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OFFICE OF SMALL BUSINESS ADVOCATE

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I. INTRODUCTION

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 (*i.e.*, the share of a rate increase to be borne by each particular category of customer).

Historically, the Attorney General's Office of Consumer Advocate ("OCA") has represented residential ratepayers in rate structure disputes. Furthermore, large commercial and industrial customers frequently have had their own attorneys and expert witnesses. In contrast, because they did not have—and could not afford—their own representation, small business customers often received a disproportionate share of the rate increase. The legislature sought to level the playing field by creating the Office of Small Business Advocate ("OSBA").

The OSBA operates under the act of December 21, 1988 (P. L. 1871, No. 181), known as the Small Business Advocate Act, 73 P.S. §§399.41 *et seq*. (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"), before comparable federal agencies, and in the courts. 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."

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, and the substantiality of the effect of the particular proceeding on the interests of small business consumers.

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.

Because of the office's success in utility litigation, 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" filings that are made each year by the Pennsylvania Compensation Rating Bureau and the Coal Mine Compensation Rating Bureau of Pennsylvania.

The OSBA's budget for fiscal year 2009-2010 is $1,230,000. 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%. None of the OSBA's budget is financed by General Fund tax revenue.

The OSBA's authorized employee complement consists of seven persons, including five attorneys (the Small Business Advocate and four Assistant Small Business Advocates) and two 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.

II. THE UTILITY RATEMAKING PROCESS

Historically, utility companies have been viewed as natural monopolies which, in the absence of regulation, could charge excessive rates to their customers. Under the Public Utility Code, the PUC is responsible for setting rates which are "just and reasonable," *i.e.*, rates which cover the utility's costs and provide an opportunity for the utility to earn a fair profit.

Under the traditional ratemaking process, the PUC first measures the dollar amount of the utility's investment, *e.g.*, the utility's physical plant. Then, the PUC determines the return on that investment which will enable the company to service its debt and offer a stock price and dividends which are sufficient to attract equity investors. Next, the Commission awards the utility a rate increase in an amount which yields the required return on investment (after the utility has paid its operating expenses). Finally, the PUC decides how much of the rate increase is to be paid by each class of customers, *e.g.*, residential, small commercial and industrial, and large commercial and industrial.

In an appeal brought by the OSBA, the Commonwealth Court held "that rates and rate structures [must] be set for each service primarily on a cost-of-service study." *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007). Although the Court indicated that the Commission may consider other factors, such as gradualism, the Court characterized cost of service as the "polestar" of ratemaking concerns. In addition, the Court stated that gradualism may not be permitted to trump cost of service and that, whenever gradualism is successfully invoked, there must be a plan to move rates to cost of service gradually, *e.g.*, a multi-year phase-out of any subsidy provided by small commercial and industrial customers to residential customers.

Although the Commission continues to regulate water and wastewater utilities largely through the traditional ratemaking process, Pennsylvania has departed significantly from that process with regard to telephone, electric, and gas service. This departure is in response to changing federal requirements and to three statutes enacted by the General Assembly in the 1990s.

First, a 1993 state law (commonly referred to as "Chapter 30") ended rate regulation of those telecommunications services for which there was deemed to be competition. Furthermore, Chapter 30 provided for the similar deregulation of additional services if competitive markets develop.

In addition to deregulating certain services, Chapter 30 required the local telephone company to deploy high-speed broadband throughout its service area. To help pay for the broadband deployment, the utility was allowed to increase its rates for non-competitive services each year in an amount roughly equivalent to the rate of inflation less a productivity adjustment. These annual price increases are commonly referred to as

"Price Change Opportunities," or "PCOs." A 2004 state law reenacted Chapter 30 and provided for larger annual rate increases as an incentive to accelerate broadband deployment.

Second, a 1996 state law (which was amended in 2008) ended traditional regulation of the portion of the electric rate which covers the cost of generating electricity. After a transition period, the generation rates charged by the utility are to be based on the competitive procurement of electricity in the market place.[1] Customers who are not satisfied with the utility's generation rates also have the opportunity to buy their electricity from power plants other than those selected by the utility. However, the charge for transporting the electricity from the power plant to the utility's service territory (the "transmission rate") and the charge for delivering that electricity from the transmission line to the customer's premises (the "distribution rate") remain subject to traditional ratemaking.

Third, a 1999 state law gave all customers the right to buy natural gas from either the local utility or a competitor of the local utility. If a customer chooses to buy from the local utility, the rate for that service is set by the PUC after a review to assure that the utility is paying the "least cost" for the gas and for the transportation of the gas from the well to the utility's service territory. However, regardless of whether the customer buys gas from the utility or from a competitor, the utility remains responsible for delivering the gas from the interstate pipeline or the local gas well to the customer's premises. The PUC sets that delivery (or "distribution") rate through the traditional process.

[1] Under the 1996 statute, the utility was required to acquire the electricity at "prevailing market prices." However, the 2008 amendments repealed the "prevailing market prices" standard and imposed the requirement that the utility acquire the electricity competitively through a "prudent mix" of contracts and at the "least cost to customers over time." The 2008 amendments also prohibited any interclass subsidization, *e.g.*, small commercial and industrial ratepayers can not be required to pay an above-market price for electricity so that residential or large commercial and industrial customers can pay a below-market price.

III. UTILITY ACQUISITIONS AND MERGERS

Approval from the PUC is required before a Pennsylvania utility may be sold to, acquired by, or merged with another utility or a non-utility. In general, Commission approval is contingent upon a finding that the proposed transaction would result in "affirmative benefits" to the public.

Specifically, Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), requires that the Commission issue a certificate of public convenience as a legal prerequisite for the transfer or acquisition of certain property. The statute provides, in pertinent part:

> (a) Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:
>
> * * *
>
> > (3) For any public utility or an affiliated interest of a public utility as defined in section 2101 … to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service….

66 Pa. C.S. § 1102(a)(3).

Section 1103(a) of the Public Utility Code provides, in pertinent part:

> A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

66 Pa. C.S. § 1103(a).

In *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (Pa. 1972), the Pennsylvania Supreme Court provided the legal standard for granting a certificate under Section 1103(a) in public utility merger and acquisition cases. Specifically, the Supreme Court stated:

> [A] certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger …. [T]hose seeking approval of a utility merger [are required to] demonstrate more than the mere absence of any adverse effect upon the public …. [T]he proponents of a merger [are required to] demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way.

City of York, 449 Pa. at 141, 295 A.2d at 828.[2]

Under Section 1103(a), "[t]he commission, in granting such certificate [of public convenience], may impose such conditions as it may deem to be just and reasonable." Consistent with Section 1103(a), the PUC has held that "[i]n order to ensure that a proposed merger is in the 'public interest,' the Commission may impose conditions on its granting of the certificate of public convenience." *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, Docket No. A-110300F0095, 2001 Pa. PUC Lexis 23 (Order entered June 20, 2001). Consequently, by imposing conditions pursuant to Section 1103(a), the PUC may approve a transaction which would not meet the *City of York* standard without those conditions.

Moreover, the Pennsylvania Supreme Court recently applied Section 1103(a) in deciding the appeal of the Commission's decision regarding the Verizon/MCI merger. *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 937 A.2d 1040 (Pa. 2007). The Supreme Court ruled that "while in some circumstances conditions may be necessary to satisfy the Commission that public benefit sufficient to meet the requirement of Section 1103(a) will ensue, even where the PUC finds benefit in the first instance, Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable." *Popowsky*, 937 A.2d at 1057.

Through its ruling in *Popowsky*, the Supreme Court provided further guidance on what the Commission is required to review in a merger or acquisition case. The Court opined that "the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a

[2] Although *City of York* involved a merger, its holding is equally applicable to an acquisition. Section 1102(a)(3), which imposes the certificate of public convenience requirement, makes no distinction based on whether property is acquired by the "sale or transfer of stock," a "consolidation," a "merger," a "sale," or a "lease."

preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters." *Popowsky*, 937 A.2d at 1057. In other words, the proponents of the transaction are required to prove the likelihood of *substantial* affirmative public benefits by a preponderance of the evidence.

In both *City of York* and *Popowsky*, the Supreme Court simply concluded that there was substantial evidence to support the Commission's finding that the proposed transaction would provide affirmative public benefits. The Supreme Court did not hold that it would have been erroneous if the Commission had found that the benefits (although proven by a preponderance of the evidence) were not "substantial" and, therefore, did not justify approval of the transaction. In *City of York*, 449 Pa. at 141, 295 A.2d at 828, the Supreme Court stated the test as follows:

> [T]he proponents of a merger [are required to] demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some *substantial* way. (emphasis added)

In other words, even if the Commission finds by a preponderance of evidence, that a proposed transaction would yield affirmative public benefits, the Commission is not permitted to approve that transaction unless it finds that the benefits would be *substantial*.

IV. THE OSBA'S PUC-RELATED ACTIVITIES

The OSBA participates before the PUC in major rate cases, merger cases, and other non-rate proceedings that have a significant impact on small commercial and industrial ("Small C&I") customers. The following is a summary of some of the most significant cases in which the OSBA was active in 2009:

A. Electric Highlights

The rates charged by an electric distribution company ("EDC") include the cost of generating electricity (the "generation rate"), the cost of transporting that electricity from the power plant to the EDC's service territory (the "transmission rate"), and the cost of delivering that electricity through the EDC's wires to customers' premises (the "distribution rate").

