



**MINUTES OF THE
THREE HUNDRED AND SECOND MEETING
OF THE OHIO CONSUMERS' COUNSEL GOVERNING BOARD
March 18, 2014**

Members Present: Gene Krebs, Chairman
Jason Clark
Frederick Cooke
Sally Hughes
Susheela Suguness, Vice-Chair
Roland Taylor
Mike Watkins
Stuart Young

Members Absent: Fred Yoder

Guests: Jeff Clark, Attorney General's Office
Michael Eggert, Ohio EPA
Mike Dorsey, West Virginia Department of
Environmental Protection

CALL TO ORDER

Chairman Krebs called the meeting to order at 9:15 a.m. Mrs. Knight called the roll.

APPROVAL OF MINUTES

Mr. Watkins moved to approve the January 21, 2014 meeting minutes. Mr. Young seconded the motion. Mrs. Knight called the roll. The minutes are approved.

EMPLOYEE OF THE YEAR

Consumers' Counsel Weston introduced Kyle Kern, OCC's Employee of the Year for 2013.

EMPLOYEE OF THE QUARTER

Mr. Weston introduced Marty Berkowitz, OCC's Employee of the Quarter.

NEW EMPLOYEE

Mr. Weston introduced Dan Shields, Director of Analytical Services Department. Mr. Shields thanked Mr. Weston for the opportunity. Chairman Krebs mentioned that he had an opportunity to interview Dan Shields for a PUCO Commissioner position and was impressed with his credentials and welcomed him to OCC.

WINTER'S EFFECT ON CUSTOMERS' BILLS

Mr. Hayes, Principal Regulatory Analyst, made a presentation to the Board on winter's effect on customers' natural gas bills.

Mr. Hayes stated that heating degree days are used by the National Weather Service to put a mathematical value on how cold it is.

Standard Choice Offer Auctions

Vectren Energy Delivery Ohio's lowest bid for the retail price adjustment is \$1.05, which is the same as 2013. Columbia Gas is \$1.40, which is up \$.011 from 2013. And Dominion East Ohio is \$0.43, which is down \$0.17.

Mr. Weston stated that these prices are called the adder. The Board previously passed a resolution supporting this kind of auction.

FREEDOM INDUSTRIES "MCHM" CHEMICAL SPILL

Deputy Yost introduced Mike Dorsey, who is the Chief of Homeland Security and Emergency Response for the West Virginia Department of Environmental Protection. Mr. Dorsey spoke to the Board about the spill that occurred in Charleston, West Virginia at Freedom Industries and that impacted the Elk River. A do not use order was issued for water consumers as a result of the chemical spill. That spill impacted the drinking water supply of some of the customers of West Virginia American Water Company.

Chairman Krebs thanked Mr. Dorsey for his presentation.

The Board recessed at 10:22 a.m.

The Board reconvened at 10:29 a.m.

OHIO'S SOURCE WATER PROTECTION PROGRAM

Ms. Yost introduced Michael Eggert, who is the Assistant Chief, Division of Drinking and Ground Waters, at the Ohio EPA. Mr. Eggert made a presentation to the Board on Ohio's Source Water Assessment and Protection Program.

Most Ohioans drink surface water, and most of the public water systems in Ohio are ground-water based. The goal of the water protection program is to protect the sources of public drinking water (rivers, lakes, ground water) from contamination by human activities.

Ohio EPA staff is available to assist public water systems and their planning partners in developing local source water protection plans. Currently, nearly 200 Ohio municipal systems have developed a local source water protection plan. All plans are accessible on a secured website.

Mr. Cooke asked Mr. Eggert if he works with the Ohio Farm Bureau and if he is aware of Senate Bill 150. Mr. Eggert replied that he is not familiar with the bill; he does, however, work with the Ohio Farm Bureau.

Mr. Taylor asked if he has concerns with fracking. Mr. Eggert replied that he is not aware of any issues of concern. Mr. Dorsey stated that it's not fracking but the well construction that causes concern.

