

OFFICE OF CONSUMER COUNSEL FISCAL YEAR 2008 ANNUAL REPORT

At a Glance

MARY J. HEALEY, Consumer Counsel

Established – 1975

Statutory Authority – Conn. Gen. Statutes sec. 16-2a

Central Office – Ten Franklin Square, New Britain, CT 06051

Website: www.ct.gov/occ

Average number of full-time employees – 17

Recurring operating expenses - \$3.0 million

Capital expenditures - \$21, 565.00

Mission

The Office of Consumer Counsel (OCC) is the State of Connecticut's statutory advocate for all utility ratepayers. OCC seeks to ensure just and reasonable rates and reliable utility service for customers of Connecticut's electric, gas, telephone, and water utilities and reasonable protections for cable television customers. OCC's advocacy includes the promotion of beneficial policies for ratepayers, such as the conservation of energy resources. We participate actively in proceedings before the Connecticut Department of Public Utility Control (DPUC), the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), and state and federal courts. We also seek to advance the goals and protect the needs of ratepayers at the State Legislature and the U.S. Congress.

Improvements/Achievements 2007-08

Over \$500 million in direct savings to Connecticut ratepayers was achieved this year by the Office of Consumer Counsel (OCC) through its work on behalf of utility customers. The OCC continued its advocacy in the four forums in which it has appeared for 33 years: in the hearing rooms of the DPUC and before the FERC; in state and federal courts; at the Connecticut legislature; and through its membership in state and national professional organizations, boards and committees representing ratepayers' views.

OCC participated in many dockets significant to ratepayers this year which were opened by the DPUC in response to recently enacted state laws requiring the procurement of new electricity resources. OCC is a statutory party to all of these dockets, which have included proposed projects for new power plants, customer-side distributed resources, grid-side distributed resources, and renewable resources. Highlights of OCC's advocacy this year in several major electric dockets include participating in a docket opened to address Public Act 07-242's (section 124) charge requiring the electric distribution companies to purchase long-term power agreements from Class I renewable energy source projects (Project 150). OCC advocated for the Department to limit the selection of projects to those that are the most cost-effective and to limit the number of megawatts procured to the statutory requirement. The DPUC agreed with OCC's stance, and rejected some of the largest and most expensive projects while still meeting the overall legal requirement.

Another electric docket was opened in response to Public Act 07-242 (section 50) to address the state's need for peaking generation which meets electricity demands on the hottest and coldest days of the year. OCC advocated for relatively large portfolios in the 650-750 megawatt range, and the Department agreed, selecting an OCC-recommended portfolio of three new peaking generation units with about 680 megawatts capacity, located in Bridgeport, Milford and New Haven. The three approved plants will benefit ratepayers because the plants will be paid for at regulated prices according to their cost of service, and the new plants should also enhance system reliability. Many of OCC's major recommendations were accepted by the DPUC in its final decision in a third major electric docket investigating the reliability and accuracy of CL&P's electricity meters, including: Implementation of a Service Quality Plan (SQP); one-call

resolution; bill presentation improvements; monthly reports on goodwill credit issues; and mandated filing of the customer service consultants' report with the DPUC.

OCC was out in front on two gas company issues because of their potential impact on ratepayers: Connecticut Natural Gas's (CNG) customer billing and meter reading problems and CNG's corporate overearnings. OCC petitioned the DPUC in both instances to promptly investigate these problems, which generated intense public outcry, legislative hearings on the under billing problem, and media scrutiny of both issues. Investigation of the under billing issue revealed that rogue meter readers had skewed CNG's billing system by submitting usage numbers that grossly underestimated customer usage and resulted in thousands of erroneously low bills in November and December 2007 with a correction in January 2008 of an unusually high bill. Some customer credits have been issued, but after multiple hearings and several days of testimony, we await a final decision from DPUC as to next steps.

In the CNG overearnings matter, OCC asked the Department to determine the need for an interim rate decrease because for six consecutive months the company earned a return on equity (ROE) which exceeded, by a significant degree, the statutory return authorized by the DPUC in its latest rate case. This docket proceeded quickly to final decision in which the Department ordered credits for CNG customers in an amount that would recover approximately \$15.5 million over a one-year period, subject to adjustment in an upcoming full CNG rate case.

