

# MAINE STATE LEGISLATURE

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State of Maine  
Office of the Public Advocate  
**Annual Report**

July 1, 2013 – June 30, 2014



September 15, 2014



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Paul R. LePage  
GOVERNOR  
Timothy R. Schneider  
PUBLIC ADVOCATE

September 15, 2014

Dear Governor LePage and Members of Joint Standing Committee on Utilities, Energy and Technology:

Each year, as required by 35-A M.R.S. § 1702(6), the Office of the Public Advocate submits an Annual Report providing an overview of the Office's work in the prior year. Over the past twelve months the Office of Public Advocate has been active in more than 110 proceedings at the state, regional and federal level, and testified on a variety of bills affecting Maine utility customers. In all these efforts, we have worked to ensure that the interests of utility ratepayers are given proper consideration when regulators and legislatures make decisions that affect the price and quality of utility services. A summary of the office's most significant efforts on behalf of electric, gas, telecommunications and water utility customers are included in this report.

Highlights from the past year include:

- Legislation to establish arrearage management programs to assist low income customers who fall behind on their electricity bills;
- Negotiated settlements for reductions in rate increases requested by Maine's two largest transmission and distribution utilities;
- Negotiated settlements with FairPoint to expand access to and investment in broadband in Maine;
- Successful advocacy at ISO New England to include the contribution of distributed generation in the load forecast used in transmission planning;
- Publication of the first RateWatcher Guide in three years.

Our office has vigorously pursued our mission for the past 33 years, and in the process earned the respect of both customers and regulated utilities. While there are a variety of ways to measure our success, the most easily understood is money saved for utility customers based on positions

advocated by our office alone. During Fiscal Year 2014, our advocacy saved ratepayers \$17.3 million, bringing our 33 year total to more than \$547.5 million.

I am honored to have the opportunity to work on behalf of Maine consumers, and to represent their interests before the Maine Public Utilities Commission, the Maine Legislature, Federal and state courts, and Federal agencies. I look forward to continuing the work of this Office in the year to come.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy Schneider". The signature is fluid and cursive, with a large initial "T" and "S".

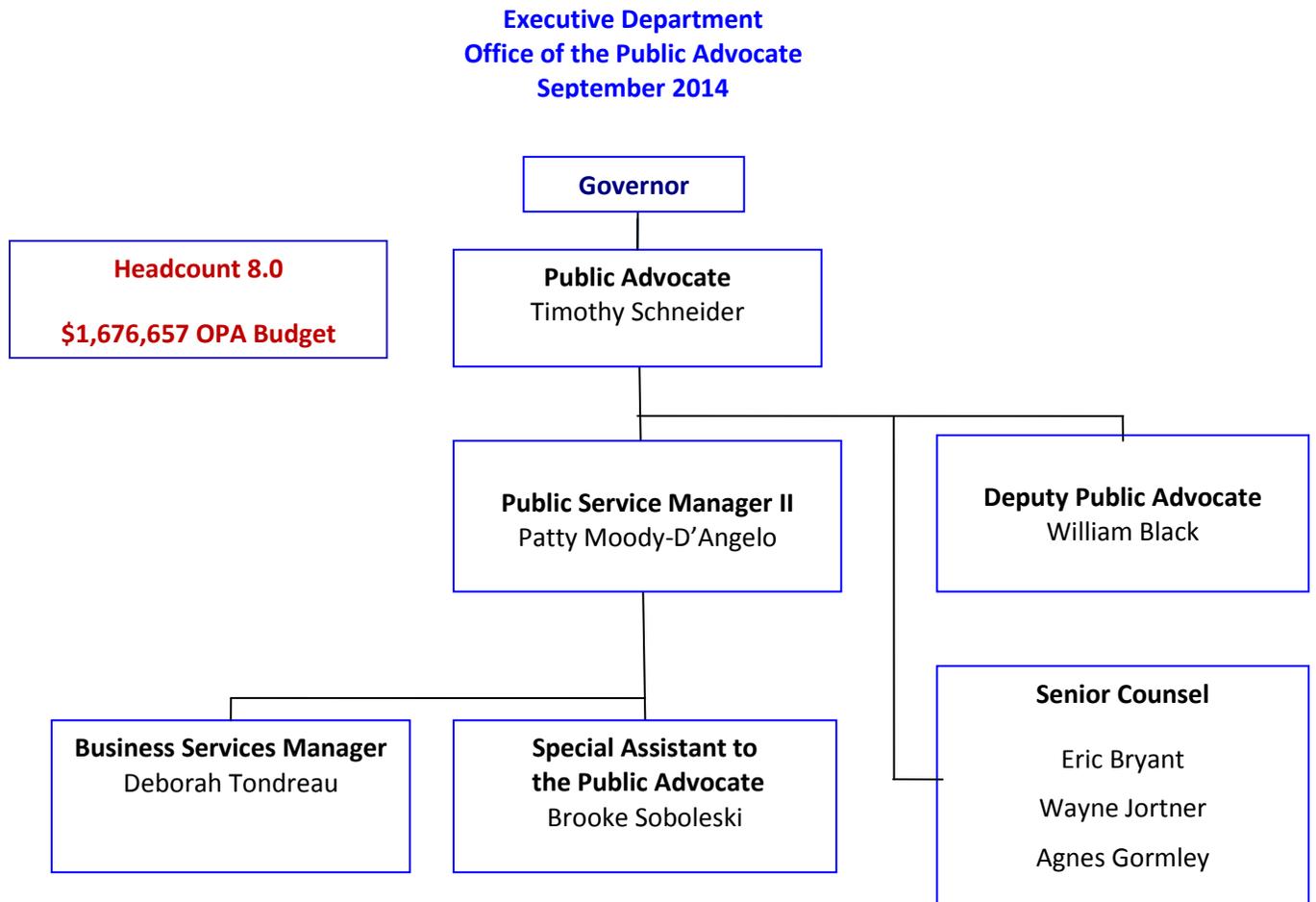
Timothy Schneider  
Public Advocate

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# About the Office of the Public Advocate

The Office of the Public Advocate’s primary responsibility is to represent the interests of Maine users of utility services. Our attorneys and staff advocate for rates, services and practices to benefit residential customers in state and regional forums, and provide information advice to ratepayers.



# ELECTRICITY

## **2013-00168 CMP Request for New Alternative Rate Plan**

In May of 2013, Central Maine Power Company filed a major distribution case in which it sought 1) a \$41 million rate increase, 2) a new five-year alternative rate plan (ARP), 3) approval of \$55 million to design and install a major new billing system, and 4) a new rate design. The OPA devoted two attorneys, and hired six consultants to assist with the following issues raised in the case: revenue requirement, cost of capital, depreciation, revenue decoupling, rate design and capital spending. After a full year of litigation including technical conferences, public hearings, and seven days of evidentiary hearings, the case was resolved by settlement on most issues, and also by briefing and Commission decision on some aspects of the rate design. The OPA, CMP and many of the parties who participated in the case agreed to a significantly smaller rate increase of \$24 million. Significantly, this \$24 million increase includes \$13.7 million for recovery of storm costs which amount were not included in the initial \$41 million rate increase request. Pre-approval of a new billing system was denied, but CMP has agreed to file its proposal for a billing system next year for review and comment.

