



OFFICE OF THE CONSUMER ADVOCATE

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The Basics of the Office of the Consumer Advocate

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Mission and Purpose

Pursuant to RSA 363:28, “to petition for, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before *any* board, commission, agency, court, or regulatory body in which the *interests of residential utility consumers* are involved and to represent the interests of such residential utility consumers.”

Size and Scope

RSA 363:28 requires the Consumer Advocate to be an attorney admitted to practice in New Hampshire. Attorney Donald Kreis, a former general counsel at the Public Utilities Commission, has served as Consumer Advocate since February 2016. He was initially appointed by Governor Hassan and reappointed, twice, by Governor Sununu (with, in each instance, unanimous confirmation by the Executive Council). His present term expires on November 5, 2027.

The Staff of the OCA consists of Assistant Consumer Advocate Matthew Fossum, an attorney who also serves as the OCA’s director of federal and regional affairs; Marc Vatter, PhD., director of economics and finance; Charles Underhill, director of rates and markets; and legal assistant Lesley LaPerle. We presently have a vacant staff attorney position that we are not filling because of the statewide hiring freeze.

Pursuant to RSA 21-G:10, the OCA is administratively attached to the Department of Energy, which means the Department provides financial and budgeting services. The OCA is a fully independent instrumentality of state government.

Oversight

Pursuant to RSA 363:28-a, a nine-member Residential Ratepayers Advisory Board meets quarterly to review the work of the OCA. Three RRAB members are appointed by the Governor, three by the Speaker of the House, and three by the President of the Senate. The RRAB plays a key role in determining who serves as Consumer Advocate: If the incumbent seeks reappointment, the RRAB must so recommend, and when the position becomes vacant the Governor must choose among three candidates recommended by the RRAB.

Financials

Fiscal Year 2025 Budget	\$1,158,791
Fiscal Year 2026 Budget (per Governor’s proposal)	\$1,158,117
Fiscal Year 2027 Budget (per Governor’s proposal)	\$1,187,138

Source of funds: Utility assessment, ultimately recovered from utility ratepayers

Cost of OCA per dollar of utility revenue: \$0.000388773

Amount reflected on typical (600 kwh) Eversource monthly bill: 5.5 cents (approx.)

Forums in which the OCA is Active

The OCA is a statutory party to any proceeding at the Public Utilities Commission in which the OCA enters an appearance. Through pending legislation (SB 237) the OCA is likewise seeking automatic party status before the Site Evaluation Committee. The OCA is a voting member of the End-User Sector of NEPOOL, which is the stakeholder body that deliberates on wholesale market rules and other matters related to the regional grid operator ISO New England.

Accomplishments and Activities

The OCA has no authority over anything – we are advocates, exclusively – and in rate cases and similar proceedings we appear alongside other parties that are also trying to exert downward pressure on utility bills. However, every year there are cases in which issues we successfully raise and positions we successfully take save ratepayers money in an amount that is typically a multiple of the OCA’s annual budget. Some examples:

Liberty Utilities Granite Bridge Project (2020)

We raised questions about the prudence of this plan to add more than \$400 million to the company's rate base, to acquire and store gas supply at a cost in excess of \$2 per decatherm. As a result of these delays, the utility suddenly discovered in late 2019 that alternative supply was available at 14 cents per decatherm, which caused the utility to abandon Granite Bridge.

Liberty Utilities Anti-CWIP Battle (2023)

Afterwards, Liberty sought to recover \$7 million in project development costs in spite of the state's famous "anti-CWIP" statute (which clearly forbids utilities from including in rates the cost of projects that are "construction work in progress" or are otherwise not actually completed and in service). We prevailed on this question at the New Hampshire Supreme Court.

Unitil Empress Gas Supply Agreements (2024)

This is an example of OCA saving customers money by supporting a utility initiative to purchase gas pipeline capacity in Canada and Maine over 30 years. We estimate cost savings on the order of 30 percent compared to the cost of gas transportation via pipelines in the U.S. The OCA has never argued against gas utility supply proposals on environmental grounds.

New Hampshire Saves (2022)

The ratepayer-funded NHSaves energy efficiency programs are designed to save ratepayers more than \$675 million during the current (2024-2026) planning period, at an estimated cost of \$254 million. In late 2021, the Public Utilities Commission rejected the previous three-year plan and indicated an intent to phase out the NHSaves program altogether. We immediately commenced appellate proceedings, which paved the way for legislative action that overruled the PUC and made clear that energy efficiency is a key aspect of electric and natural gas service in New Hampshire.

Net Metering (2017)

The OCA aligned itself with electric utilities and the N.H. Ratepayers' Association in supporting a plan to limit the amount of payments for net-metered electricity exported to the grid in an amount equal to the default energy service rate plus the transmission rate (for residential-scale installation). Ultimately the PUC sweetened the deal (from the perspective of those net metering) by also allowing a credit equal to 25 percent of the distribution rate. The 2017 determination has held up as a formula that almost entirely eliminates cost-shifting.