OCC's involvement in the legislative arena and in three significant water dockets made a difference for ratepayers: OCC's legislative advocacy in 2007 resulted in Public Act 07-139, which was a negotiated consensus of the water utilities, DPUC and OCC. The new state law directed the DPUC to open a generic docket to address regulated water companies need to replace decayed and aging water systems and meet conservation requirements by using a rate adjustment mechanism such as a water infrastructure and conservation adjustment (WICA) for eligible projects completed and in service for the benefit of the water company's customers. OCC's docket work before the DPUC helped contain a dramatic rate increase requested by Aquarion Water Company (which resulted in hundreds of consumers complaining to the DPUC) – the requested increase was reduced 11% and resulted in ratepayer savings of \$12.7 million annually. Finally, OCC reached a settlement agreement with United Water Company of Connecticut in its first rate case in 17 years. OCC's advocacy in this docket reduced a potential 47% rate increase to 29.8%, a savings of \$577,000 annually for ratepayers.

OCC continued its efforts to mitigate rising utility costs through its work this year in electric, water and gas rate dockets, consistently advocating six fundamental approaches to ratemaking which OCC believes best serve ratepayers:

- Achieving a Return on Equity (ROE) which meets the statutory standard of providing companies with a fair rate of return and ratepayers with just and reasonable rates. Utility companies by law are required to provide reliable service at reasonable rates and are compensated with a reasonable return for such service;
- Excluding incentive compensation for utility company employees from rate cases, because it is a cost benefit more appropriately borne by shareholders.
- Addressing concerns regarding reliability of service delivery due to transmission constraints and aging infrastructure;
- Maximizing the quality and reliability of customer service, including meter and billing accuracy. Companies must become proactive rather than reactive to billing and meter problems, and create a responsive customer service culture;
- Socialization of non-hardship uncollectible expenses: this burden should fall on all firm utility customers, not only on those who have remained on Standard Service or Last Resort Service. It is a social cost that ought to be shared, and this policy should be implemented across the board for all utility companies. Uncollectible expenses should be the obligation of every firm paying customer;

- Limiting implementation of decoupling because decoupling mechanisms inherently harm ratepayers by shifting the normal business risks of utility companies onto ratepayers. Decoupling also has been shown to be an ineffective and overly expensive means to promote energy conservation, when other more cost-effective solutions exist. Broad-scale decoupling is incompatible with traditional, well-respected ratemaking principles.

In telecommunications dockets, OCC led the charge in a much-publicized docket involving the safety of boxes called Video-Ready Assistive Devices (V-RAD) which were attached to utility poles last year in many Connecticut neighborhoods by AT&T to roll out its U-Verse service. A DPUC ruling in April 2008 supported OCC's argument that the Department order AT&T Connecticut to obey the provisions of a state statute on the books since 1949 and which AT&T Connecticut had observed in the past, but which it ignored in deploying V-RADs: the express requirements of notice and consent from adjoining property owners. This included bypassing the rights and concerns of municipalities, individuals, and the Department of Transportation, many of which joined OCC in prosecuting this issue in the DPUC Docket.

OCC and the other parties in this docket have stood their ground against the largest telecommunications corporation in the world in this matter and the results have been quite successful. This docket, plus a parallel docket titled, *DPUC Review of the State's Public Service Company Utility Pole Make Ready Procedures*, involves relations between pole owners and attachers, and both have recently required the Department to exert its considerable statutory authority to reestablish fairness and cooperation among the various entities operating in the public rights of way. No one company controls the public rights of way nor has any entity carte blanche to dictate the terms of its installations: the public rights of way are a common good, largely regulated by the DPUC pursuant to plain statutes. The April, 2008 ruling by the DPUC is an impressive step in assuring all parties with equal protection through fair and balanced regulation of all activities conducted in the public rights of way and the implementation of its orders remains a vital step in accomplishing the many valuable public policy goals at stake in this central aspect of life in Connecticut.