Pennsylvania EDCs no longer generate electricity. Therefore, an EDC is required to purchase electricity from generators and transport it to the service territory in order to serve the EDC's non-shopping, *i.e.*, default service, customers. The EDC is required to deliver that electricity through the EDC's wires to its default service customers and also to deliver electricity through those wires which shopping customers have bought from electric generation suppliers ("EGSs").

1. Transmission and Distribution Rates

Metropolitan Edison Company
and Pennsylvania Electric Company
Transmission Rate Increase
Docket Nos. M-2008-2036197 and M-2008-2036188

On April 14, 2008, Met-Ed filed Supplement No. 5 and Supplement No. 6 to Tariff Electric – Pa. P.U.C. No. 50 with the Commission. The two Met-Ed Supplements were filed in the alternative to recover an alleged under-recovery through the Transmission Service Charge ("TSC") in the amount of $144.48 million.

Also on April 14, 2008, Penelec filed Supplement No. 5 to Tariff Electric – Pa. P.U.C. No. 79 with the Commission. The Penelec Supplement was filed to recover an alleged under-recovery through the TSC in the amount of $3.5 million.

The OSBA filed a Complaint, Notice of Appearance, and Public Statement in both proceedings. Several other parties also filed complaints or interventions.

The Commission approved Penelec's Supplement No. 5, subject to adjudication of the filed Complaints. In the Met-Ed case, the Commission entered an Order adopting Supplement No. 6 and instituting an investigation of the proposed rates, reserving the right to order refunds if the investigation concludes that any revenues collected under Supplement No. 6 are unjust, unreasonable, or otherwise contrary to law.

The issues raised by the OSBA are that (1) the Companies are not entitled to recover interest on marginal losses and other transmission costs; and (2) the Companies should have re-adjusted their transmission rates at the conclusion of their 2006-2007 rate case to make up for the fact that their request for increasing the generation rates in the rate transition case was denied.

On July 24, 2009, the Commission issued the administrative law judge's Recommended Decision, which rejected all of the objections to the Companies' filings. However, the OSBA and several other parties filed Exceptions to the Recommended Decision. The Commission has not yet entered an Order ruling on the Exceptions.

Pike County Light & Power Co.
Distribution Rate Increase
Docket No. R-2008-2046518

On July 18, 2008, Pike County Light & Power Company ("Pike") filed Supplement No. 46 to Tariff Electric – Pa. P.U.C. No. 8 with the Commission, seeking an additional $1.2 million in annual revenues.

The OSBA filed a Complaint in the case.

Following the filing of testimony by the parties, but before the commencement of evidentiary hearings, the parties successfully negotiated a settlement of the case. The settlement called for an increase in revenues of $855,000 instead of the $1.2 million requested by the Company. Of particular interest to the OSBA, the parties agreed that the small commercial and industrial ("Small C&I") classes, which had been overpaying, would move toward cost of service. Specifically, secondary Small C&I customers would receive less than the system average increase, while the primary Small C&I customers would receive first dollar relief resulting in no increase. The Settlement would also relieve Small C&I customers of having to pay for universal service. The Company also agreed to base its next cost of service study on the same time period as the historic test year, and to address in its next cost of service study a number of criticisms raised by the OSBA.

The Commission approved the settlement by Order entered March 31, 2009. As a result of the OSBA's intervention, Small C&I customers taking service at primary voltage are paying about $65,000 less per year than proposed by the Company.

2. <u>Conservation</u>

Governor Edward Rendell signed Act 129 of 2008 ("the Act" or "Act 129") into law on October 15, 2008. The Act requires each EDC with at least 100,000 customers to adopt a plan, approved by the Commission, to reduce electric consumption by at least 1% of the EDC's expected consumption for June 1, 2009, through May 31, 2010, adjusted for weather and extraordinary loads. This 1% reduction is to be accomplished by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption is to be reduced by a minimum of 3%. Also, by May 31, 2013, peak demand is to be reduced by a minimum of 4.5% of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007, through May 31, 2008. By November 30, 2013, the Commission is to assess the cost-effectiveness of the program and set additional incremental reductions in electric consumption if the benefits of the program exceed its costs.

Act 129 required the Commission to establish an Energy Efficiency and Conservation Program ("EE&C Program") in order to set parameters for the individual EDC plans. The Commission sought comments from the EDCs and other interested parties on the content of the Commission's EE&C Program. The OSBA was among the parties which submitted comments. The OSBA also participated in a special *en banc* hearing on alternative energy, energy conservation and efficiency, and demand side response.

The Commission subsequently circulated a draft staff proposal of its EE&C Program and held an EE&C Program stakeholder meeting, in which the OSBA participated. The OSBA also submitted reply comments on the Commission's draft staff proposal. After considering the parties' input, the Commission entered an Implementation Order (at Docket No. M-2008-2069887) on January 15, 2009, that established its EE&C Program.

On July 1, 2009, each of the following EDCs filed an energy efficiency and conservation plan ("EE&C plan") with the Commission for review and approval: West Penn Power Company, at Docket No. M-2009-2093218; Duquesne Light Company, at Docket No. M-2009-2093217; PPL Electric Utilities Corporation, at Docket No. M-2009-2093216; PECO Energy Company, at Docket No. M-2009-2093215; and Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, consolidated at Docket No. M-2009-2092222. The OSBA intervened in each EDC's proceeding, filed testimony, and submitted briefs.

Each EDC proposed its own mix of EE&C programs and proposed its own customer groupings for delivery of those programs and the recovery of the related costs. Although the OSBA evaluated each EE&C plan and commented on some of the unique aspects of the plans, the OSBA focused its attention on key policy and procedural issues applicable to the plans across-the-board.

Of particular significance to the OSBA, Act 129 explicitly requires that the costs for approved EE&C measures be financed by the same customer class that will receive the direct energy and conservation benefits from those measures. The effect of this language is to prohibit inter-class subsidization.

After an initial evaluation, the OSBA concluded that each EE&C plan was reasonable enough to begin implementation. Given the abbreviated time frame for reviewing the filings and also the lack of data (because the programs are new and untested), the OSBA pointed out that an assessment of the worthiness of the various proposed EE&C programs prior to implementation would be speculative.

Nevertheless, the OSBA did make several recommendations. First, the OSBA proposed that each EE&C plan be modified to assure a full vetting of the plan as part of an annual reconciliation proceeding. The OSBA proposed that the annual vetting should include an evaluation of the cost-effectiveness of the various EE&C programs and the recovery of the costs of those programs. Although the Commission addressed the annual review process somewhat differently for each EDC, it appears that the process approved by the Commission will provide the OSBA the opportunity to recommend changes in the EE&C plans and to challenge the allocation of specific costs among the customer groupings.

Second, each EE&C plan must achieve a minimum of 10% of the plan's reductions in both overall consumption and peak demand from units of federal, state, and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities ("Government/Non-Profit"). To varying degrees, the EDCs proposed to group Small Commercial and Industrial ("Small C&I") customers and Government/Non-Profit customers together for cost recovery purposes. As a result, Small C&I customers are likely to subsidize the cost to achieve the significant reductions in consumption and peak demand required from Government/Non-Profit customers. To avoid that subsidization, the OSBA proposed that each plan be modified to place Government/Non-Profit entities into a separate class for cost recovery purposes. Although the Commission rejected the OSBA's proposal, several EDCs did agree to collect the costs of municipal lighting EE&C programs solely from the lighting classes, thereby relieving Small C&I customers from having to bear those costs.

Third, several EDCs proposed to include the EE&C cost recovery mechanism as part of the distribution charge on customers' bills. In response, the OSBA pointed out that the costs associated with the EE&C programs are not distribution costs; rather, they are subsidies to a subset of customers to encourage participation in EE&C programs. The OSBA also warned that customers would likely (albeit incorrectly) view the EE&C charge as a distribution rate increase, thereby complicating future efforts to move distribution rates to cost of service. Finally, the OSBA opined that a separate charge for conservation is likely to receive a better reception from ratepayers when coupled with communication efforts from each EDC to promote its EE&C plan. Therefore, the OSBA recommended that the EE&C cost recovery mechanism be listed as a separate line item on customers' bills rather than be included within distribution rates. The Commission agreed with the OSBA that the EE&C charge should be listed separately on the bills of business customers.

3. Smart Meters

Each electric distribution company ("EDC") with at least 100,000 customers was required to file a smart meter technology procurement and installation plan ("SMIP") with the Commission pursuant to Act 129 of 2008. After soliciting input from the EDCs and other interested parties, the Commission entered an Implementation Order (at Docket No. M-2009-2092655) to establish the parameters for the individual SMIPs.

