

WE—VIEW—THE—SOUTH—WEST—SUNSHINE—57002

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Office of Consumer Counsel
and
Utility Consumers Board



October 14, 2005

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 14, 2005

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 Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Office of Consumer Counsel and the Utility Consumers Board. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2006 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 Office of Consumer Counsel and staff in carrying out the intent of the statutes and makes recommendations for continuing both the Office of Consumer Counsel and the Utility Consumers Board.

Sincerely,



Tambor Williams
Executive Director

2005 Sunset Review **Office of Consumer Counsel** **Utility Consumers Board**

Department of Regulatory
Agencies

Bill Owens
Governor

Tambor Williams
Executive Director



Executive Summary

Quick Facts

What is Regulated? A sunset review of the Office of Consumer Counsel (OCC) is somewhat different from reviews of other government agencies, regulatory boards, and commissions. The OCC does not regulate any industry or profession. As a consumer counsel, its role is to represent consumers in utility matters. The Utility Consumers Board (UCB) provides policy guidance to the OCC regarding rulemaking matters, legislative projects, general activities, and priorities of the OCC.

What is its Function? The function of the OCC is to represent the public interest and the special interests of residential, small business, and agricultural consumers before the Public Utilities Commission (PUC). The OCC also promotes consumer education on utility issues, reviews legislative developments that may affect Colorado consumers, as well as monitoring relevant federal regulatory proceedings and congressional legislation.

The function of the UCB is to gather data and information and formulate policy positions to advise the OCC in preparing analysis and testimony to the General Assembly.

What is its Advocacy Role? The OCC is the advocate of utility consumers/taxpayers in regulatory proceedings involving electric, gas, and telephone utility rates and service affecting the interests of residential, small business, and agricultural consumers.

The OCC may petition for, request, initiate and appear and intervene as a party in any proceeding before the PUC concerning rate changes, rulemaking changes, tariffs, modifications of service, and matters involving certificates of public convenience and necessity.

What Does it Cost? The FY 04-05 expenditures to oversee this program were \$1,222,064. Total savings to consumers were calculated to be \$34.45 savings per dollar expended. There are 7 FTE employees associated with this program.

Where Do I Get the Full Report? The full sunset review can be found on the internet at:
<http://www.dora.state.co.us/opr/oprpublications.htm>

Key Recommendations

Continue the Office of the Consumer Counsel until 2015

The OCC serves as consumer advocate by formally representing consumers in rate and rulemaking proceedings before the PUC, and by informally representing consumer interests in a variety of forums. The OCC is a technical resource for utility consumers, legislators, businesses, the utilities and other government agencies. In carrying out its statutory mandate, the OCC's efforts result in savings to consumers, more equitable rate structures, and an increased knowledge about the effects of regulatory and statutory policies on utility consumers.

Continue the Utility Consumers Board until 2015

As a consumer office directed to represent Colorado consumers, it is important for the OCC to have access to a consumer forum. The ability of the OCC to obtain advice is important to fulfilling its statutory purpose of representing the interest of residential, agricultural, and small business users in Colorado. The UCB provides the OCC with a mechanism to measure positions on issues across the state. However, the function of the UCB could be improved with better participation from members and a greater geographical diversity. The regulation of utilities is filled with many complex issues over many disciplines. The availability of an active consumer board that is apprised of these issues provides an opportunity for consumers' voices to be heard directly by the OCC.

Major Contacts Made In Researching the 2005 Sunset Review of the OCC and the UCB

Members of the Utility Consumers Board
Staff of the Office of Consumer Counsel
Public Utilities Commission of Colorado
Colorado Municipal League
Energy Outreach Colorado
Qwest Corporation
American Association of Retired Persons (AARP)
Colorado Public Interest Research Group
Colorado Common Cause

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Background

The Sunset Process

The regulatory functions of the Office of Consumer Counsel (OCC) and the Utility Consumers Board (UCB), in accordance with Article 6.5 of Title 40, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2006, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the OCC and the UCB pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether OCC and UCB should be continued for the protection of the public and to evaluate their performance. During this review, the OCC and UCB must demonstrate that there is still a need for and that the regulation is the least restrictive consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 22.

Methodology

As part of this review, DORA staff attended UCB meetings, interviewed OCC staff, and reviewed monthly reports and budgetary narratives submitted by the OCC. Additionally, DORA staff reviewed records and minutes of UCB meetings, interviewed officials with state and national professional associations, contacted interested stakeholders and UCB members, reviewed Colorado statutes and rules, and reviewed other states' laws.

Introduction

A sunset review of the OCC is somewhat different from reviews of other government agencies, regulatory boards, and commissions. The OCC does not regulate any industry or profession, nor does it promulgate rules or regulations. Therefore, several of the criteria outlined in the sunset statute [§ 24-34-104(9)(b), C.R.S.] are not applicable to this review. However, the OCC is required to operate in the public interest, and its activities have an economic impact in the marketplace and on governmental functions relating to the regulation imposed by the Colorado Public Utilities Commission (PUC)

History of the OCC

The OCC was created by the General Assembly on July 1, 1984 (Senate Bill 181), as a division of the Office of the Attorney General (AGO). It was the culmination of a decade of extensive efforts to pass legislation to provide a special consumer advocate in the area of public utilities. The General Assembly determined that there was a lack of quality representation for residential, small business, and agricultural utility consumers in Colorado. The creation of the Colorado OCC reflected a nationwide trend for such advocates as a part of the utility regulatory process.

The function of the OCC is to provide testimony on behalf of residential, small business, and agricultural consumers in cases before the PUC, which affect the interests of such groups. As a division within the AGO, the OCC also was expected to provide expert legal representation for a class of consumer interests before the PUC. The General Assembly believed that a utility consumer advocate was necessary to balance the regulatory process, since the PUC staff would have a conflict if it tried to be both an advocate for consumers and an adviser to the PUC.

In connection with the creation of the OCC, the Attorney General appointed the Utility Consumer Advocacy Board (UCAB) to assist the OCC. The composition of the UCAB was to include representatives from around the state whose interests and experiences reflect the diversity of Colorado's utility consumers.

