

State of Connecticut

Office of Consumer Counsel

Mary J. Healey
Consumer Counsel

The Energy and Technology Committee
March 15, 2011

Committee Bill No. 1, AAC Connecticut's Energy Future
Testimony of Mary J. Healey, Consumer Counsel

The Office of Consumer Counsel (OCC) has reviewed Committee Bill No. 1, *An Act Concerning Connecticut's Energy Future*, to the best of our ability in a short time frame. We are generally supportive of the bill and its goals, but we would like to offer both some positive comments and some concerns.

First off, the bill seeks to merge the Department of Environmental Protection and the Department of Public Utility Control ("DPUC") into a new Department of Energy and Environment Protection ("DEEP"). OCC understands the desire to merge these two agencies and their policies since much of the time of each is spent dealing with energy-related issues. OCC seeks a revision so that OCC will also be part of DEEP, either as an independent wing (similar to the present "administrative purposes only" structure under DPUC – this is the preferred option) or as a new Division of Ratepayer Advocate within DEEP.

As an aside, OCC notes that Section 42 of H.B. 6389, *An Act Transferring the Responsibilities of the Division of Special Revenue, Consumer Counsel, Healthcare Advocate and Board of Accountancy to the Department of Consumer Protection*, seeks to merge OCC into the Department of Consumer Protection ("DCP"). At the March 8, 2011 General Law Committee public hearing concerning H.B. 6389, OCC objected to being merged into DCP. OCC's testimony (attached hereto) describes OCC's concerns that being merged into DCP would irreparably harm the ratepayers' right to an independent advocate, as intended by the legislature when OCC was created 36 years ago. OCC's entire focus, like the DPUC's focus, is on utility and energy matters of importance to the general public, and we should therefore be connected in some way to DEEP rather than DCP.

OCC would like to express particular support for certain aspects of the Bill.

- Section 1 of the Bill establishes a mission statement for the new DEEP. We are pleased to see that reducing rates and decreasing costs for Connecticut ratepayers is the first listed goal.
- Section 8 of the Bill would, among other things, allow large hydropower facilities to be considered as Class I resources. As this Committee is aware, Connecticut has very high renewable requirements, and this expansion of the Class I definition could

allow us to achieve those goals at a lower cost while still promoting clean energy.

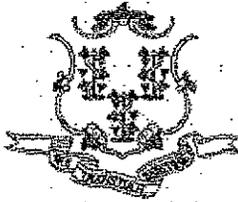
- Section 45 of the Bill would establish efficiency standards for several types of consumer products, in several cases such that they meet California's efficiency requirements. OCC is supportive of achieving energy efficiency through codes and standards because this approach does not involve subsidies from the general class of ratepayers. Moreover, making Connecticut comply with California's standards is often sensible and of limited net expense to consumers because California's huge market impacts product design and manufacture.
- Section 54 establishes a new code of conduct that must be followed by competitive electric suppliers. OCC is supportive of these provisions. We need to do more to make sure that customers understand what they are buying and that salespeople avoid misrepresentations as to the products they are selling.
- Section 66 would establish a procurement officer at DEEP who would be responsible for actively managing the standard service portfolio to try to get the cost as low as reasonably possible. Although the current efforts to procure for standard service are improving and we are tending to buy on a shorter time frame, the added intensity and focus of aggressive portfolio management should reap benefits that cannot be achieved through periodic procurements.
- Section 77 would require state agencies to develop a plan to reduce energy consumption by at least 10%. OCC has been working to implement energy efficiency in State buildings for years and welcomes this initiative, since decreased State agency electric bills benefit all citizens.

OCC has some concerns about the Bill as well, including as to the following provisions:

- OCC is concerned about the costs of the solar promotion program at Sections 56, et seq. The cost of the program rises from about \$22 million per year in 2012-14 up to about \$45 million per year in 2016. This is a substantial assignment of ratepayer dollars for a technology whose benefits in Connecticut remain unproven as compared to the high cost, although OCC does acknowledge that solar is clean, relatively easy to site and tends to operate well during summer system peaks. OCC is concerned in particular about the solar renewable energy credit ("REC") program in Section 58. OCC has become increasingly confident that REC programs are generally failing to lead to financing of new projects due to, among other things, the volatility of the income stream and mistrust of financiers as to the durability of REC targets. Programmatic approaches that create a portfolio of more focused incentives and contracts will likely provide for greater certainty of development, with fewer overpayments.
- OCC has similar concerns about the scale and scope of the new combined heat and power program in Section 91. OCC is supportive of combined heat and power and its added efficiencies, but hopes that the goals of promoting same will not reach the full amount of the caps listed in Section 91 (\$40 million in net cost to ratepayers, in the aggregate). OCC does note that the DEEP will have the ability to manage this

cost.

