



CO L O R A D O

**Department of
Regulatory Agencies**

**2014 Sunset Review:
Office of Consumer Counsel and
Utility Consumers' Board**

*Office of Policy, Research and Regulatory Reform
October 15, 2014*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Office of Consumer Counsel and the Utility Consumers' Board (UCB). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 6.5 of Title 40, C.R.S. The report also discusses the effectiveness of the Consumer Counsel and the UCB, in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Kelley".

Barbara J. Kelley
Executive Director





COLORADO

Department of Regulatory Agencies

2014 Sunset Review Office of Consumer Counsel and Utility Consumers' Board

SUMMARY

What Is the Office of Consumer Counsel?

The Office of Consumer Counsel (OCC), located within the Department of Regulatory Agencies (DORA), is charged with representing the interests of consumers in utility matters before the Public Utilities Commission (PUC), federal regulatory agencies and in the courts.

What Is the Utility Consumers' Board?

The Utility Consumers' Board (UCB) is an 11-member board that provides policy guidance to the OCC.

How Is It Administered?

The OCC endeavors to save consumers money by intervening in utility proceedings in which utility companies are seeking to obtain the highest possible return on equity. The OCC advocates for its constituents in these proceedings, often arguing that the amounts requested by the utilities should be reduced so that consumers pay reasonable utility rates and utility companies are compelled to operate more efficiently. To do this, the OCC staff must examine the technical evidence filed by utilities, provide expert testimony, cross-examine witnesses, make legal arguments, and represent consumers in settlement negotiations. The OCC also has the unique ability to appeal to the Colorado courts any decisions adopted by the PUC.

Who Is Served by the OCC?

The OCC advocates on behalf of agricultural, residential and small business consumers in electric, gas and telephone utility matters. In fiscal year 12-13, the OCC's activities helped to save consumers over \$51 million.

What Does It Cost?

In fiscal year 12-13, the total expenditures to administer the OCC were approximately \$1.5 million, and there were 7.0 full-time equivalent employees associated with the program. The same year, the UCB expenses totaled \$6,000.

KEY RECOMMENDATIONS

Continue the OCC for 11 years, until 2026.

The OCC protects agricultural, residential and small business consumers by helping to ensure that utility rates are fair and reasonable. Not only does the OCC ensure consumers are well represented in utility matters, it also helps to create a more efficient regulatory process. Without the OCC, many different consumer groups would intervene on a haphazard basis, which would delay the regulatory process and increase the cost of regulation. Therefore, the OCC should be continued.

Continue the UCB in conjunction with the OCC and remove the separate repeal provision.

The OCC is created to represent the interests of the public, and the UCB ensures that it does. The UCB creates an opportunity for staff to discuss critical issues with consumer groups and other experts. The OCC is a small office with only seven people on staff, and without a consumer board, the OCC runs the risk of being isolated from the consumers it serves. Therefore, the UCB should be continued.

The Department of Regulatory Agencies has historically reviewed the UCB and the OCC at the same time, and it inevitably produces one report for both reviews. If the OCC undergoes sunset review, the UCB does too. For this reason, a separate sunset provision is unnecessary.

MAJOR CONTACTS MADE DURING THIS REVIEW

Atmos Energy
CenturyLink
Colorado Energy Office
Colorado Office of Consumer Counsel
Colorado Public Utilities Commission
Colorado Telecommunications Association
Energy Outreach Colorado
National Association of State Utility Consumer Advocates
National Regulatory Research Institute
SourceGas
Utility Consumers' Board
Xcel Energy

