

# OFFICE OF THE CONSUMER ADVOCATE

## REPRESENTING RATEPAYER INTERESTS

To do their job effectively, utility regulators must balance the interests of utility customers with those of utility shareholders. Therefore, New Hampshire is among the 40 states that have created an office to represent the interests of customers before its state utility regulator. Although some states assign ratepayer advocacy to an executive branch agency, the attorney general, or to a division of the utility regulator itself, in New Hampshire this work is the responsibility of the Office of the Consumer Advocate (OCA), an independent and nonpartisan state agency.

The OCA is administratively attached to the Commission, which means the Commission provides business services to the OCA but is not responsible for oversight or guidance. The OCA is funded through an assessment on New Hampshire's regulated utilities and non-utility energy suppliers.

Designated by statute as the representative of residential customers, the OCA does not advocate on behalf of commercial or industrial customers, nor does it ever represent the interests of individual consumers. When the OCA receives an inquiry from an individual consumer, it typically refers the inquiry to the Consumer Services Division of the Commission – but it monitors such inquiries to determine whether they reflect any trends or other concerns that require action on behalf of all residential ratepayers.

Most but not all of the OCA's work involves advocacy before the Commission. The OCA also serves as a resource to the Legislature when it needs information about the possible effects of policy initiatives on consumers. Increasingly, the OCA participates in regional and national matters as larger geographic markets influence New Hampshire's residential rates. At all times, the OCA works to educate

consumers about utility rates and related concerns.

To assure the independence of the OCA, in 1999 the Legislature created the Residential Ratepayers Advisory Board and tasked it with screening candidates to serve as Consumer Advocate. When the position is vacant, the Advisory Board is charged with recommending three candidates to the Governor. When an incumbent Consumer Advocate wishes to seek reappointment, the Advisory Board must decide whether to recommend a subsequent four-year term or to declare a vacancy and recruit a new slate of three candidates.

## OCA STAFF

The Consumer Advocate is an unclassified state employee appointed for a four-year term by the Governor and approved by the Executive Council. The Consumer Advocate leads a staff of four full-time classified state employees: an Assistant Consumer Advocate, a Staff Attorney, a Director of Finance, and a legal assistant. The OCA also has a part-time clerk position.

Attorney D. Maurice ("Don") Kreis has served as Consumer Advocate since February 2016. He has previously served as general counsel of the Commission, a hearing officer with the Vermont Public Utility Commission and a professor at Vermont Law School.

Assistant Consumer Advocate Pradip Chattopadhyay is a PhD economist who has previously served as a utility analyst with the Commission. Director of Finance James Brennan holds an MBA and has a special interest in utility data management and grid modernization. Staff Attorney Brian Buckley came to the OCA in 2017 after several years with the Northeast Energy Efficiency Partnerships. Legal aide Jamie Breen keeps everything organized.

## **ADVOCACY AND OUTREACH**

By statute, the Consumer Advocate is responsible for furthering consumer knowledge and education. The OCA strives to accomplish this goal through a web site ([www.oca.nh.gov](http://www.oca.nh.gov)), a social media presence, a regular column with a statewide web-based news organization, press releases, media interviews, and participation in public forums on residential rate-related concerns. The OCA Advisory Board meetings are open to the public and include speakers on utility issues.

The OCA's website contains retail energy supplier data, summaries of OCA cases, OCA press releases, useful links, and information on the Residential Ratepayers Advisory Board. It also includes instructions on how to read utility bills, how and where to file a complaint about a public utility, how to become involved in a Commission docket, information on energy efficiency resources, and financial assistance programs for utility customers.

Subject to the rules of professional conduct for attorneys, it is the policy of the OCA to assist when possible the efforts of individual citizens and grassroots organizations to participate in Commission proceedings. The OCA believes that the interests of residential utility customers, and the public interest generally, are well-served when citizens have meaningful access to Commission proceedings despite their complexity.

## **THE OCA AT THE PUBLIC UTILITIES COMMISSION**

When a utility files a request with the Commission to increase rates, the OCA scrutinizes each component of the detailed filing the utility must submit. The OCA's objective is to assure that rates remain as low as possible without sacrificing safe and reliable service, subject to the utility's constitutionally protected right to the opportunity to earn a reasonable return on shareholder investment.

In 2016 and 2017, the OCA participated actively in rate cases concerning the electric

service provided by Unitil and Liberty Utilities, the natural gas service provided by each company, as well as cases involving Pennichuck Water Works and Lakes Region Water Company. The OCA submitted prefiled written testimony in response to the written testimony of utilities, conducted discovery and participated in settlement negotiations. In the Liberty Utilities natural gas rate case, the utility proposed a "revenue decoupling" plan (the purpose of which is to eliminate the utility's disincentive to help customers consume less energy) after the OCA successfully urged electric and natural gas utilities to agree to propose such plans in rate cases over the next several years.

