



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

Meeting of May 14, 2024

The members present were:

Ms. Cheryl Grossman, Vice-Chair
Mr. Randy Brown
Mr. David Fleetwood
Mr. Dorsey Hager
Ms. Kelly Moore
Ms. Jan Shannon
Ms. Connie Skinner

Member Absent: Mr. Michael Watkins, Chair and Mr. Josh Yoder

Assistant Attorney General Bryan Lee was also present at the meeting.

Vice-Chair Grossman chaired the meeting in the absence of Mr. Watkins.

CALL TO ORDER BY CHAIR:

Vice-Chair Grossman called the meeting to order at approximately 10:00 A.M. Board Secretary Susan Loe called the roll. The members answering as present were as shown above.

Vice-Chair Grossman asked the guests to introduce themselves. Present at the meeting were: Mike Livingston from Gongwer, Robert Dove of Kegler, Brown, Hill & Ritter, Stephanie Gonya from the PUCO and several OCC staff members.

APPROVAL OF THE MINUTES:

Vice-Chair Grossman asked for a motion to approve the minutes of the March 12, 2024 Board meeting. A motion was made by Ms. Skinner to approve the minutes as written. Mr. Fleetwood seconded the motion. Ms. Loe called the roll. The motion was approved unanimously by members present.

CONSUMERS' COUNSEL'S REPORT:

Consumers' Counsel Willis announced the issuance of the agency's annual report which was due April 1. She thanked the staff for their work on the project. She encouraged everyone to review the annual report on the agency website, and noted it contains a lot of information about OCC's casework and legislative activities and more.

Consumers' Counsel Willis next discussed some of the cases that the agency is involved in advocating for consumers. She noted that electric security plans were created under the 2008 energy law, which OCC considers to be a very pro-utility, anti-consumer law. She explained that it allows a lot of add on charges, known as riders or trackers, without standard ratemaking protections. She added it also allows utilities to earn excessive earnings, as compared to standard ratemaking which only allows utilities to the opportunity to earn a fair and reasonable return. She explained that under the law utilities can terminate or withdraw from the plan if the PUCO modifies it. She explained that this has caused problems for consumers, for example in Dayton, where DP&L has 500,000 consumers and has twice terminated its plan in three years. She noted that OCC would like to see electric security plans repealed as called for under Senator Romanchuk's bill, S.B. 143.

Ms. Willis explained that there are several electric security plans that are pending before the PUCO. She first discussed a recent settlement in the AEP case, where OCC is seeking a rehearing and has several concerns with the settlement. She next discussed FirstEnergy's electric security plan explaining that OCC had extensive testimony opposing the plan. She noted FirstEnergy's plan includes a \$1.4 billion increase to consumers and another \$2.6 billion in charges to consumers for riders or trackers. She explained that there had been no settlement reached and the case is pending a PUCO decision. She next discussed the Duke electric security plan that had just recently been filed and which OCC has just begun to review. She explained that Duke's plan would increase consumer rates by \$135 a year and also seeks a change in the standard service auction. She noted that OCC is investigating and will be hiring consultants to assist OCC in its analysis of Duke's plan.

Ms. Willis next discussed FirstEnergy's filing of its first rate case since 2007. She noted this is the first case in 17 years. In the case FirstEnergy is seeking to increase rates to consumers by \$100 million. She explained that this is the rate case that FirstEnergy had been trying to avoid for fear that it would actually result in a decrease. Under the direction of Former Chair Randazzo, the PUCO initially determined that FirstEnergy did not have to come in for the rate case, but that decision was later overturned by the PUCO. She stated that OCC would be taking a very close look at the rate case and likely hiring experts. She also discussed a recent article in Akron Beacon Journal on the FirstEnergy rate case.