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr



Table of Contents

Background	1
Introduction.....	1
Types of Regulation.....	2
Licensure	2
Certification.....	3
Registration	3
Title Protection.....	3
Regulation of Businesses	4
Sunset Process.....	4
Methodology	4
Profile of the Utility Consumer Advocates	5
Legal Framework.....	6
History of the Office of Consumer Counsel.....	6
Legal Summary	6
The Office of Consumer Counsel	6
The Utility Consumers’ Board	7
Program Description and Administration.....	9
Utility Cases.....	10
Telephone Utilities.....	11
Electric and Natural Gas Utilities.....	13
The Utility Consumers’ Board	14
Analysis and Recommendations.....	16
Recommendation 1 - Continue the Office of Consumer Counsel for 11 years, until 2026.	16
Recommendation 2 - Rename the “Office of Consumer Counsel” to the “Office of the Utility Consumer Advocate” and replace references to Consumer Counsel with Director.....	18
Recommendation 3 - Continue the Utility Consumers’ Board and repeal the sunset provision.....	18
Recommendation 4 - Limit UCB members to two consecutive terms of four years.	19

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The functions of the Office of Consumer Counsel (OCC) and the Utility Consumers' Board (UCB) as enumerated in Article 6.5 of Title 40, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the OCC and the UCB pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to advocate on behalf of agricultural, residential and small business utility consumers should be continued and to evaluate the performance of the Consumer Counsel. During this review, the Consumer Counsel must demonstrate that the program serves the public interest. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended UCB meetings, interviewed the OCC staff and UCB members, reviewed OCC and UCB records and UCB minutes, interviewed officials with state and national professional associations, interviewed stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Utility Consumer Advocates

A public utility is a company that provides essential public services, such as electricity, natural gas, telephone and water. Utility companies must operate as monopolies in those cases in which it is too expensive to build the infrastructure to produce or deliver the services competitively.^{2,3}

In the United States, utility companies may be privately or publicly owned,⁴ and they are closely regulated by the government to ensure safe operation, reasonable rates and consistent service.⁵

Most states have utility consumer advocates who represent rate payers before regulatory agencies and courts in order to protect consumers from unfair rate increases and to ensure that utilities are reliable, especially during emergency situations.⁶ In Colorado, the utility advocate represents agricultural, residential and small business consumers of electric, natural gas and telephone utilities.

Regulation of utility companies is complex and can be difficult for consumers to understand. A utility consumer advocate serves to protect the interests of consumers who otherwise would have little or no representation in utility regulation. Although the interests of utility companies and large industrial consumers are well represented by teams of attorneys working on behalf of those companies, the interests of other rate payers would be inconsistent without professional representation.

A utility consumer advocate also helps to create a more efficient regulatory process. Otherwise, numerous citizens' groups would intervene haphazardly, creating a more expensive and time-consuming process.

Forty-five states and the District of Columbia have established utility consumer advocates. Typically, these offices are located in the state's office of the attorney general. However, they may also be housed in the governor's office, in the legislature, in the office of the public utility commission, in another state agency or as a separate office.

² Legal Dictionary. *Public Utility*. Retrieved on July 23, 2014, from https://www.google.com/search?q=define+public+utility&hl=en&gbv=2&oq=&gs_l=http://legal-dictionary.thefreedictionary.com/Public+Utilities

³ Merriam-Webster. *Public Utility*. Retrieved on July 23, 2014, from <http://www.merriam-webster.com/dictionary/public%20utility>

⁴ Legal Dictionary. *Public Utility*. Retrieved on July 23, 2014, from https://www.google.com/search?q=define+public+utility&hl=en&gbv=2&oq=&gs_l=http://legal-dictionary.thefreedictionary.com/Public+Utilities

⁵ Merriam-Webster. *Public Utility*. Retrieved on July 23, 2014, from <http://www.merriam-webster.com/dictionary/public%20utility>

⁶ AARP. *Fighting for Consumer Advocate Offices for You*. Retrieved on September 9, 2014, from <http://www.aarp.org/politics-society/advocacy/info-09-2013/fighting-for-consumer-advocate-offices-for-you.html>

Legal Framework

History of the Office of Consumer Counsel

The Office of Consumer Counsel (OCC) was established by the General Assembly in 1984 when it determined that there was a lack of quality representation for agricultural, residential and small business utility consumers. The Utility Consumer Advocacy Board, now the Utility Consumers' Board (UCB), was created to assist the OCC, and it was made up of representatives from around the state whose interests and backgrounds reflected the diversity of Colorado's utility consumers.

