubling. Mr. Young commented that if Sub. HB246 passes as it currently stands, it will totally cripple the OCC and it might as well be closed.

Mr. Keiper replied saying, in his opinion, OCC did such a fine and ferocious job of representing the public interest on HB6 that OCC is now left to deal with the retribution for that. He continued saying it seems "everything about this bill is retaliatory and it is shameful." Mr. Keiper said he appreciates that the current environment is challenging and said "Consumers' Counsel Weston and his team do an extraordinary job of walking the edge of the sword and representing the people and he is proud of the work that OCC does. It is truly amazing."

REMARKS BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston offered further comments on Sub. HB246. He reminded the Board that the bill sponsor, Rep. Nino Vitale, attended the November 2019 Board meeting to talk about the original version of HB246, which had been referred to as a "placeholder" bill, that contained one or two sentences. OCC learned on May 28, 2020 (and not in advance), that the bill language had changed with Substitute HB246. That date is when Rep. Vitale presented sponsor testimony to the House Public Utilities Committee as part of presenting the Substitute Bill. Discussions had been taking place for quite a while. Mr. Weston said the new version of the bill is very concerning. The stated intention of the bill was to reform the OCC and PUCO. What OCC would like to see is adding new protections for consumers, elevating and empowering the role of OCC as a consumer advocate for the public. Those things are not included in the substitute version of the bill.

Mr. Weston referenced discussions about what has been described as politicizing the OCC Board in Substitute House Bill 246. Under the current appointment process the Attorney General, the chief attorney in the state, appoints the 9-member OCC Governing Board. When the OCC was created the idea behind having farmers, consumers and organized labor on the Board was to provide a sense of consumerism and seek to protect consumers. With the proposed appointment process in the Substitute Bill the Attorney General would be reduced to having just three appointments instead of nine. The Speaker of the House and the Senate President would each get three appointments. This would certainly change the intended dynamics of the Board composition.

Mr. Weston said when the legislature passed a reform law in the early 1980s, it clarified intervention and the need to guard the rights of parties. He said the type of legislation that is really needed would constrain the influence of the utilities and their predilection for charging consumers higher rates, and not legislation like Substitute H.B. 246, which he described as an effort to find more ways to limit what consumer advocates can do.

He also said the proposed bill would limit, to just the PUCO, the forums where OCC could advocate on behalf of consumers. As an example, when OCC "follows the money" it might lead to the Federal Energy Regulatory Commission. Or it could lead to bankruptcy court, such as in the recent case where

FirstEnergy Solutions was making proposals that could have resulted in an additional financial burden on consumers.

GUEST SPEAKER – REPRESENTATIVE KENT SMITH, OHIO HOUSE OF REPRESENTATIVES, EIGHTH DISTRICT:

Chair Watkins welcomed Rep. Smith to the Board Meeting and Board members introduced themselves. Mr. Weston introduced Rep. Smith, providing information from his biography and expressing appreciation to the Representative for reaching out to OCC to gain a better understanding of who we are and what we do.

Rep. Smith, who is in his third term, serves on the House Public Utilities Committee. He is the Ranking Minority Member on the Committee. Rep. Smith talked about Sub. HB246. He said it sat for about a year with only placeholder language. He anticipates the bill could move during lame duck session and was concerned about whether there would be any more opportunities for discussion or hearings in Committee. He said the proposed appointment process for the OCC Board could be problematic with political appointments. He also indicated OCC is doing a fine job and is a much-needed voice for Ohio consumers.

Considering the three areas of proposed changes to the Public Utilities Commission of Ohio, the Power Siting Board and the Ohio Consumers' Counsel, this bill should be fully vetted in both chambers.

Board Member Moore noted currently all three political parties are represented on the Board: Independent, Republican and Democrat. She wondered whether this type of representation would continue. Rep. Smith replied the only change he is aware of is to the appointing authority.

Chair Watkins asked if the staggered terms of Board members would continue. Currently three members are appointed each year which provides opportunity for new members to learn the position and follow guidance from longer serving members. Deputy Director Sauer said he thought the language was confusing, but it does seem the whole board would be reconstituted initially with one-year, two-year and three-year terms.

Mr. Weston asked for Rep. Smith's perspective on OCC's legal representation for consumers and added OCC was created in 1976 to give consumers a voice among the strong voices of utilities. Mr. Weston noted concerns with the Substitute Bill's approach of having the General Assembly make appointments to the OCC Board, considering that the General Assembly is also where legislation involving utilities is considered.

