



Office of the Ohio Consumers' Counsel

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

MAY 21, 2019

Members Present: Mr. Stuart Young, Vice-Chair
Ms. Kelly Moore
Mr. Douglas Moormann
Mr. Roland "Butch" Taylor
Ms. Andra Troyer
Mr. David Wondolowski

Members Absent: Mr. Fred Cooke, Ms. Beverlyn Johns and Mr. Michael Watkins.

CALL TO ORDER BY VICE-CHAIR:

Vice-Chair Young called the meeting to order at approximately 10:00 A.M. Ms. Hunyadi called the roll. The following members answered as present: Vice-Chair Young, Mr. Moormann, Mr. Taylor, Ms. Troyer, Mr. Wondolowski. Ms. Moore arrived later during the meeting.

MEETING MINUTES:

Vice-Chair Young asked for a motion to approve the minutes of the March 19, 2019 Board meeting. A motion was made by Ms. Troyer to approve the minutes. The motion was seconded by Mr. Wondolowski. Ms. Hunyadi called the roll. The March 19, 2019 Board meeting minutes were approved unanimously, with the exception of Ms. Moore who was not yet in the room.

RECOGNITION:

Consumers' Counsel Bruce Weston recognized Andy Tinkham, Senior Outreach & Education Specialist, as the Employee of the Quarter for the 4th quarter of 2018. Throughout his time with OCC Mr. Tinkham has consistently demonstrated an outstanding commitment to serving Ohioans. Recently, during the lame duck session of 2018, he stepped in to provide temporary assistance with OCC legislative activities.

PRESENTATION BY CONSUMERS' COUNSEL BRUCE WESTON:

Mr. Weston updated the Board on the status of the OCC operating budget. He reported that he testified on OCC's budget in the House and in the Senate. The budget bill passed the House and is now with the Senate. Mr. Weston said that, per Board member interest, OCC is supporting a budget increase of \$600,000, which some legislators had proposed in amendments. The budget increase proposal relates in part to state salary and benefit cost increases.

Mr. Weston also noted that former Senator Leigh Herington of the Northeast Ohio Public Energy Council (NOPEC) attended a Senate hearing to testify in support of the OCC budget and the budget increase. Ryan Augsberger with the Ohio Manufacturers' Association (OMA) testified in the House and the Senate in support of the OCC budget. OMA noted the benefits to consumers of having the OCC's advocacy and noted that OCC's advocacy also helps others including manufacturers. Mr. Weston also stated his appreciation for support in the legislature for OCC and its work for consumers.

GUEST SPEAKER JEFF JACOBSON, STRATEGIC INSIGHT GROUP:

Mr. Jacobson provided an update on legislative activity. He reported that three members of the House and one member of the Senate have sponsored amendments to increase the OCC budget. Mr. Jacobson said legislators appreciate that Mr. Weston is not a wasteful spender.

Mr. Jacobson talked about H.B. 6 (Rep. Callender and Rep. Wilken) which would allow a subsidy for the Davis-Besse and Perry nuclear plants. The subsidy would result in an additional charge to consumers on their monthly utility bills. He said in addition to support from Speaker Householder and a majority of Republicans, there is support from the Governor's office. Mr. Jacobson noted there are parts of the bill that make it difficult for consumers and there has been a lot of opposition as well as support from affected parties and communities.

Mr. Jacobson mentioned other pending bills. He discussed H.B. 246 (by Rep. Vitale) that has the stated intention to reform and modernize the PUCO and the OCC. And he discussed an amendment to H.B. 166 (State budget bill) which would allow an electric distribution utility of FirstEnergy (Ohio Edison) that has higher profits to average its profits with other FirstEnergy distribution utilities (Cleveland Illuminating and Toledo Edison) that have lower profits with a result of potentially avoiding the refunding of so-called significantly excessive profits to customers. H.B. 247 (by Rep. Stein) would allow monopoly utilities to enter the competitive market and serve electric consumers on other business lines for a profit. Mr. Jacobson said OCC has testified against S.B. 1 (by Sen. Obhof). This bill would require all agencies to reduce regulations. OCC is concerned that regulations offering protections for utility customers' health and safety may be cut unnecessarily.

Mr. Weston noted H.B. 6 (power plant bailouts, etc.) is missing a requirement for the recipient of the power plant subsidy to prove the subsidy is needed for a lack of profit. And it does not hold subsidy recipients accountable for making too much profit. While most power plant companies have debt from making capital investments, FirstEnergy Solutions will have the benefit of emerging from bankruptcy free of debt per the federal bankruptcy court.

