

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO OFFICE OF
CONSUMER COUNSEL AND
THE UTILITY CONSUMERS
BOARD

1997 SUNSET REVIEW



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EXECUTIVE SUMMARY

The Department of Regulatory Agencies (DORA) has concluded its 1997 Sunset Review of the Office of Consumer Counsel (OCC) and the Utility Consumers Board (UCB). DORA found that there is a continued need for both the OCC and the UCB.

The Office of Consumer Counsel (OCC) was created in 1984 by the General Assembly to provide "competent and professional" testimony on behalf of residential, small business and agricultural consumers in cases before the Public Utilities Commission (PUC). The OCC was also 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 its 13 year existence, the OCC has saved consumers tens of millions of dollars in utility rates while also acting as the major consumer representative in numerous policy making issues before the commission and legislature. As Colorado enters a new era in regulatory restructuring, the OCC will continue to play an important role as consumer advocate.

The UCB provides valuable assistance to the OCC in developing policy directives for the office. Its 15 member board consists of individuals with backgrounds in consumer related utility matters. The UCB provides consumer representation from around the state allowing the OCC to receive input from different demographic areas. As a consumer advocate, it is essential that the OCC have such a body of consumers.

In addition to the recommendations of continuing the OCC and UCB, this report recommends §40-6-108, C.R.S., be amended to exclude the OCC and utilities from requiring twenty-five signatures before they issue a complaint regarding reasonableness of rates or charges of any gas, electric, or telephone public utility. Cases such as these affect many consumers and the signature requirement creates an unnecessary procedural burden on the OCC and other utilities.

Finally this report makes an administrative recommendation to the PUC to provide the OCC "read access" to their complaint database. This will give the OCC the ability to better analyze complaint trends that affect consumers as a group.

BACKGROUND

Introduction

The Colorado Office of Consumer Counsel (OCC) terminates on July 1, 1998, unless continued by the General Assembly §40-6.5-108, C.R.S. The purpose of this review is to evaluate the performance of the office since its last sunset review in 1992 and the statute under which it operates. This review is intended to determine whether the OCC is a necessary state agency and if it continues to function in the public interest.

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 regulation imposed by the Colorado PUC.

History Of The OCC

The OCC was created by the General Assembly as a division of the Attorney General's Office on July 1, 1984. Senate Bill 181, which created the office, was the culmination of a decade of extensive efforts to pass legislation which would provide a special consumer advocate in the area of public utilities. The creation of the Colorado OCC reflected a nationwide trend for such advocates as a part of the utility regulatory process.

The OCC was created to provide "competent and professional" 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 Colorado Attorney General's Office, 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 a Utility Consumer Board (UCB) to assist the OCC. The UCB is comprised of representatives from around the state whose interests and experiences reflect the diversity of Colorado's utility consumers. It includes representatives from senior citizen organizations, small business, public interest consumer organizations, the Western Slope, rural consumers and individuals with expertise in utility consumer issues. The UCB meets regularly to review the activities of the OCC and to discuss utility issues of concern to consumers.

The OCC is funded through an assessment on the state's regulated utilities. Thus, the General Assembly annually appropriates a specific amount of cash funds for the OCC. The OCC's funding comes from utility ratepayers, not the General Fund. In this way, the OCC is funded by those utility consumers who are intended to benefit from its work. The estimated cost for the operation of the OCC is \$0.05 per month for the average residential ratepayer.

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 which 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 OCC should assume 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, it 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 Attorney General's Office and the DORA studied those issues raised by the legislative committees and published their results and recommendations. As a result of this process, the OCC was transferred to the DORA through a type 1 transfer while the attorneys for the OCC remained within the Attorney General's Office. Additionally, the Utility Consumers Board was continued and also transferred to DORA. However, members of the Board are now appointed by the Governor.

SUMMARY OF STATUTE

The function of the 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 PUC" §40-6.5-104, C.R.S. 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 and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges in matters involving rule-making which have an impact on the charges, the provision of services, or the rates to consumers, and in matters which involve 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 §40- 6.5-104, C.R.S.

In 1992, the General Assembly expanded the jurisdiction of the OCC. It now can participate in utility proceedings before federal courts and agencies such as the Federal Energy Regulatory Commission and the Federal Communications Commission.

The OCC is the advocate of utility consumer/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 represents consumers primarily by intervening in complex utility rate and rule-making cases. The OCC's representation of consumers requires examining technical evidence filed by the utility company, providing expert testimony on the consumers' behalf, cross-examining other witnesses in the case and making legal arguments before the PUC. The OCC is also the consumers' representative in settlement negotiations.

The OCC's role has also included 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 legislature and other decision makers.

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 External Affairs Section handles individual consumer complaints.

The powers of the OCC are identified in §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 of 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, rule making 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.

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 any member of its staff, like all parties to a case, must refrain from *ex parte* communications with members of the PUC, but OCC staff do have the same rights and are governed by the same *ex parte* rules as all other intervenors.

STRUCTURE OF THE OCC

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

The OCC staff of 8.0 FTE consists of four Rate/Financial Analysts, an Administrative Program Specialist, an Administrative Director and Administrative Assistant. The OCC staff is also supported by three attorneys and an assistant from the Attorney General's Office. The Administrative Director is an attorney with expertise in utility regulatory and policy matters. This staff has very successfully served its statutory goals with the assistance of utility experts within which the OCC contracts on a case-by-case basis to perform research and to appear as expert witnesses in hearings before the PUC.

In 1993, the OCC relocated physically from the Attorney General's Office to DORA. Located in the same building as the PUC, the OCC has easy access to PUC documents and hearings. The OCC is supported by three assistant attorneys general that provide legal advice to the staff and represent the OCC at hearings.