Rep. Smith replied that the approach for OCC Board appointments described in the Substitute Bill is one of the major concerns. The Attorney General is the watchdog for the state and similarly OCC has specific responsibilities as a watchdog for consumers for public utilities. Rep. Smith said it makes sense for the Attorney General to be the appointing authority for the OCC Board. This keeps the Board

bipartisan and the division of representation with residential, labor and farmers ensure the voices of all Ohioans are heard.

RESOLUTION

The Board discussed passing a resolution opposing Sub. HB246, given that the bill would result in reductions, limits or weakening of the services and independence of the Office of the Ohio Consumers' Counsel for protection of millions of Ohio residential consumers. Vice-Chair Young made a motion to accept the resolution as presented. Ms. Troyer seconded the motion. Ms. Hunyadi called the roll. The Board unanimously approved the resolution.

REMARKS BY CONSUMERS' COUNSEL BRUCE WESTON, CONTINUED:

Mr. Weston discussed the added financial pressures consumers are experiencing related to utility disconnections. He said OCC would like to see the suspension on disconnections of utility consumers continue beyond the declared emergency in the state, or the PUCO should extend the emergency that it declared, as some consumers may need more time for things to return to normal.

REMARKS BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Deputy Sauer discussed the natural gas energy choice program, which began in 1999, and the amount of money spent by consumers on buying gas from marketers. Columbia Gas tracked consumers in the energy choice program (buying gas from marketers) to compare their costs to what those consumers would have paid to Columbia Gas. As of 2016, Columbia's data showed that consumers choosing marketers instead of Columbia Gas for their natural gas had paid \$1.36 billion more in total since the beginning of marketer sales of gas. As of March 2020, Columbia's data showed that consumers choosing marketers instead of Columbia Gas for their natural gas have paid \$1.837 billion more in total since the beginning of marketer sales of gas. Columbia's data is called shadow-billing.

Mr. Sauer said a PUCO web page recently showed 76 of 77 marketer offers were higher than the Columbia Gas standard offer and 89 of 95 were higher than the Dominion standard rate.

Mr. Sauer referenced a position by the Retail Energy Supply Association, representing marketers, to eliminate or limit the default service offer (the utilities' standard offer) which OCC believes is the best choice for consumers at this time. The utilities' standard offers for natural gas are established through a highly competitive auction process.

PUCO NOMINATING COUNCIL:

Mr. Weston discussed the PUCO Nominating Council process for appointments of PUCO commissioners. He said the current process, established in 1982, is that the nominating council meets, interviews selected applicants, and then submits a list of names to the Governor. The Governor then makes the appointment(s). The OCC would like the process modified to include giving OCC the role to nominate one of the commissioners. And OCC recommends expanding

the law's qualifications for commissioner applicants beyond the hard sciences to include social sciences. And the law should bar applicants who have worked for public utilities. Additionally, there should be increased transparency regarding the nominating council. And the state should consider changing to the election of PUCO commissioners.

Mr. Sauer said there are eleven states that do elect their commissioners. He said information from the U.S. Energy Information Administration shows states with elected commissioners had lower average rates than states with appointed commissioners. He noted under the current system that three of the five current PUCO commissioners previously worked for the utility industry, which seems to make it more difficult for consumers to benefit from the process.

OCC FISCAL REPORT:

Mr. Weston reported for Fiscal Year 2020, which started July 1, 2019 and ends June 30, 2020, the agency has committed approximately \$4.8 million or approximately 88% of the total annual budget of \$5.54 million.

Mr. Weston said with the current economic crisis and the impact on state government, the Governor directed state agencies to cut 20% from the current operating budgets (based on budget amounts yet to be expended) for the fiscal year ending June 30, 2020. The OCC budget is funded from assessments on utilities and is not derived from tax money from the general revenue fund.

Mr. Weston complimented the OCC staff on how well they have responded to working remotely for consumers during the pandemic over the last few months.

Ms. Troyer made a motion to adjourn the meeting. It was seconded by Ms. Moore. Ms. Hunyadi called the roll. Prior to the Motion, Vice-Chair Young and Mr. Callion had left the meeting conference call. The motion was approved by Chair Watkins, Ms. Moore, Mr. Newman, and Ms. Troyer, as well as by Ms. Shannon who joined the meeting in time to vote on the motion to adjourn.

The meeting adjourned at 11:45 A.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on August 25, 2020.



Michael Watkins, Chair



Larry Sauer, Interim Secretary
Ohio Consumers' Counsel Governing Board