



Office of the Ohio Consumers' Counsel

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

July 27, 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 to order the first non-virtual Board meeting since January 2020, at approximately 10:00 A.M. Interim Board Secretary (Deputy Consumers' Counsel) Larry Sauer called the roll, with members present as shown above.

Chair Watkins welcomed two of the newer Board members, Dorsey Hager, Jr. representing labor and Connie Skinner representing farmers. They have only been able to attend virtual meetings (due to the pandemic) since their appointment to the Board.

MEETING MINUTES:

Chair Watkins asked for a motion to approve the minutes of the May 18, 2021 Board meeting. A motion was made by Ms. Grossman to approve the minutes. Ms. Moore seconded the motion. Mr. Sauer called the roll. The May 18, 2021 Board meeting minutes were approved unanimously.

GUEST SPEAKER – PEGGY LEE, SENIOR STAFF ATTORNEY, SOUTHEASTERN OHIO LEGAL SERVICES (SEOLS):

Mr. Sauer introduced Peggy Lee with SEOLS, where she handles the bulk of utility issues for their legal services clients and trains new attorneys on utility issues. She is also a long-time member of the OCC-sponsored Low Income Dialogue Group.

Ms. Lee complimented the “wonderful folks” at OCC that she has worked with on low-income consumer issues. She discussed issues for her clients that existed prior to the COVID pandemic

including disconnections by utility companies or by landlords. She said that her clients with utility services not regulated by the PUCO, such as propane and Buckeye Rural Electric Co-op, presents a unique set of challenges. Those clients lack the consumer protections provided by the PUCO's winter reconnect order or Percentage of Income Payment Plan for low-income consumers.

Ms. Lee said things became even more difficult for some people during the pandemic due to a reduction or total loss of income. She said at-risk consumers were helped by the moratorium (albeit short) on utility disconnections and by a willingness of utilities to work with customers on payment arrangements. She also noted that the availability of federal funding for consumer assistance was very helpful, among other things. She said when the disconnection moratorium expired, landlords began evicting tenants due to utility shut offs, rather than going through the courts to seek an eviction order. Although some funding for rental and utility assistance is available, getting the funds processed timely and quickly for consumers has been problematic. And some landlords have refused to wait for the money.

Chair Watkins thanked Ms. Lee for her presentation.

RECOGNITION:

Consumers' Counsel Weston recognized Dr. Daniel Duann as employee of the quarter for the first quarter of 2021. At that time Daniel was the Assistant Analytical Director, where he helped manage the Analytical Department. And he analyzes, reviews, and prepares testimony on electric and natural gas cases and other regulatory proceedings and legislation in Ohio. Daniel was a senior research specialist for nine years at the National Regulatory Research Institute at The Ohio State University and was an economist for the Ohio Division of Energy. He has a master's degree in economics from the University of Kansas and a master's degree in energy management and policy and a doctorate in public policy from the University of Pennsylvania.

Mr. Weston then reported the leadership transition in the Analytical Department. Dan Shields, formerly the Analytical Department Director, requested a change in responsibilities to allow him to focus on federal electric issues and to reduce his number of hours worked to part-time. Dan's new position is Senior Regulatory Analyst – Utility Federal Matters, Markets and Competitive Services. OCC is appreciative of Dan's good work during his time as Analytical Department Director and is pleased that he sought to continue working with OCC.

Mr. Weston then announced the appointment of Daniel Duann and Mike Haugh as co-directors of the Analytical Department. Daniel's new title is Analytical Department Co-Director – Traditional Regulation. Mike will serve as Analytical Department Co-Director – Markets and Competitive Services. Mike is a former OCC Assistant Analytical Director and OCC consultant. Mike's experience includes regulatory and legislative consumer advocacy for OCC in addition to experience with competitive services in private industry.

Mr. Weston commemorated Dave Rinebolt. He unexpectedly passed away. Dave was involved in consumer advocacy for many years and was Executive Director of Ohio Partners for Affordable Energy (OPAE). OPAE members provide weatherization and other services to low-income consumers. Dave was the first director of OPAE in 1998 and returned in 2019 to serve as Executive Director. Dave dedicated his life to helping low-income people.

Mr. Weston thanked the Board for their support of OCC staff over this past year. And he expressed his appreciation for the OCC staff who have continued advocating for residential consumers during a challenging time.

VIDEO CLIP – ANGELA O’BRIEN’S ORAL ARGUMENT AT SUPREME COURT OF OHIO:

Deputy Sauer provided background for a video clip of Angela O’Brien, Assistant Consumers’ Counsel, presenting an oral argument before the Supreme Court of Ohio. OCC appealed the PUCO ruling approving the application of FirstEnergy Advisors. NOPEC also appealed. The PUCO’s ruling enabled FirstEnergy Advisors to become a competitive retail energy service provider. OCC’s position includes that the PUCO’s process was unfair and that FirstEnergy Advisors had not complied with certain regulatory standards needed to protect fair competition and consumers.

REPORT BY CONSUMERS’ COUNSEL BRUCE WESTON:

Mr. Weston reported a new budget biennium began on July 1st. OCC has been authorized \$5.64 million each year of the biennium, which includes an increase of \$100,000 over the last biennium budget. However, OCC had requested a budget increase of \$700,000. Mr. Weston expressed appreciation to the Ohio Manufacturers’ Association (OMA) and NOPEC for testimony in favor of OCC’s budget.

Vice-Chair Young commented it has been discouraging for him that, even though some legislators speak highly of OCC and refer constituents to OCC for assistance, the legislature is not willing to provide an increase in funding for the agency’s operating costs for consumer protection.