The purpose of the OCC is to represent the interests of agricultural, residential and small business utility consumers in cases before the Public Utilities Commission (PUC). The OCC does not represent the interests of individual consumers; it only represents the interests of particular classes of consumers as a whole.

When involved in proceedings before the PUC, OCC staff is prohibited from *ex parte* communications with PUC Commissioners; however, in 2008, the General Assembly excluded rulemaking and discussions on pending legislation from this prohibition.

The OCC has undergone four sunset reviews, and in each review, the Department of Regulatory Agencies (DORA) recognized the necessity and the effectiveness of the OCC in protecting the interests of utility consumers and recommended continuation.

Legal Summary

The OCC and the UCB are created in Title 6.5 of Article 40, Colorado Revised Statutes (C.R.S.), (Act). The Consumer Counsel of the OCC is appointed by the Executive Director of DORA (Executive Director).⁷

The Office of Consumer Counsel

It is the responsibility of the Consumer Counsel to represent the interests of residential, small business and agricultural consumers in any PUC proceeding and subsequent appeal in matters relating to:⁸

- Proposed rates and charges by a public utility;
- Rulemaking impacting charges, services or rates to consumers;
- Certificates of public convenience;
- Construction of new public utilities that would affect rates and charges; and
- Charges and tariffs.

⁷ §§ 40-6.5-102(1), (2)(a), and (3)(a), C.R.S.

⁸ § 40-6.5-104(1), C.R.S.

Public utility is defined as an electric, gas or telephone utility.⁹

When determining whether to appear in a proceeding before the PUC, the Consumer Counsel must consider the importance and the extent of the public interest, considering the impact upon the different classes of consumers represented by the OCC. When faced with competing consumer interests, the Consumer Counsel may choose to represent one of the interests or none at all.¹⁰

The Consumer Counsel may also participate in similar proceedings before a federal agency that regulates utility rates or services, or before a federal court.¹¹

However, the Consumer Counsel is prohibited from intervening in a complaint between a utility and an individual consumer.¹²

All proposed gas, electric and telephone tariffs must be provided to the Consumer Counsel, as well as all PUC orders affecting agricultural, residential and small business utility consumers.¹³ The Consumer Counsel may have access to the files of the PUC when conducting research.¹⁴

The Consumer Counsel must have at least five years of experience in consumer utility issues or in the operation, management or regulation of utilities as an attorney, engineer, economist, accountant, administrator or financial analyst. The Consumer Counsel must be free of any financial interest in a corporation regulated by the PUC.¹⁵

The OCC is cash funded by the PUC Fixed Utility Fund, into which public utilities pay in order to cover the cost of regulation. No general fund dollars may be appropriated to the OCC.¹⁶

The Utility Consumers' Board

The UCB consists of 11 members appointed by the Governor to four-year terms with no limit on the number of terms a member may serve. Members should represent different geographic areas of the state and have expertise or experience in consumer-related utility matters, utilities management, economics, accounting, financing, engineering, planning or utilities law.¹⁷

The purpose of the UCB is to oversee and provide policy guidance to the OCC.¹⁸

⁹ § 40-6.5-101(3), C.R.S.

¹⁰ § 40-6.5-104(2), C.R.S.

¹¹ § 40-6.5-106(2.5), C.R.S.

¹² § 40-6.5-106(2), C.R.S.

¹³ § 40-6.5-104(3), C.R.S.

¹⁴ § 40-6.5-106(1)(d), C.R.S.

¹⁵ § 40-6.5-103, C.R.S.

¹⁶ § 40-6.5-107, C.R.S.

¹⁷ § 40-6.5-102(3)(b), C.R.S.

¹⁸ § 40-6.5-102(3)(c), C.R.S.

The powers and duties of the UCB additionally include, but are not limited to:¹⁹

- Advising the OCC on proposed legislation,
- Reviewing the performance of the OCC annually, and
- Consulting with the Executive Director on the hiring of the Consumer Counsel and the annual performance evaluation of the OCC and the Consumer Counsel.

