



Office of the Ohio Consumers' Counsel

MINUTES OF THE THREE HUNDRED AND SEVENTY EIGHTH MEETING OFFICE OF THE OHIO CONSUMERS' COUNSEL GOVERNING BOARD May 15, 2018

Members Present: Mr. Michael Watkins, Chair
Mr. Stuart Young, Vice-Chair
Mr. Fred Cooke
Ms. Beverlyn Johns
Ms. Kelly Moore
Mr. Douglas Moormann
Ms. Andra Troyer
Mr. David Wondolowski

Members Absent: Mr. Roland "Butch" Taylor

CALL TO ORDER BY CHAIR:

Chair Watkins called the meeting to order at approximately 10:00 A.M.

MEETING MINUTES

Chair Watkins asked for a motion to approve the minutes from the March 20, 2018 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 20, 2018 Board meeting minutes were approved unanimously.

EMPLOYEE RECOGNITIONS:

Consumers' Counsel Weston recognized Mike Haugh as the Employee of the Quarter for the 4th quarter of 2017. Mr. Haugh has served the public interest since making a return to the OCC in 2014 as the Assistant Director of Analytical Services. He previously worked for OCC from 2004-2007 as a regulatory analyst. Mr. Weston noted that, unfortunately, Mr. Haugh will soon be leaving the OCC. He received an unsolicited offer from a firm and, after much thought and consideration, he accepted it. He has done great work for Ohio consumers.

Mr. Weston recognized Molly McGuire as the 2018 Employee of the Year. She was selected for this award by her colleagues. Ms. McGuire is the Legislative and Public Affairs Specialist. She has served the public interest since she began working at OCC as a Public Affairs intern in 2015. In her current position, Molly handles legislative and public affairs matters before the General Assembly and works to inform consumers and help resolve their utility issues.

PRESENTATION BY DAVID BECK, OCC'S SPECIAL COUNSEL FOR UTILITY BANKRUPTCY ISSUES:

Mr. Weston provided an introduction for Mr. Beck's presentation regarding the FirstEnergy Solutions (FES) bankruptcy. Mr. Weston described FES as a company that markets energy to consumers and owns power plants. FES is not a utility. FES filed for bankruptcy on March 31, 2018.

Deputy Consumers' Counsel Larry Sauer welcomed Mr. Beck (whose services were made available to OCC by the Attorney General). Mr. Beck is a partner with Carpenter Lipps & Leland, LLP.

Mr. Beck provided an overview of bankruptcy basics. Mr. Beck then discussed the status of the FES bankruptcy. FES is currently trying to sell its retail business (marketing energy to consumers) and is looking to sell its fossil fuel power plants. OCC is participating in the bankruptcy case to protect consumers. It is likely this bankruptcy case will take many months, if not years, to resolve.

Of significant importance to consumers is FES' attempt to reject its OVEC coal plant contract. AEP, Duke, and DP&L (joint owners of these plants) are opposed to this rejection. Ohioans pay to subsidize the OVEC coal plants and FES's withdrawal could cost consumers of AEP, Duke, and DP&L an even greater subsidy.

OVEC utilities sued FES at FERC to prevent breach of the coal plant contract. OCC filed to protect consumers of AEP, Duke, and DP&L from paying more for FES's share of coal plants. On May 1, 2018 the Bankruptcy Court enjoined the OVEC proceeding at FERC which means the question of whether FES can "reject" its power purchase agreement with OVEC will be decided in the Bankruptcy Court (subject to any appeals).

PRESENTATION BY DEPUTY CONSUMERS' COUNSEL SAUER:

Deputy Sauer discussed the PUCO investigation of the FES bankruptcy. OCC filed a letter in November 2017 requesting the PUCO, in advance of a bankruptcy filing, to take action for protecting consumers and minimizing confusion for consumers. The PUCO did open a docket in the case after the bankruptcy was filed on March 31, 2018. In the docket the commission requested that FES file a report, which they did. In the report FES stated they will continue to serve customers during the bankruptcy but did not address in the filing that it is attempting to sell its marketing business. As discussed by Mr. Beck, OCC is reviewing issues for consumer protection in the bankruptcy case.

Ms. Moore asked if FES sells its marketing business, will the contracts entered into by customers

be cancelled without penalty or if the customers must go with new provider. Deputy Sauer said that terms are unknown at this point and it may be that being switched to a different provider may mean a different rate. Mr. Weston added that OCC's expectation is consumers would continue to receive the bargain of the contract they entered. PUCO has noted publicly that it cannot be guaranteed what consumers will have in the event the business is sold. OCC wants consumers, to the extent practical, to not be harmed due to the sale of the business. OCC will monitor this and, to the extent possible, advocate for consumers. Mr. Beck added that the terms of the sale will have to include how costumers will be notified, which will need to be specific, and have the approval of the bankruptcy judge.

VIDEO CLIP - MAUREEN WILLIS PRESENTATION AT PUCO

The Board watched a video clip of Maureen Willis, OCC Senior Counsel, as she presented at the PUCO PowerForward event on the topic of grid modernization. This presentation was one of the lead-ins to the Board's resolution on H.B. 247.

SUBSIDY SCORECARD

Deputy Sauer reviewed the subsidy scorecard noting the estimated \$945 million in subsidies to be collected from consumers between 2018-2024. Since the 2008 change in law, electric security plans can result in consumers paying subsidies. AEP and FirstEnergy specifically noted at the PowerForward event that ESP's could be used for the implementation of certain grid modernization riders.

