



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

**Meeting of September 17, 2024**

The members present were:

Mr. Michael Watkins, Chair  
Ms. Cheryl Grossman, Vice-Chair  
Mr. Randy Brown  
Mr. David Fleetwood  
Mr. Dorsey Hager  
Ms. Jan Shannon  
Ms. Connie Skinner  
Mr. Josh Yoder

Member Absent: Ms. Kelly Moore

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

**CALL TO ORDER BY CHAIR:**

Chair Watkins 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. Chair Watkins noted that Ms. Moore had shared that she would not be seeking reappointment. He asked Mr. Hager and Mr. Yoder about their intent to continue serving on the Board. Both responded they hoped to be reappointed.

Chair Watkins asked the guests, staff and Board members to introduce themselves. Present at the meeting were: Mike Livingston from Gongwer, Paul Teasley of Hannah, Gene Freeman of Pickerington, staff from the PUCO and OCC, as well as the Board Members, Deputy Consumers' Counsel and Consumers' Counsel.

**APPROVAL OF THE MINUTES:**

Chair Watkins asked for a motion to approve the minutes of the July 16, 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 updated the Board on PUCO activities. The first case she discussed was a submetering case, where the PUCO determined that Nationwide Energy Partners was not a utility, but had required certain language in utility tariffs. She explained that OCC filed comments, including recommendations for language to help protect consumers, and noted that the issue is still on appeal at the Supreme Court. Vice-Chair Grossman commented that there had been some news coverage on this issue. Ms. Willis stressed that this was an important issue and OCC has been increasing efforts to educate consumers. Ms. Willis added OCC is hoping to partner with utilities to work on consumer protective legislation in a future session.

Consumers' Counsel Willis next discussed certain audits ordered by the PUCO. She explained that a draft audit report is provided to the utilities for review, and that utilities are given the opportunity to recommend changes to auditor's findings. She noted this had occurred in the coal subsidy OVEC audits. She added that its not appropriate for the draft audit report to be shared solely with the utilities and no other parties. Additionally, she indicated that utilities appear to be pushing for changes to auditor findings in the draft reports. The process needs reform.

Ms. Willis next discussed the coal subsidies where PUCO recently approved \$280 million in continued subsidies. She explained that OCC had repeatedly asked for repeal of this remaining portion of HB 6. She also shared a recent op-ed piece in the Plain Dealer discussing the amount of money and calling for change.

Ms. Willis next discussed the Duke Electric Security Plan rate increase. She explained to the Board that if the full increase is approved, it will amount to a \$135 annual increase for a user of 1000 KW of electricity per month.

Ms. Willis next discussed the Dominion rate case, where the utility is seeking a 30% increase; however, PUCO staff had recommended a 30% decrease. She added that OCC's analysis concluded that a 32% increase was reasonable. She described the outreach efforts conducted by OCC to get the word out to affected communities, and noted that a number of cities, villages and townships had issued resolutions opposing the increase.

She next discussed the AEP Gridsmart Phase 3 case. She explained that in AEP's Gridsmart Phase 1 and 2, the PUCO gave AEP the ability to collect up to \$600 million, and that to-date consumers had paid \$385 million toward that cap. She noted when adding \$350 million for Phase 3, the Gridsmart program would now cost \$1 billion. She added that one of OCC's concerns is the utilities' lack of proof that these efforts are producing more reliable service for AEP consumers. She noted Gridsmart programs were not unique to AEP, and thus far the results/benefits had not been consistent.

She next discussed the four investigations at the PUCO regarding FirstEnergy, the first one being the corporate separation case. She noted the internal investigation report still had not been produced, and FirstEnergy was fighting the release at the 6<sup>th</sup> Circuit. Chair Watkins asked if the Attorney General's office had been provided the report and Ms. Willis responded that she did not believe so. She added there were two separate reports done by two law firms. Mr. Hager asked where the 6<sup>th</sup> Circuit was located and Ms. Willis responded it was located in Cincinnati.

Ms. Willis next discussed a Centerpoint (Vectren) newly filed rate case, where a 30% increase was being sought. She noted that it was important for OCC to be involved in this case.