The Attorney General must advise the OCC and the UCB on all legal matters and provide representation in proceedings in which the OCC participates.²⁰

¹⁹ § 40-6.5-102(3)(c), C.R.S.

²⁰ § 40-6.5-102(4), C.R.S.

Program Description and Administration

The Office of Consumer Counsel (OCC) is housed in the Department of Regulatory Agencies (DORA).

Unlike the Public Utilities Commission (PUC) and most agencies within DORA, the OCC has no regulatory authority. Instead the OCC is charged with representing the interests of agricultural, residential and small business consumers in utility matters before the PUC, federal regulatory agencies²¹ and in the courts.

While the PUC has a broader jurisdiction, the OCC only represents consumers in telephone, natural gas and electric utility matters.

The PUC has the duty to balance the interests of the public by ensuring just and reasonable rates for consumers and ensuring utilities have an opportunity to earn a rate of return commensurate with similarly situated businesses.

The OCC, on the other hand, is not charged with balancing the interests of utilities and consumers. Instead, the OCC has the duty to represent the interests of particular classes of consumers in cases such as rate changes, charges, tariffs, service modifications, rulemaking, and certificates of public convenience and necessity. To do this, the OCC staff must examine the technical evidence filed by utilities, provide expert testimony, cross-examine witnesses, make legal arguments and represent consumers in settlement negotiations.

The OCC also has the ability to appeal an unfavorable decision by the PUC to the Colorado courts, and it may represent consumers by participating on gubernatorial, legislative and PUC-established task forces, advisory groups, working groups, legislative hearings and in other forums to advocate for consumers.

The OCC does not handle individual complaints, but it may examine individual complaints filed with the PUC in order to detect any patterns of rate or service problems.

The OCC is cash funded through assessments on state-regulated utilities, which are credited to the PUC Fixed Utility Fund (Fund). The Fund can only be used to regulate utilities and to finance the OCC.

²¹ These agencies include the Federal Communications Commission and the Federal Energy Regulatory Commission.

Table 1 demonstrates the staffing levels and expenses over the five-year period under review.

**Table 1
OCC FTE and Expenditures**

Fiscal Year	FTE	Expenditures
08-09	7.1	\$1,454,090
09-10	7.0	\$1,401,533
10-11	7.0	\$1,381,560
11-12	7.0	\$1,388,123
12-13	7.0	\$1,468,065

The program staffing and expenditures have remained stable over five years.

In fiscal year 08-09, the outgoing Consumer Counsel stayed for a short period of time to train the new Consumer Counsel resulting in the additional 0.1 FTE.

In fiscal year 12-13, the staff included:

- 1.0 FTE, Consumer Counsel;
- 4.0 FTE, Financial Analyst V;
- 1.0 FTE, Budget Analyst II; and
- 1.0 FTE, Administrative Assistant III.

Three attorneys and one paralegal (4.0 FTE) in the Department of Law are also assigned to the OCC for legal representation in the various utility regulatory proceedings. The OCC additionally works with recognized and technically qualified experts to perform research and appear as expert witnesses.

Utility Cases

The OCC endeavors to save consumers money by intervening in utility rate cases and other proceedings before the PUC. In these cases, utility companies are seeking to obtain the highest possible return on equity. The OCC advocates for its constituents in these cases, often arguing that the amounts requested by the utilities should be reduced so that consumers pay reasonable utility rates and utility companies are compelled to operate more efficiently.

The OCC may advocate for consumers on its own or in conjunction with the PUC staff or other parties. Each rate case includes a number of parties advocating different positions, including PUC staff. The PUC weighs all positions and makes its decision based on the evidence presented in each case.

The OCC must review all utility filings to determine how consumers will be impacted. The number of filings is determined by the utility companies themselves, and the OCC intervenes when it finds that its consumers may be negatively impacted.

Table 2 reflects the OCC involvement in telephone, natural gas and electric utility cases over a five-year period.

