



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.

Quantification of Ratepayer Savings Due to OCC Advocacy		Scorecard of Cases with Final Decisions Decisions Issued 2/1/09 -3/1/11 (or impacting rates effective 1/1/09 and thereafter)			Ratepayer Savings
Docket Name	Docket No.	Decision Date	Company Proposal	OCC Recommendation	Allowed
Water					
Valley Water Systems Rate Increase	10-06-05	11/3/2010	Proposed rate increase of \$687,204 or 19.62%	Settlement: Rate Increase of \$199,343 or 5.64% Large reduction in rate increase due to changes in capital structure and debt refinancing.	Approved Settlement \$487,861 in savings
Jewett City Water Rate Case	10-10-05	3/2/2011	Rate Increase requested of \$374,578 or 28%	Settlement: Rate increase of \$320,367 Reduction in ROE to 10.0% Expenses to follow precedent from its sister company Hazardville Water case.	Approved Settlement \$54,211 in savings Majority of rate increase associated with two large capital projects
Hazardville Water Co. Rate Case	09-06-10	12/23/2009	Rate Increase requested of \$565,811.00	Rate decrease of \$14,854	Rate increase of \$117,142 \$448,669 in savings
Avon Water Rate Case	09-10-08	3/31/2010	Revised rate increase of \$688,091 requested.	Rate increase of \$218,203	Rate increase of \$511,021 \$177,070 in savings
Connecticut Water Rate Case	09-12-11	7/14/10	Three year rate increase: Rate Year 1: \$16.3 million Rate Year 2: \$1.4 million Rate Year 3: \$1.4 million	\$4 million in Rate Year 1, no multi-year incremental rate increases	\$8 million Year 1, no multi-year increases. Yr. 2 = \$9.4 million Yr. 3 = \$10.8 million of savings annually.
Connecticut Water Rate Case - Reopener	06-07-08RE01	7/1/2009	CWC & OCC reached a settlement that resulted in a limited six-month rate decrease of \$580,000 (1.84%) to reflect a change in depreciation rates.	Settlement: \$580,000 rate decrease 7/1/09 - 12/31/09	approved settlement \$580,000 in savings
Aquarion Rate Case	10-02-13	9/08/10	Three year rate increase: Rate Year 1: \$23.5 million Rate Year 2: \$3.9 million Rate Year 3: \$3.8 million	\$9.14 million in Rate Year 1, no multi-year incremental rate increases	Single year rate increase of \$15.2 million Yr. 1 = \$8.3 million Yr. 2 = \$12.2 million Yr. 3 = \$16 million of savings annually.

<u>Docket Name</u>	<u>Docket No.</u>	<u>Decision Date</u>	<u>Company Proposal</u>	<u>OCC Recommendation</u>	<u>Allowed</u>	<u>Ratepayer Savings</u>
Water Infrastructure and Conservation Adjustment Proceedings (Cases for Aquarion, CT Water and United Water)	08-10-05 08-06-21	Various	Individual company WICA applications	OCC applied criteria from initial DPUC WICA proceeding which limited the type of projects that were eligible to be included in surcharge. Projects not completed and property taxes not included were not allowed.	Removed unfinished projects, as well as routine systematic projects. Removed unbilled property taxes.	Annual savings of \$2 million
United Water Special Accounting Treatment	08-09-23	4/8/2009	United requested special accounting treatment on a remediation settlement.	OCC entered settlement with UWC where the \$662,622 of proceeds were amortized over a 5 1/2 year period.	DPUC approved settlement	\$330,00 for amortization period.
Heritage Village Water Co. Rate case	08-09-23	3/26/2009	HVWC requested an increase in water rates of \$539,775 and an increase in sewer rates of \$328,061.	Settlement between HVWC & OCC. First rate case in 18 years. Settlement allowed rate increase of \$387,404 for water and \$305,680 for sewer.	Approved Settlement	\$152,371 for water service and \$22,381 for sewer.
Topstone Hydraulic Rate Increase	08-08-56	3/4/2009	\$65,408 increase sought	OCC recommend numerous adjustments and a transfer of ownership. \$30,000 rate increase proposed	\$48,646 rate increase	\$16,962 in savings
Gas						
CNG Rate Case	08-12-06	6/30/2009	\$16.4 million rate increase	\$19.2 million rate decrease	\$16.2 million rate decrease	\$32.6 million in savings
SCG Rate Case	08-12-07	7/17/2009	\$50.1 million rate increase	\$1.6 million rate reduction	\$12.5 million rate reduction	\$62.6 million in savings
COURT						
CNG Rate Case Appeal	CV094021664S	1/6/2010	Company appealed DPUC Decision in Docket No. 08-12-06		Upheld DPUC Decision	\$32.6 million in savings
SCG Rate Case Appeal	CV094021665S	4/1/2010	Company appealed DPUC Decision in Docket No. 08-12-07		Upheld DPUC Decision	\$62.6 million in savings
Electric						
LICAP Settlement	FERC		Original annual cost estimate was \$500 million to \$1 billion	Settlement: equates to payments of \$350 million by Connecticut	FERC Approved	Savings of at least \$200 million annually