On August 14, 2009, the following EDCs filed their SMIPs: West Penn Power Company, at Docket No. M-2009-2123951; Duquesne Light Company, at Docket No. M-2009-2123948; PPL Electric Utilities Corporation, at Docket No. M-2009-2123945; PECO Energy Company, at Docket No. M-2009-2123944; and Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, consolidated at Docket No. M-2009-2123950. The OSBA intervened in each EDC's proceeding and filed testimony and briefs as deemed necessary. For the most part, the OSBA focused on the allocation of SMIP costs among the customer classes and the collection of those costs within the classes which include Small Commercial and Industrial ("Small C&I") customers.

Of particular significance to the OSBA, the Commission's Implementation Order provides that SMIP costs which benefit only one class are to be recovered solely from that class. However, costs which benefit more than one class, *i.e.*, "common costs," are to be allocated among the classes on the basis of reasonable cost of service practices.

The EDCs proposed to recover the cost of each smart meter directly from the class for which that meter is purchased and installed. This approach is consistent with the Implementation Order and also recognizes that the cost of a meter is likely to vary on the basis of the meter's size and functionality. Although there has been no dispute among the parties on the assignment of these costs directly to the classes, there has been considerable controversy over the allocation of the "common costs" among the classes.

Specifically, the EDCs proposed to allocate these common costs to the rate classes on the basis of the relative number of customers in each class. The OSBA supported the EDCs' approach, in that common costs are likely to vary on the basis of the number of customers in each class and not on the basis of the classes' relative consumption of electricity. However, the OCA opposed the EDCs' approach and argued that the common costs should be allocated on the basis of the relative energy consumption and coincident peak demand of each rate class. The OCA's proposal would effectuate a dramatic reduction in the share of the common costs allocated to the Residential rate class and a dramatic increase in the share of the common costs allocated to the Small C&I and Large C&I rate classes.

The essence of the OCA's argument is that smart meters will reduce electricity costs for ratepayers, that the ratepayers who use more electricity will "benefit" more from these reduced costs, and that the ratepayers who "benefit" more from these reduced costs should pay a larger share of the SMIP costs than the ratepayers who "benefit" less. In making this argument, the OCA assumes that Small C&I customers are more likely to be able to reduce their electric bills through the use of smart meters than are customers in the Residential class. However, the OSBA pointed out that there is no reason to believe that restaurants and retail establishments will be able to shift their load to off-peak periods as (or more) readily than Residential customers will be able to shift their use of dishwashers, washing machines, and dryers to the evening hours or weekends. In that regard, the OSBA noted that it is unrealistic to assume that a restaurant which relies upon its lunch, Happy Hour, and dinner patrons will be able to shift its load to off-peak hours and manage to continue in business.

The OCA's proposal also assumes that the principal reason for mandating the deployment of smart meters is to save ratepayers money. However, the OSBA pointed out that smart meters are expected to result in environmental benefits which will accrue to all citizens, regardless of how much electricity they use and regardless of whether their electric bills go down—or go up—as a result of smart meters.

The SMIP proceedings are pending before the Commission.

4. <u>Default Service</u>

Duquesne Light Company
Medium C&I Rates
Docket Nos. P-00072247 and P-2008-2079461

On December 1, 2008, Duquesne Light Company ("Duquesne" or "Company") filed a tariff to become effective on January 1, 2009, which proposed to adjust the default service rates for Medium Commercial and Industrial ("Medium C&I") customers. The adjustment was purported to be an implementation of a previously-approved default service multiplier. However, contrary to the formula previously approved by the Commission, the proposed tariff included a new adder for capacity to reflect the PJM Interconnection's Reliability Pricing Model ("RPM").

The OSBA filed a complaint, citing to the inclusion of the adder as the principal basis for the complaint. The Commission apparently agreed that the adder was problematic because on December 31, 2008, the Commission issued a Secretarial Letter summarily rejecting Duquesne's December 1 tariff filing.

On December 15, 2008, Duquesne filed a second tariff supplement which was purported to "clarify" the previously-approved formula and to provide a basis for the rate adjustment the Company sought to have approved via the December 1 filing.

The OSBA filed a complaint, again citing to the adder as the principal basis for the complaint. The OSBA also filed an answer to the Company's December 15 petition, as well as direct testimony.

Ultimately, the OSBA and Duquesne were able to reach a settlement which allowed the Company to modify its previously approved default service plan ("POLR IV") in a way that complies with the new requirements of Act 129.

The settlement discontinued the use of a formula to adjust Medium C&I default service rates and allowed the competitive market to set those rates. Specifically, Duquesne is to procure electricity for its default service obligations through a competitive Request for Proposal ("RFP") process. The default service supply for Medium C&I customers is to be acquired through full-requirements load-following contracts with adjustments in rates scheduled every six months to coincide with the procurement process.

The Commission approved the Settlement by Order entered April 20, 2009.

If the default service rates calculated under the previously-approved tariff had gone into effect as of January 1, 2009, the rates for Medium C&I customers would have decreased by approximately 1.8%. However, if the Company's proposal had been approved and permitted to go into effect as of January 1, 2009, the rates for Medium C&I customers would have increased by approximately 13.3%. The settlement was a compromise of the positions of the OSBA and Duquesne for the first six months of 2009, in that default service rates for Medium C&I customers were frozen at the level in effect on December 31, 2008.

The RFPs conducted thusfar have produced default service rates which actually are lower than the rates in effect on December 31, 2008. Therefore, the combination of the generation rate freeze for the first six months of 2009 and the favorable market prices for the second six months saved Medium C&I customers an estimated $23 million in 2009. In addition, Medium C&I customers are likely to pay less in 2010 than they were paying on December 31, 2008.

Duquesne Light Company
Default Service (2011-2013)
Docket No. P-2009-213550

On October 9, 2009, Duquesne Light Company ("Duquesne" or "Company") filed a default service plan for the period from January 1, 2011, through May 31, 2013.

The OSBA filed a notice of intervention and an answer. Subsequently, the OSBA filed three rounds of testimony through its expert witness.

The OSBA is in general agreement with the Company's proposal to serve Small Commercial and Industrial ("C&I") customers, *i.e.*, non-residential customers with peak loads of up to 25 kW, and Medium C&I customers, *i.e.*, non-residential customers with peak loads between 25 kW and 300 kW, through a series of competitively-procured, full-requirements contracts.

The matter is pending before the Commission.

Metropolitan Edison Company
and Pennsylvania Electric Company
Default Service (2011-2013)
Docket Nos. P-2009-2039053 and P-2009-2039054

On February 20, 2009, the Metropolitan Edison Company ("Met-Ed") and the Pennsylvania Electric Company ("Penelec") filed a Joint Petition for approval of their default service programs for the period of January 1, 2011, through May 31, 2013.

The OSBA filed an Answer, Notice of Intervention, and Public Statement. Several other parties also intervened. After the filing of direct, rebuttal, and surrebuttal testimony, the parties reached a settlement of most of the issues.

The OSBA was in general agreement with the Joint Petition, in that the Companies proposed to serve Commercial Group customers, *i.e.*, non-residential customers with peak loads below 400 kW, through a series of one-year, competitively-procured, full-requirements contracts. As part of the settlement, the OSBA agreed to a revision pursuant to which the Companies will serve 10% of the Commercial Group load through purchases in the spot market.

Separate issues reserved for briefing included the OSBA's recommendation to use Non-Utility Generator ("NUG") power for default service for Commercial Group customers and the OSBA's recommendation of a 50% cap on the load served by one supplier rather than the 75% load cap proposed by the Companies.

The Companies have entered into long-term purchase contracts with NUGs, pursuant to Section 210 of the Public Utility Regulatory Policies Act ("PURPA"). The contracts run for up to 20 years and expire on a staggered basis through 2020. The Companies will receive electricity under these contracts until they expire. Thus far, the contracts have generally been priced above market, but they are expected to be below market for the period of January 1, 2011, through December 31, 2020. Customers have been paying for stranded costs on these contracts and will be responsible for paying stranded costs on the contracts through 2020.

The Companies proposed to sell all NUG-related products, including the electricity, into the PJM-administered market and to credit any difference between market revenue received and NUG contract costs to ratepayers via the NUG Charge Rider. The NUG Charge Rider would replace the Companies' existing Competitive Transition Charge ("CTC"). In contrast, the OSBA proposed that the Commercial Group's share of the electricity under the NUG contracts be used to serve part of the Commercial Group's default service load. In the OSBA's view, customers are already entitled to the credit proposed by the Companies. Furthermore, using the NUG power to serve Commercial Group customers would act as a hedge against market price increases.

The presiding ALJ issued a Recommended Decision on August 17, 2009, rejecting the OSBA's positions. Specifically, the ALJ recommended that the Commission defer to the Companies' expertise regarding the 75% load cap. In addition, he recommended rejection of the use of the NUG power to serve Commercial Group customers, principally because he concluded that there was a lack of evidence that the NUG contract prices are consistent with market prices.

The OSBA filed an Exception to the Recommended Decision regarding the use of the NUG power. That Exception was denied by the Commission in an Order entered November 6, 2009.

Metropolitan Edison Company
and Pennsylvania Electric Company
Phase-In of Default Service Rates
Docket No. P-2008-2066692

On September 25, 2008, Met-Ed and Penelec filed a joint Petition for Approval of a Voluntary Prepayment Plan ("VPP") with the Commission, seeking permission for a program to enable certain qualified customers to make prepayments against an anticipated default service rate increase in 2011. The OSBA filed an Answer to the Joint Petition.