Table 2
Telephone, Natural Gas and Electric Utility
Case Intervention, Rate Case and Rulemaking Case Involvement

Fiscal Year	Rate Cases	Rulemaking Cases	All Case Interventions ²²
08-09	3	5	41
09-10	5	3	41
10-11	3	6	44
11-12	4	5	32
12-13	2	3	40

On average, the OCC intervened in about 40 cases a year. Specifically, the OCC intervened in 17 rate cases and 22 rulemaking cases over the five-year period under review.

Telephone Utilities

In order to understand the role of the OCC in telephone utilities, it is important to understand the regulatory environment.

The PUC ensures compliance with state and federal statutes, rules, and safety standards, and it initiates enforcement actions to correct non-compliance.

The PUC also issues a Certificate of Public Convenience and Necessity and a Certificate of Operating Authority, which authorize telecommunications companies to operate in Colorado. The PUC oversees companies to protect consumers from unscrupulous providers and to ensure that companies are providing service on a non-discriminatory basis. It also registers long-distance providers to protect consumers from being transferred to other providers without their authorization and to monitor mandatory operator services.²³

²² All case interventions include rate cases and rulemakings cases, in addition to other interventions, such as energy compliance plans, applications for surcharge increases, certificates of public convenience and necessity, demand-side management plans, gas price volatility mitigation plans, gas cost adjustments plans, decommissioning plans, service integrity and electric resource plans.

²³ Colorado Public Utilities Commission. *About Telecommunications*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632683208>

Additionally, the PUC manages the Colorado High Cost Support Mechanism – a program created to ensure that every Colorado resident has access to telephone service, specifically those who live in areas that would not otherwise be served because of the high cost of providing service.²⁴

While the PUC is charged with balancing the interests of consumers with the interests of utility service providers, the OCC simply advocates for the interests of consumers.

Table 3 shows the number of telephone utility cases in which the OCC’s efforts resulted in or contributed to consumer savings and the amount of savings gained over the five-year period under review.

Table 3
Telephone Utility Savings

Fiscal Year	Cases	Savings
08-09	1	\$7,654,776
09-10	1	\$2,124,429
10-11	3	\$4,188,715
11-12	2	\$4,485,715
12-13	2	\$4,485,715

Overall, the OCC’s efforts resulted in savings in nine telephone utility cases, during the period under review, resulting in nearly \$23 million in savings for consumers.²⁵

As of July 1, 2016, the PUC will no longer regulate rates and service for basic telephone service. However, the PUC maintains the option to regulate basic telephone service after July 1, 2018 if it finds that it is necessary to protect the public interest. If the PUC does not regulate basic telephone service after that date, the OCC’s role in telephone utilities will be significantly diminished.

²⁴ Colorado Public Utilities Commission. *About Telecommunications*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632683208>

²⁵ The OCC calculated the savings based on the difference between the amount initially sought by the utility and the PUC’s final order. The OCC then adjusts the amount of savings depending on whether savings were achieved solely through its own efforts (100 percent), primarily through its efforts (75 percent), or in conjunction with the PUC staff (50 percent).

Electric and Natural Gas Utilities

The OCC represents the interests of consumers in both electrical and natural gas cases.

In order to understand the role of the OCC, it is important to understand the regulation of energy utility companies. The PUC handles the following regulatory activities related to electric and natural gas utility companies:²⁶

- Establishes rates;
- Establishes service standards;
- Ensures compliance with state statutes;
- Ensures compliance with PUC decisions, rules and safety standards;
- Initiates enforcement actions to correct non-compliance; and
- Takes complaints from consumers.

The PUC also issues a Certificate of Public Convenience and Necessity to electric and natural gas companies to ensure financially healthy companies that will stay in business and provide a high level of service to consumers and to ensure that companies are providing service on a non-discriminatory basis.²⁷

The OCC may intervene in proceedings before the PUC or in the courts on behalf of electric and natural gas consumers.