Ms. Willis next discussed the H.B.6 coal subsidies being paid by Ohioans, which have recently reached \$248 million. She explained that OCC's efforts to repeal the subsidy were not getting anywhere in the legislature. She noted that the PUCO's recent prudence audit showed that in 2020 consumers paid \$100 million to subsidize the plants. OCC has argued that the coal plants are not being operated prudently. She added that briefs have been submitted in the audit cases but there has not been a ruling yet, and that other parties had joined OCC in the call for a consumer refund of the \$100 million paid.

Mr. Hager asked about the kind of feedback OCC receives when presenting its viewpoint to the legislature. Ms. Willis responded that there is a concern that Ohio needs all the power we can get, that there is a looming power shortage. She noted that OCC supports relying on the market, which tends to produce lower prices and greater innovation. The subsidies edge out other forms of competition and create an uneven playing field in the market. She added that it had previously been claimed that the nuclear plants would close down without the subsidies – but the same claim had not been made about the coal plants. She noted minority caucus bills have tried to repeal the coal subsidy without success, and is hopeful new leadership coming in may recognize the unfairness. Ms. Moore asked about the subsidy scorecard and the legislative notebook. Ms. Willis explained the notebook may be something that OCC could look at updating. She explained that the scorecard is kept up to date and often

attached to testimony, etc. She noted that the scorecard has stood the test of time and has not been challenged. Ms. Moore added that she thought it was a valuable tool to help educate those who are unaware of the situation, such as some of the newer people at the legislature.

Ms. Willis next stated that the standard service offer prices were coming down, which is good news for consumers. She noted that this was a statewide phenomenon and that this may be the time for those who had chosen a marketer to switch back to the standard service offer, which was being publicized on the agency website.

Ms. Willis next discussed the FirstEnergy internal investigation reports that have yet to have been shared with OCC. She explained that these internal investigations led to firings and resignations at FirstEnergy. She further explained that these reports had previously been deemed by the PUCO to be privileged. She noted that the District Court has recently ruled that the reports need to be released to Defendants Jones and Dowling. OCC has an agreement with FirstEnergy that they will provide OCC a copy of anything that is provided to other litigants, so she is hopeful they will be released to OCC.

Ms. Willis next discussed consumer refunds and displayed a pie chart which shows that despite the Court finding \$1.5 billion in unlawful or unreasonable charges, no refunds have been made to consumers because of the way the Supreme Court interprets the law. She noted that OCC has been pursuing a change in the law to allow the refunds. She also added that PUCO Chair French recently commented in her confirmation hearing that the PUCO would provide for refunds wherever they are authorized by law. OCC has asked for transmission charges to be subject to refund and she is hopeful that the PUCO will enable those refunds, reflecting Chair French's recent comments.

Ms. Willis then discussed some outreach efforts, including a submetering story that is to be run by local Channel 10 and for which she provided an in-person interview. She reminded the Board that the PUCO recently ruled that submetered consumers are not entitled to the same protections under the law as consumers receiving service from a regulated utility.

She also displayed a slide of a recent televised interview by J.P. Blackwood of OCC Public Affairs Department discussing the 30% Dominion rate increase.

Vice Chair Grossman commended Consumers' Counsel Willis on the outreach efforts and asked about the public response. Ms. Willis noted an increase in letters being filed in the docket, as well as cities and townships filing resolutions against the rate increase. Ms. Willis noted that she and Deputy Consumers Counsel had made a number of personal appearances in local communities to get the word out.

DEPUTY CONSUMERS' COUNSEL'S REPORT:

Deputy Consumers' Counsel O'Brien discussed matters that the OCC is involved in before the Federal Energy Regulatory Commission (FERC). She explained that the main focus at FERC is transmission costs and displayed a slide which showed the consumer impact. She noted OCC has a complaint at FERC asking for a review of the supplemental transmission projects. She added that on the previous day FERC issued an order regarding long term transmission planning, including who was going to pay for the transmission. She noted it

was a very large order and OCC staff is in the process of reviewing it. Ms. Moore asked why there was such a difference in the three major companies on the graph. Ms. Willis noted that she believes AEP is expecting a lot of data centers and economic development in the AEP service area in central Ohio.