The parties negotiated a settlement of the VPP before it was necessary for the parties (other than the Companies) to file testimony. The OSBA supported the settlement particularly because of the resolution of the following issues: (1) the inclusion of all small C&I customers with peak demands of up to 25 kW in the program, which the Companies did not initially propose; and (2) obtaining the agreement of the Companies to forgo the collection of any costs associated with providing customers the 7.5% interest on prepaid amounts.

By Order entered February 26, 2009, the Commission approved the settlement.

PECO Energy Company
Default Service (2011-2013)
Docket No. P-2008-2062739

On September 10, 2008, PECO Energy Company ("PECO" or "Company") filed its plan for acquiring electricity for default service customers after the expiration of the Company's generation rate caps on December 31, 2010.

The OSBA intervened in the case, and filed an Answer to the petition. In analyzing the proposals in the petition, the OSBA agreed, in principle, with many elements of the Company's proposal, particularly the use of full requirements contracts to provide most of the electricity to small business customers. However, there were several issues identified by the OSBA that were ultimately resolved as part of a settlement. Those issues included the following:

First, PECO's proposed three-year phase-out of its declining block rates raised a potential problem that some low load factor Small Commercial customers might experience substantial rate increases in 2011 even though they were already paying above-market rates. This concern was resolved by PECO's acceptance of the OSBA's alternative method for implementing the three-year phase-out, which provides that no existing rate block that is at or above-market on January 1, 2011, will be increased above market; and that if a rate block is below market on January 1, 2011, it can be brought to market but cannot be moved higher.

Second, the three-year phase-in of flat rates could make it difficult for small business customers to decide whether to shop (or to continue shopping), and difficult for them to decide whether or not to opt-in to the early payment program or to the Deferral Program. In response to this concern, PECO agreed to provide a customer-specific price to compare on the bills of Small and Medium Commercial customers.

Third, some of the contracts proposed by PECO were to extend beyond the May 31, 2014, ending date for the default service plan. This concern was satisfied by the shortening of the default service plan to 29 months rather than the proposed 41 months and by the termination of contracts for Small and Medium Commercial customers by no later than the expiration date of the plan.

Fourth, because PECO originally proposed to conduct procurements in the "spring" and the "fall," the OSBA was concerned that the company might attempt to time the market. PECO resolved that concern by agreeing to a more specific procurement schedule.

Fifth, the OSBA was concerned about the impact on rates if a major wholesale supplier were to default. PECO addressed that concern by agreeing to impose a 65% cap on the amount of load a single wholesale supplier can win.

By Order entered June 2, 2009, the Commission approved the settlement, but the Commission reserved (for a future proceeding) the question of whether the Nuclear Decommissioning Cost Adjustment Clause should be continued.

PECO Energy Company
Phase-In of Default Service Rates
Docket No. P-2008-2062741

On September 10, 2008, PECO Energy Company ("PECO" or "Company") filed a petition which sought approval from the Commission of PECO's plan for mitigating the rate increases anticipated to occur when the generation rate caps expire at the end of 2010.

PECO's Phase-In Program is designed to give eligible customers, including Small and Medium Commercial customers, an option to help them manage the transition from PECO's capped generation rates to market-priced generation. The Phase-In Program will allow customers (that elect to participate) to make advance payments as part of their bills from July 1, 2009, through December 31, 2010. The advance payments will then be credited to their bills, with interest, between January 1, 2011, and December 31, 2012.

The principal issues identified by the OSBA included that there was not sufficiently specific language with respect to a price to compare, for customers to be able to ascertain whether to opt-in to the program; that customers would not be permitted into the program after an initial 60-day period; and that the implementation costs were not specified to be recovered on a class-basis.

The issues identified by the OSBA were resolved in a settlement which was approved by Commission Order entered March 13, 2009.

Pike County Light & Power Co.
Default Service (2009-2011)
Docket No. P-2008-2044561

On May 30, 2008, Pike County Light & Power Co. ("Pike") filed a Petition seeking Commission approval of Pike's program to supply its default service customers for the period from June 1, 2009, through December 31, 2012. The OSBA filed a formal Protest and an Answer in opposition to the Petition.

Pike and the OSBA filed direct testimony, and public input hearings were held. On October 15, 2008, Act 129 was signed into law. Among other things, Act 129 changed various portions of Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), with regard to default service procurement, thereby directly impacting Pike's Petition. As a result of the statutory changes, the procedural schedule was suspended.

On October 31, 2008, Pike filed an Amended Petition and supplemental testimony to address the Act 129 statutory changes. In its Amended Petition, Pike affirmed its original proposal to maintain the *status quo* of spot market purchases as the default service strategy through 2009. Pike predicted that, by the end of 2009 (seven months after the scheduled termination of Direct Energy's aggregation program which has provided electricity to most of Pike's customers), the Company would better know the default service load that it would have to serve. Pike proposed in its Amended Petition to serve that load primarily through the use of layered financial hedges purchased in coordination with Orange & Rockland Utilities (an affiliated interest), and supplemented by modest unhedged spot market purchases. In addition, Pike stated that it does not consider long-term contracts to be prudent because of the Company's unique characteristics. Finally, Pike made recommendations regarding its rate design and Alternative Energy Portfolio Standards ("AEPS") requirements.

The OSBA filed supplemental direct testimony in response to Pike's Amended Petition and supplemental testimony. No other parties filed testimony.

The OSBA recommended that Pike continue to serve its default service load through purchases on the spot market, based on the assumption that the majority of Pike's load would continue to be served through the combination of Direct's aggregation program and shopping with electric generation suppliers ("EGSs").

In the Amended Petition, Pike recommended that Direct's retail aggregation program not be renewed or extended. Pike and Direct Energy (through its pleadings) also recommended that the customers of Direct Energy who did not take affirmative action to return to Pike's default service at the end of the aggregation program and who did not shop for default service supply from another EGS would remain with Direct Energy under such terms and conditions as would be agreed upon between the customers and Direct Energy.

After extensive negotiations, the parties agreed to a settlement.

The OSBA initially advocated that the Commission consider rebidding and extending the aggregation program as the best way to assure Pike's customers a reasonable fixed-price default service option. However, there are several factors that weigh against the success of a rebidding of the aggregation program.

As an alternative to seeking protection for ratepayers through a rebidding of the aggregation program, Direct Energy agreed in the settlement to provide a fixed price during a two-year extension of the aggregation period, to coincide with the May 31, 2011, termination date of the default service period. That price appeared reasonable to the OSBA in view of the aforementioned uncertainty regarding the results of a rebidding of the aggregation program. Furthermore, the settlement adopted the OSBA's position that those default service customers who opt not to be customers of Direct Energy should be served at spot market prices.

The OSBA argued that when the Direct Energy aggregation program ends, the customers in that program should automatically return to Pike for their default service unless, on an individual basis, a customer affirmatively "opts in" to continued service by Direct Energy or another EGS. In contrast, Direct Energy argued that it should retain the aggregation customers, except for those who affirmatively "opt out" of continued service by Direct Energy.

The status of Direct Energy's aggregation customers at the end of the aggregation program is the single issue which was not resolved by the settlement. The parties agreed that this issue would be resolved by the filing of briefs following Commission approval of the settlement.

The Commission approved the settlement on February 5, 2009. As agreed, the parties thereafter briefed what would happen to Direct Energy's customers at the end of the aggregation program. On October 20, 2009, the Commission issued the administrative law judge's Recommended Decision, which reached the result advocated by the OSBA. However, Direct Energy filed Exceptions. The Commission has not yet acted on those Exceptions.

PPL Electric Utilities Corporation
Default Service Phase-In
Docket No. P-2009-2091280

On February 19, 2009, PPL Electric Utilities Corporation ("PPL") filed a Petition for the Approval of a Rate Mitigation Plan with the Commission. The OSBA filed a Notice of Intervention and an Answer to the Petition on March 11, 2009.

The Rate Mitigation Plan was intended to allow customers to defer part of the default service rate increase expected following expiration of PPL's generation rate caps on December 31, 2009. Originally, PPL's Petition provided participation in its Rate Mitigation Plan for "most" of PPL's small commercial and industrial customers. The OSBA opposed this limitation as insufficient and in violation of the Commission's regulations. PPL responded that the Company excluded the GS-1 customers because it did not expect the average increase for the GS-1 rate class in 2010 to exceed the necessary threshold for participation.

A settlement was reached in this proceeding. PPL and the OSBA agreed that GS-1 customers with average monthly usage greater than or equal to 1,775 kWH and an average monthly load factor greater than or equal to 45% will be eligible to participate in the Rate Mitigation Plan. This change was tailored to allow the larger GS-1 customers to participate. Significantly, GS-1 customers who meet the eligibility criteria could well experience an increase in generation rates of 25% or more even though the GS-1 class taken as a whole may experience a generation rate increase of less than 25%.

PPL's Petition stated that the Company did not seek to reconcile its Rate Mitigation Plan. In the Commission's August 13, 2009, Order which approved the settlement, the Commission modified the settlement to permit PPL to track uncollectible expenses and administrative costs associated with the Rate Mitigation Plan.