In the view of the OCA, technological evolution and regulatory changes provide extraordinary opportunities for electric consumers in particular to save money and assert more control over their use of energy. Therefore, the OCA participated actively in the Commission's Grid Modernization Working Group and will likewise play a vigorous role in upcoming grid modernization proceedings. It is the firmly held view of the OCA that reforming the electric grid so that it becomes an open and technologically advanced platform, on which consumers and utilities and third-party providers alike can build creatively, is critical to maximizing the benefits residential utility customers will get from the grid of the future.

The OCA has been a persistent voice on the subject of energy efficiency, participating actively in efforts to develop and to deploy the state's new Energy Efficiency Resource Standard (EERS). An EERS commits the state to "all cost effective energy efficiency." When it comes to acquiring the next unit of work from electricity or natural gas, energy efficiency is the cheapest available resource – which makes it the most cost-effective deal for residential utility customers.

The OCA continues to play a pivotal role in the net metering proceeding (Docket No. DE 16-576) the Commission has been conducting at the Legislature's directive in H.B. 1116 as adopted in 2016. The objective pursuant to H.B. 1116 was to come up with fair and

reasonable terms on which small-scale customer-generators could receive payment from utilities for their surplus generation, so as to make the previous cap on such customer-generation unnecessary. The OCA hired an outside expert to assist with the development of suitable proposals and ultimately entered into a settlement agreement with the electric utilities, other ratepayer advocates and the Governor's energy office. Largely because the solar industry in New Hampshire is relatively undeveloped, there was very little data available to assist the Commission in developing an appropriate net metering program. Therefore, terms and conditions ultimately adopted by the Commission reflect an interim solution; the Commission convened working groups on 'value of solar' determinations, time-of-use rates, community solar initiatives for low- and moderate-income customers, and the use of distributed generation as an alternative to new investments in distribution and transmission facilities.

## **THE OCA IN COURT**

By statute, the OCA's authority to represent the interests of residential ratepayers is not limited to advocacy at the PUC but, rather, includes appearing before "any board, commission, agency, court, or regulatory body in which the interests of residential utility customers are involved." RSA 363:28, II. Thus, while most agencies in state government are represented in court by the Department of Justice, because the OCA does not appear on behalf of the state, the OCA's attorneys have historically participated directly in judicial proceedings.

In September 2017, the OCA had the opportunity for the first time in 12 years to argue before the New Hampshire Supreme Court. At issue was the Commission's determination in Docket No. DE 16-241 that it was inconsistent with the Electric Industry Restructuring Act, adopted in 1996, for Public Service Company of New Hampshire (doing business as Eversource Energy) to invest in natural gas pipeline capacity and then include the costs in nonbypassable electric distribution rates.

The OCA argued that when the Legislature initiated the restructuring process in 1996, its intent was to relieve ratepayers of the risks associated with investments in generation facilities – including the risks associated with acquiring an adequate fuel supply. The OCA also noted that, to the extent that fuel supply constraints are a challenge for the region's natural gas generators during extremely cold winters (e.g., those of 2013 and 2014), state and federal restructuring initiatives effectively transferred the responsibility for addressing such problems to the federally regulated regional transmission organization ISO New England, which oversees the region's wholesale energy markets.

In the fall of 2017, the OCA negotiated an important settlement agreement with Liberty Utilities concerning its proposal to obtain a natural gas franchise to serve Lebanon and Hanover. The settlement protects existing customers of the utility in the event that not enough new customers in those communities sign up to make the expansion project pay for itself. The OCA believes this sets an important precedent at a time when Liberty is moving aggressively to expand its footprint in New Hampshire, but the economics and public policy implications of such expansion are uncertain.

## **THE OCA AT THE LEGISLATURE**

Serving as a resource to legislators who need information about the effects of their initiatives on residential utility customers is the primary objective of the legislative outreach conducted by the OCA. The OCA endeavors to advance the interests of residential utility customers through offering forthright testimony and maintaining effective partnerships with lawmakers in both caucuses.

In the preceding biennium, the OCA helped draft and gain passage of a measure that strengthened privacy protections for data collected by utilities about their customers. The OCA also worked with the sponsors of a Senate bill that would allow utilities to make certain investments that are presently beyond their

authority, the focus of the OCA being on strengthening protections to consumers to reduce their vulnerability to stranded costs.

Additionally, the OCA supported the legislation that led to the Commission's net metering inquiry and sought to protect the Commission's authority to implement the new Energy Efficiency Resource Standard.

Due to the complexity of issues related to regulated utilities and our daily immersion in the application of law to utilities and consumers, the OCA is uniquely situated to assist policymakers while advocating for the interests of residential customers. The OCA participates in the Legislative Electric Restructuring Oversight Committee meetings advocating for legislative changes to support residential ratepayers.

## **COLLABORATING WITH OTHER STAKEHOLDERS**

The OCA participates collaboratively with other interest groups before the Commission and at the legislature. We are a resource to any customer or interested party who seeks information about a utility case, utility rates or practices, or about Commission processes.

We strive in every adjudicative proceeding to find common ground with other parties, including utilities and Commission Staff, to maximize our efficiency through collaborative resolution of issues when appropriate. The OCA resolves cases through settlement when to do so is the better means of protecting residential ratepayers.