She next discussed a recent OCC appellate argument presented before the 6th Circuit Court of Appeals regarding an incentive payment paid for by consumers, the RTO adder. She explained that this is an incentive provided to transmission companies for participating in the RTO, such as PJM. She noted that Ohio has a law that mandates participation in the RTO, making the incentive unnecessary. She discussed recent oral arguments and displayed some of the comments and questions from the judges. Ms. Willis noted that these incentives that consumers are being charged involve a lot of money. For example in AEP's case, this adder charge was worth about \$20 million.

Ms. O'Brien next discussed activities at the Ohio Supreme Court. She first discussed supplemental briefing in a DP&L rate stabilization charge. Ms. Willis added that in 2021 the PUCO required DP&L to add the language "subject to refund" to tariffs that are collecting a stability charge. She noted that the stability charges were collected from consumers for two years at \$76 million per year.

Ms. O'Brien next discussed the submetering issue being pursued at the Ohio Supreme Court involving Nationwide Energy Partners (NEP). She explained that OCC was denied intervention in the PUCO case to advocate for consumers, and that the PUCO also ruled that consumers who receive submetered utility service are not entitled to the same protections as consumers of regulated utilities. She explained that OCC appealed and has filed its first brief, while NEP has filed a motion to dismiss. She added that AEP has also filed an appeal of the PUCO's order.

Ms. Moore asked if there were other groups involved in support. Ms. O'Brien responded that Ohio Partners for Affordable Energy had filed an amicus brief. She noted that this PUCO decision is a horrible situation that has created a second class of utility consumers who reside in apartments. She added that OCC had heard of instances where consumers were evicted because they were unable to pay their utility bills and did not have protections such as PIPP to assist them. Ms. Willis added that OCC participates in a Low Income Dialog Group and that submetering is one of the issues that comes up all the time. She noted that there are not a lot of options for these residents. Ms. Shannon noted that moving out is probably not an option with limited affordable housing. Ms. Willis added that OCC was also looking at whether there was a way to address it legislatively.

LEGISLATIVE UPDATE:

Ms. Willis introduced Beau Euton, President of First Harvest Consulting, which is a business development and public policy firm located in Ohio. Ms. Willis stated that Ms. Euton will be serving as OCC's new lobbyist, and provided a brief bio and history of Beau's work and her experience in political and non-profit sectors. Ms. Euton spoke to the Board members about the work she would be doing with the OCC. She noted that some of their goals included building bridges with the legislature and helping them understand why it is important for them to support OCC's work for their constituents. She added that they would also like to get OCC's budget back to where it should be so that OCC can provide more services for consumers. Ms. Willis added that OCC will be trying to work cooperatively with legislators. Ms. Euton also spoke briefly about her co-workers at First Harvest who would be joining in the effort.

Nick Stallard updated the Board on refund bills currently in front of the legislature. He highlighted House Bill 393 and Senate Bill 228 dealing with refunds of unlawful charges and noted some recent conversations with Rep. Baker and Sen. Smith. He next discussed House Bill 197 regarding community solar programs, and OCC's amendments. He noted there had been good interested-party meetings with OMA and CUB, and there were more hearings and amendments expected. He next discussed House Bill 226 regarding replacement of lead water lines and noted that OCC had participated as a proponent. Ms. Willis added that the cost is shared/socialized because it would otherwise cost an individual consumer \$5,000-\$12,000. Mr. Stallard noted that Aqua had met with OCC at the beginning of the process.

