

The Appropriations Committee

February 9, 2009

Testimony in Support of Preserving the
Office of Consumer Counsel

Mary J. Healey, Consumer Counsel

Thank you Co-Chairs, Representative Geragosian and Senator Harp, ranking members and all members of the Appropriations Committee for your invitation to speak to you tonight.

I also want to thank Chairman Geragosian for his supportive words on National Public Radio last week regarding the OCC.

Governor's Proposal to Eliminate OCC Unwarranted and Troubling

When the work and the results of the OCC are examined in the context of its status as a wholly independent agency, funded by the utility ratepayers it serves, the proposal in the Governor's budget package to eliminate our agency is both unwarranted and deeply troubling.

This is especially true in the current economic climate in this state.

OCC is Not a General Fund Expense

The costs and expenses of the OCC are funded from assessments of the gross receipts of public utility companies, paid by the ratepayers of those utilities.

This means that OCC is not an expense item on the state's budget.

In fact, the OCC "transfers" over \$600,000 in ratepayer funds annually for various services of other state agencies to the General Fund.

This raises the question, “Why, if the OCC is not an expense item of the state’s budget, is the elimination of the OCC being proposed for budget and cost -saving purposes?”

Ratepayers Need their Independent Advocate Now More Than Ever

The only way that eliminating the OCC helps the State’s budget shortfall is if the State expropriates the ratepayers money, takes away its independent advocate and farms certain OCC’s responsibilities among other state agencies who are responsible to multiple constituencies.

At a time when energy and other utility costs have become a major portion of residential and business budgets, we view the taking of the ratepayers’ money and the elimination of their independent advocate in order to pay other state expenses as an outrage.

We hope you do too.

The millions of ratepayers, who are being hurt every day by the current financial collapse, now more than ever, need their independent advocate fighting to hold the line on spiraling energy and other utility rates and increasing degradation in customer service.

OCC Has a Consistent Record of Success for Ratepayers

OCC has been tracking its successes using a results based accountability approach since 2001.

Our annual scorecard demonstrates that over the last five years, OCC has delivered savings of \$2.5 billion to ratepayers through our advocacy in rate cases at the Department of Public Utility Control as well as in other forums like the courts or on the federal level at the Federal Energy Regulatory Commission and the Federal Communications Commission.

To name just a few accomplishments:

- OCC was an instrumental party in forging the Forward Capacity Market settlement at FERC, which has saved and will save the ratepayers hundreds of millions of dollars when compared to ISO-New England's Locational Installed Capacity ("LICAP") market proposal.
- United Illuminating Rate Case requested \$51.4 million for 2009. The decision allowed \$6.13 million, a reduction of \$46.3 million and a reduction of \$970,000 below the rates approved in the multi-year rate plan that covered annual distribution rate changes for 2006-2009. OCC was the only party other than the company that presented expert testimony. Without OCC, the record would not have been balanced, and many of the alternative ratemaking proposals adopted by the DPUC would not have been presented.
- Southern Connecticut Gas Overearnings Final Decision dated August 6, 2008, SCG exceeded their allowed return on equity by more than 100 basis points for six consecutive months. OCC advocated for and the DPUC approved an interim rate decrease of \$15.1 million.
- Connecticut Natural Gas Corporation Final Decision dated October 24, 2008, CNG exceeded their allowed return by more than 100 basis points for six consecutive months. OCC advocated for and the DPUC approved an interim rate decrease of \$15.5 million.

OCC has consistently pushed to hold the utilities accountable for the rates they receive from the ratepayers by not being susceptible to competing pressures or interests.

Assigning AG Duties of OCC Raises Conflict Issues

The Attorney General regularly represents the State in contested legal matters. The interests of the ratepayers of the regulated utility companies are not always aligned with the interests of the State.

Bill No. 840 is a clear example of how the interests of the State can differ from the interests of the ratepayers.

The State has budget difficulties; it wants to take the ratepayers' money to solve those budget difficulties.

This taking would in reality be a tax paid by utility ratepayers.

Time Tested Rationale for an Independent Advocate for Ratepayers

Over thirty years ago, the Legislature recognized that ratepayers need an independent advocate with funding separate from the General Fund; someone solely charged to look out for their interests without conflict of interest or competing agenda.

This is why OCC is not required to report or take direction from the Governor or anyone else in state government.

This is why in 1997, the Legislative Program Review and Investigations Committee, after an extensive review of OCC, AG and DPUC, concluded that OCC should remain separate and independent. (See Full 1997 Legislative Program Review Report, at <http://www.ct.gov/occ/site/default.asp>.)

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Appendix to the OCC Testimony to the Appropriations Committee

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In 1997, the Legislative Program Review and Investigations Committee conducted a lengthy and detailed examination of the responsibilities of the AG, OCC, and the consumer unit of the DPUC, and declared in its January 22, 1997 Report:

The Committee concludes that OCC exerts a positive influence for consumers, and should continue. (1)

Also, the DPUC witnesses stated to the Committee that:

[T]he [OCC] enhances the DPUC's work, resulting in decisions that better reflect the public interest....The Department has been the beneficiary of the services of the independent Office of Consumer Counsel for over 20 years. The OCC has unstintingly represented ratepayer interests... (31)

The Report of the Committee also noted that the DPUC functions as a quasi-judicial body and thus essentially cannot advocate to itself, finding that the DPUC depends upon the parties to do so, and the only statutory party to all DPUC dockets is the OCC. (39) Indeed, in most cases, the OCC is the only party other than an individual public utility and thus is the only expert voice offered in opposition to the utility's

evidence.

The Committee expressly addressed and answered the question of whether the functions of the OCC should be relocated to the AG's office. Issues that argued against such a move included the use of staff for non-utility consumer issues, and the politicization of the office, since the governor and attorney general are constitutional officers individually facing elections. (48-49) This last was seen as especially important since the independence of the Consumer Counsel "establishes a political accountability balance" in which the OCC is itself accountable for its actions.

The Committee found that "technical proficiencies of OCC work could be diluted" if the importance of utility consumers is "not recognized" and given the priority that the OCC places upon that singular issue. (49) In contrast to the myriad of issues confronting the AG, the OCC is dedicated solely to the task of advocating for utility consumers and has devoted its full attention to this issue for over thirty years.

The Committee held that while there is an obvious "subject matter overlap" between the OCC and AG, the differences between the OCC and the AG in scope of responsibility and available resources "create a presumption against duplication." (50) This presumption, the Committee found, "is strengthened by the belief that the more complete the record is in terms of different ideas and information presented, DPUC's decision making process is enhanced." (50)

The conclusion of the Report was: “the program review committee does not recommend that the OCC be merged into the Office of the Attorney General.” (49)

The OCC believes that the Program Review Committee’s thorough review and significant conclusions on the different utility consumer efforts of the OCC and AG remain sound. The OCC, with its focus entirely devoted to utility issues and rates, provides the vital advocacy that utility consumers deserve in this dismal economic climate to receive the maximum benefits possible.

Accordingly, the OCC agrees with the Program Review Committee that the existing ratepayer funding of “an independent state agency [that] acts as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies” should continue in place. (CGS § 16-2a)

A copy of the full report January 22, 1997 report issued by the Legislative Program Review and Investigations Committee can be found at:

<http://www.ct.gov/occ/site/default.asp>