The OSBA filed a Petition for Reconsideration, arguing that the Commission improperly modified key terms in the settlement agreement that were important to the OSBA. On October 8, 2009, the Commission denied the OSBA's Petition. However, in doing so, the Commission acknowledged a letter from PPL agreeing with the OSBA that the settlement did not contemplate reconciliation and implying that the Company would not seek to recover any shortfall in collections from customers.

PPL Electric Utilities Corporation
Default Service (2011-2013)
Docket No. P-2008-2060309

In September of 2008, PPL Electric ("PPL" or "Company") filed a petition for approval of a default service plan for the period from January 1, 2011, through May 31, 2014.

The essence of the Company's plan was to acquire electricity for Small Commercial and Industrial ("Small C&I") customers through full-requirements, load-following contracts; five-year and ten-year fixed blocks of power; and the spot market. The OSBA intervened in this proceeding and filed direct, rebuttal, and surrebuttal testimony, recommending changes in the plan. Subsequently, the parties reached a settlement.

The OSBA agreed in principle with many aspects of PPL's originally proposed default service plan, especially its primary reliance on load-following, full-requirements contracts for the acquisition of default service supply for the Small C&I customers. The settlement preserved the core of PPL's filed procurement plan, *i.e.*, reliance on load-following, full-requirements contracts to serve the Small C&I customers. The settlement also made changes recommended by the OSBA, including the elimination of the long-term five-year and ten-year fixed blocks of power to serve part of the Small C&I load and the establishment of an aggregate 65% cap on the amount of Small C&I load which can be awarded to any individual wholesale bidder. The load cap will help to limit the impact on Small C&I rates if a wholesale supplier defaults, forcing PPL to find possibly expensive alternative supplies.

The settlement also shortened the default service period by one year, terminating it on May 31, 2013, rather than on May 31, 2014.

The Commission approved the settlement by Order entered on June 30, 2009.

UGI-Electric Division
Default Service (2010-2011)
Docket Nos. P-2008-2022931 and P-2008-2063066

In February of 2008, UGI Electric filed a petition for approval of a default service plan that lasted four years and five months and used a "portfolio" approach for obtaining default service supplies.

The OSBA disagreed with nearly every feature of UGI Electric's plan. Furthermore, the OSBA protested that the plan was incomplete, as it did not include any rate design for the customer classes, nor did it include any plan for procurement of the required alternative energy credits. The OSBA filed an extensive answer explaining the defects of the plan, and also filed direct testimony in the proceeding.

Ultimately, UGI Electric agreed to significant modifications proposed by the OSBA. Consequently, a settlement was reached among the parties. The settlement addressed the rate design and alternative energy credits issues, and revamped the procurement in a manner much more favorable to UGI Electric's small business customers. Of critical importance, the settlement will assure that small business ratepayers are not required to subsidize other rate classes.

The Commission approved the settlement by order entered July 17, 2008.

In August of 2008, UGI Electric subsequently made a filing setting forth the rate design details and alternative energy credits procurement plan as required by the settlement.

The OSBA identified a number of defects and errors in the August filing. Once those problems were corrected, all parties reached a settlement on the rate design and alternative energy credits issues.

The Commission approved the settlement by Order entered January 22, 2009.

UGI Utilities-Electric Division
Default Service (2011-2014)
Docket No. P-2009-2135496

On October 1, 2009, UGI Utilities, Inc. – Electric Division ("UGI") filed with the Commission a Petition for approval of a default service program for the company's commercial and industrial group customers with peak loads below 500 kW.

On October 21, 2009, the OSBA served an Answer and a Notice of Intervention in response to the Petition. Subsequently, the OSBA participated in a prehearing conference, served discovery on UGI, and filed direct testimony. In that testimony, the OSBA stated that it supports, in general, the load-following, full-requirements contracts UGI proposes to use in order to acquire default service supply for the commercial and industrial group customers for the period beginning June 1, 2011. However, the OSBA did identify a series of issues that it will pursue in this proceeding, including the disclosure of procurement results.

The proceeding is pending before the Commission.

West Penn Power Company d/b/a Allegheny Power
Default Service (2011-2013)
Docket No. P-00072342

On or about October 25, 2007, West Penn Power Company, d/b/a Allegheny Power ("Allegheny" or the "Company") filed with the Commission a plan for providing default service beginning on January 1, 2011. The Commission entered an Order on July 25, 2008, approving the plan with revisions.

One of the issues which the OSBA litigated was the procurement schedule for Small and Medium Commercial and Industrial ("C&I") customers. West Penn proposed to begin procurements in October 2008 for supply that would not be provided to customers for some three to five years in the future. The OSBA opposed procuring supply so far in advance. Instead, the OSBA recommended that West Penn's Small and

Medium C&I procurement begin in mid-2009 rather than in October 2008. The Company adopted the OSBA's procurement schedule. The Commission approved the OSBA's procurement schedule for the Company's initial contracts. However, the Commission provided that subsequent contracts are to be procured no more than six months in advance; those subsequent procurements must have multiple solicitations at pre-set staggered times (as the OSBA had proposed).

On February 6, 2009, West Penn filed a petition seeking to accelerate the previously-approved procurement schedule. The Company alleged that market prices for generation services had decreased by more than 40% since the Commission issued the July 25, 2008, Order. Consequently, the Company proposed to advance the procurement of six tranches of power for residential customers from 2010 to 2009 and to conduct the first 2009 procurement in April rather than in June.

Although West Penn's proposal applied only to the residential class, the OSBA opposed the petition because permitting the Company to revise a procurement schedule which was approved in a fully litigated case (and which was a contested issue) based solely on market fluctuations, would set a dangerous precedent. As the OSBA pointed out, it was uncertain whether market prices in April 2009 actually would be lower than market prices on the dates designated for procurements under the previously-approved schedule. Despite the OSBA's arguments, the Commission approved West Penn's petition by Order entered March 20, 2009.

On April 24, 2009, West Penn filed another petition to further modify the Company's procurement schedule for purchasing generation service to fulfill West Penn's residential default service load. Specifically, the Company requested permission to advance the purchase of six residential bid blocks to June 2009. Because of the Commission's decision in the first acceleration case, the OSBA took no position on the second acceleration petition. By Order entered May 15, 2009, the Commission approved West Penn's request to further modify the Company's procurement schedule.

Pennsylvania State University
(West Penn Power Company d/b/a Allegheny Power)
Default Service (2009-2010)
Docket No. P-2008-2021608

On December 3, 2007, the Pennsylvania State University ("Penn State") filed a petition for declaratory order at Docket No. P-2007-2001828, requesting that the Commission issue an order declaring that the generation rate cap extension from 2008 to the end of 2010, approved as part of a 2005 settlement for certain other rate classes, applies to electric generation service provided to Penn State.

On January 21, 2008, Allegheny filed a petition at Docket No. P-2008-2021608, seeking approval of a plan to provide default service for Penn State in 2009 and 2010.

By Order entered April 22, 2008, the Commission consolidated the two proceedings.

The OSBA was concerned with two issues since the Penn State proceeding was running on a similar time frame as West Penn's Default Service Proceeding at Docket No. P-00072342. First, the OSBA was concerned with the Company's request to be exempted from the Commission's regulations regarding interest on over- and under-collections of default service rates. Second, the OSBA was concerned that Penn State would be grouped with Medium C&I customers for purposes of procurement, thereby significantly increasing rates for the Medium C&I customers.

The OSBA's concerns were alleviated by the Company's withdrawal of the interest proposal and by the Commission's approval (in a July 25, 2008, Order at Docket No. P-00072342) of a separate procurement group just for Penn State.

Penn State filed a Petition for Review in the Commonwealth Court. The OSBA entered a Notice of Intervention in that proceeding. In its brief, Penn State questioned whether the 2005 settlement (which extended rate caps for some customer classes, including those applicable to small business customers) was valid. In response, the OSBA filed a brief demonstrating that the Commission properly approved the 2005 settlement. On January 22, 2010, the Court upheld the Commission's decision.

Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company Default Service (2010-2013) Docket Nos. P-2009-2110780 and P-2009-2110798

On May 18, 2007, Citizens' Electric Company of Lewisburg, PA ("Citizens'"), and Wellsboro Electric Company ("Wellsboro") (collectively, "the Companies") filed for approval of a plan (at Docket Nos. P-00072306 and P-00072307) to provide default service beginning on January 1, 2008.

Thereafter, the Companies hired Aces Power Management LLC ("APM"), a wholesale trading and risk management firm, to assist in the development of a procurement methodology. With the guidance of APM, Citizens' and Wellsboro initially proposed a procurement plan ("the Scheduled Procurement Plan") that consisted of a 25 MW 7x24 block product and a 25 MW 5x16 block product to be purchased each quarter. The remainder of the Companies' default service requirements were to be purchased through the PJM spot market.

However, at the hearing, the Companies presented rebuttal testimony which significantly modified their original position in the case and proposed a new procurement plan ("the Stratified Procurement Plan"). Under the Stratified Procurement Plan approach, the Companies proposed to purchase power via an annual 7x24 block product for approximately 20 to 25 MW of load, with the remainder of the load met through monthly contracts of mostly 5 MW increments plus spot market purchases.

