

ANNUAL REPORT  
OF THE  
PENNSYLVANIA  
OFFICE OF SMALL BUSINESS ADVOCATE  
  
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*William R. Lloyd, Jr.  
Small Business Advocate*

*Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)*

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## INTRODUCTION

The Office of Small Business Advocate (“OSBA”) was established by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 et seq. (the “Act”).

The OSBA is administratively included within the Department of Community and Economic Development (“DCED”). However, the Act specifically provides that the Secretary of DCED is not in any way responsible for the policies, procedures or other substantive matters developed by the OSBA to carry out its duties under the Act.

The Act directs the OSBA to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission (the “PUC” or “Commission”), in the courts and before comparable federal agencies. For purposes of the Act, a small business consumer is defined as “a person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification.”

Business and residential customers generally have a similar interest in keeping a proposed utility rate increase as small as possible. However, their interests often conflict on the issue of rate structure (in other words, the percentage of a rate increase to be borne by each particular category of customer). In a rate structure dispute, the Attorney General’s Office of Consumer Advocate represents residential ratepayers. Furthermore, large industrial and commercial customers frequently have their own attorneys and expert witnesses. As a result, there was a fear prior to Act 181 that a disproportionate share of any rate increase would be allocated to small business customers because they usually could not afford their own representation. The legislature sought to alleviate that fear by creating the OSBA.

Under the Act, the Small Business Advocate is granted broad discretion concerning whether or not to participate in particular proceedings before the PUC. In exercising that discretion, the Small Business Advocate is to consider the public interest, the resources available to support the activities of the OSBA and the substantiality of the effect of the particular proceeding on the interests of small business consumers.

Because of the office’s success on utility matters, additional duties were assigned to the OSBA as part of the 1993 reforms to Pennsylvania’s Workers’ Compensation Act. Specifically, Article XIII of that revised statute, 77 P.S. §§1041.1 et seq., authorizes the Small Business Advocate to represent the interest of employers in proceedings before the Insurance Department that involve filings made by insurance companies and rating organizations with respect to the premiums charged for workers’ compensation insurance policies. Those duties require the Small Business Advocate to review the “loss cost” adjustment filings that are made each year by the Pennsylvania Compensation Rating Bureau and the Coal Mine Compensation Rating Bureau of Pennsylvania.

The current budget for the Office of Small Business Advocate is \$1,151,000. That budget is funded by assessments on utilities and on workers' compensation insurers, in proportion to the office's expenses in relation to each group. At the present time, utility company assessments account for about 85% of the budget and insurance company assessments for about 15%.

The OSBA's present employee complement consists of seven persons, including four attorneys (the Small Business Advocate and three Assistant Small Business Advocates) and three support staff personnel.

After being nominated by Governor Edward G. Rendell and confirmed by the state Senate, William R. Lloyd, Jr., began serving as Small Business Advocate on November 24, 2003.

## **PUC ACTIVITIES**

The OSBA participates before the PUC in major base rate cases, purchased gas cost cases, telephone rate rebalancing cases, and other non-rate proceedings that have a significant impact on small business consumers. The following is a summary of some of the most significant cases:

### **Electric Highlights**

#### **POLR Roundtable Docket No. M-00041792**

Historically, the local electric utility company was responsible for generating or purchasing electricity for its customers and delivering that electricity to the customers' premises. However, Act 138 of 1996, 66 Pa.C.S. Ch. 28, allowed customers to purchase electricity from entities (known as "electric generation suppliers" or "EGSs") other than the local utility. The local utility (now known as the "electric distribution company" or "EDC") is responsible for delivering that electricity to those customers who choose to shop for the best price. The EDC is also responsible for acquiring and delivering electricity for those customers who do not shop or whose EGS fails to provide the promised electricity.

When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the provider of last resort ("POLR") (also known as the "default service provider"). At present, the rates most EDCs charge for that electricity are capped. However, once an EDC's cap has expired, 66 Pa.C.S. § 2807(e)(3) requires that EDC to acquire electricity for POLR or default customers at prevailing market prices. Under Section 2807(e)(2), the PUC

is required to promulgate regulations defining the obligation to acquire electricity after each EDC's rate cap has expired. As a prelude to promulgating those regulations, the PUC convened a "POLR Roundtable" to obtain the views of interested parties. In order to protect the interests of small business customers, the OSBA submitted both written and oral testimony.

The following are the key points raised by the OSBA:

- Contrary to the urging of the EGSs, the EDC should continue to serve as the POLR or default provider in its service territory.
- The POLR or default provider should acquire electricity through a competitive procurement process that determines the market price for each class of customer.
- POLR or default service should be offered to small business customers at a fixed price for at least one year.
- The PUC should be cautious about forcing small business customers to pay seasonal rates, in that many small business customers are unable to shift their usage from high-price periods to low-price periods.

After considering the input obtained through the POLR Roundtable, the PUC initiated a proposed rulemaking in December 2004 to promulgate the regulations required under Section 2807(e)(2). As a general proposition, the PUC's proposed regulations embrace the aforementioned key points advocated by the OSBA.

**Petition of Duquesne Light Company for Approval of  
Plan for Post-Transition Period POLR Service  
Docket No. P-00032071**

On December 9, 2003, Duquesne Light Company ("Duquesne") filed a POLR service plan ("POLR III Plan") to meet its POLR obligation for the period from January 1, 2005, through December 31, 2010. In its filed POLR III Plan, Duquesne proposed specific rates for Residential Customers and for Small Commercial & Industrial Customers ("Small C&I Customers") for the entire six-year period. Duquesne labeled the Residential Customers and Small C&I Customers, collectively, as the "Small Customers."

After the completion of the evidentiary hearings, Duquesne entered into an agreement with the OSBA that modified the POLR III Plan for the Small C&I Customers. Duquesne entered into similar agreements with the Office of Consumer Advocate for the Residential customers and the Duquesne Industrial Intervenors for the Large Commercial & Industrial Customers.