The agreed-upon rate design change allows CMP to increase the fixed monthly customer charge paid by residential customers, but it will not, by itself, increase or decrease CMP's revenues. Consistent with statute, the change will align the costs to serve customers more closely with the price; in short, each customer will now pay more of its costs for those portions of CMP's grid and service that are uniquely required to serve that customer. As a result, the kWh charge will be lower than it would have been if the customer charge had remained unchanged. Some high usage residential customers will actually see a reduction in the distribution portion of their bill, but most will see an increase in the distribution portion of their bill. Those customers who use the smallest amount of electricity in a given month will see the highest percentage bill increase. The OPA negotiated for the lowest possible increase to this fixed monthly charge out of concern for the effect of these rate design changes on low income customers, and about the reduced ability of customers to control their bills by using less.

## **2011-00170 Emera Maine Request for Approval of Joint Venture**

In March of 2014, the Law Court decided an appeal that had been pending since early 2013. The Office of the Public Advocate had joined two other parties in appealing the

Commission's decision to approve Emera's request to form a joint venture with First Wind for ownership and operation of its northeast wind projects. The Law Court upheld our appeal and remanded the matter to the Commission to decide the statutory issue of whether affiliates of Maine transmission and distribution companies may have a financial interest in generation in the state. The Commission sought new briefs from the parties on the questions. Based on our assessment of the Law Court's holding, the experience gained with the operation of the joint venture during the intervening time period, and related developments, the OPA did not oppose approval of the joint venture on remand. Based on this experience, we also proposed additional conditions that we believe would provide additional and better tailored safeguards to consumers. In July, the Commission approved the joint venture.

### **2011-00138 Boothbay Non-Transmission Alternative Pilot Project**

Following the approval of CMP's Maine Power Reliability Program (MPRP) in 2010, the reliability needs of the midcoast were set aside for the development of non-transmission alternatives (NTAs). In this docket, GridSolar's proposal to provide NTA services in the Boothbay peninsula was reviewed and approved, with our support, as a pilot. In 2014, this pilot is well underway. CMP's initial proposal was to upgrade a transmission line to meet reliability requirements in Boothbay at a cost of \$18 million. GridSolar's pilot has shown promising signs of being able to meet these reliability requirements at a much smaller cost. We expect that all aspects of this pilot will be fully tested and evaluated in 2015.

### **2013-00443 Emera Maine Request for Distribution Rate Increase**

### **2014-00118 Emera Maine: Maine Public District, Stranded Cost Revenue Requirement Update**

### **2014-00168 Emera Maine: Bangor Hydro District, Stranded Cost Revenue Requirement Update**

On December 6, 2013, Emera Maine filed a request for a 9.4% increase in distribution rates applicable to its Bangor Hydro and Maine Public districts. It subsequently revised its request in an updated filing to request an 11.74% increase. The OPA intervened in the case and hired two experts to review the proposed increase. The case was settled with an agreement that allowed an 8.6% distribution rate increase effective July 1, 2014. This increase includes funds for the Company's implementation of a new customer information system, as well as incremental costs incurred in restoring service to customers as a result of extraordinary

storm events that occurred in December of 2013. The increase in rates also includes funds for spending on vegetation management.

The settlement also included a 9.74% decrease in Emera's Stranded Cost rates for its Bangor Hydro District and a 30.1% decrease in Stranded Cost rates for the Maine Public District. The Stranded Cost revenue requirement reflects the estimated receipt of funds for Bangor Hydro and Maine Public Service, net of amounts paid to Efficiency Maine Trust, from the settlement of the Maine Yankee v. US Department of Energy litigation.

The overall impact of these rate changes, combined with recent transmission rate changes, is approximately a 4.2% increase for the Bangor Hydro District and a 4.1% decrease for the Maine Public Service District.

### **2011-00262 Request for Commission Investigation Into Smart Meters**

In response to a directive from the Law Court, the Commission initiated an investigation to determine whether smart meter technology is safe. Our office hired consultants to provide an objective and independent testing program to measure radiofrequency output of CMP's smart meter network. The results of the testing indicated that the measured exposure levels are below the exposure limits set by the Federal Communication Commission. The case was litigated, hearings were held and the matter was briefed. The Hearing Examiners issued a report in March 2014 finding that Central Maine Power's advanced metering infrastructure, including the smart meters, are safe and that there are no credible peer-reviewed scientific studies in the record before the Commission that demonstrate or even purport to demonstrate a direct human health risk specifically from smart meter radio frequency emissions. We expect the Commission to deliberate this case in late 2014.

# ELECTRICITY – REGIONAL EFFORTS

For FY 2013-14, the Office of the Public Advocate focused its regional efforts on three major efforts that we concluded offered the potential for significant impact to Maine ratepayers: 1) development of a forecast for distributed generation that would be incorporated into the regional transmission planning process; 2) opposition to ISO New England’s proposal to implement changes to the forward capacity market; and 3) proposed changes to the assumptions and processes used to conduct transmission planning at the regional level.

The results of these efforts were mixed. The ISO ultimately delayed taking up the latter effort due to resource limitations, but will take up changes to the transmission planning manuals in the coming year. On the positive side, an interim distributed generation forecast was developed by the Distributed Generation Forecast Working Group and included in the 2014 Regional System Plan. On the negative, despite strong, nearly unanimous opposition from ISO New England stakeholders including the OPA and the Maine PUC, the ISO’s proposed changes to the Forward Capacity Market were approved by FERC in May of 2014. Each of these are discussed in greater detail below

## **Distributed Generation Forecast Working Group**

In 2013 the E4 Group,<sup>1</sup> which includes the OPA, commissioned a report showing that the load forecast used by ISO New England for transmission planning purposes did not include the large amounts of current and planned distributed generation (DG) in New England that, if incorporated into the load forecast, would likely reduce the need for transmission. In response, ISO New England convened a Working Group to develop a draft interim solar PV forecast, and Synapse actively participated in this process on behalf of the E4 Group. The ISO developed this forecast and included it in the 2014 Regional System Plan, as we had sought. Though we will continue to push for improvements in this forecast, this is a significant step toward incorporating the rapid growth of distributed solar PV generation resources into the ISO’s system planning process.

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<sup>1</sup> The E4 Group is a collection of parties from CMP’s MPRP case who have access to a \$1.5 million fund for the purpose of advocating for better transmission planning and cost allocation by ISO-NE. The Group is made up of the Public Advocate, GridSolar LLC, Environment Northeast, Conservation Law Foundation, National Resources Council of Maine and the Industrial Energy Consumers Group.

