

## **Background:**

### **Why was the PUCO Nominating Council created in the first place?**

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The PUCO Nominating Council was created for a reason, and understanding the reason helps in understanding the current conflict-of-interest controversy.

In 1911, Ohio began regulating telephone, electric, gas, and water companies, through a three-person commission appointed by the governor with the advice and consent of the Senate. There was no Nominating Council.

By the 1970s, the Commission had stopped regulating. Governor Jim Rhodes, whose political base was the coal industry and electric utilities, appointed commissioners who were certain to approve whatever the electric utilities wanted.

For example, Ohio's electric utilities wanted to go on a nuclear power plant construction spree. Rhodes' Commission agreed and then allowed utilities to charge their customers for electricity that had not yet been produced, through the notorious "construction work in progress" charges.

This rubber-stamp regulation hit consumers hard. In 1981 alone, the cost of gas, electricity and telephone for the typical Ohio family climbed 14.5%. The next year, 1982, it jumped 27.7%. Ohio consumers did not take this lying down, and there were years of conflict:

- **1976:** Consumer activists put three utilities measures on the Ohio ballot: to establish procedures for legislative hearings and approval of nuclear power plants safety features, to provide for representation of residential utility consumers before the Commission, and to limit the rates which may be charged to residential consumers for fixed amounts of gas and electricity. Proponents could not afford an effective ballot campaign, so the utilities' "No" campaign crushed these proposals.
- **1978:** Cincinnati Gas and Electric (now Duke Energy) canceled the Zimmer 2 nuclear power plant (Zimmer 1 was canceled in 1984).
- **1978:** CEI (now FirstEnergy) and local banks threw the City of Cleveland into financial default to try to force the City to sell its municipal electric system to CEI.
- **1979:** Clevelanders voted 2-to-1 to keep the city's public power system after a mid-winter door-to-door campaign led by Citizen Action, United Auto Workers, community groups, and Mayor Dennis Kucinich.
- **1979:** The Three Mile Island nuclear power plant in Harrisburg, Pennsylvania, suffered a partial core meltdown, the worst accident in US commercial nuclear power history. No utility has been licensed to build a new commercial U.S. nuclear plant in the 28 years since.

- **1980:** Ohio Edison (now FirstEnergy) canceled the Erie 1 and 2 nuclear power plants near Sandusky.
- **1981:** Toledo Edison (now FirstEnergy) canceled the Davis-Besse 2 and 3 nuclear power plants near Port Clinton.
- **1982:** Consumer activists put a measure on the statewide ballot requiring direct election of commissioners. Again, utility money defeated the proposal.

Commonly, during ballot issue campaigns, legislators propose bills on the same topic. This confuses voters and enables opponents to argue, "There is no problem to solve. The legislature has already dealt with it." It can also, however, be a way to extract progress out of a defeated ballot campaign.

So, for example, a byproduct of the defeated 1976 ballot issues was the legislated creation of the Ohio Consumers' Counsel.

Similarly, a byproduct of the defeated 1982 ballot campaign for direct election of commissioners was the legislated creation of the PUCO Nominating Council and expansion of the Commission from three to five members.

**In sum, the PUCO Nominating Council was created for an express purpose: to stop the conflicts-of-interest that can emerge when any governor has a free hand to appoint commissioners.**

This is not just a Columbus insider 'good government' issue. It is a statewide pocketbook issue. The 1983 creation of the Nominating Council, curbing "construction work in progress," and other reforms by incoming Gov. Richard Celeste, made a big difference for Ohio families.

Gas, electricity and telephone utility rates for a typical Ohio family				
1981	1982	1983	1984	1985
+14.5%	+27.7%	+3.3%	+2.7%	-1.9%

To serve its intended purpose, the new law required that the twelve-member Nominating Council be broadly based, with members chosen as follows: one appointee each by the Ohio House Speaker and Ohio Senate President, three appointees by the Governor, representing regulated utilities, the business community and organized labor, and representatives of the Ohio Consumers' Counsel Governing Board, Accountancy Board, State Board of Registration for Professional Engineers and Surveyors, Ohio State Bar Association, Ohio Municipal League, Ohio Department of Development, and Ohio Department of Aging.

So far, so good. Regulated utilities have one representative out of twelve on the panel, so they have a voice but can't skew the outcome.

Of course, without a commitment to the spirit as well as the letter of the law, nothing is foolproof. Over time, the process has gone haywire.

1. One utility representative became five

Had all concerned followed the spirit of the law, utilities would have been represented on the Nominating Council by one person, Marvin Resnick of American Electric Power, chosen as above by Governor Ted Strickland in the regulated utility category.

Instead, other choices by the Governor, House Speaker, Senate President, and Ohio Bar Association created a five-member utility bloc on the Council:

- House Speaker Jon Husted chose Dan Helmick, lobbyist for Embarq and First Communications (FirstEnergy).
- Ohio Senate President Bill Harris chose Thomas Green, lobbyist for AT&T and Columbia Gas.
- Governor Ted Strickland chose as the representative of the business community, Christie Angel, an AT&T lobbyist.
- Ohio State Bar Association President, John Stith, is an attorney for the Porter Wright law firm. He chose as his representative fellow Porter Wright attorney Dan Conway, who represents American Electric Power.

2. Conflicts of interest created more conflicts of interest

This set the stage for last weeks decisions by the Council. On Monday, February 5, the panel cut the list of applicants from 115 to eight. On Wednesday, February 8, the panel interviewed each of the eight for twenty minutes, and forwarded four names to Gov. Ted Strickland.

#### **Four Council recommendations for Commissioner**

**Paul Centolella** (Worthington)

Senior economist, Energy Solutions Group

**Paul Duffy** (Columbus)

Legal Director, Public Utilities Commission of Ohio

**Gretchen Hummel** (Columbus)

Attorney and lobbyist, Industrial Energy Users-Ohio and Vectren Corporation.

**Charles Moses** (Dublin)

President, Ohio Telecom Association, which lobbies for "41 telecommunications providers, 3 wireless providers and over 100 associate member companies."

Ms. Hummel and Mr. Moses are capable and talented people, and we hope they will apply their talents to serve the State in other positions. Unfortunately, the one position neither should be in, regardless of talent, is the one for which they have been nominated.

3. Choices

Ohio need not end up with what the utility lobbyists are offering.

1. Governor Strickland could choose one of the two recommended applicants now before him who do not have such conflicts.
2. "Nothing in this section shall prevent the governor in the governor's discretion from rejecting all of the nominees of the council and reconvening the council in order to select four additional nominees" (*ORC 4901.021(F)*).
3. If Governor Strickland chooses one of the conflicted candidates, the Ohio Senate could block the appointment. "Each appointment by the governor shall be subject to the advice and consent of the senate" (*ORC 4901.021(F)*).

Governor Strickland has thirty days to decide.