The agreement between Duquesne and the OSBA set forth the rates for the Small C&I Customers for the entire six-year period. For the first three years, the agreement fixed the rates to be charged to Small C&I Customers. For the second three years, the agreement permitted Duquesne to seek Commission approval to raise those rates one time, but only if justified by changing market conditions. Furthermore, the agreement included a ceiling on any such rate increase.

The Commission ultimately approved the agreement between Duquesne and the OSBA for the first three-year period, but the Commission eliminated the second three year period. However, the Commission suggested that Duquesne could re-submit its rate proposal for 2007-2010 closer to the end of the first three-year period to take account of the then-current market conditions.

The OSBA's efforts in this case resulted in lower rates, as well as rate stability, for the small business customers in Duquesne's service territory. The settlement agreement provides fixed rates for the next three years, at levels that were lower than prices paid by the Small C&I customers in the mid 1990's. Furthermore, about 75% of the Small C&I customers will benefit by receiving an increase of only about 1% in the rates they were paying in 2004; some of them will actually receive a rate decrease.

**UGI Electric Utilities Inc.  
POLR Proceeding  
Docket No. R-00017033**

In a 2002 order, the Commission approved pricing rules for UGI-Electric's POLR service for calendar years 2003 and 2004. However, the 2002 order provided no rules for setting UGI's POLR rates beyond December 31, 2004.

On February 10, 2004, the OSBA filed a petition to amend the 2002 order to provide for Commission review and approval of POLR rates beyond 2004. In opposing the OSBA's petition, UGI argued that an amendment to the 2002 order was unnecessary and that UGI was free to set post-2004 rates without Commission approval of those rates. According to UGI, if its rates were to exceed market prices, the customers' remedy would be to purchase electricity from a competitor of UGI.

After negotiations, the parties agreed to a settlement which allowed UGI's rates for 2005 to exceed its rates for 2004 by no more than 4.5% and its rates for 2006 to exceed its rates for 2004 by no more than 7.5%. UGI also agreed to a procedure for review of proposed POLR rates for 2007 if the Commission's regulations governing POLR rates are not yet in effect.

With minor modifications, the Commission approved the settlement.



As a result of the OSBA's action, small business customers in UGI's service territory are protected against excessive rates. Commission approval of UGI's proposed POLR rates is especially critical because small business customers in UGI's service territory have few, if any, competitive alternatives to buying electricity from UGI.

**West Penn Power Company  
QRO Proceeding  
Docket No. R-00039022**

On November 25, 2003, West Penn Power Company filed a petition seeking to securitize its remaining unsecuritized, unrecovered stranded costs allowed in its 1998 Restructuring settlement. The OSBA objected to the petition because it would allow for the recovery of stranded costs in 2009 and 2010 despite the fact that West Penn's generation rate cap is scheduled to expire at the end of 2008.

After lengthy, settlement discussions, the OSBA came to an agreement with West Penn and several other parties that would extend the generation rate cap period through 2010 to coincide with the period during which West Penn would be recovering the remaining stranded costs.

The settlement was submitted to the Commission and notice of the settlement was published in the Pennsylvania Bulletin. Several additional parties have now intervened in the proceeding and the matter has been assigned to an Administrative Law Judge for hearing and decision.

**Metropolitan Edison Company/Pennsylvania Electric Company  
Docket Nos. R-00016219 and R-00016220**

A Generation Rate Adjustment ("GRA") is a mechanism that is used to calculate the amount of money that a shopping customer is to pay an EDC to reimburse for extra costs the EDC may incur in the event that the shopping customer returns to the utility's POLR service prematurely.

Both Metropolitan Edison Company and Pennsylvania Electric Company filed GRA tariffs with the Commission in 2001. The OSBA and other parties protested these GRA tariffs. The OSBA opposed the imposition of an administrative fee (in addition to the GRA) on small customers who shop and then return early to POLR service. In the OSBA's view, this fee would exceed the EDC's costs and would eliminate any financial incentive for small customers to shop in the first place. Hearings in this matter before an ALJ are scheduled for March 2005.

**FirstEnergy Companies**  
**Investigation into Reliability**  
**Docket No. I-00040102**

The Electricity Generation Customer Choice and Competition Act requires the Commission to ensure that an EDC's level of reliability at the time of the restructuring of the electric utility industry does not deteriorate in the new competitive marketplace.

On January 16, 2004, the Commission instituted an investigation into the level of service reliability provided by the FirstEnergy companies – Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company.

The OSBA attended the 10 public input hearings held throughout the service territories of the three companies and participated in the evidentiary hearings. Negotiations that followed the close of the evidentiary record resulted in a unanimous settlement that was approved by the Commission. This settlement did not address the issue of whether the reliability of the companies had deteriorated but did contain a number of conditions that should improve the companies' service and reliability over the next several years. The companies have also agreed to file reports regarding reliability with the Commission and the parties on a regular basis.

In addition, a mediation program has been instituted for customers who have prevailed at the Commission in a service-related complaint proceeding against any FirstEnergy company. This program will allow successful complainants to receive a financial remedy without having to incur the expense of filing an action in the court of common pleas.

**PPL Electric Utilities Corporation**  
**Base Rate Proceeding**  
**Docket No. R-00049255**

On March 29, 2004, PPL Electric Utilities Corporation ("PPL") filed a rate case to produce \$164.4 million in additional annual distribution revenue. Furthermore, the PPL filing also included a notice that transmission service charges were expected to increase by \$57.3 million.

The PPL filing presented a large number of complex issues for litigation. The OSBA addressed the following issues throughout the proceeding:

- The proper Cost of Service Study methodology to be employed by PPL;
- The design and selection of a metric to measure progress towards cost of service;
- A just and reasonable allocation of the revenue increase among the customer classes;

- The rate design necessary to recover the transmission charges paid by PPL to PJM;
- The legality of PPL's proposed Distribution System Improvement Charge ("DSIC") mechanism;
- The proper way in which to fund and operate the Sustainable Energy Fund of Central Eastern Pennsylvania; and
- The proposal by the Office of Consumer Advocate ("OCA") to have all customer classes pay for PPL's residential-only universal service program ("USP").