Fixed Customer Charges

The OCA has steadfastly and successfully fought to keep the monthly fixed customer charge for the state's three investor-owned utilities below \$20 a month. In contrast, the fixed monthly charge of the New Hampshire Electric Cooperative is \$35. Over-reliance on fixed monthly charges (as opposed to rates imposed per kilowatt-hour) discourage conservation and limit customer freedom to save money through energy efficiency.

Pennichuck Merger Proceeding (2024)

In late 2023 the Pennichuck Corporation, owned by the City of Nashua, sought to merge its three operating subsidiaries and adopt a unified set of rates. As proposed, this would have resulted in residential customers from Nashua providing a bail-out of customers in the suburban regions served by the Pennichuck East subsidiary. The OCA successfully pushed for rate design reforms intended to prevent this reverse-Robinhood scenario and, responding to concerns expressed by the Nashua Board of Alderman, we worked with the utility to design a special rate that would be applicable to apartment buildings.

\$4 Million Mistake

The OCA blew the whistle on Liberty Utilities trying to recover \$4 million from gas customers on a retroactive basis, on the ground that the company made a mistake in its application of a rate adjustment tariff. We pointed out that retroactive ratemaking is a violation of the New Hampshire Constitution.

Granite State Transmission Settlement

A little known fact is that the only energy utility with a parent company headquarters in New Hampshire – Unitil – has an interstate pipeline subsidiary subject to federal jurisdiction, Granite State Gas Transmission. Last year we joined a settlement agreement (along with the Department of Energy, the Maine Public Advocate, and the Maine PUC) to avoid a full-blown rate case at the federal energy regulator (FERC). The agreement limits Granite State Transmission to a return on shareholder equity that is more in line with what state regulators typically approve (as opposed to the more generous returns typically granted by FERC).

No Reactive Power Mystery Money

Last year the FERC sought comments on whether power producers should be specially compensated for their production of “reactive power” – a little known component of alternating current that, although necessary and therefore valuable, is an automatic byproduct of generating

electricity. We joined our regional counterparts in opposing additional compensation for something generators produce anyway. Via an order issued in October, FERC agreed with our position, over the opposition of utilities, the regional grid operator (ISO New England) and its stakeholder advisory body NEPOOL.

Ongoing Efforts and Activities

These are some of the ongoing proceedings in which we are currently involved:

Vegetation Management

Liberty Utilities failure to meet its tree-trimming obligations from the settlement agreement it signed to resolve its 2019 rate case. The Company committed to trimming all of the trees in its rights-of-way every four years, recovering a maximum of \$2.4 million per year from customers to do so. The utility further agreed that shareholders would cover an additional \$649,000 in costs. Complying with the four-year cycle would have required 214 miles of tree trimming in 2023 but the company completed only 146 miles. The OCA filed a petition seeking a determination that the utility is in contempt, so that ratepayers suffer neither a degradation in reliability nor costs incurred by the utility to meet previous tree trimming obligations to which it agreed. The OCA is participating in a follow-on proceeding to assure that any storm recovery costs incurred by Liberty Utilities during the same period were prudently incurred and thus appropriate for recovery from customers.

Default Energy Service

The OCA is concerned about two related and troubling trends in connection with default energy service, which is the “backstop” service utilities provide to customers not purchasing electricity from a competitive supplier or municipal aggregation program. The PUC favors increasing reliance on the hyper-volatile “spot” wholesale market for acquiring this electricity while, at the same time, charging all customers (including those NOT reliant on default energy service) for any shortfalls resulting from wholesale transactions in the spot market. This has the potential to force some customers to pay twice for their electricity and/or to force residential customers to subsidize default energy service provide to commercial/industrial customers.

Eversource Proposed 47 Percent Rate Increase

The electric utility serving 70 percent of New Hampshire is seeking to increase distribution charges at more than twice the rate of inflation. The Company claims its shareholders deserve an annual return of 10.3 percent. The OCA, erring on the side of generosity, has proposed 8.1 percent. That’s a difference of more than \$12 million in annual revenue, even assuming

Eversource is entitled to everything else it wants. The utility is also seeking a performance-based regulation plan that will allow it to put tens of millions in new investments into rates automatically. We are interested in exploring incentives for good performance, not free money for utilities.

Eversource X-178 Transmission Project

According to the New England States' Committee on Electricity, last year there were some \$5 billion in so-called “asset condition” transmission projects in the planning and construction pipeline. Ostensibly subject to federal rate regulation, these projects involve upgrades and rebuilds for existing transmission facilities, but they are receiving no oversight. The poster child for such projects is Eversource’s plan to spend more than \$400 million rebuilding and upgrading its X-178 line in western New Hampshire. We have been seeking to force Eversource to justify this cost in proceedings at the regional level, before the Site Evaluation Committee, and before the Public Utilities Commission.

One final vignette . . .



This map from ISO New England shows wholesale “spot” electricity prices in New England at roughly 5:00 p.m. on Christmas Eve 2022. The New Hampshire price of \$2,294 is equivalent to \$2.29 per kilowatt-hour. Right now retail electricity prices in New Hampshire are between 9 and 10 cents per kilowatt-hour.