In the legal arena this year, OCC was victorious in a lawsuit filed in U.S. District Court in Connecticut, *OCC v. AT&T*, in which OCC prevailed on its claim that the DPUC's 3-2 decision was inconsistent with the Federal Communications Act and would exempt AT&T from regulations placed on other cable providers, including a prohibition on the distribution of private information such as viewing habits, equal time provisions and special rates for political advertising, and a ban on "red lining". OCC argued that if the DPUC's decision exempting AT&T Connecticut from federal cable laws was allowed to stand, this would allow AT&T to become a telecom freeloader, serving only the wealthy while avoiding taxes, privacy protections and rules protecting children. The federal telecommunications laws, OCC maintained, must be applied equally among all providers, including all obligations, responsibility and accountability required of other cable providers. The federal court completely agreed and upheld the OCC's position in a final judgment issued in July 2007. *Office of Consumer Counsel v. S. New Eng. Tel. Co.*, 515 F. Supp. 2d 269 (D. Conn. 2007).

U.S. v. Palermino, 3:06-CV-01405 (JBA): While OCC was disappointed to see the Congress and Bush Administration support providing immunity for illegal actions to the telecommunications companies in July 2008, OCC and other state agencies continue to prosecute those companies for their failure to observe long-standing state statutes prohibiting distributing consumer information without proper judicial authority. A brief history of this multiyear litigation follows: in the wake of a May 11, 2006 *USA Today* story that accused AT&T, Inc. and Verizon Communications, Inc. of secretly turning over tens of millions of U.S. customer call records to the Bush Administration through the National Security Agency (NSA) to be used in a database that could be analyzed for patterns to help detect terrorist activity, the Connecticut ACLU and the OCC called for a DPUC docket designed to call upon AT&T and Verizon to provide information on this potentially illegal spying. This process proceeded through several litigation stages at the DPUC in order to find out whether these major telephone companies had been secretly passing phone records to the federal government, and whether laws designed to protect the privacy of ordinary citizens had been broken. The OCC and other parties, including the DPUC, remained concerned with maintaining the

delicate balance between the need to protect Americans from terrorism attacks while not providing the Administration with a blank check for snooping. The U.S. Department of Justice sued the DPUC (*U.S. v. Palermo*, 3:06-CV-01405-JBA) to prevent the docket from proceeding; the DPUC and the OCC argued this case first in the federal district of Connecticut, then at a transfer proceeding in Miami, and finally at the Northern District of California where the case presently resides. See *In Re National Security Agency Telecommunications Records Litigation*, MDL No. 1791, MDL Docket No. 06-1791 VRW. While two of the three issues in the case have been successfully ruled upon in our favor, the third issue remains at the Ninth Circuit of the federal courts and the parties await that determination before proceeding.

In January, an OCC principal attorney, acting as “Counsel of Record” on behalf of the National Association of State Utility Consumer Advocates (NASUCA), successfully convinced the U.S. Supreme Court to deny an appeal to the highest court by the wireless carriers Sprint Nextel and T-Mobile from a federal circuit decision in favor of consumers. The FCC had preempted state regulation of line items on wireless bills in a March 2005 “truth-in-billing” order, on the grounds that such state regulation would violate a section of the federal 1934 Communications Act, which bars states from regulating the rates charged for commercial mobile services. In a setback to the wireless carriers and the FCC, however, the 11th Circuit Court of Appeals (Atlanta) ruled in favor of consumers, stating that the federal statute “unambiguously preserved the ability of the states to regulate the use of line items in cellular wireless bills,” and the wireless companies appealed the decision to the U.S. Supreme Court.

In its decision, the Court contended that the state should have jurisdiction over the regulation of line items on wireless bills, rather than the Federal Communications Commission (“FCC”). By determining that it should not review this case, the Supreme Court underscored the important role that state commissioners play in determining truth-in-billing issues for consumers, such as early termination fees and allowing consumers to compare the rates of one provider against those offered by competitors. OCC’s national association, NASUCA, was joined in this litigation by the National Association of Regulatory Utility Commissioners, NARUC, (of which the Connecticut DPUC is a member).

OCC continued its participation this year in utility-related organizations, committees and boards, where it serves as a respected voice for ratepayers among state, regional and national policymakers and industry professionals. Appointed by statute in 2005 as a member of the Low Income Energy Advisory Board (LIEAB), OCC participated in three board subcommittees this year, analyzing utility company policies and procedures on arrearage forgiveness and working to ensure that community action agencies have the necessary procedures in place to process applications for energy assistance in a timely fashion. OCC participated in LIEAB’s annual recommendations to OPM and DSS on energy issues which impact low-income ratepayers, among which are the LIEAB’s recommendations that a current requirement that Social Security numbers be produced by all household members applying for energy assistance should be eliminated, and that OPM and DSS address how energy assistance benefits will be calculated for households in which some members are immigrants.