The OCC is funded through an assessment on state regulated utilities called the Fixed Utility Fund, (Fund), §40-2-110(1), C.R.S. The Fund consists of fees collected from regulated fixed utilities. The amount of each utility's fee is compiled by multiplying its gross intrastate operating resources for the preceding year by no more than 1/5 of one percent. Three percent of the amount collected goes to the state's General Fund and 97% goes to the fixed utility fund. The amount of the Fund can be used only to defray the administrative costs of supervising and regulating utilities that contribute to the fund and the financing of the OCC.

Approximately 40 states and the District of Columbia have established utility consumer advocate offices similar to the OCC. The majority of the state consumer advocate offices belong to the National Association of Utility Consumer Advocates (NASUCA). The Colorado OCC is a member of this national organization. NASUCA plays a leading role in debating energy, utility and telecommunications policies throughout the United States.

SUNSET ANALYSIS

Section 24-34-104(9)(b), C.R.S., identifies the eleven 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.

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. To perform these functions, the OCC requires adequate staff and resources to ensure consumers are fairly represented.

In 1984, the General Assembly determined that there was a lack of quality representation for residential, small business and agricultural utility consumers in Colorado. As a response to this finding, the General Assembly created the OCC to perform these tasks. Since 1987, the OCC has been subject to two sunset reviews. Both reviews concluded there was a continued need for OCC services. 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.

Throughout the country, states are undergoing regulatory restructuring in the fixed utilities. As competition emerges in what has traditionally been regulated monopolies, Colorado regulators and citizens will confront many new challenges in providing utility access to all while maintaining reasonable utility rates. Colorado has only begun the transition from monopolies to competition. This transition may take several years or decades before all utilities are open and consumers see effective competition. Below is a summary of regulatory restructuring in the fixed utilities.

Telecommunications

Throughout much of this century, state and federal governments have allowed the telecommunications and electric utilities to function as regulated monopolies. The early goal was to ensure that basic services were provided to all Americans whether they lived in rural or urban settings. In order to achieve this goal, companies were provided monopolies to ensure reliable and relatively inexpensive access to the public. Called universal service, this concept was designed to ensure that basic services were available and affordable to all citizens in all areas and that the scope of these services expand with new technological advancements.

Advances in telecommunications services in the local, long-distance and international telephone market along with technological advances in cellular and mobile radio, satellite, and Internet created a more competitive market for telecommunications. These advancements coupled with a change in regulatory philosophy resulted in opening these markets to competition. The beginning of this deregulation began in 1982 with the elimination of AT&T's regulated monopoly over United States telephone service.

The break-up of AT&T in 1982 created a competitive market in the long distance market. Local telephone companies were divided into seven Regional Bell Operating Companies (RBOCs), known collectively as "Baby Bells," who continued to enjoy a virtual monopolistic control over their areas of local telephone service. The country's service territories were divided into local access transport areas or LATAs. Basic local exchange service was provided by the RBOCs as well as other independent local exchange carriers (LECs). Under the terms of the break-up, these RBOCs had exclusive franchises to provide intrastate basic local exchange service but were prohibited from entering certain lines of business including the long distance market.¹

¹ Victoria A. Ramundo, *The Convergence Of Telecommunications Technology And Providers: The Evolving State Role In Telecommunications Regulation*, 6 ALB. L.J. SCI & TECH 35, 40-42 (1996)

Federal Telecommunication Restructuring

In 1996, the Federal Telecommunications Act (the “Act”) was signed into law. This law allowed a wide variety of companies, including cable, wireless, long distance and satellite companies and electric utilities to compete in offering telecommunications services for both local and long distance services. The Act established provisions for new companies (“entrants”) to compete with RBOCs for local telephone service, and for RBOCs to compete with interexchange carriers for long distance service. The law also allowed the Federal Communications Commission (FCC) to preempt any state or local law or regulation that presents an “illegitimate barrier” to the telecommunications market by favoring one provider over another. Incumbent companies must sell other carriers access to their physical infrastructure, emergency and directory assistance services, and transmission and switching services on an as needed basis. Incumbents, in turn, are permitted to offer long distance services outside their home regions. The law also allowed cross-ownership of cable television and telephone companies, which prior to the Act was illegal. Finally, the law gave the FCC explicit authority to require common carriers to provide universal service.²

Congress divided telecommunications carriers into four classifications and varied the degree of regulation within each category. They are:

General Telecommunications Carrier - Identified as any entity offering, for a fee to the public, to transmit information without changing the content of that which is transmitted. General telecommunications carriers have a duty to interconnect directly or indirectly with all other carriers.

Local Exchange Carriers - Those entities that provide local exchange service or service access. Under the 1996 Act, LECs are barred from prohibiting or imposing discriminatory or unreasonable conditions on the resale of telecommunications services. LECs must allow (within technological feasibility) consumers to switch among telecommunications carriers without having to change their telephone/telecommunications number (number portability). LECs must provide dialing parity, meaning that customers dial the same number of digits to use any telecommunications carrier. LECs must provide their competitors with access to their poles, conduits, and other rights of way. Finally, LECs must establish reciprocal compensation agreements whereby a call originating in one LEC network compensates the LEC network in which that call terminates.

² Michael I. Meyerson, *Ideas of the Marketplace: A Guide to The 1996 Telecommunications Act* 49 Fed. Comm. L.J. 251, 255-257 (1997)

Incumbent LECs - These are LECs that were in existence prior to opening the market to competition (in Colorado, US WEST). While following the obligations set out above, incumbents have additional responsibilities. Incumbents must provide interconnection from other telecommunications carriers at any technical feasible point in their network. Incumbents must provide interconnection to all providers who wish to provide local telephone exchange service and exchange access. Incumbents must make available unbundled access to network elements, meaning that the availability of access to distinct parts of the incumbent's network at an appropriately lower wholesale cost than access to all of the elements of the network. Incumbents must also allow other carriers to place their equipment at the site of the incumbents' own existing center. Finally, incumbents are required to sell to other carriers, at wholesale rates, the same telecommunications services they provide to consumers.