Table 4 shows the number of electric and natural gas utility cases in which the OCC's efforts resulted in or contributed to consumer savings and the amount of savings gained over the period under review.

Table 4
Electric and Natural Gas Utility Savings

Fiscal Year	Electric Cases	Natural Gas Cases	E&G Cases*	Total Savings
08-09	4	2	1	\$51,372,678
09-10	2	2	0	\$42,683,935
10-11	4	3	0	\$38,201,987
11-12	5	3	0	\$40,946,529
12-13	5	2	0	\$47,012,416

*Cases involving both electric and natural gas utilities

²⁶ Colorado Public Utilities Commission. *Natural Gas Utilities Service*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632608624> and Colorado Public Utilities Commission. *About Regulated Electric Utility Service*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632683058>

²⁷ Colorado Public Utilities Commission. *Natural Gas Utilities Service*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632608624> and Colorado Public Utilities Commission. *About Regulated Electric Utility Service*. Retrieved on August 6, 2014, from <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632683058>

Overall, the OCC was involved in 33 cases related to electric and natural gas utilities during the period under review. The OCC intervened, alone or in conjunction with other parties, in rate cases related to smart grid technology to ensure rates were fair to consumers, pipeline upgrades to ensure upgrades were reasonable, and other energy utility cases resulting in over \$220 million in savings to consumers.²⁸

The Utility Consumers' Board

The Utility Consumers' Board (UCB) is an 11-member board that provides policy guidance to the OCC. It also works with the Executive Director of DORA (Executive Director) to evaluate the performance of the Consumer Counsel and the OCC on an annual basis. UCB members are appointed by the Governor, from various geographic areas of the state, to represent the interests of agricultural, residential and small business consumers.

The UCB is required to meet at least six times a year. During fiscal year 13-14, it met eight times, and most of the board members attended all of the meetings.

The meetings consist of presentations from OCC staff and guest speakers, and the members discuss matters such as current utility cases, utility market trends, current legislation and consumer outreach.

Some of the guest speakers that presented to the UCB during fiscal year 13-14 included:

- The Executive Director of the Colorado Energy Office,
- Two PUC commissioners,
- The Associate State Director of the AARP,
- The Legislative Liaison of DORA, and
- The Executive Director.

The UCB operates in an advisory capacity. It cannot direct negotiations on cases, but it is able to provide guidance to the Consumer Counsel regarding the overall direction of the OCC. The UCB may also provide advice regarding pending legislation.

In 2013, a representative of the UCB served on a panel that interviewed candidates for the position of the Consumer Counsel.

Board members serve without compensation, but they are reimbursed for travel expenses if they reside outside of Denver, Jefferson, Adams, Arapahoe, Boulder and Douglas counties.

²⁸ The OCC calculated the savings based on the difference between the amount initially sought by the utility and the PUC's final order. The OCC then adjusts the amount of savings depending on whether savings were achieved solely through its own efforts (100 percent), primarily through its efforts (75 percent), or in conjunction with the PUC staff (50 percent).

Table 5 provides the UCB expenses over the five years under review.

Table 5
UCB Expenses

Fiscal Year	Meetings	Per Diem	Mileage	Parking	Total
08-09	\$868	\$0	\$1,093	\$91	\$2,052
09-10	\$2,412	\$877	\$2,703	\$165	\$6,157
10-11	\$1,373	\$503	\$2,368	\$150	\$4,394
11-12	\$1,865	\$1,317	\$4,648	\$253	\$8,083
12-13	\$1,370	\$514	\$3,842	\$278	\$6,004

The expenses in Table 5 are not included in the OCC expenses reported in Table 1.

The UCB expenses are primarily to pay for lunches and to reimburse board members who live outside the Denver metropolitan area and must travel to Denver for board meetings. The mileage expenses fluctuate depending on the distance board members must travel to meetings. Per diem is only paid to board members who live outside the Denver metropolitan area and attend the meetings in person, so these costs fluctuate depending on the distance board members must travel.