In 1987, the OCC was subject to its first sunset review, which resulted in the General Assembly continuing the OCC until July 1993. That report concluded that the OCC was a professional advocate that had proven its effectiveness, especially in the area of negotiation, a desirable alternative to high cost litigation. The report also cited some confusion as to which agency, PUC or OCC, should serve as consumer advocate, and finally recommended that the OCC should continue in that role.

A second sunset review was conducted in 1992. The Department of Regulatory Agencies (DORA) concluded that the OCC role as professional consumer advocate was more necessary than ever due to the increasing complexity and current trends in utility regulation. In addition to recommending the continuation of the OCC, DORA also recommended the addition of two additional staff.

During the 1992 legislative session, the Joint Legislative Sunrise and Sunset Review Committee held hearings on the continuation of the PUC and the OCC. During these hearings, issues were raised regarding the organizational structure and placement of the OCC. The AGO and DORA studied those issues raised by the legislative committee and published the results and recommendations. As a result of this process, the OCC was transferred to DORA through a Type 1 transfer while the attorneys for the OCC remained within the AGO. Additionally, the UCAB was continued, renamed the Utility Consumers Board (UCB) and transferred to DORA. The Governor now appoints members of the UCB who were previously appointed by the Attorney General.

In recommending continuing the OCC and the UCB, the 1997 sunset review reported that the OCC had been responsible for substantial savings to consumers. In addition to consumer savings, the OCC ensured that consumers received the most benefit from open competition in the telecommunications market.

Legal Framework

The function of the Office of Consumer Counsel (OCC) is to represent the public interest, and to the extent consistent therewith, the specific interests of residential, small business, and agricultural consumers before the Public Utilities Commission (PUC) (§ 40-6.5-104, Colorado Revised Statutes, (C.R.S)). The OCC's representation of consumers requires examining technical evidence filed by utility companies, providing expert testimony on consumers' behalf, cross-examining other witnesses in the cases before the PUC, and making legal arguments before the PUC. The OCC is also the consumers' representative in settlement negotiations.

The statute creating the OCC outlines the procedures the OCC is authorized to use in providing expert, technical, and legal representation for those interests. The OCC staff appears in proceedings before the PUC in matters involving proposed changes in a public utility's rates and charges, as well as rulemaking that has an impact on rate charges and the provision of services. Other issues in which the OCC may become involved include certificates of public convenience and necessity for facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges.

The OCC is the advocate of utility consumers/ratepayers in regulatory proceedings involving electric, gas, and telephone utility rates and service affecting the interests of residential, small business, and agricultural consumers. "In evaluating the public interest, the consumer counsel give[s] due consideration to the short and long-term impact of the proceedings upon various classes of consumers so as not to jeopardize the interest of one class in an action by another" (§ 40-6-5-104(2), C.R.S). The OCC is the only party in cases before the PUC, whose full-time job is to represent those consumers.

The OCC occasionally assists utility consumers by resolving complaints or answering inquiries about billing and service problems. The OCC is not staffed to handle individual consumer complaints except on an *ad hoc* basis. The PUC's External Affairs Section handles individual consumer complaints.

The powers of the OCC are identified in section 40-6.5-106, C.R.S. In addition to allowing the OCC to employ personnel as necessary to carry out its duties, the OCC may contract for services with technically qualified personnel to perform research and appear as expert witnesses before the PUC. The OCC is given authority to intervene in all cases and may have access to the files of the PUC when conducting research. The OCC may also petition for, request, initiate and appear and intervene as a party in any proceeding before the PUC concerning rate changes, rulemaking changes, tariffs, modifications of service, and matters involving certificates of public convenience and necessity. Finally, the OCC may participate in utility proceedings before federal courts and agencies such as the Federal Energy Regulatory Commission and the Federal Communications Commission.

An important power of the OCC is the right to appeal PUC decisions or orders. More specifically, the OCC has the authority to seek judicial review of the PUC's decisions. This power distinguishes the OCC from the staff of the PUC. The OCC acts as counsel on behalf of consumers, while the PUC serves as the fact-finder and decision maker.

The role of the OCC includes some functions performed by traditional consumer affairs offices. These functions include promoting consumer education on utility issues, reviewing legislative developments that may affect Colorado consumers, as well as monitoring relevant federal regulatory proceedings and congressional legislation. The OCC also disseminates information about new developments in the public utilities area to consumer and business groups, as well as to members of the General Assembly and other decision makers.

Participation in utility regulation proceedings is often quite complex and expensive. Intervenor compensation programs provide an opportunity for individuals or consumer groups to fund their representation in PUC proceedings where they otherwise might not be able to afford to appear, by paying actual expenses, such as legal representation, expert testimony, technical studies, and transcripts. The Colorado Supreme Court in several cases has upheld the PUC's authority to award expenses. The standard for awarding fees and costs to parties in proceedings where the OCC is a party include the following criteria: (1) representation and expenses must relate to the "general consumer interest;" (2) the party's testimony, evidence, and exhibits must "materially assist" the PUC in reaching its decision; (3) the legal fees and costs must be "reasonable;" and (4) the award must be "only for expenses related to issues not substantially addressed by the Office of Consumer Counsel."

Certain actions are prohibited by statute. The OCC may not be a party to any individual formal complaint between a utility and an individual, nor may it petition a federal lending agency. Furthermore, the OCC and all members of its staff, like all parties to a case, must refrain from *ex parte* communications with members of the PUC. However, OCC staff has the same rights, and is governed by the same *ex parte* rules, as all other intervenors.

Program Description and Administration

Structure of the OCC

Since 1993, the Office of Consumer Counsel (OCC) has carried out its statutory responsibilities within the Department of Regulatory Agencies (DORA). Any case filings, settlements, interventions, rules and regulations, policies, procedures and hiring authorities are within the jurisdiction of DORA.