RBOCs - These are entities which may provide long distance service to local clientele but must first meet all criteria from a "competitive checklist."³

Colorado Regulatory Restructuring

Nine months prior to the enactment of the Federal Telecommunications Act, the Colorado Legislature enacted House Bill 95-1335 which opened Colorado's local telephone exchange to competition. The legislature charged the PUC with promulgating rules by July of 1996, in six specific areas dealing with regulatory restructuring. They were:

1. Certification of Telecommunication Carriers
2. Interconnection and Unbundling
3. Local Number Portability
4. Resale
5. Universal Service/High Cost Fund
6. Services

³ *id.*, 252-257

Implementation of these rules proved to be a difficult task. First, the legislature provided a limited time frame for the PUC to implement these rules. As a new regulatory initiative that was at the forefront of national and state telecommunications regulatory restructuring, the PUC had little or no guidance from other states to address many of the complexities surrounding these telecommunications issues. Task forces were created by the PUC to receive input in the development of these regulations. Through the hard work of many at the PUC, the OCC, industry and other interested parties, rules were adopted that addressed most of these issues. The OCC has been an integral participant in drafting the language of HB 95-1335 and the development of rules and regulation that comply with this law.

The adoption of HB 95-1335 has placed Colorado ahead of much of the nation in telecommunications restructuring. Many states are now only beginning to create task forces and wrestle with issues that Colorado has already solved. The enactment of HB 95-1335 also placed Colorado in a good position for it to implement the Federal Communications Act (Act) requirements. The Act charged the PUC with approving or rejecting all interconnection agreements negotiated among carriers and also to conduct binding arbitration for those agreements where a party requested it. As of September 1997, 21 companies have been approved by the PUC to provide local telephone service in Colorado.

Colorado's local telephone service is dominated by US WEST. As an incumbent LEC and one of the RBOCs, US WEST, prior to state and federal legislation, had a monopoly on local service. As a monopoly, it in turn guaranteed universal service. Regardless of the location or cost, US WEST was required to provide basic telephone service to Coloradans. As a monopoly, more expensive service costs could be off-set through larger profits in greater rate-of-return areas.

The opening of competition makes the continuation of universal service more difficult to accomplish. Competition will occur first where companies can make the greatest profit. Certain areas of the state and types of service provide a greater rate-of-return than other areas or types of service. Generally speaking, business telephone service in a concentrated area provides the greatest rate of return for a company. In Colorado, Denver and the Denver Tech Center are the high profit areas. Moving down the “rate-of-return” chain towards the least desirable market, companies are less inclined to provide service in residential, and finally rural residential areas. The reason is that it requires less capital for a company to provide telecommunication lines to a building that may serve hundreds or thousands of people than to run lines throughout a neighborhood. Likewise, costs increase further when those houses are farther apart, as in rural areas. The OCC has put forth considerable effort in ensuring that universal service is available and affordable to all of Colorado’s citizens. The OCC was instrumental in placing a price cap on residential telephone service and amending the Universal Service High Cost Fund (Fund) to off-set the high costs of rural local exchange service.

New competition in the telecommunications market makes it essential that the OCC be an active participant in future decisions. With the change in telecommunications regulation, the OCC had adapted its role to continue to support the best interest of the consumers they represent.

Electricity

The regulation of electricity seems to be following a very similar route as that of telecommunications. In the past two years, bills in both in the U.S. Congress and the Colorado Legislature have proposed customer choice of the electric industry. Currently, the retail supply of electricity is provided through franchise-electric monopolies. Like telecommunications, technological advancements in electric-generating technology, lower natural gas prices (as compared to coal as a fuel source), and recent regulatory actions have paved the way for discussions of competition in the local electric markets. Termed “retail wheeling,” open competition would allow customers to purchase electricity directly from the electric generation company of their choice and have it delivered by their local utility.

Large wholesale electric generation is already occurring in the electric market. The Federal Energy Policy Act of 1992 and the Federal Energy Regulatory Commission Order 888 in 1996 were the result of federal initiatives to increase competition in the wholesale power market. Through these initiatives, utilities are purchasing increasing amounts of electricity from a variety of bulk suppliers, allowing the purchaser the ability to buy less expensive electricity.

Proponents of retail wheeling state that it will lower consumers' electric bills as wholesale wheeling did for bulk producers. Opponents argue that competition will benefit only the industrial and large commercial customers and increase costs to residential customers.

Colorado has over fifty three electric utility companies that supply virtually all of the retail electric sales in the state. These utilities can be categorized into three general types: 1) investor-owned (Public Service Co. of Colorado and WestPlains Energy); 2) rural electric cooperatives (22 co-ops); and 3) municipal utilities (29 municipal owned utilities). Investor owned utilities are regulated by the PUC while rural electric cooperatives and municipal utilities are regulated by their board of directors or municipalities they serve.

In 1996 and 1997 bills were introduced in the Colorado General Assembly proposing retail wheeling, but they did not pass. It is likely that the Colorado Legislature will again debate the merits of retail wheeling. As it does, it will need to address many complex and controversial issues related to this proposal, including:

- Impact on rates and reliability of the electrical delivery system
- The ability of utilities to recover investments already made in power plants that may not be used (commonly termed stranded costs)
- Determining the provider of last resort in a competitive market
- The type of regulation will be necessary with competition

In the past , the OCC and its Board have opposed retail wheeling because of the uncertainty of its benefit to consumers. Should the debate over retail wheeling continue, the OCC will be an integral party to further discussions of these issues.

Gas

While much of the attention on public utilities has focused on telecommunications and electricity, natural gas has quietly undergone its own regulatory restructuring. The natural gas industry has experienced significant changes since the mid-1980s. Prior to that time, natural gas was delivered to consumers via local gas distribution companies and municipal gas distribution systems. Local gas distribution companies were state regulated monopolies that purchased their gas from interstate pipelines. Pipelines were also considered monopolies and were regulated by the Federal Energy Regulatory Commission (FERC). FERC Order 436 in the 1980's and Order 636 in 1992 resulted in deregulating gas prices and changing the regulatory format of gas by separating the commodity "gas" from the transportation of that commodity. Currently, the price of gas is determined in a competitive environment on the interstate basis, while the transportation of the gas to low volume customers continues to be a regulated service. Local distribution companies (LDCs) may now purchase gas from whomever is least expensive, thereby reducing the cost to consumers. The positive effect of open access to the wholesale gas supply has raised the issue in Colorado of extending this regulatory restructuring to the retail side. Theoretically, end consumers would be able to purchase their gas from whomever they wished.