PPL's filing was fully litigated. The OSBA made significant progress on some issues in the case. For example, the rate design created to recover the transmission charges paid by PPL to PJM favors PPL's small business customers. In addition, the OSBA was able to help defeat both PPL's proposed DSIC mechanism and the OCA's plan to charge all customer classes for the residential-only USP.

Nonetheless, the OSBA believes that the Commission committed serious errors in its final order. Therefore, the OSBA is appealing the issue of the proper allocation of the revenue increase among the customer classes to the Commonwealth Court.

## **Gas Highlights**

### **Investigation into Competition in the Natural Gas Supply Market Docket No. I-00040103**

Since the 1980s, large commercial and industrial customers have been able to buy natural gas from entities (known as "natural gas suppliers" or "NGSs") other than the local gas utility. The local gas utility (known as the "natural gas distribution company" or "NGDC") remains responsible for delivering that gas from the interstate pipeline to the shopping customer's place of business.

By Act 21 of 1999, the General Assembly enacted 66 Pa.C.S. Ch. 22 (the Natural Gas Choice and Competition Act), to give small business and residential customers the same right to shop as was already enjoyed by large commercial and industrial customers. Under Chapter 22, the NGDC is responsible for acquiring natural gas for all customers who do not shop or whose NGS fails to provide the promised gas.

Section 2204(g) of 66 Pa.C.S. requires the PUC to conduct an investigation five years after the effective date of Act 21 to determine if there is "effective competition." Pursuant to Section 2204(g), the PUC convened the required investigation. In order to protect the interests of small business customers, the OSBA presented written and oral testimony.

The following are the key points made by the OSBA:

- Because the NGDC buys gas in bulk and at rates subject to PUC review and approval, it would be surprising if NGSs were able to beat the NGDC's rates for most small business and residential customers. Therefore, whether there is "effective competition" should be determined by evaluating whether there are unreasonable barriers to competition rather than by counting the number of customers served, or the percentage of gas provided, by NGSs.
- The NGDC's rates should not be increased for the purpose of helping NGSs gain a bigger percentage of the retail market.
- To avoid an unreasonable barrier to competition and to assure uniformity, the penalties owed by NGSs for failing to deliver should be lower when that failure does not result from "gaming." One possible solution is to impose the penalty multiplier on the actual cost incurred by the NGDC to acquire replacement gas rather than on some calculated cost.
- Requiring NGSs to provide their own transportation and storage capacity or accept capacity assignment from the NGDC has avoided the creation of stranded costs and does not appear to have impeded competition. Therefore, that system should be continued.
- NGDCs and NGSs should be required to report data regarding the percentage of customers who are shopping and the percentage of gas provided by NGSs. This data could assist the PUC and the General Assembly in tracking changes in the level of competition and in determining the effect of events and policy changes on competition.

**National Fuel Gas Distribution Corporation  
Base Rate Proceeding  
Docket No. R-00049656**

On September 15, 2004, National Fuel Gas Distribution Corporation ("NFG") filed for a general increase in base rates, i.e., rates for the recovery of costs of service other than purchased gas costs. NFG requested a rate increase of \$22.78 million (an increase to overall revenues of approximately 6.69% and an increase in distribution revenues of approximately 23.8%). Of that \$22.78 million, NFG proposed to recover approximately \$2.4 million from the Company's small commercial and industrial customers. In addition, NFG proposed to implement a Distribution System Improvement Charge ("DSIC") and an Uncollectibles Expense Tracker ("UET").

The OSBA filed a complaint against the proposed increase. Through that complaint and subsequently filed written testimony, the OSBA has raised the following concerns regarding NFG's filing: (1) NFG's requested cost of equity and rate of return are excessive; (2) NFG's claim for uncollectibles expense is excessive; (3) NFG's proposed rate allocation is inconsistent with the Company's cost analysis and is unduly discriminatory against small commercial and industrial customers; (4) NFG's proposed rate design for small commercial and industrial customers is unreasonable; (5) NFG's proposed DSIC is illegal; and (6) NFG's proposed UET is illegal.

An investigation of the proposed rate increase is pending before the Commission.

**National Fuel Gas Distribution Corporation  
Gas Cost Rate (1307(f) Proceeding  
Docket No. R-00049108**

On January 30, 2004, National Fuel Gas Distribution Corporation ("NFG") submitted its annual filing to recover the company's natural gas costs pursuant to 66 Pa.C.S. § 1307(f).

This proceeding focused on a proposal by NFG to modify how the under-delivery charges levied on a Natural Gas Supplier ("NGS") would be credited to the company's sales (or Purchased Gas Cost) customers. Under the current mechanism, an NGS that under-delivers its requirement of natural gas for a given month is charged a significant, sometimes severe, rate for the volume of under-delivered natural gas. For example, one NGS (Vineyard) was charged approximately \$750,000 for under-delivering its volume of natural gas by only six percent. The under-delivery charges collected by NFG are credited to NFG's sales customers, thus lowering those customers' monthly bills.

NFG is required, under its tariff, to give the appropriate credit to its sales customers, even if NFG has not yet received the full payment from the NGS. However, because Vineyard did not pay its under-delivery charge for more than a year, NFG proposed a change in the tariff to delay the issuance of the credit to the sales customers until the under-delivery charges are actually paid by the offending NGS.

The OSBA opposed NFG's proposal and submitted written expert testimony on the topic. The OSBA observed that NFG was already authorized a certain level of cash working capital to cover such cash flow shortfalls. Thus, the company was already prepared financially for such an occurrence. Furthermore, if NFG's under-delivery charges were too onerous, the company could submit a tariff modification to lower those charges for the future, thereby reducing the risk of an NGS's being unable to pay such large under-delivery rates.

Finally, the OSBA argued that no utility should make its paying sales customers endure a rate increase simply because that utility is having trouble with under-collections from some other customer or entity.

Ultimately, NFG agreed to withdraw its proposal without prejudice to the company's ability to resubmit it in a subsequent proceeding.