The OCC does not regulate anyone. Rather, it provides consumer representation through a state agency. As a consumer counsel, its sole role is to represent consumers in utility matters. Representation of Colorado consumers requires a thorough knowledge of complex issues related to the utility industry, its practices, and its effects on the general public. The OCC serves the public interest through advocacy in the following areas:

- Advocate for reasonably and affordably priced quality utility service.
- Achieve savings for utility consumers through participation in regulatory procedures and through settlements with utility companies that result in rate reductions, refunds, or reductions in proposed rate increases.
- Ensure that utility laws, regulations and policies are equitable for residential, small business, and agricultural consumers.
- Serve as a technical resource for utility consumers, legislators, small business, the utilities, and other government agencies.
- Ensure quality service for consumers that, at a minimum, meets standards established through Public Utilities Commission (PUC) rules.

To determine which issues and cases to pursue, the OCC reviews every application/filing with the PUC in regard to the three types of utilities that the OCC is statutorily required to address - natural gas, electric, and telecommunications. An analyst reviews the individual application/filing and determines whether it impacts Colorado consumers. If there is an impact, the OCC takes the appropriate action, primarily in the form of an intervention in the application/filing. With regard to rulemaking proceedings, the OCC receives Notices of Rulemakings and again, to the extent a rulemaking procedure has an impact on constituents, the OCC becomes involved on its constituents' behalf.

The staff of 7.0 full-time equivalent (FTE) employees consists of a Director, four Rate/Financial Analysts, a Budget Analyst, and an Administrative Assistant. The OCC is supported by three Assistant Attorneys General that provide legal advice to the staff and represent the OCC at hearings. The OCC often contracts with utility experts on a case-by-case basis to perform research and to appear as expert witnesses in hearings before the PUC. For example OCC contracts with experts or professional witnesses to provide utility rate case analysis and testimony in areas where in-house staff lacks specific expertise or does not have sufficient time available. The OCC has found this practice to be the most time and cost efficient approach in meeting its workload.

In addition to addressing rate and policy issues, OCC staff members serve on numerous task forces and working groups in Colorado and nationally, addressing such issues as federal telecommunications legislation, telecommunications network reliability, low-income energy and telephone assistance, and the provision for 9-1-1 services throughout Colorado. For example, the OCC belongs to the National Association of State Utility Consumer Advocates (NASUCA), an organization comprised of state utility consumer advocates. A staff member of the OCC chaired NASUCA's Consumer Protection Committee from early in 1999 through September 2004.

The OCC is a cash-funded, Type 1 policy independent agency. It is funded through assessments on state regulated fixed utilities, which are credited to the Public Utilities Commission Fixed Utility Fund (Fund) (§§ 40-2-114 and 40-6.5-107, C.R.S.). The amount of each utility's fee is compiled by multiplying its gross intrastate utility operating resources for the preceding year by no more than one-fifth of one percent. Three percent of the amount collected goes to the state's General Fund, and 97 percent goes to the Fund. The Fund can be used only to defray the administrative costs of supervising and regulating utilities that contribute to the Fund and to finance the OCC. The estimated cost for the operation of the OCC is less than \$.04 per month for the average residential ratepayer. The OCC expenditures and FTE for fiscal years 99-00 through 04-05 are listed in the table below.

Table 1

OCC FTE and Expenditures

Fiscal Year	Director	Staff FTE Technical	Admin.	Personal Services (Includes contractual fee)	Indirect Cost Assessment	Legal Services	Operating Expenses	Operating Expenses - Other	Total Expenditures
99-00	1.0	4.8	2.2	\$679,153 (\$121,218)	\$64,932	\$318,749	\$67,472	\$50,449	\$1,180,805
00-01	1.0	5.0	2.0	\$689,347 (\$206,218)	\$69,578	\$332,332	\$52,362	\$53,043	\$1,196,662
01-02	1.0	4.0	2.0	\$667,331 (\$115,932)	\$74,051	\$318,742	\$40,748	\$54,629	\$1,155,501
02-03	1.0	4.0	2.0	\$722,895 (\$123,512)	\$77,911	\$403,322	\$41,045	\$52,048	\$1,297,221
03-04	1.0	4.0	2.0	\$714,624 (\$110,197)	\$71,823	\$364,182	\$47,693	\$59,805	\$1,258,127
04-05	1.0	4.0	2.0	\$685,756 (\$117,917)	\$76,214	\$370,093	\$45,051	\$44,950	\$1,222,064

Operating Expenses include such items as telephone, travel, printing, postage, office supplies, etc.

Operating Expenses – Other include such items as information technology equipment, leased space, and hardware/software maintenance.

Telecommunications

Advances in telecommunications services in the local, long-distance, and international telephone markets along with technological advances in broadband, fiber-to-the-home, high-speed packet and digital switching equipment, cellular and mobile radio, satellite, and access to the Internet have created a more competitive market for telecommunications. These advancements coupled with a change in regulatory philosophy resulted in opening these markets to competition. The telecommunications industry continues to evolve rapidly as competition and new technologies produce new services. There have been many changes in the way telecommunications companies have been doing business - not only to satisfy the needs of the consumer, but also to compete with other telecommunication services.

Promoting competition and seeking ways to reduce regulatory restrictions to entry while protecting the affordability of rates, particularly to residential and rural ratepayers, continues to be a challenge for the OCC. The OCC is committed to intervening in rate cases that exceed the statutory cap on residential rates.

The examples that follow highlight the participation of the OCC in carrying out its function to assure that public policies affecting the quality and price of utility services reflect the needs of the residential, small business, and agricultural consumer.

Qwest Deregulation

In July 2004, Qwest filed an application to deregulate virtually all of the products and services offered to consumers in the state of Colorado. This deregulation would, in effect, have ended rate, service quality, and consumer complaint jurisdiction over all retail services by the PUC except for the statutory rate cap for residential service. The current statute provides that any service may be reclassified upon a showing that there is “effective competition” for that service in the relevant market.