- Section 89 would establish a feed-in tariff program for renewable resources in Connecticut. Feed-in tariff programs can be an effective way to promote renewable energy, but the design has to be done with extreme caution to avoid overpayments, building more capacity than anticipated, or building far less capacity than anticipated. OCC notes that the bill claims that the feed-in tariff will not be funded by ratepayers and hopes that such position is maintained.



Mary J. Healey
Consumer Counsel

State of Connecticut

Office of Consumer Counsel

The Joint Committee on General Law

March 8, 2011

H.B. 6389, AN ACT TRANSFERRING THE RESPONSIBILITIES OF THE DIVISION OF SPECIAL REVENUE, CONSUMER COUNSEL, HEALTHCARE ADVOCATE AND BOARD OF ACCOUNTANCY TO THE DEPARTMENT OF CONSUMER PROTECTION.

Testimony of Mary J. Healey, Consumer Counsel

Thank you Senator Doyle, Representative Taborsak and members of the General Law Committee for this opportunity to speak on behalf of the Office of Consumer Counsel.

The Office of Consumer Counsel (OCC) opposes Section 42 of H.B. 6389, *An Act Transferring the Responsibilities of the Division of Special Revenue, Consumer Counsel, Healthcare Advocate and Board of Accountancy to the Department of Consumer Protection.*

UTILITY RATEPAYERS NEED A STRONG, INDEPENDENT VOICE NOW MORE THAN EVER

The OCC recognizes that the state is experiencing trying economic times, that the governor has a central role in balancing the budget, and that drastic measures are necessary to accomplish that goal. Merging OCC, an off-budget agency, into the Department of Consumer Protection (DCP) does nothing to help balance the budget, or to create efficiencies in government. Rather, it could lead to an increase in utility bills paid by ratepayers (including the utility bills paid by state agencies and institutions) due to a decrease in OCC's efficacy as the ratepayer advocate.¹ The proposed merger of OCC into DCP, as written, provides no protection of a separate division within the DCP, and removes the important requirement that OCC be provided space at the Department of Public Utility Control (DPUC). Most significantly, merging OCC into any executive branch agency would make OCC more vulnerable to political influence and could compromise OCC's right to appeal DPUC cases. For these reasons, H.B. 6389 would

¹ The OCC, supportive of the Legislature's promotion of results-based accounting practices, has been creating a scorecard of its goals and accomplishments for a number of years. OCC's scorecard, recently updated and attached hereto, indicates that OCC's advocacy at the DPUC over just the past year has led to approximately \$950 million in savings for utility ratepayers.

seriously hinder OCC's ability to effectively represent ratepayers.

OCC AND DCP ROLES ARE VASTLY DIFFERENT AND OCC'S EXPERTISE IN UTILITY/ENERGY MATTERS IS UNIQUELY SPECIALIZED

OCC and DCP do not duplicate roles in any way, and the two agencies actually function very differently. OCC represents the general class of utility ratepayers in regulatory proceedings, primarily acting as a litigant appearing before regulatory agencies and courts of law, whereas DCP functions as a regulatory agency and is represented in court by the Attorney General's Office. While DCP processes individual customer complaints, OCC does not, since that function is handled pursuant to statute and budget by the Consumer Services Unit of the Department of Public Utility Control. In fact, the DCP, through its website, refers all public utility service complaints to the DPUC, as does the OCC.

Thus, there is no overlap in subject matter between the agencies. OCC's only focus is utility and energy matters as they affect utility ratepayers, a highly complex and technical area of law and practice with which DCP has no current involvement. Further, unlike DCP and all its component parts, the legislature created OCC in 1975 with the specific intent of creating an independent advocacy agency. (See attached testimony of Sen. Amenta (6th), May 29, 1975 at 2989; testimony of Rep. Ritter (6th), June 2, 1975 at 6025.) For the past 36 years, the legislature has consistently protected OCC's independence from periodic efforts to dilute that independence.

This bill, as written, does not even provide protection for OCC as a separate division of DCP. OCC is highly specialized in utility and energy matters, and should be preserved to ensure that OCC is solely focused in this area. The Consumer Counsel brought ten years of utility experience to this position, possessing a comprehensive background in utility regulatory law and business as Vice President, General Counsel and Corporate Secretary of a regulated utility. Due to the high level of training and experience necessary in this complex field, it would be wasteful to have OCC's specialized and experienced staff working on non-utility matters, just as it would be wasteful to have DCP staff not trained in this area filling in on matters within OCC's purview.

