



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

Meeting of November 19, 2024

The members present were:

Mr. Michael Watkins, Chair
Ms. Cheryl Grossman, Vice-Chair
Mr. Randy Brown
Mr. David Fleetwood
Mr. Bruce Lackey
Ms. Jan Shannon
Mr. Josh Yoder

Member Absent: Mr. Hager, Ms. Skinner

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 welcomed OCC's new Board member, Bruce Lackey.

Chair Watkins asked the guests, staff and Board members to introduce themselves. David Basich, the newly hired Director of Analytical Services, introduced himself and provided the Board with a brief summary of his background. Also present were Beau Euton (OCC Legislative Consultant), Gene Freeman, staff from the PUCO and OCC, as well as the Board Members, Deputy Consumers' Counsel and Consumers' Counsel. Chair Watkins reminded the Board members to take their ethics training before the end of the year.

APPROVAL OF THE MINUTES:

Chair Watkins asked for a motion to approve the minutes of the September 2024 Board meeting. A motion was made by Mr. Fleetwood to approve the minutes as written. Ms. Shannon seconded the motion. Ms. Loe called the roll. The motion was approved unanimously by members present.

RESOLUTION FOR KELLY MOORE:

Chair Watkins next asked the Board members if they had reviewed the resolution honoring Ms. Moore for her years of service on the Board. Ms. Grossman moved to approve the resolution as written. Mr. Fleetwood seconded the motion. Ms. Loe called the roll. The motion was approved unanimously by members present.

BOARD MEETING DATES FOR 2025:

Chair Watkins next reviewed the proposed meeting dates for 2025 and asked the members for any potential conflicts. The dates were agreed upon as follows: January 21, March 18, May 20, July 15, September 9 and November 18, 2025.

CONSUMERS' COUNSEL'S REPORT:

Consumers' Counsel Willis updated the Board on PUCO activities. The first matter she discussed was OCC's long-standing push for reform on the Nominating Council and the PUCO commissioner selection process. She explained that the Ohio Ethics Commission had made a resolution requiring candidates to file financial statements with the Ethics Commission. Ms. Willis discussed other legislative efforts to reform the selection process. She noted OCC will also be filing comments during the upcoming five-year review process at JCARR.

Ms. Willis next discussed the Dominion/Enbridge gas rate case, which has been delayed several times at the request of the utility. Both PUCO staff and OCC recommended decreases rather than the requested 20-30% increase. She explained that there had been a lot of meetings around the state to encourage public input and noted there had been 23 separate resolutions filed against the rate increase. She added that the utility had filed multiple extensions to delay the hearing, which were opposed by OCC.

Ms. Willis next discussed the FirstEnergy electric rate cases. She explained that consumers in Cleveland area would see over a \$13 increase in their monthly bill. She explained that OCC had engaged consultants to assist with analysis of the filing and testimony.

Ms. Willis next discussed the AES case where a settlement concerning AES's failure to meet reliability standards was filed without OCC participation. After OCC formally complained to the PUCO, the settlement was opened up and renegotiated, resulting in more consumer protections.

Ms. Willis next discussed AES Ohio's most recent electric distribution rate increase request, which if approved would increase residential consumers bills by 14-16%. Under AES's proposal a residential consumer 1000 kwh would see their monthly bill increase from \$136 to \$158. She noted that this

affects the Dayton area residents. In particular the rate increase will be critical for consumers in the Dayton metropolitan area which has a federal poverty rate of around 27% -- double the average 13% poverty rate in Ohio. She added that to compound the problem, CenterPoint, who serves some of the same AES consumers, is also asking for natural gas distribution rate increase of 29.6%. Under that proposal, on average, consumers' monthly gas distribution bills will increase from \$78.86 to \$102.

Ms. Willis next discussed a case where FirstEnergy withdrew from its electric security plan after modifications by the PUCO. She explained that the law states the utility reverts back to the most recent approved standard service offer, not the recently approved electric security plan with all of its add on riders. Because of prior PUCO rulings, there is a potential that FirstEnergy's distribution rate increase request (previously discussed) cannot get implemented until FirstEnergy's next standard service offer is approved. She noted that the issue of what happens after a utility withdraws from an electric security plan is currently pending at the Supreme Court in an AES appeal that OCC took from previous PUCO orders. OCC's position is that the law requires and consumers are better off with a simple standard service offer without all of the add on distribution riders allowed under an electric security plan.

Ms. Willis next discussed a case filed by Duke, who services the southern part of Ohio. In that case Duke is asking for an additional \$14 million increase from consumers for a mistake Duke made in settling the last rate case. She added that Duke is also pursuing increases in transmission rates. She noted that 90 percent of the transmission charges get pushed onto Duke's residential consumers. OCC was working on several fronts to change this. She also discussed settlement negotiations over Duke's Electric Security Plan that had been ongoing for a couple of months.