The OSBA supported the Scheduled Procurement Plan and opposed the Stratified Procurement Plan. In the OSBA's view, the Stratified Procurement Plan (which is an "actively" managed portfolio), gave the Companies too much discretion as to when to buy power and how much to buy in each purchase. In theory, this discretion would enable the Companies to "time the market" in order to get lower prices than under the more rigid Scheduled Procurement Plan (which is a "passively" managed portfolio). However, the Stratified Procurement Plan did not explicitly subject the Companies' decisions to a prudence review, whereby recovery of the purchase price of any procurements could be denied if the Companies made unsound choices. Without a prudence review, the risk of mistakes by the Companies would fall entirely on the ratepayers.

On October 3, 2007, the Commission entered an Opinion and Order, which approved the Companies' Stratified Procurement Plan for the period of January 1, 2008, through May 31, 2010. Rather than impose a requirement for prudence review, the Commission ordered that the Companies, the OTS, the OCA, and the OSBA initiate a collaborative process to develop portfolio performance benchmarks and reporting requirements for those benchmarks.

In accordance with the Commission's directive, the Companies, the OSBA, the OCA, and the OTS attempted to develop consensus performance benchmarks. The parties agreed that the following three performance benchmarks should be used:

1) The total power, transaction, and administrative costs incurred under the Companies' Stratified Procurement Plan will be compared to the total power, transaction, and administrative costs that would have been incurred if all of the power had been purchased in the spot market.

2) The total power, transaction, and administrative costs incurred under the Companies' Stratified Procurement Plan will be compared to the total power, transaction, and administrative costs that would have been incurred under the Companies' Scheduled Procurement Plan, *i.e.*, the purchase each quarter of a 25 MW 7x24 block and a 25 MW 5x16 block and the purchase of the remainder of the Companies' default service requirements on the PJM spot market.

3) The total power, transaction, and administrative costs incurred under the Companies' Stratified Procurement Plan will be compared to total power, transaction, and administrative prices that could have been obtained through an RFP for long-term,

full-requirements contracts.

However, the parties could not reach a consensus on how the third benchmark should be constructed in order to obtain a valid proxy for the costs associated with long-term, full-requirements contracts to serve the Companies' default service customers. The parties also could not reach a consensus on the timing and frequency of the Companies' submission of the benchmark reports.

The Companies, the OCA, and the OSBA submitted comments to the Commission regarding the two benchmark issues on which they had been unable to agree. In an Opinion and Order entered on March 28, 2008, the Commission decided that the third benchmark should be constructed using the New Jersey auction but that the Companies should not be required to devote substantial resources to rendering the New Jersey "results into a directly 'equivalent' Citizens/Wellsboro price." The Commission also ordered that Citizens' and Wellsboro should provide benchmark reports annually and not quarterly (as the OSBA suggested).

Although the first annual benchmark report was due on April 1, 2009, the Companies did not file it until May 14, 2009. The Companies' benchmark report provided the results for only calendar year 2008. For 2008, the Companies' benchmark report showed that the Stratified Procurement Plan produced the lowest average procurement cost per MWh, for both Citizens' and Wellsboro, compared to spot market purchases, the Scheduled Procurement Plan, and the full-requirements contract.

On May 29, 2009, the Companies filed their proposed default service plan (at Docket Nos. P-2009-2110780 and P-2009-2110798) for the period of June 1, 2010, through May 31, 2013. Relying on the results shown in the benchmark report, the Companies requested approval to continue using the Stratified Procurement Plan, with several modifications which would give them even greater discretion. Specifically, the Companies requested permission to utilize certain financial products, *e.g.*, call options and swaps, to acquire default service supplies. In addition, the Companies requested permission to employ an abbreviated (30-day) review process for the purpose of obtaining Commission approval to enter into transactions for multiple year products, including the possibility of products to be delivered years beyond the end of the default service period.

During the subsequent discovery process, the OSBA identified several flaws in the benchmark report. First, the Companies failed to update the benchmark report to include the data available for the first and second quarters of 2009. Second, the Stratified Procurement Plan results included by the Companies in the benchmark report did not take into account the prices of the contracts that Citizens' and Wellsboro had entered with Lehman Brothers ("Lehman") for 2008 and 2009.

With regard to the second flaw in the benchmark report, the Companies had entered into two separate contracts with Lehman for 7x24 products. The first contract was for the calendar year of 2008. However, Lehman failed to deliver energy to both Citizens' and Wellsboro for the time period of September 15, 2008, through December 31, 2008. The second contract was a twelve-month contract executed on June 26, 2008, for energy to be delivered in 2009. Lehman also failed to deliver under that contract. As a result, the Companies had to buy energy from other suppliers to replace the 7x24 products that Lehman failed to deliver.

Because Lehman's failure to deliver energy to Citizens' and Wellsboro occurred during a period of energy price decline, the Companies were able to purchase replacement energy at prices which actually were below the prices under the Lehman contracts. This outcome was fortunate for Citizens' and Wellsboro's ratepayers, but it did not provide the basis for a fair assessment of the success or failure of the Stratified Procurement Plan. Therefore, the OSBA requested that the Companies supplement their benchmark report by providing the information necessary to run the benchmark analysis to include the first and second quarters of 2009 and to show what would have been the results under the Stratified Procurement Plan if Lehman had delivered under its two contracts.

The revised benchmark results showed that if Lehman had performed, the Stratified Procurement Plan would have produced a higher average procurement cost than the Scheduled Procurement Plan. Nevertheless, despite the revised benchmark results, the Companies continued to advocate for the continuation of the Stratified Procurement Plan (with APM as the portfolio manager) from June 1, 2010, through June 1, 2013, and for the two modifications.

The OSBA opposed the continuation of the Stratified Procurement Plan and opposed the two modifications proposed by the Companies. In view of the revised benchmark results, the OSBA recommended that the Companies use the Scheduled Procurement Plan, rather than the Stratified Procurement Plan, for the period from June 1, 2010, through May 31, 2013. Furthermore, the OSBA proposed that the Companies explore the possibility of purchasing default service electricity for its small business customers in conjunction with larger, neighboring electric distribution companies for service on and after June 1, 2013.

The parties are awaiting the Commission's decision.

Wellsboro Electric Company
Default Service Rates (2008)
Docket No. P-2008-2020257

On October 3, 2007, the Commission entered an Order (at Docket Nos. P-00072306 and P-00072307), which approved a default service program for Wellsboro

Electric Company ("Wellsboro") and its affiliate, Citizens' Electric Company of Lewisburg, PA ("Citizens"), for the period of January 1, 2008, through May 31, 2010.

On November 2, 2007, Wellsboro submitted its Generation Supply Service Rate ("GSSR") filing for the period from January 1, 2008, through March 31, 2008. Wellsboro's GSSR filing projected congestion costs for January 2008 to be -$11,145.97; congestion costs for February 2008 to be -$11,878.07; and congestion costs for March 2008 to be $12,071.11.

On January 30, 2008, Wellsboro filed a petition proposing alternatives for recovering an unanticipated increase in congestion costs for the period of January 1, 2008, through March 31, 2008. The petition alleged that actual congestion costs for Wellsboro for the months of January, February, and March of 2008 were now projected to be $821,045.81; $769,661; and $803,437, respectively. The Company's Petition further alleged that the reason the Company was, and would be, experiencing higher congestion costs was the derating of a transformer at East Towanda on the FirstEnergy transmission system.

As part of the pleadings in the case, the OSBA proposed that the Company be permitted to begin recovering the extraordinary congestion costs, subject to a possible refund at the conclusion of a proceeding to determine the reasonableness of those costs.

On February 28, 2008, the Commission entered an Order approving the recovery of the extraordinary congestion costs over a period of twelve months. Moreover, the Commission granted the OSBA's request that this matter be assigned to the Office of Administrative Law Judge for hearings to investigate the high congestion costs; to identify the likely causes of the extraordinary congestion costs; to recommend options that could mitigate the future possibility of such extraordinary congestion costs; to provide a recommendation regarding the level of congestion charges that are reasonable per Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3), and therefore recoverable in the GSSR over the twelve-month recovery period; to provide a recommendation regarding the Company's request for a waiver of Section 54.187(f) of the Commission's regulations; to address the Commission's nine directed questions; and to address the following issues:

1. Why the derating of the transformer occurred;

2. What steps Wellsboro took, or could have taken, to avoid the effects of the derating or to mitigate the impact of the derating on ratepayers;

3. What steps can be taken by Wellsboro, FirstEnergy, and PJM to make sure this problem does not reoccur; and

4. What steps First Energy/Penelec could have taken to avoid the derating or

to mitigate its impact.

Furthermore, the Commission directed Pennsylvania Electric Company ("Penelec") to participate in the investigation because the East Towanda transformer is part of the Penelec transmission system.

Ultimately, the OSBA and the other parties in the proceeding reached a settlement.