Furthermore, OCC routinely provides the only testimony that counters the utility companies' testimony in rate cases and other technical proceedings before the DPUC. OCC's staff is frequently outmanned, though not outmatched, by utility company personnel during these proceedings, thus OCC needs to be able to act quickly and efficiently in order to effectively challenge the utility companies and protect utility ratepayers' wallets. Quick and efficient action is difficult to achieve in a large agency with a broad mandate like DCP's. In sum, a dilution of the services provided by OCC to Connecticut's utility ratepayers seems inevitable under this proposed construct.

OCC is not an administratively inefficient agency. OCC has only one secretary position filled and one executive secretary to support eleven other positions in addition to the Consumer Counsel. If OCC were merged with a larger agency, it would still require administrative support specific to its daily functioning at the level it has now. Moreover, the Consumer Counsel position would presumably have to be replaced with a supervisory or unit head position. In sum, the number of positions cannot be reduced without affecting the core functions of the agency.

Thus, a merger of OCC with DCP would not create any discernible staffing efficiencies. Rather, it would be awkward and inefficient, as there are few parallels between the agencies with

respect to subject area, and the legal roles of the two agencies are quite different. Most significantly, it would compromise the independence of the agency and could also compromise its legal right to appeal DPUC cases.

OCC STAFF CANNOT OPERATE EFFECTIVELY IF NOT IN PROXIMITY TO THE DPUC

Section 42 of H.B. 6389 would also diminish the efficacy of OCC's staff by removing an important existing requirement: that the DPUC provide OCC with office space. This provision to house the OCC in the same building as the DPUC (then the Public Utility Control Authority, or "PUCA"), was intended to provide the benefit of proximity. (See attached testimony of Rep. Ritter (6th), June 2, 1975 at 6042.) This benefit is critical to OCC's day to day operations. The DPUC is located in New Britain. Approximately 90% of OCC's work involves preparation for, and participation in, DPUC hearings. During complicated proceedings such as rate cases, the majority of OCC's staff is in and out of the hearing room many times during the course of the day, cross examining witnesses, listening to the cross examination of DPUC staff, and/or giving testimony as a witness on behalf of ratepayers. Thousands of pages of documents may be in evidence, and need to be available to OCC's staff during hearings. Since OCC's offices are in the same building as the DPUC and its hearing rooms, OCC staff is able to use the office as a staging area, with all relevant documents at hand, and as a meeting area for confidential staff discussions.

Basing OCC employees in Hartford would require each of OCC's employees to travel constantly between Hartford and New Britain, even for frequently-scheduled short hearings and meetings, which would reduce staff productivity greatly. Moreover, OCC staff would have no access to work space in New Britain, which is essential during complicated and time-consuming cases. This would put OCC staff at a distinct disadvantage to the larger utility companies, who typically rent space near the DPUC offices either temporarily during the course of a rate case, or on a permanent basis.

OCC's participation in DPUC proceedings and Court proceedings requires tens of thousands of pages of filings annually. In these proceedings, OCC is required to file original, hard copies of documents in person with the DPUC or at the Superior Court in New Britain. Not being located in the same physical proximity will put OCC in a distinct disadvantage in making filings with the DPUC when under filing deadlines. This will increase travel and shipping or mailing costs.

There are also cases when OCC finds its positions aligned with those of the DPUC, and the two agencies work together closely to achieve an outcome. For example, OCC and DPUC often work collaboratively on issues arising at ISO-New England and the Federal Energy Regulatory Commission ("FERC"). Proximity to DPUC staff is also valuable in this regard.

THE VAST MAJORITY OF OTHER STATES HAVE INDEPENDENT RATEPAYER ADVOCATES

In other states that have utility ratepayer advocates (only five do not), according to OCC's research, there are 17 states with independent ratepayer advocate agencies and 15 states which assign the function, in whole or in large part, to their Attorney General's office. Five states have a ratepayer advocate division at the PUC, and only 3 states have ratepayer advocate

divisions in other state agencies.² Thus, the vast majority of state legislatures have chosen to create independent ratepayer advocate offices that are not assigned to an executive branch agency.

CONCLUSION

The OCC urges the members of this Committee to support the preservation of an independent, utility ratepayer focused OCC (as the legislature has done many times before) and to maintain the statutory requirement that the DPUC provide space to the OCC. Section 42 of H.B. 6389 provides no general fund savings or staffing efficiencies and the dilution of OCC's strong, independent voice will have a profound negative economic impact on Connecticut's utility customers. Utility ratepayers pay for OCC's advocacy on their behalf and have a need for, and a right to, a dedicated, independent advocate. Please ensure that Connecticut's utility ratepayers retain their voice through a strong, independent OCC.