Mr. Stallard next discussed House Bill 260 and Consumers' Counsel Willis' opponent testimony. Ms. Willis noted that OCC believes electric security plans should end rather than be modified. She also noted OCC's concerns that HB 260 allows rates to be based on fully forecasted expenses and investment rather than historical actual data. Ms. Willis added that the bill is supposed to reform electric security plans, but it actually makes things worse for consumers. She noted that it also limits discovery to a small number of questions and gives favorable treatment to operations and maintenance expenses that is not allowed today. She added that the bill allows electric utilities to propose new riders in distribution cases which is currently not allowed. Mr. Stallard added there were other parties who presented opponent testimony, including OMA, Americans for Prosperity and NOAC. Ms. Willis added that OCC was open to continuing dialog to improve the bill.

Mr. Stallard next discussed House Bill 79 dealing with energy efficiency. He noted it had garnered quite a bit of opposition and although OCC supports energy efficiency, OCC's position is that energy efficiency products can be obtained in the market voluntarily without being subsidized through utility rates.

Mr. Stallard briefly discussed other pending bills that OCC was following, including HB 257 (allows for virtual meetings), SB 102 (regulatory reform) and SB 174 (carbon offsets for natural gas service).

EMPLOYEE OF THE QUARTER:

Ms. Willis next discussed the Employee of Quarter, Bill Ferriot. She explained that Bill had been very helpful in the design and layout of the annual report and also the website updates. She noted that he is OCC's graphic artist and noted he also was very helpful on the new videos being produced.

PUBLIC AFFAIRS REPORT:

Merrilee Embs, Public Affairs Director, gave the Board an update on the progress of the two new videos. She noted that the two outreach topics were Energy Choice 101 – (dealing with marketers) and a Guide to Utility Assistance. She noted that these were the two topics very frequently encountered in dealing directly with consumers. She explained that the videos were in the final stages of production and that many OCC employees served as the “actors” in the videos. Ms. Willis added that part of these videos could be used in public service announcements at some point. Ms. Embs noted that they also produced several short clips videos that could be used in a variety of forums.

Ms. Embs next updated the Board members on website traffic and the top pages viewed. She also reviewed the outreach activities during March and April, including 150 events and site visits and interaction with over 3,900 consumers. She noted that OCC staff was in the process of finalizing its summer fairs schedule.

She also discussed the outreach related to the Dominion rate case. She noted that the Consumers' Counsel and Deputy had both made presentations to local communities. She added that in response communities had been passing resolutions opposing the rate increase. Ms. Willis highlighted particularly that Warren City Council Members Greg Greathouse and Michael O'Brien had been contacting other communities and rallying others and thanked them for their efforts.

Ms. Embs next discussed a recent meeting with regional NAACP, who is also assisting in getting the word out. She noted that in addition, they had agreed to continue to work together with OCC and build a continuing relationship on other projects that could be beneficial.

Mr. Brown commented that he thought the videos and community outreach were great projects and very important, and thanked staff for their efforts.

Mr. Stallard commented that he earlier referenced Americans for Prosperity's support of HB 260 and wanted to correct himself that he should have referred to their involvement with House Bill 79 with their key vote alert rather than 260.

Ms. Shannon moved to enter into Executive Session for the purpose of discussing compensation matters for OCC. Mr. Brown seconded the motion. Ms. Loe called the roll:

Mr. Brown: Yes
Mr. Fleetwood: Yes
Mr. Hager: Yes
Ms. Moore: Yes
Ms. Shannon: Yes
Ms. Skinner: Yes
Vice Chair Grossman: Yes

Ms. Loe noted there would be no more business after the executive session. The Board entered Executive Session at 11:25 A.M.

The Board returned from Executive session at 11:35 A.M.

Ms. Shannon made a motion to adjourn the meeting. It was seconded by Mr. Hager. Ms. Loe called the roll. The motion was approved unanimously.

The meeting was adjourned at approximately 11:36 A.M.


I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on July 16, 2024.



Michael Watkins, Governing Board Chair



Cheryl Grossman, Vice-Chair



Susan Loe, Board Secretary
Ohio Consumers' Counsel Governing Board