Chairman Krebs asked if the Board would like any further discussion on this issue. Mr. Cooke stated that he would like more information with regard to fracking and well construction.

CONSUMERS' COUNSEL REPORT

Outcome of Appeal of AEP Ohio Rates

Mr. Weston presented a Powerpoint slide with the number "368" on it. He reported that 368 million dollars equals the amount of money that AEP should not have collected from customers but, under an Ohio Supreme Court decision, is allowed to keep instead of refunding to customers. This decision by the Court was issued in appeals by OCC and others to overturn a PUCO order.

Mr. Weston said that OCC had been successful in obtaining the result on appeal that the PUCO should not have allowed AEP's charges. But OCC was not successful in convincing the Court to order a refund of consumers' payments to AEP. He explained there is precedent that utilities use to assert that customers should not be given refunds of money that customers already paid to the utilities. OCC believes, though, that the present case is distinguishable from the earlier precedent.

In the past, OCC has filed motions requesting stays of PUCO orders, to prevent utilities from charging customers while the charges are on appeal. A stay would avoid the problem of the precedent that utilities cite against refunds. Those motions included the reasons why OCC should not have to purchase a bond to obtain a stay. Those motions have been denied.

Chairman Krebs suggested that the Board should encourage OCC staff to seek all legislative remedies to alleviate any requirement for OCC to have to post a bond in order to obtain a stay. Mr. Weston stated that we are currently looking into a legislative remedy.

Update on Manufactured Gas Plant Pollution Clean-up Charges

Mr. Weston noted that the Board passed a Resolution last year to protect consumers from manufactured gas cleanup costs. And he noted that the Board voted in favor of a motion by Mr. Yoder for OCC to explore all alternatives for protecting consumers on the issue. The PUCO decided to allow Duke to collect clean-up costs from customers for defunct manufactured gas plants. Mr. Weston explained that the PUCO should not allow utilities to charge customers for costs when the costs (such as the cleanup costs) are not incurred in providing current service to the utility's customers. OCC, the Ohio Manufacturers' Association (OMA), the Kroger

Company, and OPAE appealed the PUCO's decision to the Supreme Court of Ohio. And OCC, OMA, the Kroger Company, and OPAE then filed a Motion for a stay of that PUCO decision.

At the time of its Resolution last year, the Board was considering two forums for this issue. In the legislature, the biennial budget bill last year contained a provision to weaken the consumer protection of the "used and useful" law. And the General Assembly in fact then passed a provision in that budget bill to allow utilities to charge customers for clean-up costs. The Governor then line-item vetoed the law. The mid-biennial review this year will likely include a provision making it easier for utilities to charge customers to clean up abandoned industrial sites. The term "used and useful" could be weakened to "is or was used" in the legislation. Mr. Weston discussed an additional concern that legislation, which has to date been focused on natural gas utilities, could be revised to include electric utilities among the utilities allowed to charge customers for manufactured gas plant cleanup costs.

Filing by Dayton Power & Light

Mr. Weston noted that the utilities are well aware of what the PUCO allows each of them to charge to customers. In this regard, Dayton Power & Light has now proposed to charge customers for its environmental clean-up costs. The utility has proposed charging customers for clean-up costs regarding property that "had" been used and useful. The present law does not allow for charges to customers unless the property "is" used and useful.

Duke Energy Case for Capacity Charges

In 2011, OCC, Duke Energy and others reached a settlement of an electric security plan. The settlement resulted in a 17.5 % electric rate reduction for Duke's customers. Despite the settlement, Duke then filed a case to collect \$776 million from customers for capacity charges. Duke's proposed charges would cost the typical residential customer about \$150-\$200 per year for three years. In the view of OCC and other parties, the signed settlement prevented Duke's additional request.

The PUCO denied Duke's request and dismissed the case. Mr. Weston described the PUCO's decision as good news and an example of regulation working.

Mr. Young asked about OCC's fiscal situation. Mr. Weston said that the agency is mindful of not over-spending its budget and is well situated as it proceeds to fill various position vacancies. Chairman Krebs requested Mr. Repuzynsky's latest fiscal report. The latest fiscal report will be provided to the Board.