## **Forward Capacity Market Performance Incentives**

Over the past two years, ISO New England developed proposed changes to its Forward Capacity Market that were intended to improve the performance of generators that received payments in that market. This so-called “Pay-for-Performance” proposal would reward generators that performed well during system shortage events, while penalizing those that underperformed relative to their capacity supply obligations. The program would take effect with next Forward Capacity Auction, and the incentives and penalties would begin during 2018-19.

The OPA strongly opposed the Pay for Performance proposal as an untested and unprecedented reimagining of the purpose and function of the ISO-NE capacity markets, and expressed deep concerns about the ability of PI to achieve its stated goals of building and maintaining the resources necessary to ensure reliable service. Most importantly, we believe that the unpredictable and in some cases unhedgeable penalties under PI would force new capacity suppliers to build substantial risk premiums into their capacity offers that will end up costing Maine electricity customers hundreds of millions of dollars. We actively opposed this effort in the stakeholder process, expressed our concerns directly to FERC Commissioners during a visit in December 2013, and filed opposition to the proposal at FERC along with other New England consumer advocates. As noted above, despite nearly unanimous opposition from ISO New England stakeholders the Pay for Performance proposal was approved by FERC in May of 2014.

## **Consumer Liaison Group**

OPA Senior Counsel Agnes Gormley is a member of the Coordinating Council of ISO New England’s Consumer Liaison Group (CLG) is a consumer group that holds regular meetings that provide information to regional consumers and consumer representatives to help them better understand the opportunities as well as the risks of the region’s wholesale electricity market structure. Each meeting has presentations and discussion about current industry activity, new technologies, and economic and public policy developments that change with the industry. This past year’s meetings focused primarily on issues concerning natural gas, including a well-attended May 29<sup>th</sup>, 2014 meeting in Ogunquit, Maine on the subject of “Coping with the Shortfall in Diverse Energy Resources,” which included a number of speakers from Maine, including Thomas Welch, Chair of the Maine Public Utilities Commission and Michael Stoddard, Director of the Efficiency Maine Trust.

## Consumer Advocates of New England (CANE)

Recognizing that electricity consumers across the region share many common concerns, the Office of the Public Advocate took a lead role in facilitating cooperation between the state agencies charged with representing utility customers in each of the New England states. These agencies included the Connecticut Office of Consumer Counsel, the Office of Ratepayer Advocacy in the Massachusetts Attorney General's Office, the New Hampshire Office of the Consumer Advocate, the Rhode Island Attorney General's Office, and the Public Advocacy Division of the Vermont Public Service Department. The heads of office participated in a monthly conference call to share information and develop collaborative approaches to problems affecting utility consumers. These efforts resulted in coordinated action on behalf of the Consumer Advocates of New England in a number of proceedings, including:

- A filing in opposition to ISO New England Pay for Performance Proposal that highlighted the potential costs to consumers;
- A petition for FERC investigation into potential market manipulation associated with retirement of the Brayton Point Power Plant in Massachusetts;
- A filing in support of *en banc* rehearing of the DC Circuit's decision invalidating FERC Order 745;

In addition, the group shared information on the practices of competitive electricity providers and regional efforts to procure additional natural gas pipeline capacity.

# NATURAL GAS

## **2013-00211 Bangor Gas Company, Request for Approval to Acquire Loring Pipeline**

On April 10, 2013, Bangor Gas filed a petition requesting that the Commission authorize it to accept its parent company's conveyance of lease hold rights in the Loring Pipeline, a pipeline constructed in 1946 to carry jet fuel from Searsport to the Loring Air Force base located in Limestone. Bangor Gas proposed that the Loring line would connect to Bangor's distribution system and carry gas to possible large commercial (anchor) customers in such towns as Lincoln, Millinocket, Hampden, and Searsport. The Company proposed to rehabilitate and activate the pipeline in four phases – the first of which would extend from Bangor to the municipalities of Lincoln and Madawamkeag.

The Commission opened an investigation and granted the petitions to intervene of the Office of the Public Advocate and Bucksport Energy/Verso. After refiled its petition on May 23, 2013, Bangor Gas filed its supporting business case for the Loring Project, together with several studies on the condition of the pipeline, financial analysis and pipeline rehabilitation cost estimates. After discovery, both the OPA and Bucksport Energy filed position statements objecting to the transfer of the Loring Pipeline because of the poor financial projections and risks associated with the Project.

The Commission issued its decision on September 23, 2013, approving the proposed affiliate transaction and transfer of the Loring Pipeline lease from Penobscot Natural Gas Company to Bangor Gas. However in response to the objections raised by intervenors including the OPA and to ensure that the transaction would meet the "public interest" standard required by statute, the Commission imposed conditions on the transfer to protect the rates and ratepayers in Bangor Gas's existing service area against potential adverse effects of the Loring Pipeline. The Commission ruled that, for a period of ten years, Bangor Gas must establish separate accounting for all costs and revenues associated with the Loring Pipeline lease assets and service. In addition Bangor Gas must treat the Loring assets as "Future Use Property" until the time when the investment actually becomes plant in service. No revenues, expenses, or investment associated with the Loring Pipeline lease assets can be reflected in Bangor Gas's (a) rates, (b) cost of service, used in any rate plan, or in any calculations of Bangor Gas additions to plant. Finally, Bangor Gas must provide service to customers off the Loring Pipeline pursuant to the same rates and conditions applicable to customers served by its non-Loring facilities.

### **2013-00133 Northern Utilities, d/b/a Unitil Proposed Increase in Rates**

On April 1, 2013, Northern Utilities requested Commission approval for an annual increase of \$4,578,140 in its distribution revenues and approval for a multi-year alternative rate plan that would allow for future changes in the Company's distribution rates without the need to file a general rate case. This rate plan included a "targeted infrastructure recovery adjustment" (TIRA) designed to allow annual cost recovery for upgrades to the Company's distribution system and other safety-related improvements. The Company also proposed to reallocate recovery among classes and to increase the fixed monthly customer charge while decreasing volumetric usage charges.

The Public Advocate was the only party to intervene. After conducting discovery, the OPA filed the direct testimony, exhibits and workpapers of its three witnesses, which concluded that the Company had a revenue deficiency of \$1,518,801. On October 18, 2013 the parties – including Commission Staff – engaged in settlement negotiations that resulted in a stipulation. Under the terms of the settlement, Northern was permitted to increase its revenues by \$3,444,259, effective January 1, 2014. Furthermore, a TIRA mechanism was adopted that allows for base rate increases to recover costs resulting from cast-iron replacement expenditures, the replacement of steel mains, and the replacement of farm-tap regulators through 2016, subject to a cap of 4% of the Company's distribution revenues and certain performance benchmarks. In addition, changes in rate design allocated a higher percentage of Northern's revenue requirements to fixed monthly customer distribution charges and a lower percentage of revenue requirements to seasonal volumetric distribution charges and rate blocks. Finally, the stipulation continued and revised Northern's service quality plan, which consists of seven metrics and administrative penalties for failure to meet any of the metrics involving field operations, meter reading, contact center performance, and overall service complaints.