PUC staff and the OCC, among others, subsequently filed testimony. The PUC staff, in its initial testimony, requested that the PUC reject Qwest’s proposal. The OCC offered the PUC the option to take a more balanced approach to regulating the telecommunications industry in general, and Qwest in particular. The OCC’s proposal allowed the PUC to relax regulation in those areas of products and services where Qwest was facing some competition and to respond to those challenges in a timely way. Conversely, where Qwest still enjoyed monopoly status (primary residential lines, small business lines, and rural consumers) the OCC proposed that the PUC continue to regulate Qwest without a change to the current rules and regulations.

The OCC’s testimony position afforded PUC staff, Qwest, and the OCC a basis for negotiating a modified regulatory regime to which they could agree. The PUC approved a settlement that would ease regulation of most Qwest telephone services except primary residential lines, lines for small businesses, and some “public interest” calling features. It provided Qwest with pricing freedom for some telecommunications services where consumers have competitive choices. However, the PUC retained full regulatory control

across the state over the first residential telephone line (basic service) and basic service to businesses with five lines or fewer. "Public interest" features and services, which include per-call blocking, per-line blocking, call trace, business line verification, busy line interrupt, non-listed and non-public services remained under full PUC oversight.

The PUC retained its after-the-fact authority to address complaints about unjust or unreasonable pricing or undue discrimination as well as the authority to reinstitute regulation if unforeseen consequences developed after implementation of the new regulatory plan.

New Telecommunications Technology

Voice over Internet Protocol (VoIP) allows consumers to have telephone service through their high-speed Internet connections. While the OCC recognizes that this technology presents the opportunity for increased competition and potential savings, the OCC works to ensure that the consumer protections for this service are comparable to traditional telephone service.

New technology presents the problem of protecting consumers against poor service quality and ensuring access to enhanced 9-1-1 emergency services. The Federal Communications Commission (FCC) ruled that VoIP is an interstate service and not subject to state regulation. One of the key issues that the FCC's decision affected was the states' authority to require VoIP companies to provide their customers with 9-1-1 emergency services. The OCC participated in the preparation of the comments that the NASUCA submitted to the FCC regarding the 9-1-1 issue. Subsequently, the FCC ruled that VOIP providers are required to provide access to 9-1-1. The OCC continues to advocate that all consumers purchasing some form of local service deserve comparable protections no matter how they receive their local telephone service.

U.S. West (now Qwest) Service Quality

The OCC was party to a case, whereby the PUC issued a show cause order concerning the company's declining service quality. The parties to the case, including the OCC, agreed that local telephone customers of U.S. West would receive a credit as part of a \$2.27 million refund by U.S. West. The PUC staff alleged significant service quality rule violations by U.S. West during the period January 1, 1998 through April 22, 1999. The OCC position was that the violations did occur, (although staff may have undercounted the violations) and that the PUC should provide incentives for U.S. West to correct the problems and provide remedies to the customers who had been provided inadequate service. U.S. West conceded that rules were violated but maintained that most of the violations were because of events outside its control and that the violations should be excused. U.S. West also argued that some of the rules were too difficult to comply with. The PUC agreed with the OCC calculations of the number of violations and rejected the U.S. West position that the violations should be excused. The total rebates ordered by the PUC equaled \$12.8 million.

NOW Communications, Inc.

The NOW Communications, Inc (NOW) case addressed whether rates charged for a prepaid telecommunications plan, the NOW Plan, violated Colorado's statutory rate cap for residential telephone service. The PUC approved NOW's rates and granted NOW a certificate of public convenience and necessity to provide residential basic local telephone exchange service. The district court affirmed the PUC's order.

"Both the PUC and the district court held that the monthly and non-recurring charges for NOW Communications, Inc.'s prepaid residential basic local telephone exchange service [would] not violate the statutory rate cap for such service because NOW's basic service is bundled with other services. Although the PUC did not consider the issue, on appeal the district court held that the PUC implicitly determined that rates for the NOW Plan were non-discriminatory."¹

The OCC appealed the district court ruling that had upheld the original PUC ruling to the Colorado Supreme Court. The Colorado Supreme Court held, "that residential basic local telephone exchange service is subject to the statutory rate cap of \$14.74 per month ... even if it is combined with other products ... when the final product amounts to no more than basic service."² The result was to reverse the district court decision and remand the case back to the PUC for additional proceedings. Subsequently, the PUC ordered refunds of approximately \$30,000. More significantly, it prevented NOW from continuing to offer a service above the rate cap and prevented other companies from doing the same. As a party to a case, the OCC also has the rights of any other party before the PUC, which includes appealing PUC decisions to the courts.

¹ Colorado Office of Consumer Counsel v Public Utilities Commission of Colorado, 42 P.3d 23, 23, (Colo. 2002).

² Id.

Natural Gas and Electric Cases

The OCC represents and advocates for residential, small business, and agricultural consumers' interests in rate cases, including participating in settlement negotiations regarding natural gas and electric utilities. Such activities include analyzing rate filings and utility financial information to determine the appropriate revenue requirement (including rate of return and rate spread) and to present this information in formal written and oral testimony as an expert witness before the PUC. The OCC often files a rate complaint with the PUC when financial evidence indicates rates are excessive and consumers are paying more than they should for utility service. They also negotiate settlements with utilities and other parties regarding rate proceedings. In general, the OCC has been successful at having its position adopted for a variety of issues, including adjustments to revenues and expenditures and requested rates of return.

The OCC also represents and advocates in service quality and rulemaking proceedings by formulating regulatory policies, such as protection from invasion of privacy, service quality standards, fair disconnect policies, and protection from marketing abuses.

For example, in fiscal year 04-05 the OCC participated in 69 utility case interventions involving natural gas and electric utilities (as evidence on the table below), four of which were rate cases. Effective consumer representation early in the policy formation process can often prevent costly, unnecessary litigation.