In response to the Commission's Directed Questions, the settlement included a Stipulation of Facts presented by Wellsboro and Penelec. The Stipulation of Facts contained conflicting evidence as to what caused Wellsboro's high congestion costs (FirstEnergy's derating of East Towanda No. 3 or factors such as virtual bidding and loop-flow issues around Lake Erie). The OSBA did not agree with Wellsboro and Penelec's Stipulation of Facts (concerning the weight that should be attributed to each of the factors they identified as contributing causes of the increase in Wellsboro's congestion costs for January 2008 and the reasonableness and prudence of the conduct of Penelec and Wellsboro). However, the OSBA concluded that the Settlement provided benefits to ratepayers, which outweighed further litigation (in an attempt to establish responsibility and to obtain refunds to ratepayers).

In addition, the settlement addressed the OSBA's following concerns:

First, the OSBA was concerned that if FirstEnergy's derating of East Towanda No. 3 actually caused Wellsboro's spike in congestion costs, action should be taken to reverse the derating of the transformer as soon as possible. FirstEnergy fixed the transformer. Therefore, if FirstEnergy's derating of the East Towanda No. 3 transformer was actually the primary factor in increasing prices above normal levels at the Wellsboro load bus, then FirstEnergy presumably resolved the problem when it fixed the transformer.

Second, the OSBA was concerned that if FirstEnergy's derating of East Towanda No. 3 was not the cause of Wellsboro's congestion costs and that factors such as virtual bidding and loop-flow issues around Lake Erie contributed to the level of congestion experienced during late 2007 and early 2008 in the Wellsboro area, fixing the East Towanda No. 3 transformer would not protect Wellsboro's customers from high congestion costs in the future. The settlement committed Wellsboro to requesting a change of the settlement point for its purchases of electricity, *i.e.*, from the Wellsboro aggregate bus to the Penelec zone, and committed Penelec not to oppose the request. Changing the settlement point for Wellsboro's purchases of electricity would address Wellsboro's high congestion costs if the congestion was caused by factors such as virtual bidding and loop-flow issues around Lake Erie.

Third, the settlement required Wellsboro to follow a hedging plan laid out in Citizens' and Wellsboro's Joint Petition to Add Congestion Management Strategy to

Default Service Procurement Plan that was filed with the Commission on August 7, 2008. Because the approval and implementation of Wellsboro's settlement point change will not become effective until the first day of the next PJM planning year beginning after the date that FERC, PJM, or both (PJM and FERC) grant approval of the settlement point change, Wellsboro's customers will be at risk for high congestion costs while that request is pending. Therefore, Wellsboro's agreement to continue following its previously filed hedging plan until the settlement point change becomes effective should help protect ratepayers from any high congestion costs in the intervening period.

Fourth, the settlement required Penelec to hold informational meetings with Wellsboro prior to October 2009, and annually thereafter for two years, at which Penelec will share information regarding upcoming projects related to the transmission facilities that serve Wellsboro. During those meetings, Penelec also will provide Wellsboro with information regarding projects that could be undertaken by Penelec to improve reliability to the circuits that serve Wellsboro. The meetings between Wellsboro and Penelec should help resolve any miscommunication that has been occurring between the two utilities and give them a forum to discuss projects and repairs that may affect the reliability of the circuits that serve Wellsboro.

Fifth, the settlement offered the following benefits to Wellsboro's ratepayers:

a. Penelec will include in its 2010 budget a list of projects that will help to improve reliability to the circuits that serve Wellsboro.

b. Wellsboro and Penelec also will jointly explore the installation of a 115 KV line to replace the 34.5 KV line currently serving the Wellsboro area, including an investigation of whether federal stimulus funding can be obtained for such a project.

c. Wellsboro will perform and present a cost of service study in its next distribution rate case.

d. In Wellsboro's Default Service Plan filing for the period beginning June 1, 2010, Wellsboro will not request an accelerated schedule for all or part of its plan. Wellsboro also will promptly provide the OSBA and the other relevant parties with the benchmarks that were to be filed according to the Commission's Order in *Petition for a Joint Default Service Plan for Citizens' Electric Company of Lewisburg, Pennsylvania and Wellsboro Electric Company for the Period of January 1, 2008 through May 31, 2010, Benchmarks*, Docket Nos. P-00072306 and P-0072307 (Order entered March 28, 2008).

e. Wellsboro agreed to a cap of $325,000 on litigation expenses.

Due to the magnitude of the litigation costs already incurred by the Company in the proceeding and the magnitude of the litigation costs the Company, the OSBA, Penelec, and other interested parties would have likely incurred to continue to litigate this proceeding, the OSBA believed that the above benefits were an adequate substitution for ratepayer refunds.

By Order entered July 23, 2009, the Commission approved the settlement.

5. Alternative Energy

Non-Utility Generators
Alternative Energy
Docket No. P-00052149 and 1198 C.D. 2007

On February 22, 2005, Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") (jointly, the "Companies") filed a Petition for Declaratory Order ("Petition") with the Commission seeking a declaration that the Companies are entitled to ownership of the Alternative Energy Credits ("AECs") associated with the electricity purchased from the York County Solid Waste and Refuse Authority ("York Authority"). York Authority is a non-utility generation ("NUG") facility.

Various parties intervened in the proceeding, including the OSBA, PPL Electric Utilities Corporation ("PPL"), and NUGs other than York Authority.

The Alternative Energy Portfolio Standards Act, 72 P.S. §§ 1648.1-1648.8 ("AEPS Act"), requires that a percentage of the electricity sold to retail customers by EDCs and EGSs be derived from certain alternative energy sources. To comply with the Act, EDCs and EGSs may purchase the required proportion of their total energy requirements from alternative energy sources, or they may purchase an equivalent number of AECs in the marketplace.

This dispute arose after the AEPS Act was signed into law in late 2004. Over the last two decades, Met-Ed, Penelec, and PPL had entered into long-term power purchase agreements ("PPAs") with various NUGs like York Authority. Now that the AECs have been statutorily created, the NUGs claimed that they own the AECs and are free to sell them to third parties even though the NUGs are contractually obligated to sell the electricity itself to Met-Ed, Penelec, or PPL. In contrast, Met-Ed, Penelec, and PPL argued that the EDCs own the AECs and can use them to meet the requirements of the AEPS Act. The OSBA argued that the AECs belong to the EDCs and must be used for the benefit of ratepayers.

On July 5, 2006, the ALJ issued her recommended decision. The ALJ recommended that the Petition be granted and that ownership of the AECs be awarded to the Companies.

On February 12, 2007, the Commission adopted the ALJ's recommendation.

On June 28, 2007, ARIPPA appealed the Commission's order to the Commonwealth Court at 1198 C.D. 2007. York Authority also filed an appeal on that date. However, York Authority withdrew its appeal one month later.

Briefs were filed by all of the parties, including the OSBA, in mid-2008. Oral argument was held before the Commonwealth Court in early December 2008.

On March 3, 2009, the Commonwealth Court issued an Opinion upholding the PUC's decision.

The prices paid by Met-Ed, Penelec, and PPL to the NUGs have been in excess of the market price of electricity. Consequently, retail customers have been paying higher rates than they would have paid if the EDCs had not been required to enter the PPAs. If ownership of the AECs had been awarded to the NUGs, Pennsylvania retail customers would have seen an increase in their electric bills because the EDCs would have continued to be obligated to purchase the electricity generated by the NUGs but would also have been required to purchase replacement AECs from other entities in order to comply with the AEPS Act.

PECO Energy Company
Solar Alternative Energy Credits
Docket No. P-2009-2094494

On March 3, 2009, PECO filed a Petition for approval of a plan to procure solar alternative energy credits ("AECs"). Specifically, the Petition sought approval from the Commission of PECO's plan for annual procurement of up to 8,000 solar Tier I AECs for a ten-year period to satisfy a portion of PECO's future solar-related Alternative Energy Portfolio Standards Act ("AEPSA") requirements.

The OSBA filed an Answer, Notice of Intervention, and Public Statement. Several other parties also intervened. Following the filing of direct testimony, the parties reached a settlement of the issues.

The OSBA was concerned that there may not be adequate competition in the procurement of solar AECs to produce a reasonable price (and, therefore, a reasonable cost for ratepayers to bear). To address this concern, the OSBA proposed that PECO reject the bids unless there were a minimum number of bidders.

The Settlement adopted the OSBA's solution, requiring that at least three unaffiliated entities submit bids in order for the results to be approved by the

Commission. The Commission approved the settlement by Order entered August 28, 2009.

6. Miscellaneous

Purchase of Receivables

The distribution rates of an electric distribution company ("EDC") typically include charges to cover the utility's cost of compiling, sending, and collecting bills and to cover the billed amounts which are likely to be uncollectible. A customer is required to pay these charges regardless of whether the customer buys default service electricity from the EDC, *i.e.*, the customer is a non-shopper, or the customer buys electricity from an electric generation supplier ("EGS"), *i.e.*, the customer is a shopper.

An EGS incurs similar costs to compile and send bills to its customers and to collect those bills and a similar cost to cover the bills which are uncollectible. The EGS can be expected to include these costs in the generation rate it charges to its customers. As a result, EGSs frequently argue that it is unfair that shopping customers must pay these billing, collection, and uncollectibles costs twice, *i.e.*, once to the EGS as part of the generation rate and once to the EDC as part of the distribution rate. According to the EGSs, this so-called "double charge" inflates the generation rates offered by EGSs, thereby inhibiting customers from shopping.