Analysis and Recommendations

Recommendation 1 – Continue the Office of Consumer Counsel for 11 years, until 2026.

The Office of Consumer Counsel (OCC), located within the Department of Regulatory Agencies (DORA), is charged with representing the interests of agricultural, residential and small business consumers in utility matters before the Public Utilities Commission (PUC), federal regulatory agencies and in the courts. While the PUC has a broader jurisdiction, the OCC only represents consumers in electric, gas and telephone utility matters.

Specifically, the OCC intervenes in utility proceedings that involve rate changes, rulemaking, service modifications, and certificates of public convenience and necessity.

To do this, the OCC staff must examine the technical evidence filed by utilities, provide expert testimony, cross-examine witnesses, make legal arguments and represent consumers in settlement negotiations. The OCC has the ability to appeal to the Colorado courts any decisions adopted by the PUC. The OCC also represents consumers by participating in task forces, advisory groups, working groups, legislative hearings and other forums.

Sunset reviews are guided by statutory criteria in section 24-34-104, Colorado Revised Statutes. The primary purpose of a sunset review is to determine whether a government program is necessary to protect the public.

The OCC serves a critical role in government for utility consumers. The interests of utility companies and large industrial consumers are well represented by teams of attorneys. Providing a professional office to represent agricultural, small business and residential consumers ensures that their interests are consistently and competently represented. Otherwise consumers would have inadequate representation before the PUC, which would result in unfair cost shifting to consumers with less economic power.

The OCC protects agricultural, residential and small business consumers by helping to ensure that utility rates are fair and reasonable.

Table 6 shows the savings to consumers obtained through the efforts of the OCC, often in conjunction with other parties, over a five-year period.²⁹

Table 6
Consumer Savings³⁰

Fiscal Year	Solely	Jointly	Total
08-09	\$28,928,644	\$30,098,808	\$59,027,452
09-10	\$18,843,645	\$25,964,719	\$44,808,364
10-11	\$11,747,572	\$30,643,130	\$42,390,702
11-12	\$5,982,420	\$39,449,824	\$45,432,244
12-13	\$9,650,638	\$41,847,493	\$51,498,131

Not only does the OCC ensure consumers are well represented in utility matters, it also helps to create a more efficient regulatory process. The OCC is a professional office that regularly intervenes in cases on behalf of consumers. Without the OCC, many different consumer groups would intervene on a haphazard basis, which would delay the regulatory process and increase the cost of regulation.

Therefore, the OCC should be continued.

Sunset criteria question whether the analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

The OCC operates with a staff of 7.0 full-time equivalent employees. When appropriate, the OCC contracts with utility experts to perform research and act as expert witnesses. On average, the annual OCC expenditures are approximately \$1.4 million. This includes about \$450,000 a year in legal expenses and \$84,000 a year in the costs of hiring consultants.

For every dollar the OCC spends, consumers realize approximately \$34 through rate reductions, refunds and reductions in rate increases.

Considering the complex nature of the work involved, the heavy workload that monitoring utility regulatory procedures entails, and the savings that the OCC earns for consumers, the agency performs its statutory duties efficiently and effectively.

²⁹ The savings are calculated by determining whether the OCC intervened in cases alone or with other parties and then by the determining the difference between the rate to consumers before an OCC action and the rate to consumers subsequent to the OCC action.

³⁰ The OCC calculated the savings based on the difference between the amount initially sought by the utility and the PUC's final order. The OCC then adjusts the amount of savings depending on whether savings were achieved solely through its own efforts (100 percent), primarily through its efforts (75 percent), or in conjunction with the PUC staff (50 percent). The "Jointly" column, in Table 6, includes savings achieved both primarily through its own efforts and in conjunction with the PUC staff.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years. None of the recommendations in the report should substantially alter the operations of the OCC.

Therefore, the General Assembly should continue the OCC for 11 years, until 2026.

Recommendation 2 – Rename the “Office of Consumer Counsel” to the “Office of the Utility Consumer Advocate” and replace references to Consumer Counsel with Director.