Table 2

Involvement in Natural Gas and Electric Cases

Fiscal Year	Utility Filings Reviewed	Utility Case Interventions/Rate Cases	Rulemaking Participation (# of cases)
98-99	940	80/14	5
99-00	777	71/4	6
00-01	807	54/7	4
01-02	639	57/4	4
02-03	992	77/4	5
03-04	1,221	92/11	7
04-05	930	69/4	9

Gas Cases

Since 1999, natural gas prices have continued to escalate, which has been a real concern for Colorado consumers, especially low-income consumers. In 2004, the PUC solicited comments from interested parties on how to address the volatility of retail natural gas prices, and whether it was appropriate to address that volatility. The OCC comments affirmed that volatility was a major problem, and that the issue could be addressed by including more fixed price contracts in companies' portfolios, eliminating the Gas Cost Adjustment (GCA) factor, and by substituting a fixed priced for gas for a fixed term. The OCC contracted a polling firm to determine whether customers would be willing to pay some premium if it reduced the current volatility. For the most part, participants wanted to pay a fixed rate for natural gas. Most participants were concerned about staying within a monthly budget and wanted to be able to project what natural gas was going to cost them each month. In fact, many residential participants reported that they currently partake in a "budget-billing program."

Public Service Company of Colorado Gas Rate Cases

Public Service Company of Colorado (PSCo) filed an application in 2005 to increase base rate revenue by approximately \$33.4 million. This represents an increase of 12.04 percent on jurisdictional gas revenues of \$310.7 million, or 3.11 percent on total gas revenues of \$1.073 billion. The annual average impact on customer bills would be \$22.80 for residential and \$101.04 for commercial. According to a news release issued by the OCC, the OCC filed testimony requesting that the PUC deny the entire \$33.4 million gas rate increase requested by PSCo. Furthermore, the OCC pronounced that a "detailed analysis of the company's requested rate of return, its expenses and cost allocation leads us to recommend that the PUC eliminate the increase and reduce the monthly customer charge for residential and small business consumers." Additionally, the OCC recommended reducing PSCo's rate of return to 8.5 percent. As of the release of this sunset review, this case is pending before the PUC. The hearing is scheduled for December 5-16, 2005.

PSCo filed an application in 2003 for approval of a refund plan to customers due to a supplier's refund to PSCo. The PUC staff opposed the method by which the refund would be implemented and requested that the PUC order a traditional refund. The OCC and Energy Outreach Colorado (EOC) supported PSCo's original application at the hearing. The PUC agreed with the OCC and EOC and granted the application. If the position of PUC staff had been adopted by the PUC, consumers would have received \$750,000 less in offset to the GCA and the \$390,000 payment to EOC for low-income energy assistance would have been uncertain.

In July 2000, PSCo filed for a 5.04 percent increase (\$38.8 million) in natural gas rates, which would in effect increase residential rates by 4.74 percent. The filing sought an increase in the company's rate of return on equity (profit) for its gas department from 11.25 percent to 12.5 percent. In addition, PSCo proposed a reduction in construction allowance by about 57 percent. The effect would be to increase the cost that developers, builders, and other new customers would pay to connect to the natural gas system. The OCC challenged many issues including rate of return on equity, cash working capital treatment of gas costs, depreciation, recovery of costs associated with a storage facility, and the construction allowance calculations. The OCC's testimony recommended that PSCo only be permitted to raise rates by about \$10.6 million per year. The PUC ruled that the appropriate net increase in revenue should be \$14.2 million, which was approximately \$25.6 million less than the amount requested by PSCo. The PUC also retained the existing 11.25 percent return on equity for the company's natural gas operations rather than increasing the return on equity to 12.5 percent as requested by PSCo.

In 1999, PSCo requested a \$23.4 million increase to pay for investments it had made in the natural gas delivery system to serve new customers and to maintain the existing system. It also requested that its return on equity be set at 12 percent. The major difference between the OCC and PSCo position was the appropriate rate of return on equity. The OCC's position was to support a rate of return of 9 percent. The PUC decided that the gas rate increase should be \$14.8 million per year and preserved the 11.25 percent rate of return on equity.

Public Service Company of Colorado Proposed Coal Plant in Pueblo

PSCo filed three applications in 2004 seeking PUC approval to build a new coal plant in Pueblo, to acquire wind power, and for approval of a new regulatory plan that would increase rates to finance the construction of the coal plant. PSCo proposed that this new plant be built with a "rate rider" that would allow PSCo to increase its customer's energy rates before the construction of the plant had begun. This would be the first time that an energy utility required its customers to pay for new construction before a power plant was proven necessary.

The OCC, in conjunction with several participants representing cities, large industrial electric consumers, government agencies, and environmental and community groups, presented a joint agreement to the PUC. In approving the settlement agreement without modification, the PUC granted PSCo permission to proceed with a plan to obtain approximately 3,600 megawatts (mw) of new generating capacity by 2013, including the construction of a new 750 mw coal-fired generation unit in Pueblo. The parties reported that the proposed settlement would save customers between \$500 million and \$1.3 billion as compared to other resource options considered.

In addition to the approval of the new coal plant, highlights of the settlement approved by the PUC included a construction cost cap for the new coal plant to ensure that cost overruns were not passed on to consumers. Additionally, state-of-the-art emissions controls at the generating plants and energy efficient programs to decrease peak demand and energy usage would be utilized.

Atmos Energy

In 2004, the OCC was involved in a negotiated agreement that required Atmos Energy to refund \$1.85 million to alleviate concerns that it exceeded its authorized earnings in 2002 and 2003. Atmos Energy serves approximately 105,000 customers in more than 60 communities, including Greeley, Canon City, Gunnison, Crested Butte, Lamar, and Steamboat Springs.

In 2003, Atmos Energy filed a tariff requiring all gas transportation customers to use electronic flow metering (EFM), with real-time communication with the company. Many agricultural (irrigation) customers complained that the cost of installing EFM devices would be about \$3,000 per meter and the cost of a dedicated telephone line would be about \$40/month, plus the cost of installation, wherever it was possible. After lengthy discussions, the case was settled whereby Atmos introduced an alternative solution, which was an Automatic Meter Reading device (AMR) that would cost \$500 per meter. Atmos Energy has approximately 120 irrigation customers; therefore, the one-time savings in capital costs were approximately \$300,000. In addition, telephone annual savings to customers would be \$58,000.