Chairman Krebs expressed interest in future analysis of the data OCC referenced regarding Ohio's ranking for costs of electric service.

Mr. Weston updated the Board on the status of projects of interest to the Board (and the Board also discussed items for the list) as follows:

- OCC's work with Farm Bureau;
- Attendance at county fairs;

- Utility bill formats;
- Future presentation on prices among the utilities;
- Future presentation on energy storage in batteries, in the electric distribution system;
- Future of the electric utility industry when customers use their own distributed generation for electricity supply (per Chairman Krebs' discussion);
- Fracking;
- Battelle tour;
- A small model house to be used for energy efficiency explanations to consumers (per an earlier suggestion by Mr. Watkins); and
- Educational video.

Chairman Krebs informed that evaluations of the Consumers' Counsel and the Deputy Consumers' Counsel will be discussed in executive session and then out of executive session.

EXECUTIVE SESSION

Mr. Clark made a motion to enter executive session for the discussion of personnel issues including the evaluation of the Consumers' Counsel and the Deputy Consumers' Counsel. Mr. Watkins seconded the motion. Mrs. Knight called the roll. The motion passed unanimously.

The Board entered Executive Session at 11:49 a.m.

The Board returned to open session at 12:47 p.m.

EXECUTIVE SESSION

Mr. Watkins made a motion to enter executive session for the purpose of discussing compensation of the Consumers' Counsel and the Deputy Consumers' Counsel. Mr. Clark seconded the motion. Mrs. Knight called the roll. The motion passed unanimously.

The Board entered Executive Session at 12:48 p.m.

The Board returned to open session at 1:20 p.m.

OPEN SESSION

Mr. Weston thanked the Chairman and the Board Members for the conversations during Executive Session. And he thanked Deputy Consumers' Counsel Yost for her service to consumers, the agency and the Board. Consistent with his authority, Consumers' Counsel Weston is promoting Ms. Yost to the position of Legal Director (in addition to her Board-appointed position as Deputy). Chairman Krebs asked Mr. Weston to recommend a salary for Ms. Yost for the Board to consider. Mr. Weston recommended an annual salary of \$110,000 for Ms. Yost.

Mr. Watkins moved that Ms. Yost be granted a yearly salary of \$110,000. Mr. Young seconded the motion. Mrs. Knight called the roll. The motion passed unanimously. Chairman Krebs said "to let the minutes show that Ms. Yost received very positive comments and was highly praised in executive session."

Mr. Young moved that, given the Board's "positive evaluation" of Consumers' Counsel Weston, he should be granted a salary increase to \$130,000. Ms. Hughes seconded the motion.

Mr. Weston stated that he is grateful to the Board for allowing him to serve Ohioans and the Board. Mr. Weston asked to be permitted to decline a salary increase at this time.

In response to Mr. Weston's request, Mr. Young withdrew his motion to increase Mr. Weston's salary and Ms. Hughes seconded it. Chairman Krebs said he wants to emphasize that the Board gave Mr. Weston "overwhelmingly positive reviews" for his evaluation. Chairman Krebs said that the Board members "encourage him [Mr. Weston] to continue on doing a superb job fulfilling the mission, the values and the vision of the Ohio Consumers' Counsel." And Chairman Krebs said that "the Board is uniformly pleased with his job performance to this date." Mrs. Knight called the roll. The withdrawal of the motion to increase Mr. Weston's salary was adopted, with one Member (Mr. Cooke) voting no. Mr. Cooke, who continued to want Mr. Weston to have a raise, voted against withdrawing the motion for a salary increase for Mr. Weston.

With no further business the meeting adjourned at 1:22 p.m.

I verify that the above meeting minutes have been approved and ratified by the OCC Governing Board on this 17th day of June, 2014.



Gene Krebs, Chairman
Ohio Consumers' Counsel Governing Board



Laurie C. Knight, Secretary
Ohio Consumers' Counsel Governing Board