Mr. Moorman said Rep. Vitale, sponsor of H.B. 246 (to reform the PUCO and OCC), has commented in the media that he has concerns about who represents consumers and the level of litigation that is occurring over utility regulations. Mr. Moorman asked Mr. Jacobson what should be done to educate legislators about why OCC is involved in litigation and what we do to serve

consumers, to build a base of knowledge. Mr. Jacobson said it is necessary to engage with House and Senate members and leaders, and to help them understand the role of the OCC and the purpose of litigation. Mr. Weston said he met with Rep. Vitale in April (just before H.B. 6 was introduced) and talked with him about subsidies, markets and competition, and told him about OCC (which he was not aware existed). A second meeting with Rep. Vitale has been scheduled.

PRESENTATION BY CONSUMERS' COUNSEL BRUCE WESTON (CONT'D):

Mr. Weston shared news headlines from Pennsylvania reporting the lack of bailout legislation for the Three Mile Island nuclear power plant. The Pennsylvania bill is similar to H.B. 6 which is being considered by the Ohio legislature. The Board viewed a video clip of a portion of testimony in opposition to H.B. 6, by Mike Haugh, on behalf of OCC.

RESOLUTION:

The Board discussed a draft resolution opposing any legislation (including H.B. 6) that would charge Ohio utility consumers to subsidize any type of generation (including nuclear power plants). The resolution also opposes any legislation (such as potentially H.B. 246) that 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. The resolution was tabled pending further discussion later in this meeting.

PRESENTATION BY KERRY ADKINS, SENIOR REGULATORY ANALYST:

Mr. Adkins discussed consumer protections and marketing issues in two recent cases at the PUCO. In the first case the PUCO opened an investigation into the Palmco company and consumer complaints of high bills. Palmco offered a low two-month introductory rate, lower than what the utility charged, but for the remainder of the contract was charging up to six times higher rates than the utility. The PUCO staff is recommending that the PUCO Commissioners suspend or rescind Palmco's operating certificate, award restitution to customers and pay a \$1.4 million forfeiture to the State. OCC has intervened in the case and recommended immediate suspension of Palmco's certificate to prevent any further harm to consumers.

Mr. Adkins said in the second case the Verde company has engaged in widespread abuse of consumers, using misleading and deceptive actions. Verde marketed low rates but charged two to three times higher rates than the utility. It falsely claimed to represent the local utility and used tactics such as spoofing of caller ID, so calls to consumers appeared to be coming from the utility. The PUCO staff is recommending that the PUCO Commissioners rescind Verde's operating certificate, make restitution to customers and pay a \$1.5 million forfeiture to the State. OCC intervened in the case and recommended immediate suspension of Verde's certificate.

Mr. Adkins said other complaints have been filed by marketers and utilities, against marketers, for making misleading statements in order to entice customers to switch from one company to the other. Mr. Adkins said OCC continues to advocate to strengthen consumer protections rather than

waiving or weakening them in PUCO rules. Ms. Moore asked where the forfeiture money goes. Mr. Adkins answered the money goes to the state's general fund.

PRESENTATION BY DAN SHIELDS, DIRECTOR OF ANALYTICAL SERVICES:

Mr. Shields updated the Board on PowerForward, the PUCO's initiative to establish an independent, informal process to review the latest in technological and regulatory innovation that could serve to enhance the consumer electricity experience. The PUCO created two work groups to look at the potential uses for data from smart meters and related privacy issues, and to identify issues that currently exist, or that may arise, in the integrated distribution system planning process. Mr. Shields said new rules regarding management of customer information and grid management are anticipated.

Mr. Shields discussed the FirstEnergy Solutions (FES) bankruptcy case. The bankruptcy court absolved FES of its obligation to the Ohio Valley Electric Corporation (OVEC), estimated by FES to be \$268 million through the remaining 20-year contract. OCC and others appealed this decision to the U.S. Sixth Circuit Court of Appeals, asking that this decision be reversed so as to protect customers from paying higher rates to cover this shortfall.

Mr. Shields mentioned the OVEC and renewable subsidies cases at the PUCO. He said DP&L, Duke and AEP collect subsidies from customers, for OVEC coal plants. These subsidies (that OCC opposes) are being presented to the PUCO as a hedge against volatile prices at PJM. If OVEC is profitable, the money will be returned to customers. Mr. Shields noted that the other OVEC owners filed a complaint with FERC asking them to enforce the FES obligation to OVEC, as otherwise remaining customers could end up paying hundreds of millions of extra dollars.

Mr. Shields said AEP has a proposal pending at the PUCO to subsidize a 400MW solar facility. By law, AEP must demonstrate need for the facility before the proposal can be approved. AEP says the facility is needed for economic development. OCC has testified that in PJM's market the facility (and charges related to it) are not needed for reliability (which should be how need is defined). If approved, AEP will propose to build at least another 500MW facility for wind generation.

Mr. Shields said FERC issued a decision saying that the independent market monitor for PJM can file a complaint against PJM. This decision could result in protection for consumers from excessive pricing.

Mr. Shields told the Board that H.B. 422 was enacted by the last General Assembly and effective April 5, 2019. The law allows water utilities to purchase municipal water and sewer system at market prices as opposed to book value, which is a weakening of existing ratemaking protections for customers. Because the appraised market value can exceed book value, prices to customers could increase due to this bill. OCC filed testimony opposing the bill as it would be bad for consumers.

