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Consumers' Counsel

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Dear Friends and Colleagues:

After many months of hard work, we have a new energy bill that provides landmark changes in energy policy to benefit Ohioans on the one hand and will require stronger vigilance in the regulatory arena to protect residential customers from runaway rate increases, on the other. From the beginning, the Office of the Ohio Consumers' Counsel (OCC) worked diligently – often as the only voice – to deliver a consistent, logical message of fairness, consumer protections and least-cost options for residential customers.

On the positive side, OCC was able to accomplish a number of key benefits for customers. They include the following:

Advanced Energy:

- OCC led the effort to adopt energy efficiency standards as the least-cost mechanism to address our state's energy needs and to provide customers with tools to lower their monthly bills. The standards that OCC proposed were adopted in the legislation resulting in a requirement for a reduction in electricity demand of 22% by the end of 2025. An important benefit of this win is the ability to provide the low-income community with sustainable energy efficiency programs at least over the next 17 years along with other programs for all residential customers, (low-income and others). OCC worked successfully with environmental organizations to achieve this outstanding victory for Ohio.
- In concert with the environmental community, we succeeded in obtaining a 12.5 percent requirement by 2025 and thereafter for renewable energy supply with mandatory annual benchmarks and penalties for noncompliance. This will enable Ohio to develop lower cost, environmentally friendly energy supply options. This was a hard-fought battle given the great opposition of the Ohio Coalition for Affordable Power (OCAP).
- The restrictions on net-metering in existing law were repealed -- opening the door for more opportunities for customers to supply portions of their own energy through solar installations, etc.

Energy Rate Plans:

- When SB 221 passed the Senate, a provision was inserted to allow the utilities to recover in perpetuity – without challenge – regulatory transition charges or stranded costs, even after customers had completely paid for those costs. It was OCC who focused attention on this very harmful provision and took the lead in successfully arguing that these costs,

which could have amounted to *more than \$590 million per year* for FirstEnergy customers – and lesser amounts for others - needed to be removed from the legislation. We are pleased to report that these onerous costs have been removed; saving typical residential customers of Toledo Edison, Cleveland Electric Illuminating Company and Ohio Edison, up to approximately \$342, \$297 and \$144 per year respectively.

- Given the disparity in electric generation rates across the state -- where in the northern part of the state based on analysis at the time of OCC's testimony, the rates for FirstEnergy customers were higher than the market rates, OCC concluded that choosing one solution – either market or so called quasi-regulated rates – would create winners and losers. (*see chart attached*). Therefore, OCC proposed that the regulated rate be compared against the market rate so that the least cost option could be adopted and provide saving statewide. The approved legislation requires that in a utility's first Electric Security Plan (ESP) proceeding, a comparison to the market takes place and leaves the Public Utilities Commission of Ohio (PUCO) with the discretion to determine which is more favorable. In addition, for rate plans that are longer than three years, the PUCO is to determine every fourth year whether the rate plan continues to be more favorable. We are hopeful that this can be a useful tool against “quasi-regulated” rates.
- OCC advocated that the standard by which costs passed on to customers meet a prudence standard, which had been removed from the Senate version, was necessary to protect customers. It was restored in the final version.
- OCC was the sole voice arguing for due process to provide sufficient time for intervenors to prepare for the cases at the PUCO in which the utilities will be seeking potentially massive increases. SB 221 original granted the PUCO 120 days to reach a decision in an ESP filing. We advocated for 275 days which is the amount of time accorded by Ohio law for a PUCO decision in a rate case. Under the approved legislation, the PUCO must issue its order within 150 days for the first ESP case filed and within 275 days for every ESP case thereafter.
- For utilities to recover cost from customers for a new generating facility that is constructed, OCC argued the project had to be competitively bid. This provides a means of getting a least-cost option and caps the cost at the winning bid. Many of us remember the cost overruns of the Zimmer and Perry Plant. The approved legislation allows utilities to seek recovery of the costs of their new generating facilities over the life of the power plants if the plants were sourced through a competitive bid process.
- While we were not successful in preventing special contracts altogether, arrangements with utilities that can result in residential and other customers subsidizing large industrial customers, OCC was successful in removing an OCAP provision from the Senate-passed version that would have allowed all existing (well over 1,000) special contracts to be grandfathered. FirstEnergy testified that the subsidies on all the special contracts totaled \$200 million per year. Had this gone through, this would have provided each special contract holder with a lower baseline from which costs in the ESP are added, than the rest of us.