**Vineyard Oil and Gas Company v. NFG**  
**Docket No. C-20039935**

On April 16, 2003, Vineyard Oil and Gas Company ("Vineyard"), a licensed Natural Gas Supplier ("NGS") serving customers in the National Fuel Gas Distribution Corporation ("NFG") service territory, filed a complaint against NFG. Vineyard's complaint asked the Commission to modify, either temporarily or permanently, the methodology used by NFG to calculate its under-delivery charges levied on any NGS that fails to deliver the correct volume of natural gas in any given month.

In February 2003 Vineyard supplied NFG with approximately 94 percent of Vineyard's total natural gas obligation for that month. The six percent shortfall resulted in NFG issuing under-delivery charges to Vineyard and Vineyard's customers of approximately \$750,000. Consequently, the Vineyard complaint argued that these charges were grossly unfair, excessive, and could put Vineyard out of business.

The parties in this proceeding, including the Office of Consumer Advocate ("OCA") and the Commission's Office of Trial Staff ("OTS"), were able to fashion various remedies that would have reduced the total bill due from Vineyard and its customers. However, 66 Pa.C.S. § 1303 requires that all utilities operating in Pennsylvania charge their tariffed rates. Furthermore, Section 1304 prohibits any utility from excusing any entity (such as Vineyard) from paying those tariffed rates. Section 1304 reflects the general state of the law of this nation for over 125 years.

The OSBA stood alone among the parties in this proceeding in its refusal to allow an exception to NFG's tariff. The OSBA repeatedly argued that the proper solution was for NFG to modify its tariffed rates and for the parties to petition the Commission to allow a refund of the overcharges pursuant to 66 Pa.C.S. § 1312.

After oral argument, submission of legal memoranda, adjudication of the legal issues by an Administrative Law Judge, and lengthy settlement discussions, the OSBA ultimately prevailed on its underlying legal position. The resulting settlement provided relief to Vineyard and Vineyard's customers while complying with the law which requires adherence to NFG's tariffs.

**Columbia Gas of Pennsylvania, Inc.**  
**Docket No. R-00049783**

On September 1, 2004, Columbia Gas of Pennsylvania, Inc. ("Columbia"), filed a proposed tariff supplement seeking authorization to offer two new fixed price sales services, Price Protection Service ("PPS") and Optional Sales Service ("OSS").

In a formal complaint, the OSBA asserted the following: (1) Columbia's proposed PPS and OSS offerings may be harmful to natural gas competition and, therefore, contrary to the intent and purpose of the Natural Gas Choice and Competition Act; (2) the credits Columbia proposes to provide Purchased Gas Cost ("PGC") customers may be insufficient to compensate those PGC customers for the full costs that may result from implementation of the proposed PPS and OSS; (3) Columbia's failure to propose that PPS and OSS rates be regulated rates that are filed with the Commission and subject to review for justness and reasonableness is contrary to the Public Utility Code; and (4) Columbia has not demonstrated that it is necessary for the Company to offer the proposed PPS and OSS in order to provide its customers with adequate, efficient, safe, and reasonable service.

Columbia's proposal is pending before the Commission.

**Columbia Gas of Pennsylvania, Inc.**  
**Gas Cost Rate (1307(f)) Proceeding**  
**Docket No. R-00049234**

On April 1, 2004, Columbia Gas of Pennsylvania, Inc. ("Columbia") submitted its annual filing to recover the company's natural gas costs pursuant to 66 Pa.C.S. § 1307(f).

This proceeding focused on Columbia's Unified Sharing Mechanism ("USM"). The USM shares the total revenue generated by both Columbia's release of pipeline capacity and Columbia's sale of natural gas to other systems. Both of these transactions are opportunistic in nature, and both historically have been conducted successfully by Columbia. The total revenue generated by these transactions is shared between Columbia and its sales customers. Thus, the company's small business customers are directly benefited by the USM, which results in a credit applied to the customer's monthly bill.

Rather than agreeing to continue Columbia's USM, the Office of Consumer Advocate ("OCA") and the Commission's Office of Trial Staff ("OTS") proposed different and inconsistent sharing mechanisms that would have significantly decreased the total revenue generated by Columbia.

The OSBA submitted detailed testimony on the USM and disagreed with the positions of the OTS and OCA. Settlement discussions eventually produced an agreement among the

parties. That agreement implemented the modifications proposed by the OSBA to the USM rather than the changes proposed by the OTS and OCA. As a result, Columbia's PGC customers will see an increase in their share of the total revenue generated, while a strong incentive has been created for the company to continue aggressively pursuing both types of transactions.

**Philadelphia Gas Works Petition to  
Establish a Cash Receipts Reconciliation Clause  
Docket No. P-00042090**

On March 1, 2004, Philadelphia Gas Works ("PGW") filed a Petition to Establish a Cash Receipts Reconciliation Clause ("CRRC"). PGW claimed that the surcharge mechanism was authorized under 66 Pa.C.S. §§ 1307(a) and 2212(c) and under 52 Pa. Code § 5.41. The CRRC surcharge mechanism was initially projected to recover \$46.7 million from PGW's customers throughout the company's 2005 fiscal year (September 1, 2004 through August 31, 2005).

The CRRC surcharge mechanism was an attempt by PGW to recover the revenue lost because an increasing number of the company's customers either would not or could not pay their monthly natural gas bill. The CRRC mechanism would have addressed this under-recovery by significantly raising the bills of all customers, including the paying customers.

PGW's CRRC proposal was flawed on many levels, and the OSBA aggressively opposed the Petition. For example, PGW testified that approximately half of its residential customers were having trouble paying their monthly gas bill. Since the CRRC surcharge would significantly raise everyone's overall monthly gas bill, even more residential customers would have trouble paying their utility bill. Thus, fewer and fewer customers would be shouldering the burden of the financially troubled utility.

In addition, the CRRC surcharge would have added a heavy financial burden to PGW's small business customers. PGW's delivered natural gas charges are some of the highest in the nation, making Philadelphia a more costly location for operating a small business. Adding on a large CRRC surcharge, especially when nearly all small business customers pay their bills on time, would have unduly harmed the small business community in Philadelphia.