The OCC has kept abreast of these and other gas issues and any regulatory restructuring will be closely monitored by the OCC.

Recommendation 1: Continue The Office Of Consumer Counsel

The OCC represents consumers in residential, small business and agricultural issues before the PUC. These cases involve proposed changes in electric, gas and telecommunications utility rates and services. No other state agency represents consumers in regulatory proceedings at 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:

- The past merger of Public Service Company with Southwestern Public Service Company created a company projected net savings of \$770 million. Colorado ratepayers would not receive immediate benefits in the form of lower base rates. The OCC recommended that the merger be restructured and PSCo be required to reduce electric rates. One element of the restructure plan included an \$18 million rate reduction to base electric rates.
- The OCC was the only party to oppose the application by PSCo to increase gas rates by \$1,580,304. PSCo alleged that the PUC had miscalculated the weather normalization adjustment.
- US WEST proposed to discontinue its CENTREX Plus to new customers. CENTREX Plus is a discounted business communications system furnished from a central office. CENTREX Plus typically bundles basic local exchange service with various advanced features. Competitive local exchange providers use this enhancement to resell US WEST's CENTREX Plus service to multiple small business and residential users by consolidating them onto a single CENTREX Plus system. The OCC and several competitive local exchange providers opposed the proposal. OCC argued that the proposal violated the 1996 Federal Telecommunications Act and Colorado's HB 95-1335 by creating barriers to entry for new entrants and reducing short-term resale competition. The PUC agreed that US WEST should not discontinue its CENTREX Plus system.

As a party to a case, the OCC also has the rights of any other party before the PUC. This includes appealing PUC decisions to the district court. This ability presents a balancing effect with the PUC.

For example, in 1991, Public Service Company obtained a refund of natural gas overcharges from one of its suppliers. PSCo asked the PUC to award it a bonus of \$5 million of the refund for its "extraordinary" efforts in securing the

refund. Over the OCC's objections, the commission approved a \$3.27 million bonus for PSCo. The OCC successfully appealed the PUC decision to district court and to the Colorado Supreme Court. PSCo must return the refund, with interest, to ratepayers.

The OCC has intervened on behalf of consumers in 124 utility cases before the PUC. Over the last five years, the OCC has continued to increase the number of consumer interventions. Over this period of time, the budget for the OCC has remained relatively constant, between \$700,000 and \$750,000 per year. While the size and funding have remained fairly fixed, the OCC has had its burden increase dramatically over the last few years due to the changing regulatory structure of telecommunications.

YEAR	CASE INTERVENTIONS
1992-1993	86
1993-1994	103
1994-1995	120
1995-1996	124
1996-1997	98

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 of past amounts collected, and reductions in 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 1993-1997 the OCC has been responsible for savings in the amount of tens of millions of dollars to consumers. Below is a chart of these savings.

	96/97	95/96	94/95	93/94	92/93
Solely	\$89,000 - one time savings \$7.2 million annual savings	\$2.1 million annual savings	\$20.2 million- one time savings	\$130,000 annual savings	\$36 million annual savings
Primarily	\$597,262 - one time savings \$24.5 million annual savings		\$91,223 annual savings	\$23 million annual savings	
Jointly	\$53.8 million annual savings	\$6.0 million annual savings \$5.5 - one time savings	\$27.3 million annual savings \$4.0 million - one time savings	\$87 million annual savings	\$3 million annual savings

Consumer savings is only one method by which to identify the OCC's effectiveness. The OCC is also intricately involved with statutory and regulatory policies involving the regulatory restructuring of utility markets. Over the past two years, the OCC has spent considerable resources to ensure that consumers receive the most benefit from open competition in the telecommunications market. A list of the OCC's accomplishments over the last five years is outlined in Appendix I.

During the course of this review, DORA interviewed members of the regulated utility industry, the PUC, and associations. Without exception, all believed in the continued need for the OCC.

Based on the past work of the OCC, the tremendous service it provides to the public and the broad support for its existence, DORA recommends the continuation of the Office of Consumer Counsel until 2005.

Recommendation 2: Exclude 25 signature requirement for complaints

Section 40-6-108, C.R.S., should be amended to exclude the OCC and utilities from requiring twenty-five signatures before they issue a complaint regarding reasonableness of rates or charges of any gas, electric, or telephone public utility.

Section 40-6-108, C.R.S., identifies how complaints may be heard before the PUC. Within this section, subsection (b) defines the parameters of who may issue a complaint regarding the reasonableness of rates or charges of public utilities. Subsection (1)(b) reads as follows:

“No complaint shall be entered by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water, or telephone public utility, unless the same is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the county, city and county, city, or town, if any within the alleged violation has occurred, or not less than twenty-five customers or prospective customers of such public utility.”

The requirement of twenty-five signatures has outlived its usefulness and has also created an unnecessary burden for complainants in this era of open competition. The rise of competition in utilities has created a new class of complaint. Regulatory restructuring in some of the utilities has created a situation in which numerous competitors, at times, wish to file complaints against a competing company. When this occurs, the complaining company must present twenty-five signatures of customers or prospective customers along with their complaint. In order to satisfy this requirement, companies get signatures from their employees. The OCC performs the same unnecessary task when it wishes to file a complaint against a utility. Past customer rate complaints have either had the backing of legislatures or were part of OCC initiatives. For these reasons, DORA recommends that the twenty-five signature requirement for filing a complaint regarding the reasonableness of any rates be amended.