Mr. Yoder asked about whether there were common themes in all these varied rate increases. Ms. Willis described that for some of these companies it had been a number of years since they had a formal rate case. She also noted that economic development was driving rate increases for distribution charges, such as with the data centers and Intel. She explained that supports economic development, but that the service that residential consumers receive now needs to be reliable and rates need to be kept reasonable.

Vice-Chair Grossman asked how other states were dealing with distribution investments. Ms. Willis noted that this would likely be a big topic at an upcoming national conference. She said that cost causation principle is a common theme to protect consumers. Ms. Grossman noted that the AEP increases caused by data centers did not appear to be equitable. Ms. Willis commented that OCC believes that the data centers should pay for increased distribution and transmission costs. She noted that there were 20-30 parties in these cases and that settlement discussions were continuing. She noted that AEP's plan is protective of consumers as AEP will not be committing to transmission build out without substantial commitments that from these large data centers. She added that when there is stranded cost and stranded investment, it's usually not the utility that picks up that cost; it usually goes to consumers.

Mr. Brown asked if Intel was indeed going forward. Ms. Willis responded that despite recent media reports that there had been some downturn in the project, her communications with AEP and Intel had been positive, with no indication that there were any changes in plans. She noted there were claw-back provisions that would hopefully protect consumers. She added that Ohio consumers don't start paying for the distribution until next year. She noted that it would be a big disappointment for the state if the investment did not go forward. Vice-Chair Grossman mentioned a recent media report that a contract with the military was going to be helpful in moving the project forward.

#### **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 first discussed a request by PJM and PJM transmission

owners to move the transmission planning rules from the PJM Operating Agreement to the open access transmission tariff. She noted that it could cut consumer input in the transmission planning process. Under the Operating Agreement all members must agree to the transmission planning rules. She noted that OCC intervened on behalf of consumers and filed a protest to PJM's proposal.

She next discussed the base residual capacity auction, which had resulted in more than an 800% increase in capacity prices. She noted that this was estimated to cost \$14.7 billion in 2025. OCC joined with five other advocates to send a letter to the PJM Board requesting immediate action for changes to the capacity auction. The request would be to include reliability must-run units in the auction as available supply. She noted that OCC is in the process of considering what other action to take at FERC to address the issue.

Deputy O'Brien next discussed OCC activities at the Ohio Supreme Court. She first discussed the case of *Moraine Wind*, where the Supreme Court put an end to the PUCO's long-standing practice of granting applications for rehearing for the limited purpose of further consideration. She explained that under the statute for rehearing, the PUCO has 30 days after application for rehearing is filed to grant or deny. She noted that in the past the PUCO's practice in many cases was to grant a rehearing solely for further consideration of the issues, which basically gave itself an extension of the 30-day requirement. This historically had been a problem for OCC and many others, because the PUCO could take months, or even years, to issue a final decision that could potentially be appealed. She noted that this had delayed appellate review. She noted that the *Moraine* decision was very favorable for consumers; however, the PUCO has applied the ruling retroactively, which effectively precluded OCC's ability to appeal those cases that had outstanding orders.

Ms. Willis explained that the fact that the PUCO can no longer delay rulings is a good thing, but that applying it retroactively has eliminated OCC's right to appeal 37 outstanding cases. She noted this was an inequitable application of the decision. She explained the Court did not provide guidance as to whether *Moraine* should apply retroactively to existing cases. Ms. O'Brien added that the delay was problematic for consumers, because once the PUCO issues an order, those rates are paid by consumers, whether they are lawful or not. She further explained that pending the appeal, consumers are still being charged the higher rates and there is not an opportunity for refund. Consumers' Counsel Willis noted that OCC's website includes a pie chart that depicts \$1.5 billion in unlawful charges not refunded to consumers. She added that over \$200 million of that amount was directly associated with the delay that the PUCO previously caused by its Entries granting itself more time. .