### **2012-00598 Bangor Gas Company – Request for Renewal of Multi-Year Rate Plan**

On December 26, 2012 Bangor Gas filed a request to renew its multi-year rate plan for a period of 10 years. The Company proposed that its current plan, which expired four days later, remain in effect pending the Commission's investigation of its proposed plan and a tariff including an annual inflation adjustment to Bangor's price caps. The Commission denied the Company's request for an adjustment and opened an investigation of the Company's revenue requirement and earnings. The Public Advocate, the University of Maine, Bucksport Energy and the Verso mill all intervened, as did the Towns of Orono, Old Town, and Bucksport. After a good deal of discovery, technical conferences were held on

the Company's direct testimony and on the direct testimonies submitted by Verso and by the OPA.

The key issues in the case involve the value that the Commission should set on the gas plant that Bangor Gas bought in 2007 for \$500,000, together with the extent to which the Company should be required to share its excess earnings. The OPA and Verso both argued that the Commission should set the value of the Company's plant at its reduced purchase price and pointed out that accounting standards prohibit the restoration of a previously recognized impairment of value. At the end of May 2014, the Commission's Staff issued an Examiner's Report recommending that the Commission calculate a revenue requirement for Bangor Gas reflecting the impairment of Bangor's plant – i.e., the \$500,000 purchase price – and authorizing an alternative rate plan with a term of five years and an earnings-sharing mechanism; and immediately adjust Bangor's distribution-services rates downward.

The Commission did not accept its Staff's recommendation. Instead, the Commission found that the Company's rate base would be determined by using the original cost of the Company's assets – i.e., \$38 million -- net of accumulative depreciation, and accumulated deferred income taxes. The Commission established a rate plan for Bangor Gas with the following features: no adjustment to current rates; no inflation based rate adjustments during the seven-year term of the plan; and no adjustments that would permit ratepayers to share any excess earnings by the Company. The Commission also required Bangor Gas to report regularly on its expansion activities and to be subject to a set of service-quality metrics that will include the possibility of penalties for poor performance. The Public Advocate is planning to appeal the Commission's decision on using Bangor's non-impaired value and on accepting large portions of the Company's rate-case expenses.

# NUCLEAR POWER AND WASTE MATTERS

## **Maine Yankee Oversight Meetings**

Every three months a group of Maine state officials (including the Public Advocate, and representatives from the departments of Public Safety, Human Services, and Environmental Protection) meet with representatives from Maine Yankee to review developments and update attendees on issues regarding the former Maine Yankee site and the Independent Spent Fuel Storage Installation (ISFSI) located in Wiscasset. Meetings during this fiscal year covered such topics as environmental testing of the former Maine Yankee site, the results of the Maine Yankee law suit against the United States Department of Energy (USDOE) over damages attributable to the Federal Government's failure to comply with its contract obligations to begin removing spent nuclear fuel from Maine Yankee beginning in 1998, and the work of the President's Blue Ribbon Commission on Nuclear Waste. As part of these efforts, Public Advocate Tim Schneider toured the Maine Yankee ISFSI in December 2013.

## **Maine Yankee Lawsuits Against the US Department of Energy**

In November 2013, in the Phase II lawsuit filed by the owners of Maine Yankee, Connecticut Yankee, and Yankee Atomic, the Court of Federal Claims awarded the plaintiffs \$235.3 million in damages for DOE's failure (between 2002 and 2007) to honor its contractual obligation to move spent nuclear fuel to a permanent disposal facility (most likely Yucca Mountain, Nevada). The Federal Government elected not to appeal this ruling and it became final and non-appealable January 15. The three companies and the state utility regulator interveners in Maine, Connecticut and Massachusetts agreed on the disbursement of the Phase II DOE litigation proceeds in accordance with the July 1, 2013 Federal Energy Regulatory Commission Order. Maine's share of the Phase II proceeds totaled \$32.4 million. Under Maine law, 55% of these funds, \$9.8 million, were allocated to the Efficiency Maine Trust, and the balance was returned to electricity customers as a credit to each utility's stranded costs. The Phase III lawsuit, covering costs related to the ISFSI during the period between 2008 and 2012, was filed in August of 2013.

## **Quarterly Conference Calls**

On a quarterly basis, representatives of the three Yankee Atomic companies (including Maine Yankee), and state regulators from Maine, Connecticut and Massachusetts, including the Maine Public Advocate, hold a conference call to review national, regional and state activities regarding nuclear waste disposal, lawsuits against the U.S. DOE, federal actions

effecting nuclear power plants (open or closed), and the activities of the several national groups working on nuclear power and waste issues.

### **Maine Yankee Investment Overview**

In March of each year, Maine Yankee's investment advisory firm briefs the PUC Chair and the Public Advocate on the performance of their Nuclear Decommissioning Trust investment portfolio during the preceding calendar year. The portfolio in 2013 exceeded its goal of a 4.4% return over the most recent five year period.

# TELECOMMUNICATIONS

## **2013-00340 FairPoint Communications – Request for Rate Increase and MUSF Support**

On October 30, 2013, FairPoint Communications filed a case in which it asked (a) to increase the rates for its residential and business provider-of-last-resort (POLR) service by \$2.00; and (b) for \$66.9 million in additional support from the Maine Universal Service Fund (MUSF). FairPoint indicated that it was in the process of raising the rates for some of its non-regulated services by \$2.00 and, pointing to its claimed revenue deficiency, asked that it be permitted to receive \$67.6 million in revenues from the its customers and customers of Maine's other telecommunications carriers in order to help fund its POLR service.

In addition to the OPA, the Hearing Examiners granted the petitions to intervene of the Telephone Association of Maine, the IBEW, U.S. Cellular, Sprint Communications, OTT Communications, Lincolnville/Tidewater Telecom, Time Warner Cable, AT&T Corp., and CTIA-The Wireless Association. In mid-March 2014, the intervenors filed their direct testimonies which were also subject to discovery and a series of technical conferences. The OPA testimony focused on issues such as the efficiency of FairPoint's operations in Maine, the policy implications of FairPoint's request for MUSF funds, the allocations of costs between FairPoint's non-regulated and regulated businesses, the effects of competition, and the operation of the MUSF. After the parties filed rebuttal testimony, and after the parties agreed to allow the proposed the \$2.00 increase in POLR rates to go into effect, the Commission held four days of hearings during which all witnesses were cross-examined on the remaining issues in the case.

In early July 2014 the Commission issued a Procedural Order indicating that as a result of legislative action, the Commission would work with the parties to provide responses to nine questions posed by the Legislature about whether there will be a need to fund provider-of-least-report service. On September 9, 2014, the Commission held its deliberations and, because it could not be determined whether FairPoint had increased, or could increase, sufficiently the revenues that it receives from its non-regulated services, the Commission agreed that FairPoint was not entitled to receive MUSF funds. At the time of this writing, parties are still waiting to review the text of the Commission's final Order.