Administrative Recommendation: The OCC Should Have “Read Only Access” To PUC Complaint Database

In addition to providing better statistical analysis of complaint data to the public, the PUC should also provide “read only access” of their complaint database to the OCC. The OCC is responsible for representing the public in hearings and acting as a “watch dog” for consumers on rate and service issues. Easy access to complaint data is essential to the OCC for proper representation of Colorado consumers. As Colorado utilities begin to open to competition, knowledge of complaint data on the many new companies entering the state is more important than ever. Through its own analysis of the data, the OCC will be able to identify trends in the market by analyzing complaint information by company, by similar complaint and by region of the state. This data will assist the OCC in determining where resources should be targeted to most effectively protect the Colorado consumer.

UTILITY CONSUMERS BOARD

The Utility Consumers Board (UCB) was created by statute on July 1, 1993 to provide policy guidance to the OCC. The UCB consists of eleven members appointed by the Governor. Members represent residential, small business and agricultural utility consumers and also represent the different geographic areas of the state. Members serve four year terms and 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 rule making 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 annually.

The UCB meets approximately seven times per year in its effort to keep the OCC responsive to utility consumers. UCB members do not receive per diem for serving on the UCB but are reimbursed for their traveling expenses incurred in the performance of official duties. For fiscal year 1996-97, the UCB incurred total expenses of \$4,521.44. The OCC staff provides UCB members a variety of materials such as OCC position statements on matters before the PUC, PUC orders, and news clippings from around the state on various utility issues. 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 to issues before the OCC. The UCB members debate these issues and recommend positions for the OCC.

Observations by the DORA sunset review staff found the UCB meetings to be well attended and the UCB to be well informed of the varied utility issues. The UCB presented policy direction and advice to the OCC. Due to the regulatory restructuring of the telecommunications market, the UCB over the past few years has been very involved in providing policy guidance on telecommunications issues. Providing guidance on topics such as local telephone exchange rate price caps that protect rural citizens, new area code determinations for the 303 area, and legal action against companies violating the statutes and rules are only a few of the many issues the UCB has debated and provided advice to the OCC. Additionally, the UCB has been involved in gas and electric issues. These include the recent PSCo merger and positions on retail wheeling.

As a consumer office directed to represent Colorado consumers, it is important for the OCC to have easy access to a consumer forum. The UCB

provides this opportunity. The UCB's geographical makeup allows the OCC to receive consumer input from around the state. This enables the OCC to informally review new companies or products that enter the Colorado market. For example, if a new telephone service begins to operate in a particular location in the state, the UCB member from that location may informally check with other consumers on its service. At the same time, each UCB member acts as a representative of its community to alert the OCC of utility issues affecting that area. Additionally, UCB members have represented consumers in meetings such as the Rural Telecom Conference sponsored by Ft. Lewis College in Durango and regional public hearings sponsored by the PUC on rate increases requested by Public Service Company and US WEST.

The UCB provides a valuable service to the OCC and Colorado citizens. This success is reflected in the OCC's list of accomplishments. Additionally, the UCB provides an opportunity for utility consumers to advise and direct the OCC on policy directives. The regulation of utilities is filled with many complex issues over many disciplines. The availability of a consumer board that is apprised of these issues provides an opportunity for consumers' voices to be heard directly by an agency. With its geographical diversity, the UCB provides the OCC with a mechanism to measure positions on issues across the state. 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 Colorado the interests of residential, agriculture, and small business users of Colorado. For these reasons, the DORA recommends the continuation of the Utility Consumers Board.

Recommendation 3: Continue The Utility Consumers Board

APPENDICES

Appendix I: OCC Accomplishments

Below are examples of OCC's accomplishments over the last five years. 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, the health effects of electromagnetic fields, low-income energy and telephone assistance, national and regional electricity policy, consumer education about the new Colorado area code, provision of 911 service throughout Colorado, and other issues. In addition, OCC's director speaks at utility and government conferences and meetings.

FY 1996 - 1997

- During this fiscal year, the OCC participated in two major utility rate cases in which more than \$87 million in rate increases were requested, but only \$18.6 million was granted. One of the two rate cases was a request by U S West to raise residential telephone rates \$53.8 million. The OCC and other parties argued the increase was not justified and was a violation of the statutory cap on residential rates contained in Colorado's telecommunications competition law. The PUC agreed and rejected the entire rate increase. The other rate case was a request by Public Service Company to raise natural gas rates more than \$33.9 million. The OCC argued for a slight rate decrease. The PUC granted an \$18.6 million increase, or \$15.3 million less than the company requested. The OCC was solely responsible for almost 40% of the \$15.3 million deducted from the PSCo's request.
- Public Service Company of Colorado sought approval to merge with Southwestern Public Service Company and claimed the agreement would yield hundreds of millions of dollars in cost savings to the company. Only the OCC and one other party representing environmental interests argued that some of those savings should be passed through to consumers. Through a settlement among the parties that was approved by the PUC, ratepayers were granted an \$18 million annual electric rate reduction as a condition of the merger.
- The OCC legal staff and OCC/DORA were active participants at every stage of the process to introduce local telephone service competition in Colorado. The OCC/DORA represented the interests of residential, small business, and agricultural consumers in this process of informal negotiations and formal rulemakings.