Natural Gas Unbundling

Senate Bill 153 was introduced in 1999 to authorize natural gas utilities to file voluntary plans with the PUC to unbundle their natural gas service. This would permit small customers to purchase the commodity portion of their natural gas service directly from the market rather than from the utility. The utility would still provide regulated delivery service of the gas commodity. OCC was involved in extensive negotiations with the natural gas industry and other interested parties that resulted in legislation, which significantly strengthened consumer protection and provided for more direction in establishing a competitive marketplace.

Electric Cases

Reliability of Service Provided by Public Service Company of Colorado

The agreement reached between PSCo, PUC staff, and the OCC in 2004 resulted in a requirement that PSCo spend an additional \$38 million from 2005-2007 on electric distribution cable replacement or repair. This agreement also required PSCo to contribute \$2 million to Energy Outreach Colorado, monies that would come from PSCo shareholders, not ratepayers.

Aquila Networks Rate Case Settlement

Aquila Networks, serving approximately 85,000 electric customers in more than 21 communities in southern Colorado, including the cities of Pueblo, Canon City, Rocky Ford and Florence, sought approval to increase its electric rates by \$11.4 million. Through an agreement between OCC and other interested parties that was approved by the PUC in 2004, Aquila Networks agreed to a rate increase of \$8.2 million. This resulted in annual consumer recurring savings of \$3.16 million.

Public Service Company of Colorado Retrofitting Coal-Fired Power Plants

PSCo sought authority to surcharge electric rates by approximately \$13.5 million per year for 15 years beginning in 2003. The surcharge was intended to recover PSCo's cost for retrofitting a number of its Denver area coal-fired power plants to reduce emissions and clean the air. The OCC opposed collecting a profit on these costs, however Senate Bill 98-142 guaranteed a recovery of the costs. OCC recommended that PSCo be permitted only enough dollars to recover the cost of debt associated with the project, excluding the equity portion of the company's return, which was designed to compensate the company for any business risk.

Federal Energy Regulatory Commission Standard Market Design

The OCC joined the Alliance of State Leaders Protecting Electricity Consumers (Alliance) in opposition to the proposed new regulations by the Federal Energy Regulatory Commission (FERC) regarding a nationwide standard market design. The proposed new regulations would have usurped the ability of states and regions to pursue their chosen electricity policies by transferring many aspects of each state's planning and ratemaking authority to FERC.

In response to state officials and members of Congress, FERC abandoned its controversial "standard market design" national grid plan in favor of less aggressive rules that maintained the long-standing division between federal and state jurisdiction over power lines.

Public Service Company of Colorado Electric and Gas Rate Case

In May 2002, PSCo filed an electric rate case requesting an increase of \$220 million per year (15.41 percent increase over their current rates). Additionally, it requested a gas rate decrease of \$12.9 million per year, which was a 4.52 percent decrease over their current rates. The request included an increase in return on equity from 11 percent to 12 percent for electric and from 11.25 percent to 12.25 percent for gas.

The OCC argued that electric base rates should be reduced by \$15.2 million annually rather than increased by \$93 million. It also argued that gas rates should be decreased by \$32 million rather than the \$13 million reduction sought by PSCo. The major components of the OCC case included a lower rate of return on equity. The OCC, PSCo, and other interested stakeholders filed an 86-page settlement agreement with the PUC, which was the result of weeks of negotiations. The agreement provided for a reduction in PSCo's rate of return on equity to 10.25 percent for electric rates and 11 percent for gas rates. The PUC voted to approve the settlement with minor modifications.

Analysis and Recommendations

Recommendation 1 - Continue the Office of Consumer Counsel until 2015

The Office of Consumer Counsel (OCC) represents consumers in residential, small business, and agricultural issues before the Public Utilities Commission (PUC). These cases involve proposed changes in electric, gas, and telecommunications utility rates and services. No other state agency represents consumers in regulatory proceedings before the PUC. Whereas the PUC must balance the interests of the regulated industries, the OCC is free to represent only the consumers' best interests. This difference in responsibilities manifests itself in different approaches and positions on issues before the PUC. Some examples that highlight this difference are presented below:

- Qwest proposed to deregulate virtually all of the products and services offered to consumers in Colorado. In Qwest's request for deregulation, the PUC staff, in its initial testimony, took the position of essentially requesting the PUC to reject Qwest's proposal, the result of which would have been to maintain the *status quo*. The OCC argued that the PUC could reject Qwest's proposal but offered the PUC the option to take a more balanced approach to regulating the telecommunications industry in general, and Qwest in particular. The OCC's alternative regulatory proposal would allow the PUC to relax regulation for products and services where Qwest was facing some competition and to respond to those challenges in a timely way. Conversely, where Qwest still enjoyed monopoly status (primary residential lines, small business lines, and rural consumer services), the PUC would continue to regulate those services without a change to current rules and regulations.
- In 1998, NOW Telecommunications, Inc. (NOW) filed an application with the PUC seeking authority to provide telephone service. NOW proposed to offer pre-paid phone service to credit impaired customers at the rate of \$35 per month. The OCC argued at the PUC hearing that the NOW plan was unjust and unreasonable because it targeted high priced phone service to persons who could least afford it, and that the \$35 per month charge was illegal because it violated the statutory rate cap that caps residential basic phone rates at \$14.74 per month. The PUC staff supported the NOW plan. The PUC granted the application; however, the OCC appealed the decision to the Colorado District Court, which upheld the PUC decision. Subsequently, the OCC appealed to the Colorado Supreme Court, which unanimously overruled the District Court and the PUC. As a party to a case, the OCC has the rights of any other party before the PUC, which includes appealing PUC decisions to the courts.

Measuring Effectiveness of the OCC

One method of measuring the effectiveness of the OCC is to calculate the amount of consumer savings the OCC reports each year. The OCC saves consumers money when it succeeds in obtaining reductions in existing rates, refunds past amounts collected, and reduces overall rate increase requests.