Ms. O'Brien next discussed OCC's pending appeal at the Ohio Supreme Court related to AES and their \$152 million stability charge, and retention of \$62 million in significantly excessive earnings. She noted that at the end of August the Court denied AES's motion to deny OCC's appeal, so the case would be moving forward. Ms. Willis noted that if the stability charge was collected "subject to refund" written into the tariff, so there is a potential for \$200 million refund to consumers. Chair

Watkins asked if that “subject to refund” would be included in future tariffs, and Ms. Willis noted that the PUCO had made it very clear that it was a one-off in that case. She noted that there had been a lot of delays in that case.

### **LEGISLATIVE UPDATE:**

Nick Stallard, OCC’s Legislative Liaison, updated the Board on bills currently in front of the legislature. He noted OCC still continued to monitor HB 260, and that there had been no movement. He noted that OCC had been in conversation with Rep. Wilkin regarding SB 102, which had been encouraging regarding OCC’s amendments. He also discussed SB 275 regarding virtual net metering, and that OCC had met with the sponsor, Senator Dolan regarding cost shifting. Mr. Stallard also described a recent notice sent by OCC to legislators concerning the Dominion/Enbridge rate case.

### **EMPLOYEE RECOGNITION:**

Ms. Loe, Operations Director, discussed a new employee that had been hired since the last Board meeting, Charles Cox. She noted that Mr. Cox was a recent graduate of the Ohio State University with a master’s degree in Accounting. Ms. Willis commented it had been a while since OCC had an accountant on staff, which would be helpful to analytical staff in evaluating rate cases.

### **PUBLIC AFFAIRS REPORT:**

Merrilee Embs, Public Affairs Director, gave the Board an update on public outreach including a recent meeting with Ohio reporters. She updated the board on website traffic, which was up from her previous report. Ms. Embs described recent efforts to distribute and publicize the videos. She shared two of the short videos with the Board, including one regarding home weatherization assistance and one regarding winter heating tips. She updated the Board on recent face-to-face interactions with consumers, which had included the summer fair events. She also shared with the Board the number of media announcements that OCC had been sending out.

Vice-Chair Grossman asked about the qualification for PSAs, and Ms. Embs noted that it varied by media type. Chair Watkins noted that his experience was better with individual stations as opposed to cable channels, who were more concerned about profits. Consumers’ Counsel Willis noted that the focus on the PSAs had been around the rate cases. She added that it was an opportunity for a PUCO Commissioner to hear the concerns of the public and the testimony becomes part of the record. Ms. Embs also described their use of social media to send out public notice of upcoming local hearings.

### **Fiscal Report:**

Ms. Loe explained that spending for Fiscal Year 2024 was winding up as a few invoices were still coming in. She noted that OCC had spent about 95% of its budget. She also explained that Fiscal

Year 2025's budget was the same as Fiscal Year 2024, at \$6.3 million, and that the 5% COLA increase for state employees had to be absorbed within that budget.

**Audit Report:**

Ms. Loe next explained that OCC's Fiscal Years 2023-2024 had just concluded with no deficiencies. She noted that the audit was mostly a fiscal audit, but it also included payroll, agencies policies, and adherence to certain Ohio Revised Code requirements. Vice-Chair Grossman noted that it was a very nice outcome and congratulated everyone involved.

**Fiscal Years 2026-2027 Budget Request:**

Consumers' Counsel Willis next discussed the agency Fiscal Years 2026-2027 budget request, which was due September 27. She shared some slides regarding the cost of OCC's budget to consumers, and the OCC's budget versus direct consumer savings achieved. She noted that it amounts to \$29 in savings for every \$1 of agency funding. Ms. Skinner asked about the amount of the request and Ms. Willis noted that it was still being considered, but that it would be over the 5% cap identified by OBM. Ms. Willis explained that this was just the beginning of the process and that it would go through the Governor's office and both the House and Senate before the final numbers would be determined. Ms. Willis noted that our budget request included a lot of quantitative data to explain how OCC's budget has been affected by inflation and what the result of our spending means for the public. Ms. Willis noted that OCC planned to meet with as many legislators as possible during the budget process.

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

The meeting was adjourned at approximately 11:15 A.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on November 19, 2024.



Michael Watkins, Governing Board Chair



Susan Loe, Board Secretary  
Ohio Consumers' Counsel Governing Board