- The process consisted of three stages, the first two of which were completed in FY 95-96. The first stage was the Working Group process. The OCC was an active member of the Working Group that was formed by H.B. 95-1335 and was charged with discussing the implementation of competition and drafting rules that detailed the PUC's role in the new competitive market. The Working Group met throughout the fall of 1995, often four or five days a week, and attempted to reach consensus in five key areas: (1) interconnection, (2) resale, (3) universal service, (4) certification of new entrants, and (5) Emergency 9-1-1 service. In the Working Group process, the OCC advocated rules that promote competition and ensure that the benefits of competition accrue to all customers - especially residential and small business customers - and protect the customers that remain with U S West from unfair rate increases to subsidize new entrants.
- The second stage of the process was the formal PUC rulemakings. The PUC opened eight dockets. The OCC was an active participant in all of them. In the rulemaking process, the OCC presented oral and written comments supporting the positions it developed in the Working Group. As hearings on these issues began, the Federal Telecommunications Act of 1996 was enacted. Ultimately, the OCC was able to reach agreement with the staff of the PUC and make recommendations to the PUC of (1) the appropriate applications of the federal Act and the impact of the Act's passage on the process in Colorado; and (2) reasonable, middle ground positions in all of the core areas of the rulemakings. The OCC worked very closely with PUC staff in developing interconnection, resale, and universal service rules that complied with both the federal Act and state law. The positions supported by the OCC and staff were substantially adopted by the PUC in its final decisions.
- The third stage of this process began in early FY 96-97. U S West filed tariffs to effectuate the rules and to create prices for services and products that new entrants will need to purchase if competition is to work. Additionally, the new entrants have requested authorization to provide local exchange service. The OCC continues to play a role in these proceedings where necessary and appropriate to protect the interests of residential, small business, and agricultural consumers and to ensure that the ongoing implementation of H.B. 95 1335 and the federal Act is consistent with the intent of the Colorado General Assembly and Congress.

FY1995 - 1996

- The OCC was party to a case, where the PUC issued a show cause concerning the company's declining service quality. The parties to the case, including the OCC, agreed that U S West would pay \$4 million in penalties for violation of PUC service quality rules. This agreement was approved by the PUC. In addition to the initial \$4 million, the company would incur monetary penalties if further service quality rule violations occurred through the end of calendar year 1995. At the end of the calendar year, U S West had incurred another \$1.3 million in penalties resulting from continued rule violations. As part of the settlement agreement approved by the PUC, the penalties were distributed to worthy telecommunications projects benefiting Colorado citizens. The monetary penalties were intended to provide an incentive to U S West to improve the quality of its service to its customers.
- WestPlains Energy, a division of UtiliCorp, sought PUC approval to build a 141 M W combined-cycle electric generating unit at its Pueblo Substation. The OCC recommended the PUC place three conditions on its approval of the certificate of public convenience and necessity (CPCN). The first condition would cap construction costs at \$70 million. Second, UtiliCorp investors would be at risk for partial recovery of the facility's costs if the plant failed to operate as efficiently as WestPlains projected. Third, within federal and state legal limitations, UtiliCorp investors may be at risk for partial recovery of both capital and operating costs of the facility if future electric industry restructuring renders the plant uneconomic. In this way, consumers will be shielded from any construction cost overruns, plant inefficiencies, or any negative rate impacts from electric industry restructuring. The PUC granted all three conditions and approved the WestPlains CPCN.
- In Phase 2 of Public Service Company's electric rate case, issues of rate design (how much each class of customers pays for electricity) and cost allocation were determined. (Phase 1 determined the company's revenue requirement.) In Phase 2, the OCC opposed PSCo's proposal to substantially increase the service and facilities charge to collect all the costs of the service laterals, the link from the customer's premise to the PSCo network. Adding such costs to the service and facilities charge, rather than including them in the energy charge, increases rates more dramatically and unfairly causes higher bills for low energy users. Acknowledging the OCC's concern, the PUC in its order assigned 50 percent of the costs of the service laterals to the service and facility charge and 50 percent to the energy charge. Also, in this proceeding, PSCo proposed to give interruptible customers a rate discount equal to 100 percent of the estimated value of the interruptible load based on a proxy model. The OCC opposed this proposal because it would over compensate interruptible customers, many of whom are never interrupted. The OCC proposed limiting the discount to 80 percent of the avoided cost. The PUC adopted the OCC's position, but permitted the interruptible customers to recoup the 20 percent if they were actually interrupted.

FY1994 - 1995

- Public Service Company (PSCo) sought PUC approval to build a cogeneration facility on the property of Total Petroleum Corporation. The facility would provide additional generating capacity to PSCo and allow PSCo to lower Total Petroleum's electric rates. PSCo argued the arrangement was necessary to maintain Total as an electric customer. The OCC concluded the project might raise the rates of the remaining PSCo customers and, for this reason, recommended the PUC either deny the request or place limits on the construction and fuel costs associated with the plant. In this way, consumers will be shielded from any cost overruns or gas fuel cost increases over the seven-year contract period. The PUC approved PSCo's request with the OCC's conditions. The OCC's advocacy resulted in a more equitable outcome.
- In June 1993, the OCC drafted a petition to the PUC seeking rules to protect U S West residential and small business customers from unreasonable delays in obtaining basic telephone service. A significant increase in consumer complaints about "held orders" to both the OCC and the PUC prompted the OCC's petition. The OCC proposed rules requiring telephone companies to provide telephone service within certain time frames. Failure to meet those time frames would result in sanctions, including the requirement to provide access to cellular telephone service for "held order" customers at shareholder expense, not ratepayer expense, until basic phone service was made available. In May 1995, the PUC approved a U S West-initiated cellular voucher program for its "held order" customers. The PUC revised and strengthened its "held order" rules, which became effective December 30, 1995. The rules require local telephone companies that fail to provide phone services within 30 days to provide payment of up to \$150 per month for alternative service selected by the customer.
- The OCC negotiated amendments to a major telecommunications bill, H.B. 1335. This landmark legislation opens the local telephone service market to competition on July 1, 1996. Prior to that date, the PUC was required to adopt rules setting out the requirements for competition to occur. The OCC successfully advocated for a cap on residential telephone rates and other consumer protections to ensure that the benefits of competition inure to all Colorado consumers. The OCC was a member of the Working Group and its five subgroups negotiating the rules that were recommended to the PUC in December 1995.