Finally, although numerous other parties also opposed the CRRC, the OSBA stood alone in opposing the legal basis that underpinned PGW's proposal. The company claimed that 66 Pa. C.S. § 2212(c) allows the Commission essentially free rein to fashion a customized set of public utility laws just for PGW. The OSBA argued that this broad interpretation of Section 2212(c) would render the provision an unconstitutional delegation of legislative power.

After an extensive proceeding, the Commission denied PGW's proposal.



**Petition of Philadelphia Gas Works for Waiver of  
Earnings Surveillance Report Requirements  
Docket No. P-00042123**

On August 3, 2004, Philadelphia Gas Works (“PGW” or the “Company”) filed a Petition for a Waiver of Earnings Surveillance Report Requirements (“Waiver”). PGW claimed that the Waiver was authorized under Section 2212(c) of the Public Utility Code and Section 5.43 of the Commission’s regulations at 52 Pa. Code.

Financial reporting by the public utilities under the Commission’s jurisdiction is required by 52 Pa. Code Ch. 71. The reports are designed to allow the Commission “to monitor on a regular basis the financial performance and earnings” of those utilities. However, as set forth in the Waiver, PGW is a municipally-owned, cash-flow utility. Therefore, financial reports which have been tailored to monitor investor-owned utilities would be less meaningful when created by PGW. PGW’s Waiver requested the Commission to “absolve” the Company from filing the required financial reports.

The OSBA answered the Waiver, supporting and opposing the various matters contained therein. Specifically, the OSBA opposed PGW’s interpretation of 66 Pa. C.S. § 2212(c). Section 2212(c) authorizes PGW to request a suspension or waiver of “the application of any provision of this title [66 Pa. C.S.]” However, the statutory construction advocated by PGW is an overbroad reading of Section 2212(c) that, if accepted by the Commission, would violate the Pennsylvania Constitution. Consequently, the OSBA argued that PGW’s Waiver could proceed only under 52 Pa. Code § 5.43, which allows the Commission to waive any of its regulations.

In addition, the OSBA opposed PGW’s request to eliminate its financial reporting obligation entirely. The OSBA suggested that if the current financial reports are not as relevant to PGW’s municipal, cash-flow operation, the reports could be properly tailored to provide meaningful data.

The Commission agreed with the OSBA and denied PGW’s Waiver. In addition, the Commission tailored PGW’s financial reports to adhere more closely to the financial structure and operation of the Company.

**Assessment Challenges  
Commonwealth Court**

The activities of the OSBA before the Commission are funded by assessments on public utilities authorized by the Small Business Advocate Act. The allocations are made by the OSBA and transmitted to the Commission for collection. Public utilities have the right to challenge any assessment they believe to be excessive, erroneous, unlawful or invalid.

Several gas utilities have protested the Commission's, the OCA's and the OSBA's assessments based on a recent court decision that found that competitive gas suppliers are not public utilities and, therefore, are not subject to public utility assessments. The gas utilities believe that the portion of their assessment related to the regulation of competitive gas suppliers should not be allocated solely to the gas utility group but, instead, should be collected on an across-the-board basis from all public utility groups. The OSBA disagrees with the gas utilities' interpretation of the Small Business Advocate Act and the relevant court decision. The OSBA has participated in the assessment proceedings at the Commission level and is also participating in the actions brought by the gas utilities regarding their assessments before the Commonwealth Court.

## **Telephone Highlights**

### **Verizon Pennsylvania Inc. Four-Line Carve-Out and Enterprise Switching Docket Nos. R-00049524 and R-00049525**

On June 8, 2004, Verizon Pennsylvania Inc. (“Verizon”) filed with the Commission two tariff revisions regarding the leasing of Verizon’s facilities for service to customers by Verizon’s competitors. In the first filing, which was docketed at R-00049524, Verizon proposed to cease providing unbundled local switching to Competitive Local Exchange Carriers (“CLECs”) to serve business customers with four or more DS0 lines that are located in the Philadelphia and Pittsburgh Metropolitan Statistical Areas. In the second filing, which was docketed at R-00049525, Verizon proposed to cease providing unbundled local switching to CLECs to serve business customers with DS1 or higher lines anywhere in Pennsylvania. Verizon alleged that its tariff revisions are necessary in order to comply with federal law.

The OSBA opposed Verizon’s tariff revisions because: (1) the PUC has independent authority under its Global Order to require Verizon to provide unbundled local switching; and (2) Verizon failed to satisfy the Global Order test to be relieved of its obligation to provide unbundled local switching because Verizon did not demonstrate: (a) that collocation space (for the CLECs’ own switches) is available in Verizon’s central offices; (b) that collocation space can be provisioned in a timely manner; and (c) that collocation represents a valid reasonable economic alternative to Verizon’s provision of unbundled local switching. An Administrative Law Judge agreed with the OSBA and several CLECs in a Recommended Decision issued on December 1, 2004. That Recommended Decision is currently pending before the Commission.

### **Verizon Pennsylvania Inc. Access Charge Proceeding Docket No. R-00016785**

This proceeding is the latest in a series of cases beginning with the 1999 *Global Order* at Dockets P-00991648 and P-00991649, the 1999 Verizon North and Verizon Pennsylvania (“Verizon” or the “Company”) *Merger Order* at Docket A-310200, and the 2002 *Generic Access Charge Investigation* at Docket M-00021596.

On March 21, 2002, AT&T filed a complaint against Verizon North seeking to have that company’s access charges reduced to the levels of Verizon Pennsylvania as required by the *Merger Order*. AT&T’s Complaint was docketed at C-20027195.

During litigation, Verizon and the Office of Consumer Advocate (“OCA”) submitted a settlement that limited the *total* local rate increase that could be recovered from the Company’s

residential customers on a combined Verizon North and Verizon Pennsylvania basis. In addition, *specific* residential rate increases would be held to \$1.00 or less. The settlement provided for Verizon's business customers to pay the balance of the remaining local rate increase, on a combined Verizon North and Verizon Pennsylvania basis.