She next discussed the PUCO's disconnection protection docket and the winter reconnect order. She explained that OCC had advocated for larger protections, such as summer reconnect order, longer payment plans, special protections for national weather service warnings, and advance notice of scheduled disconnections. Unfortunately, none of these consumer protections were adopted by the PUCO. She noted that OCC will continue to jointly work with low-income advocates to pursue these consumer protections in future PUCO proceedings.

Ms. Willis next discussed the AEP data center tariff. She noted that OCC's senior counsel participated on a panel at a national consumer meeting (NASUCA) in November and that there is a lot of interest in this case across the country. She explained that AEP's is proposing a tariff that creates a separate class for data centers and their unique energy-intensive needs. She further explained that OCC was in support of the tariff because it is protective of consumers who might otherwise have to bear the costs associated with serving data centers. She explained that OCC filed comments in support of the AEP tariff. She noted that the data center parties filed a pro-industry settlement, without the utility, the PUCO Staff or OCC. A second settlement was reached with AEP, OCC, and the PUCO staff that is protective of consumers. It is now up to the PUCO to review both settlements and make a decision.

She noted the issues are largely about transmission investment and requiring long-term commitments by these data centers to avoid stranded costs for other consumers. Ohio is one of the very first jurisdictions where a tariff has been proposed to address some of the issues. She discussed a related transmission filing where AES Ohio filed a data center agreement seeking FERC approval.

Chair Watkins asked whether the current Ohio grid could handle the proposed load created by these data centers. Ms. Willis commented that there is no way to know if the proposed load (30,000 MW) will actually materialize. She noted that is why OCC and AEP are seeking long term commitment contracts from data centers. She explained that a very large investment in transmission will be needed if the load is actually added. This raises the issue of who should pay for the load. She added that it was her understanding that the distribution system can handle the load, that the issue was transmission, getting the power in, which would require AEP to build the huge 765 KV lines to transport the power. She noted that OCC will need to get involved in the transmission planning process to protect consumers. She reminded the Board of OCC's pending complaint at FERC regarding the lack of oversight for these types of projects. She noted that PJM applies a "do no harm" standard, which is not protective of consumers. She explained that OCC looks at things such as prudence, competitive bidding, least cost, allocation to consumers, gold-plating, and other concerns. She noted that the utilities earn a profit on transmission investment.

Vice-Chair Grossman asked if this was the first time that OCC and AEP were in partnership. Ms. Willis responded that it does not happen often, but that this was a very cooperative process. Chair Watkins noted they also were together on the submetering issue. Ms. Willis added that the large data center companies have stated that they are "willing to pay their fair share." She commented that the fair share of these costs that data center should pay is 100 percent.

Mr. Yoder commented that AEP is essentially making the argument that data centers are a bifurcated customer base. He asked if there were risks associated with the bifurcation. Ms. Willis noted that this involved potentially billions of dollars and she does not see the down side of treating them as a separate customer class. Mr. Yoder noted a concern that situations such as the recent rolling brownouts could be harmful to consumers with the amount of power these data centers consume. Ms. Willis noted that is one of AEP's and OCC's main concerns -- that these data centers should not negatively affect service to other utility consumers. Ms. Willis explained that media coverage on the data center issues is intense and she informed the board of a recent 10TV interview regarding the two settlement agreements.

Ms. Willis next discussed an update to the FirstEnergy HB 6 matters. She noted OCC sought a \$53 million forfeiture for FirstEnergy for the corporate separation part of the proceedings. She noted there were three other proceedings involving FirstEnergy. Ms. Willis also shared a Channel 3 (Cleveland) news story regarding OCC depositions of former FirstEnergy lobbyist/executives, who refused to answer questions under oath. She explained the Ohio law that precludes a witness from not answering

questions under oath (pleading the 5th amendment) in a PUCO proceeding. OCC is asking the PUCO to enforce that law and require testimony from the FirstEnergy folks. Mr. Lackey asked whether these witnesses were paying their own legal fees or whether FirstEnergy was paying. Ms. Willis responded that in at least some of the criminal cases, FirstEnergy Corp. is paying the legal fees, even though these are former employees, and added that there were multiple lawyers involved.

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) and OCC appellate work. She first discussed the drastic 800% price spike in capacity prices at the last base residual electric auction. She explained that this could translate to about \$16 per month increase to consumers in supply costs beginning in April of 2025. She noted that OCC has been asking PJM for reform in the capacity market rules. OCC joined in comments along with other consumer advocates in support of a Sierra Club complaint against PJM. Additionally, OCC joined in a complaint along with the other state consumer advocates against PJM. She added that the next capacity auction has been delayed at PJM's request in light of the complaints, which is a positive development. She explained the hope is there will be some time to address the issues before the next electric auction.