FY1993-1994

- In June 1994 the OCC negotiated a settlement with Public Service Company to allow the decommissioned Fort St. Vrain nuclear power plant to be retooled as a gas-turbine power plant. The OCC contracted with an expert consultant to examine the costs and benefits of repowering the Fort St. Vrain power plant. The OCC found that some of the facilities needed for the nuclear plant were not needed for the gas-turbine facility. The OCC's efforts resulted in reducing the cost of the plant to ratepayers by about \$16 million over six years. The OCC also obtained significant protections for consumers against any cost overruns in plant construction. The PUC approved the settlement agreement in July 1994.
- In January 1993, Public Service Company requested an \$81 million increase in electric and gas rates. In its request the company took the position that natural gas transportation customers (large business customers) should not bear any rate increase if one is ordered in the first phase of the case. The OCC opposed this position and argued in testimony that any rate increases should be spread across the board to all PSCo customers. The PUC agreed.
- The OCC participated in several rate cases of independent telephone companies. Although the number of customers was small, the proposed rate increases were large on a per-customer basis. The OCC succeeded in settling several of these cases with very favorable terms for residential and small business consumers. For example, Strasburg Telephone Company proposed to increase residential rates 20 percent from \$16.40 to \$19.72 per month, and business rates 20 percent, from \$26.40 to \$31.72 per month. The OCC, PUC staff and the company settled on no increase for residential and business local service. The annual savings to consumers in these independent telephone company rate cases totaled \$167,737.
- The PUC established a docket to identify appropriate incentives to encourage PSCo to develop demand side management (DSM) resources. The OCC entered into a settlement with other parties that delayed implementation of any new incentives for DSM until a study determined the potential rate impacts of such incentives. This settlement prevented inappropriate increases in electricity rates in the short term, while further examining DSM as a cost-effective resource in the long term.

1992 - 1993

- In May 1993, the PUC approved a U S WEST proposal to raise telephone rates to pay for an upgrade of rural four party telephone lines to single party lines. In its expert testimony, the OCC supported the upgrade, but advocated alternatives to U S WEST's proposals for upgrading the most costly exchanges. In its decision, the PUC adopted the OCC's proposal to pursue technological alternatives such as rural radio and to consider the sale of certain exchanges to other providers who could upgrade service at a lower cost.
- The OCC participated in approximately 12 rate cases of independent telephone companies. Although the number of customers was small, the proposed rate increases were large on a per-customer basis. The OCC succeeded in settling several of these cases with very favorable terms for residential and small business consumers. For example, Sunflower Telephone Company proposed to increase residential rates 64 percent from \$13.13 to \$21.54 per month. The OCC, PUC staff and the company settled on a monthly rate of \$12.25, a decrease from current rates. The annual savings to consumers in these independent telephone company rate cases totaled \$521,403.
- In 1992, Public Service Company of Colorado (PSCo) obtained a refund of natural gas overcharges from one of its suppliers. PSCo asked the PUC to award it a bonus of \$5 million of the refund for its extraordinary efforts in securing the refund. Over the OCC's objections, the PUC approved a \$3.25 million bonus for PSCo. The OCC appealed the PUC decision to district court. In May 1993, the Denver District Court agreed it was retroactive ratemaking and ordered PSCo to return the \$3.25 million, with interest, to ratepayers.
- In the Peoples Natural Gas Company Rate Case, the OCC successfully negotiated a settlement that resulted in residential customer rates being \$76,600 lower than the rates proposed by the company. The OCC routinely examines rate increases, rate reductions, and rate refunds to ensure that residential, small business and agricultural consumers receive an equitable share of the refunds-and pay only a fair share of increases.

Appendix II: 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 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 public interest.

Appendix III: Statute

40-6.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Agricultural consumer" means a public utility customer whose utility service is classified as an agricultural user or an irrigation user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.

(2) "Commission" means the public utilities commission created in article 2 of this title.

(3) "Public utility" means an electric utility, gas utility, or telephone utility.

(4) "Residential consumer" means a public utility customer whose utility service is limited to his residence.

(5) "Small business consumer" means a public utility customer whose utility service is classified as a small business user or a small commercial user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.

40-6.5-102. Office of consumer counsel - creation - appointment - attorney general to represent.

(1) There is hereby created, as a division within the department of regulatory agencies, the office of consumer counsel, the head of which shall be the consumer counsel, who shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) (a) The office of consumer counsel shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies as if the same were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) (I) On July 1, 1993, all employees of the office of consumer counsel, except for those employees who are attorneys at law serving as assistant attorneys general or support staff to such attorneys, whose principal duties are concerned with the duties and functions transferred to the office of consumer counsel in the department of regulatory agencies pursuant to paragraph (a) of this subsection (2) and whose employment in the office of consumer counsel is deemed necessary by the executive director of the department of regulatory agencies to carry out the purposes of this article shall be transferred to the office of consumer counsel in the department of regulatory agencies and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with the state personnel system laws and rules and regulations.

(II) On July 1, 1993, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the office of consumer counsel pertaining to the duties and functions transferred to the office of consumer counsel in the department of regulatory agencies pursuant to paragraph (a) of this subsection (2) are transferred to the office of consumer counsel in the department of regulatory agencies and shall become the property thereof.

(3) (a) The office of consumer counsel shall be under the policy guidance of the utility consumers' board, which board is hereby created. The board shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies and the executive director thereof as if the same were transferred to the department by a type 1 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) The board shall consist of eleven members appointed by the governor. Such members shall be appointed to represent residential, small business, and agricultural utility consumers.

Such members shall, to the extent possible, be persons with expertise or experience in consumer related utility matters, utilities management, economics, accounting, financing, engineering, planning, or utilities law. In making appointments to the board, the governor shall ensure that the membership of the board represents the different geographic areas of the state. Of the members of the board appointed for terms beginning July 1, 1993, five of such members shall be appointed for terms of two years and six shall be appointed for terms of four years. Thereafter, members of the board shall be appointed for terms of four years. The governor shall not appoint any

member of the board if such person has any conflict of interest with such person's duties as a member of the board. The governor may remove any board member for misconduct, incompetence, or neglect of duty. Board members shall serve without compensation, but members who reside outside the counties of Denver, Jefferson, Adams, Arapahoe, Boulder, and Douglas shall be entitled to reimbursement for reasonable actual expenses to attend board meetings in Denver. The board shall meet at least six times per year.