## **2012-00401 Service Quality Standards for Provider of Last Resort Service**

In its 2012 reforms to Maine’s telecommunications laws, the Legislature directed the Commission to conduct a rulemaking to develop rules that would govern the service standards of Maine’s local telephone companies. This was especially important because the last 5-year alternative form of regulation governing FairPoint NNE – the sole source of service quality standards – had expired. The Legislature designated the prospective rule as a major substantive rule – subject to further legislative review. The OPA was an active participant in the rulemaking process and also testified at the Legislature’s EUT Committee when it considered the Commission’s provisional rule. Eventually, the Legislature enacted legislation that sought to amend the rule but did not approve it. Subsequently, the Governor vetoed that legislative action.

The OPA successfully argued, with the support of the Commission Staff, the Office of Legislative and Policy Analysis, and ultimately, the Attorney General, that the veto of that legislative action was interpreted as a failure to “enact” legislation affecting the provisional service quality rule. Absent such enactment, the Commission was then free to formally adopt its provisional rule. In July 2014 the Commission adopted the original version of the rule submitted to the Legislature in 2012.

The new service quality rule substantially decreases any regulatory burden on FairPoint and provides mild requirements on Maine’s independent local telephone companies. The new rule does not apply any automatic penalties and the maximum penalty after a PUC investigation is a small fraction of the former maximum penalty. However, the new rule does require reasonable standards that are aimed to ensure a minimum standard for provider of last resort (POLR) service.

In late July 2014 FairPoint petitioned for a waiver of the new rule, asking the Commission to disregard it, primarily based on the possibility of future legislation that will consider additional changes to Maine’s regulation of telecommunications services, and to keep its service quality results secret. The OPA vigorously opposed FairPoint’s request for a waiver, arguing that, without adequate service quality standards, the very existence of a reliable default voice service would be jeopardized. The OPA also vigorously opposed FairPoint’s request to keep its service quality performance secret. On September 11, 2014, the Commission issued an order denying FairPoint’s request for a waiver of the new service quality rule, largely agreeing with all of the arguments of the OPA. As a result, FairPoint will continue to have an incentive to provide an adequate level of service quality for basic

telephone service, which continues to be relied upon by the majority of households in the State.

### **2013-00104 OPA Petition for Investigation Regarding Fairpoint's Retention of High Cost Funding Support**

FairPoint and Verizon were both recipients of federal high-cost universal service fund support applicable to large price-cap carriers. Verizon, and subsequently FairPoint, complied with federal rules governing such support, by passing along the subsidy as a credit on the bills of Maine telephone customers. After FairPoint lost a substantial number of its customers, the OPA realized that FairPoint was distributing credits to far fewer customers, and therefore, was retaining much of the federal support, essentially benefitting its shareholders, as opposed to its customers, who are the intended beneficiaries of such support. The OPA petitioned the Commission to investigate this matter, and, based on information produced in the course of the proceeding, it appeared that FairPoint may have retained as much as \$2 million in support, though the total liability may have been limited by FairPoint's intervening bankruptcy. The OPA negotiated a settlement with FairPoint that redirected a portion of the retained universal service fund credits to broadband-improvement projects, and the Commission approved that settlement.

### **2013-00192 Investigation into FairPoint's Broadband Build out Obligations**

FairPoint's initial state-based broadband build out obligations came about as a result of conditions to its acquisition of Verizon-Maine in 2008. Since then, a variety of disputes arose concerning the interpretation of the stipulation and associated Commission orders, as well as the decision in an approved regulatory settlement after FairPoint's bankruptcy in 2010. The OPA initiated a case at the Commission seeking to enforce the broadband obligations, based on our view that FairPoint was not correctly calculating the number of lines to be included in the numerator of the required percentage goal (87%). After a period of litigation, the Commission largely agreed with the OPA position. FairPoint appealed the Commission's decision to the Law Court, which, after argument by the PUC and the OPA, affirmed the Commission's decision. As a result of the final approved methodology for calculating FairPoint's broadband lines with respect to the goal of 87% availability, thousands of new broadband-enabled lines were made available in Maine.

On remand, in a comprehensive stipulation negotiated by the OPA, FairPoint agreed to a number of additional broadband commitments intended to clarify and hold FairPoint to its pre-bankruptcy broadband commitments, take advantage of over \$ 1 million in federal

funding, and undertake additional broadband investment in Maine. The OPA continues to monitor FairPoint's compliance with these broadband-related obligations, and will monitor FairPoint's participation in the next phase of the federal Connect America Fund, which will offer FairPoint subsidies to continue to expand its broadband services in high-cost unserved or underserved areas in the State.

### **Universal Service Administrative Company**

Senior Counsel Wayne Jortner holds several leadership roles at the Universal Service Administrative Company (USAC). USAC is a non-profit, quasi-governmental organization that is charged with administering the federal Universal Service Fund and its programs, based on the requirements of Congress in the 1996 Telecommunications Act, and as interpreted by the Federal Communications Commission. Wayne is on the board of directors designated as the representative of consumers, who ultimately fund the approximately \$9 billion per year in contributions and expenditures based on the demand of four major programs. Maine, as a rural state, is decidedly a net recipient of these funds, with Maine entities collecting approximately \$50 million annually. Wayne current serves as the board's treasurer, member of the Executive Committee, chair of the investment committee (which invests the fund's running cash balance of approximately \$7 billion), chair of the Rural Health Care programmatic committee, and member of the High-Cost and Low-Income committee. As a result of these roles, Wayne is well-positioned to troubleshoot problems faced by Maine beneficiaries of these USF programs, as well as using the knowledge and relationships built through his participation to enhance his advocacy for Maine's consumers.

# WATER

## **2014-00079   Hallowell Water District – Request for 20% Rate Increase**

In March 2014, the Hallowell Water District (HWD) gave notice to its customers that it was seeking a 20% increase in its water rates. The proposed increase was driven by the expansion of natural gas service into the District's service territory and the resulting increases in excavation and oversight of gas pipeline burial near the District's distribution facilities. The District had hired an additional employee to respond to requests to identify the locations of its underground water facilities in advance of excavation by the natural gas utility. On May 20, 2014, 211 customers filed a petition requesting that the Commission investigate the District's proposed rates increase. The Commission opened a proceeding and admitted three customers as intervenors.

At a technical conference held on August 15, 2014, the HWD Superintendent described in detail the extra costs and difficulties caused by Summit's continuing requests for water pipe location and oversight of excavation. After the technical conference, the parties negotiated a stipulation that resulted in a reduced (19.78%) rate increase, and included certain conditions that will improve the "transparency" of the District's governance. In addition, the District's Superintendent agreed to attend a meeting at the Public Advocate office with Summit Natural Gas and other interested parties to explore ways that Summit could reimburse HWD for some of the costs incurred as a result of Summit's construction activities. Finally, the Water District agreed to ask the City of Hallowell to negotiate with Summit for an agreement regarding reimbursement of certain non-dig safe costs resulting from Summit's construction activities.