The OSBA opposed the Verizon – OCA settlement. The OSBA argued that Verizon did not meet its burden of proof because the Company failed to detail how business rates would be affected by the Verizon – OCA settlement. However, in the October 31, 2003, Recommended Decision (“RD”), the Administrative Law Judge recommended that the Verizon – OCA settlement be approved. The ALJ approved the Verizon – OCA settlement because six of the seven parties that presented witnesses agreed with portions of the settlement.

On December 8, 2003, the OSBA filed exceptions to the RD. On December 18, 2003, the OSBA filed Reply Exceptions.

On February 26, 2004, Verizon, the OCA, and the OSBA reached an agreement on the issues litigated by the OSBA. Specifically, the Verizon – OCA – OSBA settlement limits the *specific* business rate increase to less than \$1 per business line, and the average increase for business local exchange lines cannot be greater than the average increase for residential local exchange lines.

On July 28, 2004, the Commission entered an order that adopted the Verizon – OCA – OSBA settlement.

### **Water and Wastewater Highlights**

#### **Aqua Pennsylvania formerly, Pennsylvania Suburban Water Company Base Rate Proceeding Docket No. R-00038805**

On November 14, 2003, Aqua America (the former Philadelphia Suburban Water Company) requested a rate increase of 10.2% or \$25,300,000. The OSBA and numerous other parties opposed the increase. The Commission ultimately approved a rate increase of \$13,749,205 or approximately 5.6%.

Upper Dublin Township intervened in this case in order to protest the company's fire hydrant rates. Upper Dublin opined that Section 1328 of the Public Utility Code required that the fire hydrant rates should be no higher than 25% of the cost of service. Under Upper Dublin's interpretation of Section 1328, the municipality's rates would have been lower, but other customers would have been required to make up the difference. The OSBA disagreed with

Upper Dublin's interpretation of the statute and argued that fire hydrant rates that already exceeded 25% of the cost of service when Section 1328 was enacted must remain frozen at their then-current levels until they are less than 25% of the cost of service. The Commission agreed with the OSBA.

**Pa-American Water Company  
Collection System Improvement Charge  
Commonwealth Court No. 2497 CD 2003**

The Commission approved a petition of the Pennsylvania-American Water Company to surcharge customers for the cost of certain wastewater system improvements implemented between base rate cases. The OSBA contested the legality of the surcharge and intervened in the appeal to Commonwealth Court taken by the Office of Consumer Advocate. The OSBA submitted briefs and participated in the oral argument and re-argument in Commonwealth Court. The Court has not yet issued its decision.

**United Water Company  
Distribution System Improvement Charge  
Docket No. P-00042110**

A Distribution System Improvement Charge ("DSIC") allows water utilities to collect up to 5% of base rate revenues in a surcharge for distribution system improvements put into service between rate cases. When the water utilities come to the Commission for a base rate increase, the DSIC is to be rolled into rates and a new DSIC may be instituted until the time of the next rate case.

On June 4, 2004, United Water Pennsylvania, Inc. filed a petition asking for a waiver of the 5% limit on its DSIC. The OSBA filed a notice of intervention and an answer objecting to the proposed waiver. In the view of the OSBA, United's proposal was contrary to the Commission's order that authorized the DSIC. After opposition by the OSBA and other parties, the company withdrew its petition without prejudice.

**York Water Company  
Base Rate Proceeding  
Docket No. R-00049165**

On April 28, 2004, the York Water Company ("York Water") filed a request for \$4,869,970 in additional annual revenue.

The York Water filing was mainly focused on the construction of a raw water pipeline from the Susquehanna River to the Lake Redman Reservoir. This water pipeline is intended to provide York Water with an alternative source of water if and when another drought occurs.

The proceeding was resolved through the settlement process. An agreement was reached to allow York Water to recover an additional \$3.5 million (a 15.9 increase in total revenue). Through the intervention of the OSBA, the small commercial customers of York Water were ultimately responsible for only \$777,098 of the total \$3.5 million increase. Furthermore, the intervention of the OSBA prevented a re-occurrence of what happened in York Water's 2003 base rate filing, wherein the Office of Consumer Advocate had attempted to assign an additional 50 percent revenue increase to York Water's small business customers.

In addition, York Water proposed that company's first Customer Assistance Program ("CAP") for its residential customers. Because of the OSBA's intervention, York Water has not begun charging the company's small business customers for this new, residential-only program.

## **Legislation**

Section 399.49 of the Small Business Advocate Act, 73 P.S. § 399.41-399.50, requires the OSBA to make reports to the Governor and the General Assembly regarding matters within the OSBA's jurisdiction.

As required by Section 399.49, the Small Business Advocate provided comments and recommendations to the Rendell Administration and the General Assembly regarding House Bill 30. HB 30 (now Act 183 of 2004) enacted a revised version of Chapter 30 of the Public Utility Code to provide regulatory relief to incumbent local exchange carriers ("ILECs") as an incentive for deployment of broadband service throughout their service territories.

In addition, the Small Business Advocate testified before the House Consumer Affairs Committee in a combined hearing on the status of electric industry restructuring and on House Bill 1841. HB 1841 (which did not become law during the 2003-2004 legislative session) would have authorized electric distribution companies ("EDCs") to use a surcharge (rather than a base rate case) to recover certain investments in their distribution systems. In response to legislative requests, the Small Business Advocate also provided follow-up information on both HB 1841 and electric industry restructuring to the General Assembly and the Rendell Administration.

### **House Bill 30**

As initially approved by the House of Representatives, HB 30 would have enabled ILECs to avoid PUC regulation of the rates charged to small business customers for basic local telephone service if those customers had more than four telephone lines. Because of dedicated lines for fax machines and computers, many small businesses have more than four telephone lines. Therefore, under the original House version of HB 30, these small business customers would have received no rate protection from the PUC on any of their lines.