² The remaining states divide the role among agencies and/or have private, non-profit consumer advocates.

Referred to Committee on Environment

Introduced by:

REP. DONOVAN, 84th Dist.

REP. SHARKEY, 88th Dist.

SEN. WILLIAMS, 29th Dist.

SEN. LOONEY, 11th Dist.

AN ACT ESTABLISHING THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

NEW Sec. 10¹. Section 16-2a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There shall be a [Office of Consumer Counsel] Division of Ratepayer Advocate, within the [Department of Public Utility Control] Department of Energy and Environmental Protection [for administrative purposes only,] which division shall have independent decision-making authority to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies, electric suppliers and certified telecommunications providers. The [Office of Consumer Counsel] Division of Ratepayer Advocate is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which such interests of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in this state may be involved. The [Office of Consumer Counsel] Division of Ratepayer Advocate shall be a party to each contested case before the [Department of Public Utility Control] Public Utilities Control Authority and shall participate in such proceedings to the extent it deems necessary. Said [Office of Consumer Counsel] Division of Ratepayer Advocate may appeal from a decision, order or authorization in any such state regulatory proceeding notwithstanding its failure to appear or participate in said proceeding.

(b) Except as prohibited by the provisions of section 4-181, the [Office of Consumer Counsel] Division of Ratepayer Advocate shall have access to the records of the Public Utilities Control Authority [and the Department of Public Utility Control], shall be entitled to call upon the assistance of the authority's [and the department's] experts, and shall have the benefit of all other facilities or information of the authority [or department] in carrying out the duties of the [Office of Consumer Counsel] Division of Ratepayer Advocate, except for such internal documents, information or data as are not available to parties to the authority's proceedings. The [department] authority shall provide such space as necessary within the department's quarters for the operation

¹ With this new Section 10 included in Governor's Bill No. 6386, the sections following its present Section 9 would have to be re-numbered.

of the [Office of Consumer Counsel] Division of Ratepayer Advocate, and the [department] authority shall be empowered to set regulations providing for adequate compensation for the provision of such office space.

(c) The [Office of Consumer Counsel] Division of Ratepayer Advocate shall be under the direction of a [Consumer Counsel] Ratepayer Advocate, who shall be appointed by the Governor with the advice and consent of either house of the General Assembly. The [Consumer Counsel] Ratepayer Advocate shall be an elector of this state and shall have demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public. The [Consumer Counsel] Ratepayer Advocate shall serve for a term of five years unless removed pursuant to section 16-5. The salary of the [Consumer Counsel] Ratepayer Advocate shall be equal to that established for management pay plan salary group seventy-one by the Commissioner of Administrative Services. No [Consumer Counsel] Ratepayer Advocate shall, for a period of one year following the termination of service as [Consumer Counsel] Ratepayer Advocate, accept employment by a public service company, a certified telecommunications provider or an electric supplier. No [Consumer Counsel] Ratepayer Advocate who is also an attorney shall in any capacity, appear or participate in any matter, or accept any compensation regarding a matter, before the Public Utilities Control Authority, for a period of one year following the termination of service as [Consumer Counsel] Ratepayer Advocate.

(d) The [Consumer Counsel] Ratepayer Advocate shall hire such staff as he deems necessary to perform the duties of said [Office of Consumer Counsel] Division of Ratepayer Advocate and may employ from time to time outside consultants knowledgeable in the utility regulation field including, but not limited to, economists, capital cost experts and rate design experts. The salaries and qualifications of the individuals so hired shall be determined by the Commissioner of Administrative Services pursuant to section 4-40.

(e) Nothing in this section shall be construed to prevent any party interested in such proceeding or action from appearing in person or from being represented by counsel therein.

(f) As used in this section, "consumer" means any person, city, borough or town that receives service from any public service company, electric supplier or from any certified telecommunications provider in this state whether or not such person, city, borough or town is financially responsible for such service.

(g) The [Office of Consumer Counsel] Division of Ratepayer Advocate shall not be required to post a bond as a condition to presenting an appeal from any state regulatory decision, order or authorization.

(h) The expenses of the [Office of Consumer Counsel] Division of Ratepayer Advocate shall be assessed in accordance with the provisions of section 16-49. The Division of Ratepayer Advocate shall be given a separate line item in the budget of DEEP.