## **2013-00362   Maine Water Company-Camden & Rockland Division – Request for Rate Increase**

On June 25, 2013, the Camden & Rockland of the Maine Water Company (MWC) filed a request that the Commission increase its annual revenues by \$447,338, or 7.81%. The need for the increased revenue, according to MWC, was driven by the costs of ongoing infrastructure replacement, declining revenue, and increased expenses. The OPA, the City of Rockland, and FMC Corporation intervened. After an initial period of discovery and a technical conference, the parties engaged in a series of discussions seeking to arrive at a stipulated resolution of the case. The parties reached agreement on all issues with the

exception of the issues involving the proper return on equity (ROE) and the treatment of rate-case expenses.

Thereafter, MWC and the OPA each submitted written testimony on the calculation of a reasonable ROE for the Company. The Water Company's witness recommended a 10.15% ROE, based on a newly introduced "Predictive Risk Premium Model (PRPM)." The OPA's witness, relying on the traditional discounted-cash-flow (DCF) model and a capital-asset-pricing model (CAPM), recommended an ROE of 8.7%. In its decision, the Commission noted that it was not prepared to use the results of the PRPM analysis in determining an appropriate ROE. The Commission acknowledged that expert testimony established that the mid-point of the range of reasonable return was 8.85%. Adjusting for flotation costs, the Commission found that the overall equity return for MWC should be 9.5%.

### **2012-00487 Fryeburg Water Company – Investigation of New Contract for Bulk Water Sales with Nestle**

In October 2012, the Fryeburg Water Company (FWC) filed a notice of its intent to enter into a long-term contract for water extraction and lease of utility property with Nestle Waters of North America, Inc. (Nestle, or Nwana). The Commission opened an investigation and granted the petitions to intervene of the Public Advocate, Clifford Hall, William Harriman, Anita Hafford, Dr. Bruce Taylor, and Food & Water Watch (FWW). At the outset of the proceeding, Commissioner Vannoy recused himself due to prior contractual relationships with Nwana.

The proposed agreement revised and replaced an existing 1997 agreement between the Company and Nwana's subsidiary Pure Mountain Springs which had previously been approved by the Commission. Under the new agreement, Fryeburg Water Company receives a guaranteed level of revenues that is significantly higher than the minimum payment obligation under the 1997 agreement – i.e., a new total minimum annual payment of at least \$224,447. The Water Company can terminate the agreement at any time (a) if Nestle's activities cause FWC to be in violation of State law or applicable permits regarding Well No. 1, or (b) if such activities have a material adverse impact on FWC's ability to supply water to its customers. Moreover, the Agreement (as amended) gives Nestle assurances that it will be able to use Well No. 1 for at least the next 20 years. Nestle also receives an increased degree of exclusivity, in that the 2012 Agreement prohibits the Water company from selling untreated water from any source to any competitor of Nestle. This contrasts with the provision in the existing 1997 Agreement that only prohibits FWC from selling

untreated water to some other entity only if doing so would diminish Nestle's use of Well No. 1. The new agreement also includes some protections for FWC's customers. On March 17, 2013, the Commission conducted a public hearing in Fryeburg at which ratepayers and members of the public stated their positions on the proposed agreement.

On April 30, the Water Company and the OPA submitted a proposed stipulation that would resolve all issues in the case. A hearing was held on the stipulation on May 16, 2013, and following deliberations, the Commission denied the proposed stipulation. After several case conferences and additional discovery, the Commission held an evidentiary hearing on September 3, 2013. However, before the Examiner's Report was issued on October 15, 2013, the proceeding was suspended indefinitely due to the recusal of Chairman Welch and the resulting loss of a quorum of commissioners necessary to decide the matter. This suspension continued until Governor LePage, pursuant to 35-A M.R.S.A. §108-B, appointed Justice Paul Rudman and Justice John Atwood to serve as alternate commissioners on May 16, 2014 and July 10, 2014, respectively. Upon the appointment of Commissioners Rudman and Atwood, a quorum was again available for decision of this matter. At the time of this writing, the Commission had indicated that an Examiner's Report would issue at the end of September 2014.

# LEGISLATIVE ADVOCACY

In the short Second Session of the 126<sup>th</sup> Legislature, the Office of the Public Advocate testified on seven newly introduced bills, and actively participated in the ongoing review of carry-over bills involving renewable energy and Provider of Last Resort (POLR) telephone service. Descriptions of the bills on which the OPA provided testimony or took an active role are below.

## **Renewable Energy-Related Bills**

The Office participated in the EUT Committee's Renewable Energy Working Group, which was formed to consider the issues raised by the wide array of renewable energy bills carried over from the First Session. On November 15, 2013, the Public Advocate made a presentation to the Working Group outlining the costs of current renewable energy policies and the principles the Office would use to evaluate renewable energy policy proposals. The Office worked with the Commission, the Governor's Energy Office and Legislative Staff to help the Committee evaluate the costs and benefits of current and proposed renewable energy incentive programs. This analysis informed the Committee's consideration of various renewable energy legislation in the Second Session, though none other than LD 1652 was ultimately enacted into law.

### **LD 38      Resolve, Regarding Legislative Review of Chapter 201 Provider of Last Resort Service Quality**

This major substantive rule established service quality standards for providers of POLR service, and the opportunity for the Commission to impose penalties for non-compliance. The OPA and other parties expressed concerns with the rule when it was submitted during the First Session, and the bill was held over to allow interested parties further time to negotiate. While most of the parties were able to reach agreement on an improved version of the rule, this version was not ultimately enacted into law. Under Maine law, the effect of this was to allow the Commission to implement its original rule, which though not perfect, provides meaningful information about telephone service quality for Provider of Last Resort Service and the opportunity for Commission action should service quality decrease.

## **LD 1479      An Act to Clarify Telecommunications Regulation Reform**

This bill, as ultimately enacted, included two components: 1) language that prevented the Public Utilities Commission from acting on FairPoint’s request for subsidy from the Maine Universal Service Fund until after the First Session of the 127<sup>th</sup> Legislature and 2) a directive to the PUC to respond to nine questions whose answers would inform the Legislature’s efforts to address potential revisions to the POLR construct. The OPA helped to develop and refine these nine questions, and is now actively participating in the PUC proceeding seeking input on the answers to these questions.

## **LD 1652      An Act to Support Solar Energy Development in Maine**

This bill, as originally drafted, established legislative findings in support of renewable energy and statewide solar energy goals, modeled on the Maine Wind Energy Act. It also directed the Maine PUC to conduct a value of solar study to attempt to quantify the costs and benefits to Maine ratepayers associated with additional development of solar energy. The OPA initially opposed this bill, because the solar energy goals did not include any mechanism to achieve those goals, which made it impossible to evaluate the ratepayer impact of setting them in statute. Notwithstanding this opposition, the Office supported the value of solar effort, which we believed would provide useful information that would inform policymakers in developing solar power incentives in the future. The final version of the bill, which the OPA supported and was enacted into law, omitted the specific MW goals for solar but retained the value of solar study, subject to some revisions suggested by the OPA and other parties that offered further clarity on the specific costs and benefits to be considered in the study.