Most people do not know what the “Office of Consumer Counsel” does or what the name means. Part of the problem is that the name is somewhat ambiguous.

First, the name suggests the office advocates for all consumers. The OCC receives calls on a daily basis from consumers seeking general guidance and assistance regarding issues that are completely unrelated to utilities. For example, the office regularly receives consumer complaints ranging from the lemon law to problems with credit cards. The office refers these inquiries to the appropriate agency or department, but it places a lot of unnecessary pressure on staff to respond to questions unrelated to their regular duties.

Second, the word “counsel” is misleading. The Act refers to a “Consumer Counsel,” which in practice is referred to as the Director of the OCC. The Consumer Counsel, or Director, is not required to be an attorney, and few of the previous Directors have been attorneys. While attorneys in the Department of Law work closely with the OCC, the OCC staff is generally made up of analysts.

Sunset criteria question whether statutory changes are necessary to improve agency operations to enhance the public interest.

The current name creates confusion among the public, which results in unnecessary work for staff. Instead, the name should accurately represent the role of the agency.

Therefore, the General Assembly should rename the “Office of Consumer Counsel” to the “Office of the Utility Consumer Advocate,” and it should replace references to “Consumer Counsel” with “Director.”

Recommendation 3 – Continue the Utility Consumers’ Board and repeal the sunset provision.

The Utility Consumers’ Board (UCB) is an 11-member board that provides policy guidance to the OCC. The UCB also works with the Executive Director of DORA (Executive Director) to evaluate the performance of the Consumer Counsel and the OCC on an annual basis.

UCB members are appointed by the Governor, from various geographic areas of the state, to represent the interests of agricultural, residential and small business consumers.

The purpose of a sunset review is to determine whether a government program, or a function of government, is necessary to protect the public.

On average, the UCB spends a little over \$5,000 a year on meeting, per diem, travel and parking expenses. For an 11-member board that meets approximately eight times a year, these costs are fairly minimal.

The OCC is created to represent the interests of the public, and the UCB ensures that it does. The UCB creates an opportunity for staff to discuss critical issues with consumer groups and other experts. The OCC is a small office with only seven people on staff, and without a consumer board, the OCC runs the risk of being isolated from the consumers it serves.

The current Consumer Counsel reports that she relies on the UCB for policy guidance. Previous Consumer Counsels also relied on the UCB for policy guidance. Even before the UCB was established as a standing board, the Consumer Counsel assembled a similar *ad hoc* advisory board.

For these reasons, the UCB should be continued. The General Assembly may continue this program for any period between 1 and 15 years, and it may remove the sunset provision entirely.

Since the UCB serves as a function of the OCC, the UCB does not require a sunset provision separate from the OCC. DORA has historically reviewed the UCB and the OCC at the same time, and it inevitably produces one report for both reviews. This would continue if the UCB sunset provision were removed. If the OCC undergoes sunset review, the UCB does too. For this reason, a separate sunset provision is unnecessary.

Therefore, the General Assembly should continue the UCB concurrently with the OCC and remove the separate sunset provision.

Recommendation 4 – Limit UCB members to two consecutive terms of four years.

The UCB is an 11-member board appointed by the Governor to four-year terms. There is no statutory limit to the number of terms a member may serve. This is unusual in Colorado.

It is generally the public policy of Colorado to limit the number of terms on boards, commissions and other governmental bodies. The Governor is limited to two terms, and the members of the General Assembly also have term limits. Further, nearly all the boards at DORA are subject to term limits.

Term limits ensure that new people have an opportunity to serve. They create a healthier board because new members bring fresh perspectives, ideas and information.

Term limits also reduce the likelihood of the board being dominated by a single, long-serving member or being captured by a particular interest. With term limits, there is more opportunity to transform and refresh the composition and the dynamics of the board.

The current policy of the Governor is to limit board members to two terms. In order to ensure a healthy change of board membership, the governor's policy should be codified in statute.

Therefore, the General Assembly should limit UCB members to two consecutive terms of four years.