At times it is difficult to identify the specific credit for consumer savings in complex cases with many parties, especially when cases are resolved through settlement agreements. To compensate for these issues, the OCC records reported savings in three categories:

- The first category identifies savings for which the OCC is **solely** responsible because it alone raised an issue, took a rate position, or settled a case that resulted in savings to the consumer.
- The second category identifies savings to consumers that were raised by other parties but for which the OCC was **primarily** responsible because it played a lead role in achieving the savings.
- The third category is shared savings for which the OCC was **jointly** responsible with other parties who raised the same or similar issues resulting in savings to consumers.

From fiscal years 96-97 to 04-05, the OCC has been solely responsible for approximately \$14 million in savings to utility consumers and primarily responsible for over \$30 million. Finally, the OCC shared responsibility with other parties for about \$659 million in savings in utility cases. During the same period, the OCC's expenditures totaled almost \$10.6 million. This calculates to be \$34.45 in consumer savings per dollar expended.

OCC's calculations of savings to consumers are based on the difference between the PUC's final order and the amount initially requested by the utility. OCC's role in influencing those savings is reflected in the three categories of savings: solely, primarily, and jointly, as illustrated in the table below.

Table 3

Budget Allocations v. Consumer Savings

Fiscal Year	Savings				Expenditures
	Solely	Primarily	Jointly	Total	
96-97	\$7,289,000	\$25,097,262	\$53,800,000	\$86,186,262	\$1,061,104
97-98	\$2,300,000	-	\$77,900,000	\$80,200,000	\$1,126,524
98-99	-	-	\$102,640,000	\$102,640,000	\$1,167,200
99-00	\$2,225,405	-	\$117,448,803	\$119,674,208	\$1,180,805
00-01	-	-	\$57,925,894	\$57,925,894	\$1,196,662
01-02	\$302,281	\$4,000,000	\$12,894,474	\$17,196,755	\$1,155,501
02-03	\$1,830,000	-	\$164,054,350	\$165,884,350	\$1,297,221
03-04	\$189,338	\$1,164,406	\$35,193,366	\$36,547,110	\$1,258,127
04-05	\$36,000	\$1,850,000	\$38,043,651	\$39,929,651	\$1,222,064
Total	\$14,172,024	\$32,111,668	\$659,900,538	\$706,184,230	\$10,685,903
Adjusted	\$14,172,024 (100% Sole)	\$24,083,751 (75% Primary)	\$329,950,269 (50% Joint)	\$368,206,044	

Savings per dollar expended: \$34.45

Source: Office of Consumer Counsel

Section 24-34-104(9)(b), C.R.S., identifies the nine criteria under which an agency is evaluated to justify its continuation and its functions. The central questions which a sunset review seeks to answer are whether regulation by the agency is necessary to protect the public's 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.

Today, the increased complexity of the utility industry coupled with an ongoing regulatory restructuring towards open competition has created difficult and complex issues before the PUC that warrant a continued need for a utility consumer advocate. Utility regulation is changing from oversight of monopoly firms using a rate-based model to consumer protection in a competitive market. As regulation of utilities shifts away from rate-based regulation, a consumer-driven consumer representation is growing in importance. The independence of the OCC is significant because consumers are provided with an advocate in proceedings that is separate and independent from the PUC, which acts as decision-maker. It has the funding and expertise that many private consumer interest groups lack. It has the power to appeal PUC decisions.

Consumer savings is only one method by which to identify the OCC's effectiveness. The power to represent consumers in PUC proceedings is not limited to rate cases. The OCC is involved in rulemaking that may affect barriers to telecommunications service, such as the disconnect policy, deposit required, and credit and collections. Also, the OCC intervenes in cases regarding discontinuance of telephone service where the company either ceases offering service in Colorado or goes out of business. OCC has participated in settlement agreements that guaranteed customers continuity of service.

The expertise and focus of the OCC also allows for dissemination of information to consumers concerning the restructured utility environment. Information is disseminated through brochures, handbooks, websites, and via outreach programs, such as speeches and presentations; and by lobbying legislators and public officials. The OCC contends that for consumers to take advantage of a competitive utility marketplace, they must be educated about new market structures and be able to compare the services being offered.

There is an advantage in having the OCC as a separate entity distinct from the PUC because it lessens the chance that the relative roles of the agencies will be confused. OCC has an essential need for independence from the PUC and from the utilities to carry out its mission effectively.

In summary, the OCC serves as consumer advocate by formally representing consumers in rate and rulemaking proceedings before the PUC, and by informally representing consumer interests in a variety of forums. The OCC is a technical resource for utility consumers, legislators, businesses, the utilities and other government agencies. In carrying out its statutory mandate, the OCC's efforts result in savings to consumers, more equitable rate structures, and an increased knowledge about the effects of regulatory and statutory policies on utility consumers.

Utility Consumers Board

Creation, Mission and Composition

The Utility Consumers Board (UCB) was created by statute on July 1, 1993, to provide policy guidance to the Office of Consumer Counsel (OCC). Historically, the Attorney General had appointed a Utility Consumer Advisory Board (UCAB) to assist the OCC in carrying out its statutory functions. The UCAB was an informal group of volunteer representatives from around the state with interests in utility issues. It acted as an advisory committee to review and help guide OCC positions on utility issues. In theory, it brought the views of the various utility consumers to the OCC to assist the OCC in representing consumer interests. There was no statutory authority for the UCAB for it was an informal advisory group, meeting every other month, established at the initiative of the Attorney General and the Director of the OCC.

By contrast, the UCB consists of eleven members appointed by the Governor. Members represent residential, small business, and agricultural utility consumers, in addition to representation from the different geographic areas of the state. Members serve four year terms, and to the extent possible, have experience in consumer-related utility matters, utilities management, economics, accounting, financing, engineering, planning, or utilities law.