## **LD 1761      An Act to Ensure that Large Public Utility Reorganizations Advance the Economic Development and Information Access Goals of the State.**

This bill proposed to increase the PUC’s standard of review for large public utility reorganizations from “no net harm” to a requirement that such reorganizations “affirmatively benefit” customers. We testified in strong support of the bill, noting that this standard had been adopted in other states, and describing the negative impact to customers of the 2008 acquisition of Verizon by FairPoint, which the MPUC approved under the “no net harm” standard. The bill was ultimately vetoed by the Governor, and the veto was not overridden.

**LD 1784      An Act to Reform Regulation of Consumer-owned Water Utilities**

This bill, as originally drafted, allowed the Public Utilities Commission to exempt consumer-owned water utilities from any provision of Title 35-A. The OPA strongly opposed the potential breadth of this legislation, and worked with the utilities, the Commission, and the Committee to modify the final bill to include specific provisions of Title 35-A that the Commission could not waive, and a procedure for rescission of any exemption. The final bill, which was enacted into law, allows the PUC to grant exemptions includes a procedure for rescission and preserves customer notification, public hearing, and reporting and financial accounting requirements that will ensure that the consumers of these utilities will have the necessary information and opportunity to participate in the oversight of their utility.

**LD 1816      An Act to Address Recommendations from the Report by the Office of Program Evaluation and Government Accountability**

This bill created a Consumer Advisor position in the Office of the Public Advocate to address the need, identified in the Office of Program Evaluation and Government Accountability's 2013 Report on the Public Utilities Commission, for a person who would facilitate consumers' ability to effectively represent themselves in adjudicatory proceedings before the Public Utilities Commission. The Governor ultimately vetoed this bill, but established the new Consumer Advisor position in the Office of the Public Advocate for the 2014-15 Fiscal Year.

**LD 1825      An Act to Assist Utility Ratepayers**

This bill, which became law, requires the state's transmission and distribution utilities to implement arrearage management programs to assist low-income residential electricity customers who are in arrears on their electricity bills. Under these programs, customers who pay their bills on time in the future have the opportunity to have a portion of their prior arrearage forgiven. Participants will also have the opportunity to reduce their electricity usage by working with the Efficiency Maine Trust. The OPA worked with the sponsor, Senator Cleveland, to develop this bill, and with stakeholders including the state's electric utilities and low income advocates to obtain unanimous support for its passage.

# RATEPAYER SAVINGS

Ratepayer savings from June 30, 2013 to July 1, 2014 attributable to the Office of the Public Advocate:

CMP filed a major distribution case in which it sought 1) a \$41 million rate increase, 2) a new five-year-year alternative rate plan (ARP), 3) approval of \$55 million to design and install a major new billing system, and 4) a new rate design. We achieved savings of \$15 million relative to CMP's request on issues where no other party or the Commission was active. On two other issues where the Staff did participate, depreciation and cost of capital – our efforts surely contributed to savings, but it is difficult to claim any particular amount. On depreciation, we sought a \$4.4 million reduction and settled for \$4.2 million. The Staff's expert, who joined the case late, ended up agreeing with most of our expert's direct testimony. On cost of capital, we sought an \$11 million reduction and the settlement was for a \$4.6 million reduction.

In CMP's final annual filing pursuant to its 2008 Alternative Rate Plan (this case was consolidated with the CMP ARP case) we contributed to a \$417,243 savings related to the Company's claimed costs for storm restoration costs.

\$15,417,243

Emera Maine filed a request for a 9.4% increase in distribution rates applicable to its Bangor Hydro and Maine Public Districts. It subsequently revised its requests in an updated filing to request an 11.74% increase. In this case, Emera settled for \$3.42 million than the \$8.7 million it requested. Of this amount, the Public Advocate can claim sole responsibility for \$390,000.

\$390,000

On June 25, 2013, the Camden & Rockland of the Maine Water Company (MWC) filed a request that the Commission increase its annual revenues by \$447,338, or 7.81%. The Water Company's witness recommended a 10.15% ROE, based on a newly introduced "Predictive Risk Premium Model (PRPM)." The OPA's witness, relying on the traditional discounted-cash-flow (DCF) model and a capital-asset-pricing model (CAPM), recommended an ROE of 8.85% Commission recommended mid-range of 8.8%. Adjusting for

flotation costs, the Commission found that the overall equity return for MWC should be 9.5%...

\$107,398

On March 2014, the Hallowell Water District gave notice that was seeking a 20% increase in its water rates driven by the expansion of natural gas service into the District's service territory causing the district to hire an additional employee to response to requests to identify the locations of its underground water facilities in advance of excavation by the gas utility. On May 20, 2014 customers filed a petition to intervene. After several agreed to meetings between the Superintendent, other interested parties and Summit Natural Gas at the Public Advocate Office to explore ways that Summit could reimburse Hallowell Water District, an agreement was reached and Summit proceeded ahead with its construction activities.