Mr. Yoder asked about the capacity auction process and its participants. Ms. O'Brien explained that PJM conducts the auctions, and there are certain rules about which generation can be part of the auction. She noted that the exclusion of some generation may have contributed to the significant price increase; although some believe that the increase price is simply a matter of supply and demand, with the higher price signaling that there is just not enough generation available. Ms. Willis explained that the companies that own generation bid into the auction, and it is designed to produce a wholesale price of electricity that is least cost. She explained that the rules that PJM adopted have decreased the amount of supply that participates in the auction, which artificially increases the price. She added that the consensus of the experts was that if the auction were to go forward in December without reform of the rules, the price would exceed \$700 per KWh.

Ms. Willis also discussed the Independent Market Monitor report, who had reported the auction rules were artificially decreasing supply, thus increasing the cost of the power. Mr. Fleetwood asked about the authority of the independent market monitor. Ms. O'Brien stated that he is very well respected, but there is a lot of debate between him and PJM. Ms. O'Brien also explained that the auction had been delayed for several years which had caused a number of issues, noting that the PUCO had to set a proxy price for capacity. Mr. Fleetwood asked how long consumers would be negatively impacted by the inflated pricing. Ms. Willis stated that it depends on FERC's decision. She explained that FERC could conclude the results were invalid and didn't reflect the true price and recommend a remedy. She noted that there could be a settlement with PJM on a substitute price or other remedies. Ms. O'Brien

noted that OCC is focusing on mitigating these PJM electricity increases by participating in distribution and security plan cases at the PUCO.

Deputy O'Brien next discussed a filing at FERC by AES Ohio (formerly DP&L), which serves west-central Ohio regarding a pending large Amazon data center to be constructed in Jefferson Township. She explained OCC filed comments in that case to protect consumers requesting that the data center pay their fair share of the cost (100%). She noted that it involved tens of millions of dollars in transmission infrastructure development costs in the first phase of the project, with more to come as the project moves into subsequent stages.

Ms. O'Brien next discussed OCC appellate activities at the Ohio Supreme Court. She stated that OCC filed an appeal in the Duke rate case of the PUCO's decision. The issue on appeal relates to consumers having to pay for propane caverns that were not used and useful at date certain. She also discussed the case of Moraine Wind, where the Supreme Court put an end to the PUCO's long-standing practice of delaying rulings on applications for rehearing. The PUCO retroactively applied the Moraine Wind decision, which had the effect of OCC's appeal. The Supreme Court however ruled that Moraine Wind should only be applied prospectively concerning filed appeals.

Ms. O'Brien next discussed a marketer (RPA Energy) appeal of a PUCO order which had issued a steep fine for deceptive marking acts and practices against consumers. She explained that both PUCO and OCC filed a motion to dismiss, which was denied, and there was now a briefing schedule beginning early in 2025. Ms. Grossman noted that OCC would also be dealing with new Supreme Court members. Ms. Willis noted that it is a challenge to educate the justices about the OCC and our role in protecting consumers, but that OCC's recent record at the court had been good.

LEGISLATIVE UPDATE:

Ms. Willis gave a brief overview of OCC's legislative activities during the lame duck session and noted most of these issues would likely continue to the next session. She discussed a Senate hearing currently taking place regarding virtual net metering, Senate Bill 275. OCC had submitted testimony as an interested party and requested an amendment to protect residential consumers from cost shifts. She expressed OCC is hopeful the bill's sponsor, Senator Dolan, will accept the proposed amendment.

EMPLOYEE INFORMATION:

Ms. Willis gave a brief update of new hires, including David Basich as the new Analytical Director, and two OCC legal interns who were being hired as full-time staff attorneys upon passing the Ohio Bar. She noted that most legal positions are now filled. She also stated that Bill Michael, a long time OCC Assistant Consumers' Counsel, had been promoted to Senior Counsel. She added that he is the

lead attorney in the data center case and FirstEnergy investigation cases and will be mentoring some of the junior attorneys.

She briefly discussed the employee of the quarter J.P. Blackwood, whose main role is working with the media and noted he also prepares the PowerPoints for the board meeting, among other duties. She noted that already this week OCC had appeared in 5 stories and that J.P. has good relationships with reporters.

PUBLIC AFFAIRS REPORT:

Merrilee Embs, Public Affairs Director, gave the Board a brief update on public outreach and website activities. She noted that Outreach & Education staff had interacted with 5,700 consumers at 116 events (virtual and in-person) in the past two months. She noted she was working on annual statistical information requested by Vice-Chair Grossman for the next meeting. Ms. Willis noted that the data was very positive for the year.

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

The meeting was adjourned at approximately 11:40 A.M.

I verify that the above meeting minutes have been approved and ratified by the Consumers' Counsel Governing Board on January 21, 2025.



Michael Watkins, Governing Board Chair



Susan Loe, Board Secretary
Ohio Consumers' Counsel Governing Board