(c) It is the duty of the board to represent the public interest of Colorado utility users and, specifically, the interests of residential, agricultural, and small business users, by providing general policy guidance and oversight for the office of consumer counsel and the consumer counsel in the performance of their statutory duties and responsibilities as specified in this article. The powers and duties of the board shall include, but not be limited to, the following:

(I) Providing general policy guidance to the office of consumer counsel regarding rule-making matters, legislative projects, general activities, and priorities of the office;

(II) Gathering data and information and formulating policy positions to advise the office of consumer counsel in preparing analysis and testimony in legislative hearings on proposed legislation affecting the interests of residential, small business, and agricultural utility users;

(III) Reviewing the performance of the office of consumer counsel annually.

(IV) Conferring with the executive director of the department of regulatory agencies on the hiring of the consumer counsel and consulting with such executive director on the annual performance evaluation of the office of consumer counsel and the consumer counsel.

(4) It is the duty of the attorney general to advise the office of consumer counsel and the board in all legal matters and to provide representation in proceedings in which the office of consumer counsel participates.

Editor's note: Subsection (3)(c)(III) was in an act that was passed without a safety clause. It will take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly unless a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution. In that event, it will take effect on the date of the official declaration of the vote by proclamation of the governor if it is approved by the voters at the 1996 election.

40-6.5-103. Qualifications - conflict of interest.

The consumer counsel shall have at least five years of experience in consumer related utility issues or in the operation, management, or regulation of utilities as either an attorney, an engineer, an economist, an accountant, a financial analyst, or an administrator or any combination thereof. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as consumer counsel.

40-6.5-104. Representation by consumer counsel.

(1) The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges, in matters involving rule-making which have an impact on the charges, the provision of services, or the rates to consumers, and in matters which involve 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.

(2) In exercising his discretion whether or not to appear in a proceeding, the consumer counsel shall consider the importance and the extent of the public interest involved. In evaluating the public interest, the consumer counsel shall give 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. If the consumer counsel determines that there may be inconsistent interests among the various classes of the consumers he represents in a particular matter, he may choose to represent one of the interests or to represent no interest. Nothing in this section shall be construed to limit the right of any person, firm, or corporation to petition or make complaint to the commission or otherwise intervene in proceedings or other matters before the commission.

(3) The consumer counsel shall be served with notices of all proposed gas, electric, and telephone tariffs, and he shall be served with copies of all orders of the commission affecting the charges of agricultural consumers, residential consumers, and small business consumers.

40-6.5-105. Intervenors other than the office of consumer counsel.

(1) If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors, other than the office of consumer counsel, and the amounts thereof shall be based on the following considerations:

(a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel;

(b) The testimony and participation of other intervenors must have addressed issues of concern to the general body of users or consumers concerning, directly or indirectly, rates or charges;

(c) The testimony and participation of other intervenors must have materially assisted the commission in rendering its decision;

(d) The expenses of other intervenors must be reasonable in amount;

(e) The testimony and participation of other intervenors must be of significant quality;

(f) The participation of other intervenors must be active during the proceeding and not merely an appearance for purposes of establishing legal standing; and

(g) The payment of expenses of other intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

(2) The commission shall promptly report the award of any intervenors' expenses to the executive director of the department of regulatory agencies.

Editor's note: Subsection (2) was in an act that was passed without a safety clause. It will take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly unless a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution. In that event, it will take effect on the date of the official declaration of the vote by proclamation of the governor if it is approved by the voters at the 1996 election.

40-6.5-106. Powers of consumer counsel.

(1) The consumer counsel:

(a) May employ such attorneys, engineers, economists, accountants, or other employees as may be necessary to carry out his duties and shall employ a maximum of sixteen full-time employees or the equivalent thereof;

(b) Shall be granted, by the commission, leave to intervene in all cases where such request is made in conformance with rules of the commission;

(c) May contract for the services of technically qualified persons to perform research and to appear as expert witnesses before the commission, such persons to be paid from funds appropriated for the use of the consumer counsel;

(d) May have access to the files of the commission when conducting research.

(2) The consumer counsel may petition for, request, initiate, and appear and intervene as a party in any proceeding before the commission concerning rate changes, rule-making, charges, tariffs, modifications of service, and matters involving certificates of

public convenience and necessity. Notwithstanding any provision of this article to the contrary, the consumer counsel shall not be a party to any individual complaint between a utility and an individual.

(2.5) The consumer counsel may petition for, request, initiate, or seek to intervene in any proceeding before a federal agency which regulates utility rates or service, or federal court when the matter before such agency or court will affect a rate, charge, tariff, or term of service for a utility product or service for a residential, small business, or agricultural utility consumer in the state of Colorado. The phrase "federal agency which regulates utility rates or service" does not include any federal lending agency.

(3) The consumer counsel and any member of his staff directly involved in a specific proceeding before the commission shall refrain from ex parte communications with members of the commission. The counsel or his staff shall have all rights and be governed by the same ex parte rules as all other intervenors.

40-6.5-107. *Financing of office.*

At each regular session, the general assembly shall determine the amounts to be expended by the office of consumer counsel for the direct and indirect costs of administration in performing its duties and responsibilities required by this article and shall appropriate to the office of consumer counsel from the public utilities commission fixed utility fund created in section 40-2-114 the full amount so determined. No general fund moneys shall be appropriated to the office of consumer counsel for the performance of its duties and responsibilities under this article.

40-6.5-108. *Office of consumer counsel subject to termination.*

(1) Unless continued by the general assembly, the office of consumer counsel and the utility consumers' board shall terminate on July 1, 1998.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the office of consumer counsel and the utility consumers' board.

40-6.5-109. *Consumer counsel report. (Repealed)*

(Repealed)