Mr. Weston said there is a bill (HB 273) pending by Rep. O’Brien that would restore for OCC the \$3 million budget cut in 2011. But there hasn’t been much activity.

Mr. Weston provided an update on the HB 6 scandal, with the latest news including that FirstEnergy has been charged with a crime. FirstEnergy reached a deferred prosecution agreement with the federal government. Mr. Weston said this scandal has highlighted how much influence utilities have in Ohio and the challenge it presents for consumers.

Mr. Weston reported the PUCO has ordered FirstEnergy to refund \$27 million to consumers due to the legislature’s repeal of the HB 6 decoupling charge. Mr. Weston referred to a radio interview

where he commented that consumer justice is a longer road than just this refund. He added that the utilities' influence should be curbed.

Mr. Weston talked about OCC's continued quest for reform in the PUCO commissioner selection process and how the HB 6 scandal should be the impetus for change. Mr. Weston noted a 2020 white paper written by former OCC Board Chair (and former legislator) Gene Krebs. Mr. Krebs asserted that the PUCO and General Assembly are under "regulatory capture" from powerful distribution utilities. Mr. Krebs wrote that "A case can be made that the General Assembly and the Public Utilities Commission of Ohio (PUCO) are suffering from 'regulatory capture,' and this leads to the need to reform the PUCO." Mr. Weston said with the scandal and the recent federal criminal charge filed against FirstEnergy, it seems there is plenty to support changing the way PUCO commissioners are selected.

Mr. Weston discussed concerns OCC has with utility disconnection rates involving at-risk Ohioans. He said with advanced metering the initial concern was with the cost but now disconnection can be done by remote control. OCC will be taking action on these consumer protection issues.

Mr. Weston announced the upcoming 45th birthday of the Office of the Ohio Consumers' Counsel. OCC was created on September 1, 1976, by Sub. Senate Bill 94.

REPORT BY DEPUTY CONSUMERS' COUNSEL LARRY SAUER:

Mr. Sauer recapped the federal criminal charge made against FirstEnergy on July 22, 2021. FirstEnergy acknowledged the underlying facts of the criminal charge and entered a deferred prosecution agreement. The federal government has assessed a \$230 million penalty on FirstEnergy. The criminal charge will be dismissed in three years if FirstEnergy cooperates in the investigation.

FirstEnergy stated in a filing that it is in the process of reevaluating its September 30, 2020 response in a PUCO investigation proceeding. FirstEnergy must demonstrate that the costs of any political or charitable spending in support of House Bill 6 were not included in rates or charges paid by consumers.

Additionally, FirstEnergy said that its federal deferred prosecution agreement is resulting in a need for it to supplement certain answers that it previously gave parties such as OCC on discovery.

Mr. Sauer shared that Columbia Gas consumers have paid \$2 billion more to marketers than what they would have paid if buying Columbia's natural gas, since 1997. This information was provided under an agreement OCC has with Columbia Gas for it to provide OCC with "shadow billing" data.

Mr. Sauer reported OCC and the PUCO made a joint filing with FERC regarding DP&L wanting a profit incentive (paid at consumer expense) for some of its transmission investments. This incentive was charged to consumers by the utility for merely belonging to the transmission organization, PJM. Ohio law requires DP&L to belong to PJM, so there is no reason DP&L should receive profit incentives paid by consumers.

Deputy Sauer said OCC and NOPEC have opposed a settlement between Dominion and the PUCO Staff, that the PUCO then approved. The settlement allows Dominion to continue charging a very high rate of return based upon outdated data about profits and cost of debt. OCC and NOPEC filed an application for rehearing opposing the PUCO's approval. In response, the PUCO held a forum to bring together stakeholders to talk about the problem and allow participants to provide recommendations for solutions. There is no case number associated with this forum and it's not on the PUCO's procedural schedule.

EXECUTIVE SESSION

Chair Watkins indicated the Board would enter Executive Session, upon a motion. Mr. Young made a motion for the Board to go into Executive Session to discuss employment and compensation of the Consumers' Counsel and Deputy Consumers' Counsel. The motion was seconded by Ms. Moore. Mr. Sauer called the roll, and the Board voted as follows: Mr. Callion – yes, Ms. Grossman – yes, Mr. Hager – yes, Ms. Moore – yes, Ms. Shannon – yes, Ms. Skinner – yes, Vice Chair Young – yes, and Chair Watkins – yes.

The Board returned from Executive Session. Ms. Grossman made a motion to increase the compensation for the Agency Director and Deputy Director by 3% and to permit rounding in calculations. The motion was seconded by Ms. Skinner. Mr. Sauer called the roll, and the Board voted as follows: Mr. Callion – yes, Ms. Grossman – yes, Mr. Hager – yes, Ms. Moore – yes, Ms. Shannon – yes, Ms. Skinner – yes, Vice Chair Young – yes, and Chair Watkins – yes .

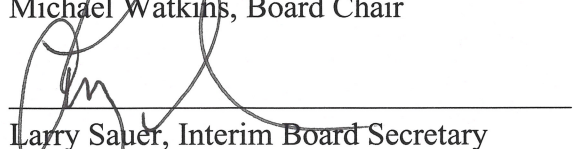
Ms. Moore made a motion to adjourn the meeting. It was seconded by Mr. Young. Mr. Sauer called the roll. The motion was unanimously approved.

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 September 29, 2021.



Michael Watkins, Board Chair



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