The presence of competitive local exchange carriers ("CLECs") helps to restrain the rates charged by ILECs in some of the most densely populated parts of the state. However, in other areas of the state, the ILEC is the "only game in town" when a small business customer needs basic telephone service. Furthermore, because of decisions by the Federal Communications Commission, the continued viability of CLECs is uncertain. Therefore, in order to protect small business customers from unregulated monopoly prices, the Small Business Advocate urged members of the General Assembly and the Rendell Administration to amend HB 30.

As had been recommended by the Small Business Advocate, the version of HB 30 finally enacted into law continues PUC regulation of the rates charged to small business customers (regardless of the number of lines a customer has) unless an ILEC can prove that there actually is competition in a particular market.

## **House Bill 1841**

Under the Public Utility Code, an EDC has a legal duty to assure that its distribution system provides safe, adequate, reasonable and efficient electric service to the EDC's customers. The distribution system includes the wires, transformers and other equipment needed to deliver electricity from the transmission system to the customer's premises.

An EDC typically recovers the cost of replacing elements of the distribution system through base rate increases submitted to the PUC for review and approval. However, HB 1841 would have permitted an EDC to begin recovering such costs through a surcharge (a "Distribution System Improvement Charge" or "DSIC") without waiting for the EDC's next base rate case. The costs would have continued to be subject to PUC review and approval, but HB 1841 would have enabled the EDC to avoid offsets to reflect any sales growth or reductions in other costs.

The Small Business Advocate testified that HB 1841 should not be enacted without amendments to assure that the surcharge was used only to recover costs related to a PUC-improvement plan and to assure that the EDC's authorized rate of return would be reduced to reflect faster-than-normal recovery of distribution system improvement costs.

The General Assembly adjourned without enacting HB 1841.

### **Rulemaking Proceedings**

The OSBA participates in rulemaking proceedings before the Commission. In many instances, the OSBA files comments that advocate positions of particular importance to small business customers. In 2004, the OSBA filed comments in the following proceedings:

Final Rulemaking Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunication Companies, Docket No. L-00030165

Proposed Rulemaking for Revisions of Chapters 1, 3 and 5 of Title 52 of the Pa. Code Pertaining to Practice and Procedure before the Commission, Docket No. L-00020156

Final Rulemaking Re: Updating and Revising Existing Filing Requirements Relating to Water and Wastewater Public Utilities, Docket No. L-00940096.

### **2004 PUC Cases**

As previously noted, the OSBA participates in major rate increase cases before the Commission, the annual Gas Cost Rate cases for Pennsylvania's 10 largest gas companies and a



number of other formal proceedings involving disputes over the kinds of services made available to, or the prices charged to, the small business customers of electric, gas, telephone, water and wastewater utilities. A list of the Commission cases in which the OSBA entered its appearance during calendar year 2004 follows:

Allegheny Power, Amend Reliability Benchmarks  
Docket No. M-00991220

Amerada Hess Corporation, Assessment Challenge  
Docket No. M-00041835

Columbia CAP Proceeding (Lentz, et al. v. Columbia)  
Docket No. C-20031302

Columbia Gas of Pennsylvania, Inc., GCR Proceeding  
Docket No. R-00049234

Columbia Gas of Pennsylvania, Inc., PPS/OSS  
Docket No. R-00049783

Columbia Gas of Pennsylvania, Inc., Assessment Challenge  
Docket No. M-00041842

Duquesne Light Company, POLR Proceeding  
Docket No. P-00032071

Equitable Gas Company, GCR Proceeding  
Docket No. R-00049154

Equitable Gas Company, Assessment Challenge  
Docket No. M-00041828

First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company) Investigation into Reliability  
Docket No. I-00040102

Frontier Communications of: Oswayo River, Canton, Lakewood, Pennsylvania, Breezewood, Network Modernization Plan  
Docket Nos. R-00040106, 0107, 0108, 0109, 0110

Investigation into Competition in the Natural Gas Supply Market  
Docket No. I-00040103

Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, Amend Reliability Benchmarks  
Docket No. P-00042115

National Fuel Gas Distribution Corporation, GCR Proceeding  
Docket No. R-00049108

National Fuel Gas Distribution Corporation, LIRA Proceeding  
Docket No. R-00049757

National Fuel Gas Distribution Corporation, Base Rate Proceeding  
Docket No. R-00049656

National Fuel Gas Distribution Corporation, Assessment Challenge  
Docket No. M-00041840

PECO, GCR Proceeding

Docket No. R-00049423

Pennsylvania American Water, OCA Complaint (CSIC)  
Docket No. C-20042816

Peoples Natural Gas Company, GCR Proceeding  
Docket No. R-00049153

Peoples Natural Gas Company, Assessment Challenge  
Docket No. M-00041832

Pepco Energy Services, Inc., Assessment Challenge  
Docket No. M-00041826

PFG/North Penn Gas, GCR Proceeding  
Docket No. R-00049424

PG Energy, GCR Proceeding  
Docket No. R-00049425

PG Energy, Assessment Challenge  
Docket No. M-00041827

Philadelphia Gas Works, GCR Proceeding  
Docket No. R-00049157

Philadelphia Gas Works, CRRC Proceeding  
Docket No. P-00042090

Philadelphia Gas Works, Earnings Reporting  
Docket No. P-00042123

Philadelphia Gas Works, Assessment Challenge  
Docket No. M-00041831

Pike County Power & Light Co., Gas Division, Base Rate Proceeding  
Docket No. R-00049884

Pike County Power & Light Co., Amend Reliability Benchmarks  
Docket No. M-00991220