RESOLUTION ON H.B. 247

Per the Board's request, a resolution was drafted for Board consideration in support of H.B. 247. This bill allows for regulatory reform to protect consumers by eliminating electric security plans and enabling refunds of improper utility charges and preserving competitively-bid standard service offers. The Bill's sponsor, Rep. Romanchuk, previously made a presentation to the Board. A motion was made by Mr. Cooke to approve the resolution. The motion was seconded by Ms. Moore. Ms. Hunyadi called the roll. The Board resolution in support of H.B. 247 was approved unanimously.

Chair Watkins called for a 5-minute break, beginning at 11:05 AM.

UPDATE ON U.S. TAX CUTS/UTILITY CONSUMER RATE CUTS

Deputy Sauer reported that PUCO established a docket to investigate the financial impact of the tax cuts/jobs act of 2017. PUCO reaffirmed it was their intent for all impacts from the tax cuts/jobs act to be returned to customers whether through this proceeding or through a case-by-case determination for each affected utility. A hearing will be scheduled on some of the issues involving tax reductions and rate reductions.

PRESENTATION BY TERRY ETTER:

Mr. Etter discussed the changes to Substitute House Bill 402 affecting basic local telephone service for Ohioans. The telephone industry, including AT&T, supports this legislation that would weaken protections for consumers. This bill would allow local telephone companies to increase monthly charges to residential and small business consumers for basic local telephone service by \$2.00 each year, which is a significant increase over the current annual rate increase of \$1.25 allowed by law. This bill would also allow the potential for removal, in four years' time, of any limit on increases in monthly charges to residential and small business consumers for basic local telephone. Significant rate increases could harm consumers of basic local telephone service.

OCC supports the availability of affordable, reasonably priced basic local telephone service with enforceable standards for adequate service quality for residential consumers throughout Ohio. OCC is opposed to the enactment of Substitute House Bill 402 as it is not in the best interest of residential consumers throughout Ohio.

RESOLUTION ON H.B. 402

Per the Board's request, a resolution was drafted for Board consideration in opposition to Sub. H.B. 402. This bill does not preserve affordable basic local telephone service with adequate quality for Ohioans. OCC has opposed the enactment of this bill as being contrary to the public's interest in the availability of affordable, reasonably priced basic local telephone service for residential consumers throughout Ohio. Mr. Moormann, Ms. Johns, Mr. Wondolowski, and Mr. Young participated in the discussion with support for adding consumer protection regarding 911 service. A motion was made by Mr. Wondolowski to approve the resolution with an amendment to protect consumers regarding access to 911 communications. The motion was seconded by Ms. Troyer. Ms. Hunyadi called the roll. The Board resolution in opposition to Sub. H.B. 402 was approved unanimously.

PRESENTATION BY TERRY ETTER:

Mr. Etter provided an update on the PUCO's investigation of the *Pitzer v. Duke* complaint case and Duke's disconnections of consumers. An audit was conducted on Duke's disconnection practices and the auditor found two instances of non-compliance and seven areas of only "partial compliance." The auditor recommended changes to Duke's disconnection policies on a going forward basis. In OCC comments, filed in response to the audit report, we recommended the PUCO should further investigate Duke's disconnection practices and assess monetary forfeitures going back to 2011 when the *Pitzer* case began. Duke also filed comments in response to the audit report which downplayed the auditor's findings.

PRESENTATION BY MONICA HUNYADI:

Monica Hunyadi, Director of Operations, updated the Board on the summer county fairs at which OCC will be attending, including the Ohio State Fair as well as the Farm Science Review.

PRESENTATION BY CONSUMERS' COUNSEL WESTON:

Consumers' Counsel Weston reviewed the contents of the Agency's 2017 Annual Report. Counsel Weston then gave an update on the pending DP&L rate case and reviewed the fact sheet prepared for consumers. He also reported on the AEP ESP case. PUCO has approved the most recent electric security plan (ESP). One item included in the ESP is a subsidy for consumers to pay for OVEC coal plants, a subsidy for electric vehicle charging stations, and microgrids, a mini grid within a grid, that can be used for battery storage and other things. Counsel Weston reported on the fiscal summary for the agency, providing information for 10 months of the current fiscal year. Thus far the agency has used approximately 81% or \$4.5 million of the \$5.5 million budget. Some of this amount has been encumbered (under state processes) for items not yet purchased. He then provided a brief update on H.B. 114. It is the most recent bill that revisits the 2008 energy law to address energy mandates. The bill has passed the House and is pending in the Senate and may see some legislative activity.


Chair Watkins next indicated that the Board would enter Executive Session, upon a motion. Vice-Chair Young 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: Chair Watkins – yes, Vice Chair Young – yes, Mr. Cooke – yes, Ms. Johns – yes, Ms. Moore – yes, Mr. Moormann – yes, Ms. Troyer – yes, Mr. Wondolowski – yes, and Mr. Taylor – absent.

The Board returned from executive session. Chair Watkins stated no decisions were made in executive session. With no further business, the meeting adjourned at approximately 1:10 P.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on July 17, 2018.



Michael Watkins, Chair
Ohio Consumers' Counsel Governing Board



Monica Hunyadi, Interim Secretary
Ohio Consumers' Counsel Governing Board