In representing the public interest in Colorado, the UCB's statutory authority includes:

- providing general policy guidance to the OCC regarding rulemaking matters, legislative projects, general activities, and priorities of the OCC;
- gathering data and information and formulating policy positions to advise the OCC in preparing analysis and testimony to the General Assembly; and
- reviewing the performance of the OCC and its director on an annual basis.

Meetings and Expenditures

The UCB is required by statute to meet at least six times per year. In practice, it generally meets seven times per year at the OCC's offices. UCB members do not receive compensation for their participation on the UCB, but are reimbursed for their traveling expenses incurred in the performance of official duties. The budget is used largely for hosting the periodical meetings, for photocopying and postage, and reimbursing out-of-town members for expenses incurred while traveling to Denver. UCB expenses are funded through general operating monies in the OCC budget. In total, as illustrated in the following table, the UCB has incurred \$17,515 in expenses for supplies, meals, postage, copying, and travel expenses from fiscal year 00-01 through fiscal year 04-05.

Table 4
Expenses of the Utility Consumers Board

	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05
In-State Common Carrier Non Employee (UCB Member)	\$4,453.00*	\$8.00	0	0	0
In-State Per Diem for Board Members	\$1,289.00	\$725.40	\$109.86	\$224.00	\$69.57
In-State Vehicle Reimbursement (Mileage)	\$1,635.00	\$2,519.16	\$724.08	\$498.40	\$292.88
Official Functions – Board Meeting Lunches	\$515.00	\$859.44	\$1,126.60	\$1,124.56	0
Board Meeting	\$24.00	0	\$97.00	0	\$1,222.16
TOTAL	\$7,916.00	\$4,112.00	\$2,057.54	\$1,846.96	\$1,584.61

*Airfare for a board member from Durango

Generally, the format of the meetings consists of a presentation by a guest speaker, staff recounting relevant legislative issues currently before the Colorado General Assembly, discussion by UCB members, and a report from the Director of the OCC and/or the rate analyst regarding the status and progress of various cases in which the OCC is currently participating. UCB meetings last approximately two hours and are attended by two to three OCC staff members who report on the OCC's activities and provide more background on the OCC's active cases. The attendee composition of the UCB meetings is illustrated in the chart below. During the past six fiscal years, the average attendance level for members has been 7.3.

Table 5
UCB Meeting Attendance

Meeting Date	Members Present	Guests Present	Staff Present
January 13, 2005	8	1	2
February 8, 2005	6	2	2
March 8, 2005	6	1	3
April 12, 2005	7	3	2
May 10, 2005	9	2	2
July 12, 2005	5	0	2
September 13, 2005	8	0	4
Average Participation 7.0 Members			
January 20, 2004	8	0	3
February 17, 2004	7	1	5
March 16, 2005	4	1	4
April 20, 2004	8	0	3
July 20, 2004	7	1	3
September 2004	4	2	3
November 7, 2004	7	1	4
Average Participation 6.4 Members			
January 13, 2003	7	0	3
February 10, 2003	8	1	3
March 10, 2003	6	1	3
April 14, 2003	6	0	3
May 13, 2003	8	0	3
July 15, 2003	9	1	3
September 16, 2003	8	1	3
Average Participation 7.4 Members			

Meeting Date	Members Present	Guests Present	Staff Present
February 15, 2002	8	0	4
March 8, 2002	6	0	3
April 19, 2002	8	2	2
May 20, 2002	8	0	3
June 24, 2002	8	0	3
August 26, 2002	6	0	3
November 18, 2002	8	0	3
Average Participation 7.4 Members			
January 11, 2001	6	0	3
February 15, 2001	6	0	4
March 19, 2001	7	0	3
April 9, 2001	8	2	3
May 21, 2001	6	1	3
July 9, 2001	7	0	3
October 22, 2001	9	0	8
Average Participation 7.0 Members			
January 5, 2000	9	0	3
February 2, 2000	10	0	4
March 1, 2000	11	0	4
April 5, 2000	8	1	5
June 21, 2000	7	0	3
September 7, 2000	7	0	2
November 9, 2000	7	0	3
Average Participation 8.4 Members			

Analysis and Recommendations

Recommendation 2 – Continue the Utility Consumers Board until 2015.

For the purposes of this review, staff of the Department of Regulatory Agencies (DORA) reviewed UCB minutes for meetings from 2000-2005 and attended meetings in 2005. To determine whether the UCB should be continued, it is necessary to assess whether it has fulfilled its statutory mandates. The UCB is charged with providing general policy guidance and oversight to the OCC.

During the past several years, the meetings have generally consisted of a review by the Director of the OCC and analysts concerning the status of cases; limited discussion by UCB members on specific cases; updates on legislative issues by OCC staff; and presentations by such entities as Qwest, Public Service Company of Colorado, Comcast, Colorado Telecommunications Association, Energy Outreach Colorado, and Vonage Broadband Phone Company. However, as reported previously, of the 11-member board, the average attendance of all meetings since 2000 equals 7.3 (66 percent). Those in attendance generally represent the Denver Metropolitan Area.

As a consumer office directed to represent Colorado consumers, it is important for the OCC to have easy access to a consumer forum. The regulation of utilities is filled with many complex issues over many disciplines. Utility issues differ not only technically but also in how they affect consumers demographically and geographically. The ability of the OCC to obtain advice that includes all of these elements is important to fulfilling its statutory purpose of representing the interest of residential, agricultural, and small business users in Colorado. The UCB provides the OCC with a mechanism to measure positions on issues across the state. However, the function of the UCB could be improved with better participation from members and a greater geographical diversity.

Eliminating the UCB would result in no significant cost savings. The UCB fosters public involvement by seeking participation of Colorado's citizens. The regulation of utilities is filled with many complex issues over many disciplines. The availability of an active consumer board that is apprised of these issues provides an opportunity for consumers' voices to be heard directly by an agency. For these reasons DORA recommends the continuation of the Utility Consumers Board.

Appendix A – Sunset Statutory Evaluation Criteria

- (I) 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;
- (II) 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;
- (III) 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;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) 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;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) 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;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.