POLR Roundtable  
Docket No. M-00041792

PPL Utilities, Base Rate Proceeding  
Docket No. R-00049255

PPL EnergyPlus, LLC, Assessment Challenge  
Docket No. M-00041841

T.W. Phillips Gas & Oil Co., GCR Proceeding

Docket No. R-00039011

UGI Utilities - Electric Division, POLR Proceeding  
Docket No. R-00017033

UGI Utilities - Gas Division, GCR Proceeding  
Docket No. R-00049422

UGI Utilities, Inc. - Gas Division, Assessment Challenge  
Docket No. M-00041834

United Water Pennsylvania, Inc., DSIC Petition  
Docket No. P-00042110

Valley Energy, Inc., Base Rate Proceeding  
Docket No. R-00049345

Verizon Pennsylvania Inc., UNE-P  
Docket Nos. R-00049424 and R-00049525

Wellsboro Electric Company, Base Rate Proceeding  
Docket No. R-00049313

The York Water Company, Base Rate Proceeding  
Docket No. R-00049165

#### **2004 Commonwealth Court Cases**

Under the Small Business Advocate Act, the OSBA is authorized to appear before the appellate courts regarding matters under the Commission's jurisdiction. A list of the cases in which the OSBA entered an appearance in 2004 follows:

#### **Appellate Jurisdiction Cases**

Columbia Gas of Pennsylvania, Inc. Assessment Challenge  
No. 1902 CD 2004

Equitable Gas Company, Assessment Challenge  
No. 1914 CD 2004

National Fuel Gas Distribution Corp., Assessment Challenge  
No. 1932 CD 2004

Peoples Natural Gas Company, Assessment Challenge  
No. 1912 CD 2004

Philadelphia Gas Works, Assessment Challenge  
No. 1913 CD 2004

PG Energy, Assessment Challenge  
No. 1911 CD 2004

UGI Utilities, Inc. - Gas Division, Assessment Challenge  
No. 1910 CD 2004

### **Original Jurisdiction Cases**

PPL EnergyPlus, Assessment Challenge

No. 668 MD 2004

Columbia Gas of Pennsylvania, Inc. Assessment Challenge

No. 706 MD 2004

Equitable Gas Company, Assessment Challenge

No. 680 MD 2004

National Fuel Gas Distribution Corp., Assessment Challenge

No. 683 MD 2004

Peoples Natural Gas Company, Assessment Challenge

No. 698 MD 2004

PG Energy, Assessment Challenge

No. 699 MD 2004

Philadelphia Gas Works, Assessment Challenge

No. 695 MD 2004

UGI Utilities, Inc. - Gas Division, Assessment Challenge

No. 690 MD 2004

### **Small Business Consumer Outreach**

In addition to its litigation caseload, the OSBA also handles individual small business consumer problems.

The following are some examples of the OSBA's assistance to individual small business customers in 2004:

- Several complaints were received from NorVergence customers. NorVergence filed for bankruptcy, leaving its customers with no telephone service and outstanding leases for equipment that no longer functioned. OSBA brought this matter to the attention of the Commission, Pennsylvania's Attorney General and the consumer advocates of several other states in which NorVergence had authority to do business. The OSBA also filed comments in a rulemaking proceeding alerting the Commission to the need to address the problem that arises when a competitive telephone company abandons service without following the proper notification procedure.



- A plastics company contacted the OSBA regarding a large increase to its monthly electric bill. The OSBA discovered that a new demand meter had been installed and the demand charge had been calculated for the old and new meter for the same period. As a result of the OSBA's intervention, the small business was refunded \$3,942.

- A school contacted the OSBA regarding several outages to the school's telephone service. The outages occurred more frequently after heavy rains. The OSBA contacted the telephone company. After an investigation determined that the underground cables needed to be replaced, the required repairs were made in a timely fashion.

- The OSBA assisted several small businesses that encountered charges on their telephone bills for internet service they did not request. Ultimately, those internet charges were taken off their telephone bills.

## **WORKERS' COMPENSATION ACTIVITIES**

The OSBA's workers' compensation duties involve a review and evaluation of, and the submission of, comments on the "loss cost"<sup>1</sup> filings that are submitted to the Insurance Department each year by the Pennsylvania Compensation Rating Bureau ("PCRB") and the Coal Mine Compensation Rating Bureau of Pennsylvania ("CMCRB"). In 2004, the OSBA also reviewed, evaluated and commented on several interim filings by the rating bureaus.

### **PCRB Filing**

After an independent analysis of the PCRB's filing for the year beginning April 1, 2004, the OSBA's actuarial consultant recommended an overall 0.41% increase to statewide industrial loss costs in lieu of the 3.32% increase requested by the PCRB. However, the Insurance Department approved the PCRB's proposal.

On December 17, 2004, the PCRB made its annual loss cost filing for rates to go into effect on April 1, 2005. The OSBA filed comments recommending a decrease of about 6.0% in lieu of the 2.89% decrease proposed by the PCRB. This matter is pending before the Insurance Department.

### **CMCRB Filing**

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<sup>1</sup>The "loss cost" portion of a workers' compensation premium reflects the cost of paying wages for employees whose injuries prevent them from working. The "loss cost" portion of the premium also reflects the cost of medical care for injured workers.

The CMCRB sought a 9.6% increase in loss costs for the year beginning April 1, 2004. The OSBA recommended that the CMCRB alter its methodology for determining individual class loss costs. The purpose of the OSBA's recommendation was to reduce the volatility that employers see in their insurance rates from year to year. The Insurance Department subsequently required the CMCRB to make changes to some of the assumptions in its filing. As a result, the Insurance Department approved an overall increase of 8.0% in lieu of the 9.6% increase proposed in the original filing. The approved increase was in the range recommended by the OSBA's actuarial consultant.

On December 13, 2004, the CMCRB proposed an overall increase in collectible loss costs to go into effect on April 1, 2005. The OSBA will be submitting its recommendations regarding the CMCRB's proposal. This matter is pending before the Insurance Department.

**OSBA STAFF**

William R. Lloyd, Jr.  
Small Business Advocate

Carol F. Pennington

Angela T. Jones (1/04 through 7/16/04)  
Assistant Small Business Advocate

Assistant Small Business Advocate

Karen Miller (8/30/04 to present)  
Assistant Small Business Advocate

Carolyn A. Shuman, Administrative Officer

Cathy L. Updegraff, Executive Secretary (9/1991 to 11/2004)

Melissa Parker, Clerk Typist II (3/2004 to 10/2004)