OCC is a charter member of the Energy Conservation Management Board (ECMB), an appointed group of 14 members which oversees the \$137 million Connecticut Energy Efficiency Fund (CEEF). The ECMB was created by state law in 1998 and is charged with advising and assisting Connecticut’s two electric and three natural gas distribution companies and the Connecticut Municipal Electric Energy Cooperative (CMEEC) with the development, implementation and oversight of a comprehensive plan for cost-effective energy conservation and load management (C&LM) programs and market transformation initiatives. An OCC staff member has served as Chair for two terms and currently serves as Vice-Chairperson. CEEF programs provided annual energy savings of approximately 355 million kWh in 2007; over 3,000 commercial and industrial customers improved their energy efficiency outcomes; and over 14,000 low-income residential customers received free weatherization services. CEEF programs created estimated peak demand reduction of 450,492 kilowatts, easing stress on the electric grid for our state.

OCC continued its active membership in the Connecticut Energy Advisory Board (CEAB), with the Consumer Counsel re-elected Vice-Chairman for 2008. CEAB’s major initiatives for this year included:

(1) reviewing OPM's Strategic Plan for Energy Management of State Facilities to determine the actual financial savings achieved by implementing the plan; (2) review and modification of the Integrated Resource Plan (IRP) submitted to CEAB by CL&P and UI, a plan which reviews the state's energy and capacity resource assessment to procure energy resources in a cost-efficient and environmentally responsible manner; (3) coordinating information on the state's energy entities to achieve the goals of Regional Greenhouse Gas Initiatives (RGGI) in reduction of greenhouse gases and increased use of indigenous alternative fuels; and (4) monitoring the progress and development of the New England East West Solution (NEEWS) project designed by Northeast Utilities to increase electric transmission capacity to Connecticut.

The Consumer Counsel serves as Vice-President of the National Association of State Utility Consumer Advocates (NASUCA), and is actively engaged with this national group of ratepayer advocates who appear and/or provide testimony before the FERC, the FCC and the U.S. Congress, providing the ratepayer perspective on energy policies of national import. The Consumer Counsel continued her elected position as a representative of the small consumer sector on the North American Electric Reliability Council (NERC), an organization which has responsibility to assure the reliability of the electric grid in the U.S., Canada and Mexico.

The OCC is an active participant in both Independent System Operator of New England ("ISO-NE") and NEPOOL. The OCC sits on the NEPOOL Participants Committee ("NPC"), as well the ISO-NE/NEPOOL associated committees such as, The Demand Response Working Group, Budget and Finance, Transmission, and Marketing. The OCC advocates a variety of ratepayer concerns among these various groups and committees attempting to lower the rate impact to Connecticut consumer's bills.

One of OCC's principal attorneys is a voting member of the North American Numbering Council (NANC), a Federal Advisory Committee that was created in 1995 to advise the Federal Communications Commission on numbering issues and to make recommendations that foster efficient and impartial number administration. As NASUCA's representative on the NANC, OCC advocates on a national basis for utility consumers in numbering issues administration of the North American Numbering Plan, telephone number portability, and implementation of the local competition provisions of the Telecommunications Act of 1996. Meetings are held at the FCC's headquarters in Washington, D.C. and it is a dynamic group that includes Bell Companies, cable companies, wireless companies, Internet-services providers, and other large telecommunications providers, as well as trade associations (e.g., NARUC), regulators and FCC staff.

An OCC principal was selected by the Connecticut House of Representatives Majority Leader to serve as a member of the Connecticut Broadband Internet Coordinating Council, which includes ten members representing both the private and public sectors. The duties of the council are to monitor the state's progress in developing a statewide world-class communications infrastructure; and issue any reports it deems necessary to the joint standing committee of the General Assembly having cognizance of matters relating to technology.

Information Reported as Required by State Statute

The Office of Consumer Counsel's Affirmative Action Biennial Plan was approved by the Commission on Human Rights and Opportunities on May 8, 2008. OCC continues its strong commitment to the policies, principles and practices that promote equal employment opportunity in contracts, programs and agency policies, including affirmative action. The agency has developed and implemented hiring and contracting goals to maintain a diversified work force. All OCC policies and procedures are consistent with state and federal reporting procedures.