Docket Name	Docket No.	Decision Date	Company Proposal	OCC Recommendation	Allowed	Ratepayer Savings
CL&P Rate Case	09-12-05	6/30/10	\$133.4 Year 1 incremental \$44.2 million Yr 2	\$6.9 million Year 1 incremental \$40.6 million Yr 3	Yr. 1: \$63.4 million Yr. 2: \$38.5 million Two years of rate increases recovered over 18 months with carrying charges.	Savings of approximately \$146 Million over two-year rate plan
Long-Term Renewable Contracts	08-03-03	4/8/2009	Total over market cost of \$329-500 million if all projects were approved.	OCC recommends that only those projects with a limited cost impact to ratepayers and which provide benefits be approved	DPUC approved projects costing \$7-8 million annually	Estimated savings of \$130 million over fifteen years.
Integrated Resource Planning	08-07-01	2/18/09	Various parties proposed new generation, conservation, load management and renewable resource projects that are incremental to those funded by customers	OCC opposed new generating assets as well as the expansion of the DSM Reference Case.	Given planned generation and the \$103.7 of DSM funded, DPUC did not call for an increase in funding.	Savings of at least \$30 million annually.
United Illuminating Rate Case	08-07-04	2/4/09	UI's updated Application would have effectively raised rates by \$51.4 million in 2009 & an incremental \$29.7 million in 2010.	OCC proposed a rate decrease of \$11.2 million for 2009 and a \$5.6 million rate increase for 2010.	DPUC approved a rate increase of \$6.1 million for 2009 and a tentative \$25.3 million in 2010.	This represents a \$45.3 million reduction in 2009 and a \$56.9 million reduction below 2010. savings of \$102 million total.
MX Energy Investigation	08-08-55	2/18/2009	Investigation regarding billing and rate issues	Settlement with OCC, AG & Company. \$367,097 credits to customers.	Approved settlement	\$367,097 in savings
Becker Energy Efficiency Partners	08-07-02	12/17/2008	Requested \$14.9 million grant funded by ratepayers.	Recommended limiting grant level based on various criteria	DPUC denied grant	\$14.9 million in ratepayer savings
Becker Energy Efficiency Partners	09-09-11	4/28/2010	Requested \$7 million grant funded by ratepayers.	Recommended limiting grant to \$2.9 million.	DPUC allowed grant of \$549,077	\$6,500,923 in ratepayer savings
2010 Integrated resource Plan	10-02-07	9/15/2010	Certain docket participants proposed increased C&LM spending trying to achieve "all cost effective" project spending at a ratepayer cost of \$206 million	OCC proposed no increase in funding at this time	No increase in program funding charged to ratepayers allowed	Savings of \$65 million to \$100 million annually
TOTAL 2/1/09 - 3/1/2011 RATEPAYER SAVINGS APPROXIMATELY \$950 MILLION						

Thursday, May 29, 1975

178.

SENATOR AMENTA: (6th)

roc

Mr. President, I rise to oppose the amendment. In Section 11 of the bill, we have made the consumer counsel a real, more responsible than he has ever been before. He is now independent from the authority and has expanded powers. He can now participate in all proceedings, state, federal, judicial and administrative that affect the provisions of utility service to Connecticut consumers. The consumer counsel shall have access to all records of the authority permitted by law and is empowered to hire the necessary staff pursuant to civil service rules and regulations to carry out the assigned duties. This means now that the consumer counsel, who is appointed by the governor, is independent of the PUC and can do an even better job than the good one that he is doing right now. It's a five-year appointment and can only be removed by cause. I don't think that the amendment does anything other than make it more political. I don't think we need a political confirmation here. I just think we have a good consumer counsel. I hope he stays with us, and we need a confirmation by one house and then keep him on as long as he does a good job. This is a bad amendment and I hope it's defeated.