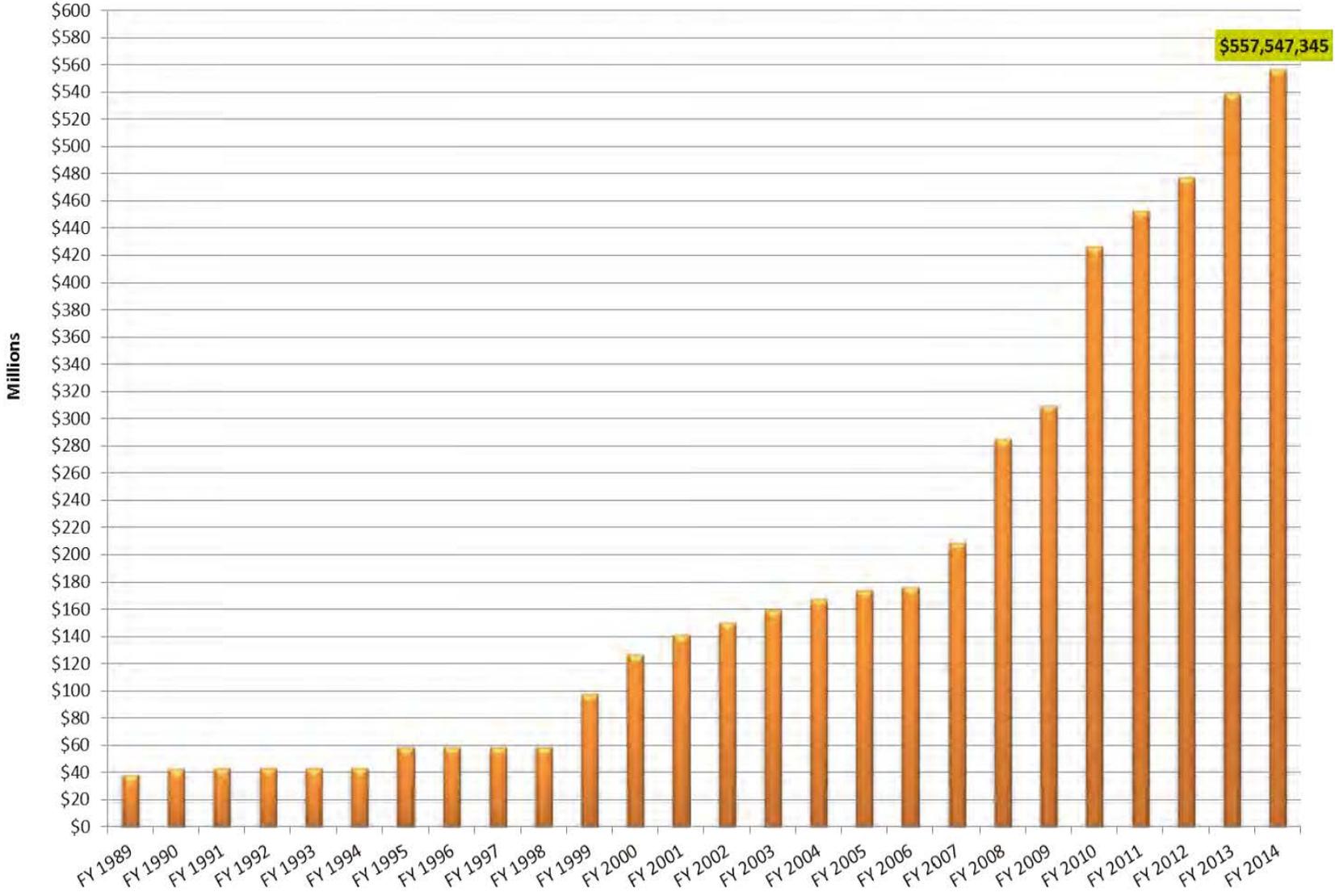
\$735

On April 1, 2013, Northern Utilities requested Commission approval for an annual increase of \$4,578,140 in its distribution revenues and approval for a multi-year alternative rate plan that would allow for future changes in the Company's distribution rates without the need to file a general rate case. The OPA, Commission Staff and other parties on October 18, 2013 engaged in settlement negotiations that resulted in a stipulation. Under the terms of the settlement, Northern was permitted to increase its revenues by \$3,444,259, effective January 1, 2014. Changes in rate design allocated a higher percentage of Northern's revenue requirements to fixed monthly customer distribution charges and a lower percentage of revenue requirements to seasonal volumetric distribution charges and rate blocks. The stipulation continued and revised Northern's service quality plan, which consists of seven metrics and administrative penalties for failure to meet any of the metrics involving field operations, meter reading, contact center performance, and overall service complaints.

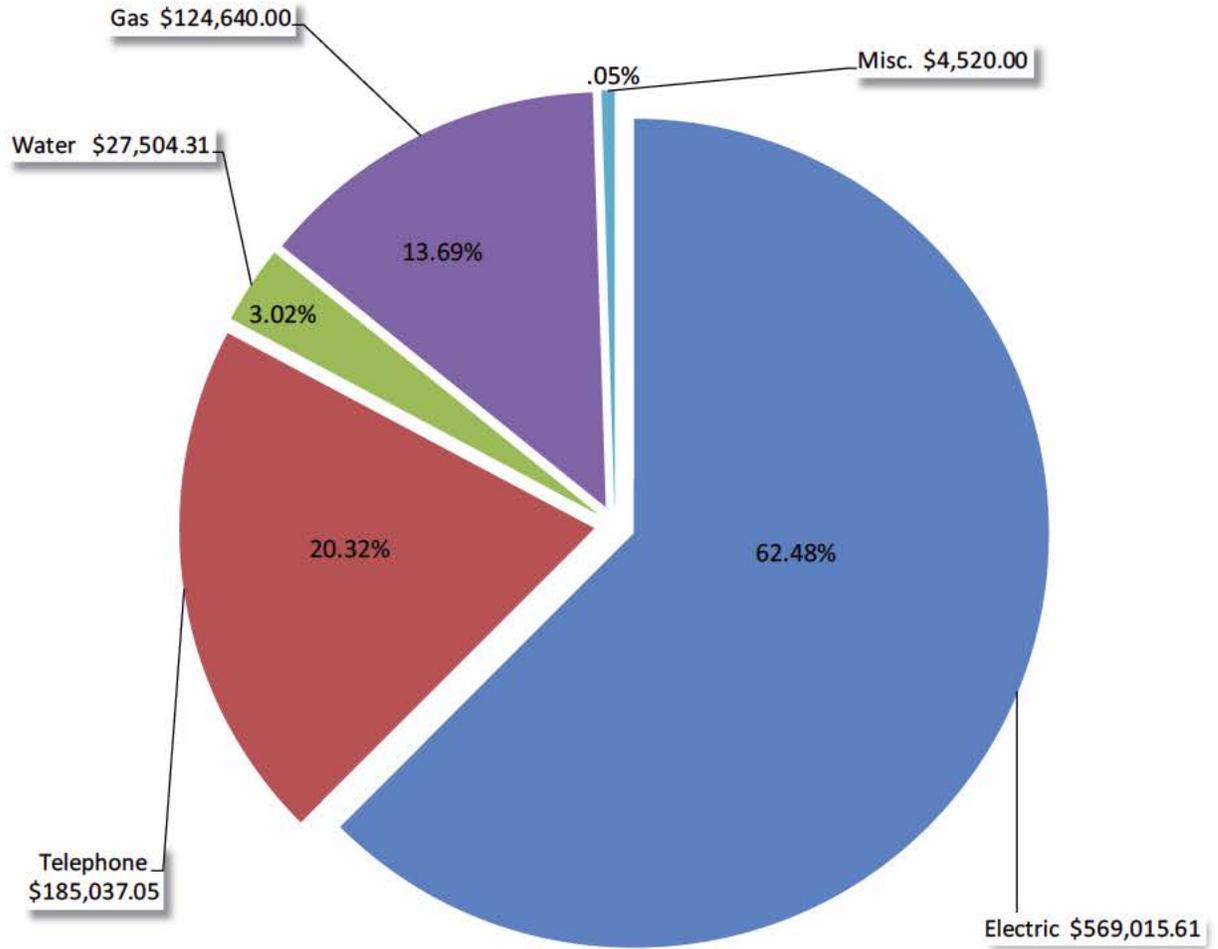
\$1,406,428

**Total Savings FY 2013-2014: \$17,321,908**

# Cummulative Savings in Rates 1988 to 2014



### Consultant Costs FY 2013-2014



**PUBLIC ADVOCATE STAFF TIME  
BY UTILITY CATEGORY & PROJECT: FY 14**