PRESENTATION BY DEPUTY CONSUMERS' COUNSEL SAUER:

Mr. Sauer updated the Board with information on natural gas consumer issues. He said it is important to preserve the utilities' standard offers because, without them, consumers could be left with a limited choice of marketer offers that can be much higher than the utility offer. The standard offer needs to be protected for consumers from marketers' attempts to artificially or indiscriminately raise the standard offer price to create more profits for marketers.

Another issue identified by Mr. Sauer relates to the rate structure of natural gas utilities that they use for charging consumers for natural gas distribution service. The PUCO has pushed natural gas companies toward a rate design where their distribution charges are completely fixed (instead of based on the variable units of gas consumed by consumers). In the Suburban rate case, the PUCO staff report has recommended a high \$33.08 fixed charge and no variable rate as part of a customer's bill for distribution service. OCC has proposed a \$22.84 fixed charge.

Mr. Sauer said infrastructure programs are accelerating the replacement of gas mains involving the removing of the bare steel and cast-iron pipes (that are prone to leaking) and installing a safer plastic pipe as the replacement. A newer infrastructure program for the natural gas companies is the capital expenditure program. This program involves single-issue ratemaking (which favors utilities), allowing utilities to collect their investment costs from consumers sooner. The monthly cost to consumers of these programs was explained to the Board.

Mr. Sauer said that a three-year delay by the PUCO in issuing a final appealable order held up the filing of appeals and led to the Supreme Court's dismissal of the OCC and OMA appeals of Duke's electric security plan. The Court dismissed the appeals as moot.

PRESENTATION BY TERRY ETTER, ASSISTANT CONSUMERS' COUNSEL:

Mr. Etter updated the Board on issues for telephone consumers including the preservation of Lifeline telephone service for low-income Ohioans. H.B. 597 and S.B. 290 both address caller ID spoofing (that is deceptive to consumers). H.B. 402 related to increased rates for basic local telephone service. Mr. Etter said H.B. 597 and S.B. 290 were designed to criminalize the use of caller ID spoofing. OCC filed testimony in support of both bills. Neither bill passed.

Mr. Etter said AT&T will cease providing lifeline service in Ohio as of June 11, 2019. OCC and others filed comments in opposition. For customers unable to find another provider, AT&T will continue offering the discount to those customers for one year or until another provider is secured. The PUCO will maintain oversight of this as the FCC is looking into the possibility of removing federal support for lifeline providers who do not have the facilities.

Mr. Etter continued by discussing H.B. 402, saying OCC and seven other groups joined together to file testimony and talk with legislators to keep basic service available and affordable for consumers. The version of the bill that passed allows a big increase now, and in four years could result in unlimited increases in basic telephone service.

Vice-Chair Young next had discussion of edits for the draft Board resolution (on H.B. 6 and H.B. 246, etc.) that had initial discussion earlier in the meeting (described above in these minutes). A motion was made by Mr. Taylor to approve the resolution. The motion was seconded by Ms. Troyer. Ms. Hunyadi called the roll. The Board resolution was approved unanimously (including by Ms. Moore who had arrived).


Vice-Chair Young indicated that the Board would enter Executive Session, upon a motion. Mr. Moormann moved for the Board to enter Executive Session to consider the employment and compensation of two public employees. Mr. Wondolowski seconded the motion. Ms. Hunyadi called the roll. The roll-call vote on the motion to enter Executive Session was as follows: Vice Chair Young – yes, Ms. Moore – yes, Mr. Moormann – yes, Mr. Taylor – yes, Ms. Troyer – yes, and Mr. Wondolowski – yes.

The Board returned from executive session. Vice-Chair Young stated no decisions were made in executive session.

Mr. Wondolowski made a motion to adjourn the meeting. It was seconded by Mr. Moormann. Ms. Hunyadi called the roll. The motion was unanimously approved.

The meeting adjourned at approximately 12:30 P.M.

The above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board at its special public meeting on August 28, 2019:



Michael Watkins, Chair



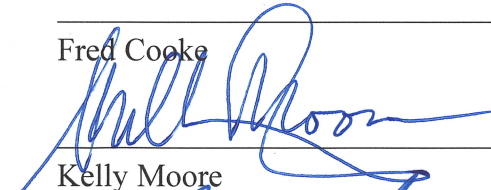
Stuart Young, Vice-Chair



Fred Cooke

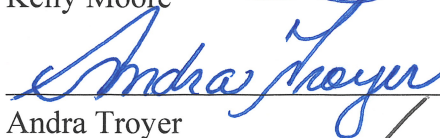


Beverlyn Johns




Kelly Moore

Roland "Butch" Taylor



Andra Troyer

David Wondolowski



Monica Hunyadi, Interim Secretary
Ohio Consumers' Counsel Governing Board