THE PRESIDENT:

Senator Gunther.

SENATOR GUNTHER:

Mr. President, very briefly. The very reasons that the Senator Amenta has stated here is all the more reason that both houses should confirm this appointment. This is the most

Remarks of Representative Ritter (6th)

House of Representatives

Monday, June 2, 1975

148
djh

in these proceedings and if the authority should find the charges of the past three months are not accurate and not based on the actual prices paid for fossil fuel or purchased gas, the authority must take any action that it believes required.

Substantially section 10a will insure that any abuse of the adjustment clause is halted.

Section 10g we discussed before in the first Amendment "A".

Section 10h, as amended, permits existing fossil fuel or purchased gas adjustment clauses to remain in effect until the authority has established the procedures required. However, it requires that this be done no later than July 1, 1976.

Section 11 makes the Office of Consumer Council independent from the authority and expands the powers of this important office so that the Consumer Council can appear not just in proceedings before the Public Utilities Commission but in all proceedings, state, federal, judicial and administrative that affect the provisions of utility service to Connecticut consumers. The Consumer Council shall have access to all records of the authority permitted by law and is empowered to hire the necessary staff, it's important to understand this, pursuant to civil service rules and regulations required to carry out the assigned duties. The Consumer Council who is presently hired by the PUC shall be appointed by the governor with the consent of either House and serve for a five year term unless removed pursuant to petitions of Superior Court as set out in 16-5 of the general statutes. This assures them of great independence.

Section 12 permits the PUCA to require public service companies. This is new provision. It requires them to provide for competitive bidding in contracts in excess of \$50,000 if the authority determines that such bidding will reduce costs without impairing quality or dependability of service or ability to respond

House of Representatives

Monday, June 2, 1975

164
djh

Through you Mr. Speaker, would the gentleman please explain what safeguard there would be other than an administrative proceeding from which there is no appeal?

MR. RITTER (6th):

Mr. Speaker through you, you've answered the question. There would be an administrative hearing at which time all the evidence would be presented in public, the parties--any party could participate. It would then be the decision of the PUCA which would control during that time until the three month period came about.

MR. STEVENS (119th):

Through you Mr. Speaker, if the clause were no longer in effect at the end of the three month period, would the hearing still be required?

MR. RITTER (6th):

Mr. Speaker through you, please repeat the impact of your question. I didn't get the import of your question.

MR. STEVENS (119th):

Wasmy question, through you Mr. Speaker, was that if at the end of the three month period the generation utilization clause was no longer in effect, would the public hearing still be required?

MR. RITTER (6th):

Mr. Speaker through you, in my opinion, yes.

MR. STEVENS (119th):

Mr. Speaker through you, line 966, subsection 11b, this appears to be an authorization for regulations by the PUC to provide adequate compensation for the providing of office space for the consumer council. Does that mean the PUCA takes the place of the public works commissioner in terms of securing office

House of Representatives

Monday, June 2, 1975

165

djh

space for the consumer council?

MR. RITTER (6th):

Mr. Speaker through you, this is one of the few provisions, Mr. Speaker, that we copied from the Meskill administration.

MR. STEVENS (119th):

Through you Mr. Speaker, I would repeat my question. Does this take the authority away from the public works commissioner?

MR. RITTER (6th):

Mr. Speaker, the answer is that essentially it's meant to put the council in the same building with the PUCA so that they, he can have the benefit of that proximity. It also requires that the PUCA make available to him office space as indicated in this state which is an exact reproduction of the present law.

MR. STEVENS (119th):

Through you Mr. Speaker, are employees of the consumer council to be under civil service?

MR. RITTER (6th):

Yes, Mr. Speaker, through you, yes.

MR. STEVENS (119th):

Through you Mr. Speaker, would the gentleman please indicate where in the bill it places them under civil service protection.

MR. RITTER (6th):

Mr. Speaker through you, lines 105 to 108.

MR. STEVENS (119th):

Through you Mr. Speaker, where in those lines does it indicate they must be civil service and not just regular employees outside the classified service?