The OCA is a member of the Electric Assistance Program (EAP) Advisory Board, and the Energy Efficiency and Sustainable Energy (EESE) Board. In 2017, the Consumer Advocate became the chair of the EESE Board's Energy Efficiency Resource Standard Committee and thereby led a summer-long effort to reach understandings collaboratively among utilities and stakeholders in advance of adjudicative proceedings conducted in the fall of 2017.

In these roles, the OCA collaborates with various state agencies, legislators, and other public and private stakeholders. The OCA works with the Commission, the Office of Strategic Initiatives, formerly the Office of Energy and Planning, and the Department of Environmental Services on a wide range of projects to ensure that the interests of residential utility consumers are represented in environmental and long term state planning initiatives.

## **THE OCA AT THE REGIONAL AND NATIONAL LEVELS**

The OCA is a founding member of the Consumer Advocates of New England (CANE) which is a group of counterpart agencies from New Hampshire, Maine, Massachusetts, Rhode Island, Vermont and Connecticut that collaborate on regional issues. To advocate for New Hampshire electric ratepayers before the regional transmission organization ISO New England (which operates the region's transmission grid and oversees wholesale markets), the OCA uses in-house staff and an outside consultant as needed. The OCA is an "end user" member of the New England Power Pool (NEPOOL) Participants Committee, and as a result the OCA has a vote on this important body on behalf of New Hampshire electric customers.

The OCA is a member of the National Association of State Utility Advocates (NASUCA), an organization of consumer representatives at the federal and state levels. Members of the OCA staff participate in NASUCA committees addressing consumer protections in the electric, natural gas, telecommunications, and water industries. Through NASUCA, the OCA keeps abreast of developments throughout the country, and often joins other advocates in filings with agencies such as the Federal Communications Commission (FCC) and the Federal Energy Regulatory Commission (FERC). The OCA also participates in the ISO New England Consumer Liaison Group (CLG), which seeks to increase residential customer representation at the ISO-NE. However, because the CLG is merely a

forum for sharing information, the OCA is concerned about the lack of a formal role for ratepayer advocates in ISO New England governance.

## **THE OCA'S ROLE WITH CONSUMERS**

The OCA is committed to keeping consumers aware of industry trends and current rate related policies, as well as initiatives such as energy efficiency and low-income assistance programs. The OCA regularly assists individual consumers by providing utility contact data, information about Commission procedures and references to relevant legislative proposals. The OCA receives weekly phone calls, letters and emails with consumer questions and concerns. To get a response to the consumer as quickly as possible, the OCA records basic information about the complaint and notifies the Commission's Consumer Services Division and the appropriate utility customer service representative about the problem.

The OCA receives questions about all types of consumer issues, not just those related to public utilities. The OCA endeavors to help all members of the public by identifying the most appropriate resources available to address the consumer's questions or concerns. To the extent the OCA becomes aware of a pattern of consumer complaints or inquiries about a utility,

the OCA can request Commission or legislative action on behalf of all residential customers. The OCA's advocacy may occur within the context of a pending proceeding or may take the form of an independent request for Commission action.

## **RESIDENTIAL RATEPAYERS ADVISORY BOARD**

In 1999, the legislature established a Residential Ratepayers Advisory Board to advise the OCA and, as previously noted, to serve as the screening panel when appointing or reappointing the Consumer Advocate becomes necessary. The Board consists of nine members: three appointed by the Speaker of the House; three appointed by the Senate President; and three appointed by the Governor and Executive Council. The Board members represent a broad range of interests including senior citizens, people with disabilities, small business owners, low-income individuals, residents of public housing, and environmental issues. Current Board members are listed at <http://www.oca.nh.gov/Advisory%20Board/AdvBrdRoster.pdf>.

Board meetings are open to the public and all meeting materials are posted on our website.

## CONSUMER ADVOCATE EXPENDITURES

Classification	Class	Expenses [1]	
		FY 2016	FY 2017
Salaries	10	329,404	328,281
Current Expense	20	2,112	1,396
Rent & Lease – Other	22	1,715	1,664
Organizational Dues	26	4,156	4,257
Transfers to OIT	27	28,641	29,595
Transfers to General Services	28	20,787	21,243
Telecommunications	39	2,001	1,979
Indirect Costs	40	3,169	3,261
Consultants	46	0	3,119
Trans. to Other Agencies	49 [2]	16,182	16,402
Other Personnel Services	50 [3]	7,236	0
Westlaw	57	6,660	6,720
Benefits	60	146,648	143,186
Educational Training	66	450	100
Travel (In State)	70	1,006	1,392
Travel (Out of State)	80	4,824	3,228
Litigation Expense	233	35,739	43,180
<b>Total</b>		<b>610,731</b>	<b>\$609,001</b>

**Notes:**

[1] Source of Information - NH First FY 2016 Closing Report dated July 23, 2016, and FY 2017 Closing Report dated July 22, 2017.

[2] The major expenses include funds transferred to support the Attorney General's office.

[3] This includes the salary expense for part-time staff assigned to the Office of Consumer Advocate.