We are very proud of what we accomplished in this complex, multi-faceted legislation, but disheartened by what we were unable to prevent. Some may describe SB 221 as a return to

regulation. It surely is not. In my last testimony in the House, I argued that if we were going to do a regulatory approach, we needed to return to the purer forms of regulation that while far from perfect, provided some modicum of fairness and review and the establishment of generation rates based on cost. What we may have is a hybrid where the starting point for generation rates from which we add is nothing more than a black box which will continue to the benefit of utilities and the detriment of customers.

The rulemaking process at the PUCO will be critical in order to protect customers from unbridled rate increases. OCC is already internally preparing for this critical phase in the implementation of SB 221. Some negative aspects of SB 221 that OCC unfortunately could not get changed – largely because we were out-lobbied by the utilities and at times OCAP - include the following:

- From the Governor’s proposal, through the Senate process and then to the House version, OCC was a lone voice arguing against the ability for utilities to automatically increase generation rates for fuel, purchased power and emission allowances *without a hearing*. We argued that just like legislation that protects shareholders on Wall Street by requiring accountability and verification of costs, customers too, were entitled to the same protections, especially when costs could run into the hundreds of millions and billions of dollars. This protection could have been met by a requirement for an audit of costs and a hearing, as was required under traditional ratemaking. Unfortunately, despite our relentless efforts on these points, there are no requirements for hearings or audits prior to these massive increases.
- Also contained in all versions of the bill was a provision that allows utilities to recover costs from customers of multibillion power plants are being built. This is a departure from traditional ratemaking in which customers were not required to pay for power plants until they were used and useful in providing electricity. This provision in the legislation shifts risks for construction costs away from utility stockholders and onto customers.
- The legislation allows the utilities to include in generation-related ESPs, provisions related to distribution service. Utilities may seek to charge customers for distribution infrastructure modernization (upgrading of distribution system and advanced metering) which could run into the billions of dollars along with expressly permitting single issue ratemaking for other distribution-related costs. As a result, customers could see significant rate increases without any recognition that other costs of the utility have decreased - and could be used to offset increases.
- In order to avoid rate shock, the approved legislation allows the PUCO to let the utilities phase-in generation price increases and defer portions of the increases, including using tools like securitization which creates a consumer debt. OCC opposes this for a number of reasons: 1) It is really playing “hide the ball” by masking the full impact of what the PUCO gives the utilities; 2) The interest costs associated with deferrals – depending on the method used and the time period of the deferral - can be very onerous; and 3) With fuel and other generation costs expected to continue to rise, deferring increases with interest on top, is providing some minimal relief today in return for larger than necessary increases tomorrow.
- Side-deals were not outlawed as they should have been since they cut against all income levels the residential class and are bad public policy. The law states that if parties to a

proceeding want to obtain them, they can do so through the discovery process. This right to obtain copies of side deals had already been affirmed by the Ohio Supreme Court through OCC's appeal of the Duke Rate Stabilization Plan in which the Court reversed the Commission on that issue.

There are many lessons learned from the SB 221 process. I attribute the success of the advanced energy plan to the commitment of a core of diverse organizations that included environmental groups, energy companies and the OCC who worked together as a team. Unfortunately, despite OCC's many efforts at the beginning of this process, a similar coalition of consumer groups was unable to emerge. That lack of consumer cohesiveness shows in some of the truly adverse outcomes with respect to the electric security plan sections of SB 221. As I have noted to many of you in the past, Ben Franklin was on to something when he said that we must all hang together or surely we will hang separately. As we head into the rulemaking at the PUCO, the rules of the road will matter greatly in terms of OCC's future ability to protect customers. It will be important for us all to work together as a united coalition not only in the rulemaking, but in the implementation cases that follow. I ask you to join with OCC to make sure we, as a collective group, can assure that consumers receive the protections they so very much need.

Thank you for your support of OCC. Please feel free to contact us if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "Janine L. Migden-Ostrander". The signature is written in a cursive, flowing style.

Janine L. Migden-Ostrander
Consumers' Counsel

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