EDCs typically respond to this argument by pointing out that an EDC does not avoid the cost of billing, collection, and uncollectibles when a customer shops, in that the utility must still incur those costs to collect for the delivery, *i.e.*, distribution, of the electricity the customer purchased from an EGS.

As a way of addressing this issue and removing a possible barrier to shopping, the Commission has encouraged EDCs to establish purchase of receivables ("POR") programs. Under a POR program, the EDC purchases the EGS's receivables, thereby relieving the EGS of most of the costs related to billing and collection and of most of the risk related to being unable to collect the bills. To reflect the fact that the EDC is assuming the risk of not being able to collect some of the EGS's bills, the EDC typically purchases the receivables at less than face value, *i.e.*, at a discount.

One issue which arises is what is to be done if the discount is too low, *i.e.*, if the EDC is unable to collect as large a portion of the EGS's receivables as was expected. In PPL's POR proceeding at Docket No. P-2009-2129502, the OSBA was successful in protecting non-shopping customers from having to make up any of the EDC's shortfall in collecting an EGS's receivables. The OSBA argued that the cost of shopping should be borne entirely by shopping customers and that making non-shopping customers liable for the shortfall would undermine the incentive for the EDC to negotiate an appropriate discount rate.

The OSBA is raising similar arguments in PECO's POR case, which is pending before the Commission at Docket No. P-2009-2143607.

Metropolitan Edison Company
and Pennsylvania Electric Company
NUG Stranded Costs
Docket Nos. D-2009-2093381 and D-2009-2093382

By Order entered October 20, 1998, at Docket Nos. R-00974008 and R-00974009, the Commission provided for the annual audit of non-utility generation ("NUG") related stranded cost recovery by the Metropolitan Edison Company ("MetEd") and the Pennsylvania Electric Company ("Penelec") (collectively, "the Companies") through the Competitive Transition Charge ("CTC").

On August 6, 2009, the Commission entered a Tentative Order giving the parties 30 days to comment upon certain findings that were raised in the audit reports of 2008 stranded cost recovery. Those findings related to the accounting methods used by the Companies regarding allocation of revenues between NUG and non-NUG stranded costs and, in particular, the practice of using a NUG credit to reduce non-NUG stranded costs.

The OSBA filed Comments, taking the position that NUG credits could not be used to reduce non-NUG stranded cost balances. As pointed out by the OSBA, this accounting practice will inflate the amount of NUG stranded costs collected from MetEd's ratepayers and also enable MetEd to collect non-NUG stranded costs to which it is not entitled. The Companies filed a response, in which they disagreed with the OSBA.

The matter is pending before the Commission.

PECO Energy Company
Nuclear Decommissioning Costs
Docket No. I-2009-2101331

By Order entered June 2, 2009, the Commission approved a settlement agreement in the Default Service Plan proceeding of PECO at Docket No. P-2008-2062739. In its Order, the Commission noted that the tariff associated with the Default Service Plan proposed to maintain the authorization for PECO to collect nuclear decommissioning costs from ratepayers under the Nuclear Decommissioning Cost Adjustment Clause ("NDCAC") after December 31, 2010. The Commission stated that the continued collection of nuclear decommissioning costs after the expiration of PECO's rate caps on December 31, 2010, had not been addressed in the settlement document.

The Commission determined that several questions exist regarding the justness, reasonableness and lawfulness of continuing to collect nuclear decommissioning costs from customers after the expiration of PECO's rate caps. Consequently, the Commission initiated an investigation at Docket No. I-2009-2101331.

On June 24, 2009, the OSBA intervened in this proceeding. The principal issue identified by the OSBA is that PECO appears to be shifting to its ratepayers all of the risk for increases in decommissioning requirements and for additional capital costs incurred to extend plant lives, even though PECO no longer owns these plants and PECO's ratepayers are not entitled to the benefit of the power generated by these nuclear facilities. In the OSBA's view, PECO's ratepayers should be liable only for decommissioning costs that are based upon the useful lives and anticipated decommissioning methods that were in place at the time of restructuring.

The parties have conducted discovery and are engaged in discussions aimed at answering the questions posed by the Commission.

PPL Electric Utilities Corporation
Time of Use Rates
Docket No. R-2009-2122718

On July 31, 2009, PPL Electric Utilities Corporation ("PPL" or "Company") filed a tariff seeking Commission approval to offer optional time-of-use ("TOU") default service generation rates to residential and small business customers. The tariff could have also affected the rates charged to small business customers who did not choose the time-of-use option.

The OSBA filed a complaint but did not file testimony. However, the OCA filed testimony opposing the Company's proposal to collect from ratepayers a potential loss in revenues caused by the fact that PPL will pay wholesale suppliers based on an average cost of electricity per kWh but will collect less than that from ratepayers who enter the TOU program. In response to the OCA's argument, the OSBA filed a brief, arguing that if the OCA were successful in shielding residential ratepayers from having to make up any such revenue loss, the same protection should be extended to Small Commercial and Industrial customers.

In a Recommended Decision issued on December 14, 2009, an Administrative Law Judge recommended that PPL's TOU tariff not be approved. Although the Commission voted at the Public Meeting of January 28, 2010, to approve the TOU tariff, the final order has not been entered.

B. <u>Gas Highlights</u>

The rates charged by a natural gas distribution company ("NGDC") include both the cost of the gas and the cost of delivering, *i.e.*, distributing, that gas through the NGDC's pipes to customers' premises. The cost of the gas includes the amount paid by the NGDC for the gas itself, the amount paid by the NGDC to transport the gas from the well to the utility's service territory, and the amount (if any) paid by the NGDC to store the gas until customers need it.

The NGDC is required to acquire gas and to deliver it through the NGDC's pipes for non-shopping customers, *i.e.*, sales customers. The NGDC is also required to deliver through those pipes gas purchased by shopping customers, *i.e.*, transportation customers, from natural gas suppliers ("NGSs"). The NGDC collects the cost of the gas from its non-shopping customers through the Gas Cost Rate ("GCR"). The NGDC collects the delivery costs from both shopping and non-shopping customers through distribution rates.

1. <u>Distribution Rates</u>

Equitable Gas Company
Base Rate Increase
Docket No. R-2008-2029325

On June 30, 2008, Equitable Gas Company ("Equitable" or "Company") requested an increase in distribution rates of $51.5 million per year, an increase of 10.1% over the then-current levels. The OSBA filed a complaint.

Ultimately, the OSBA and the other parties reached a settlement that allowed Equitable an additional $38.35 million in annual distribution rate revenue.

Using any of the cost allocation methodologies submitted in this proceeding, the small business customers taking service under rate GS were overpaying their distribution cost of service at present and proposed rates. For business customers taking service under rate GSL, both of the Company's allocation methods showed business customers overpaying at present rates, but only one reflected an overpayment at proposed rates.

While Equitable's proposed revenue allocation resulted in modest progress towards cost-based-rates, the OSBA proposed to reduce the cross-subsidies even further through first dollar-relief. Under the settlement, Equitable's small business customers experienced a smaller percentage increase than they would have under the Company's filed proposal. The Settlement set forth rates that are consistent with the OSBA's proposal for first dollar relief in which rate GS receives no increase. Consequently, the Settlement resulted in rate GSL receiving a 9.6% increase, which is lower than the

Company had proposed and lower than the system average increase of 24.8%. The redistribution of the rate increase moved small business customer class rates closer to their cost of service, thereby reducing the amount by which the Company's small business customers are overpaying. In summary, the Settlement set the distribution rates for Small C&I customers about $903,000 per year lower than proposed by the Company and about $5.3 million per year lower than proposed by the Independent Oil and Gas Association ("IOGA").

The Commission entered a final order approving the settlement on February 26, 2009.

Philadelphia Gas Works
Extraordinary Base Rate Increase
Docket No. R-2008-2073938

On November 14, 2008, Philadelphia Gas Works ("PGW" or the "Company") filed a Petition for Extraordinary or Emergency Rate Relief ("Petition") and a tariff seeking approval of rates and changes to increase distribution revenues by $60 million per year. The proposed increase was purportedly to be allocated on an across-the-board basis. The Petition also requested that the Commission authorize the deferral of the Company's required filing of its regular quarterly Gas Cost Rate ("GCR") adjustment, usually filed on December 1, and allow PGW simultaneously to implement the $60 million distribution increase and an estimated $85 million decrease to its GCR and Universal Service Charge ("USC") rates.

The OSBA filed a timely Notice of Intervention and Public Statement on November 18, 2008.

PGW did not file an updated cost of service study. According to PGW, the Company did not have time to prepare a cost of service study because of the time constraints under which the filing was made. The OSBA's primary concerns revolved around the size of the requested increase, the allocation of the requested increase, the statutory waivers requested, and the fact that PGW was trying to "end run" the requirement that it file and litigate a full base rate proceeding concurrently with the request for extraordinary rate relief.

The OSBA ultimately supported PGW's request for $60 million on an interim basis, and successfully argued for a change in the way in which PGW allocated the requested increase (saving Small C&I customers about $1.3 million per year). The Commission granted PGW's request for $60 million in extraordinary rate relief and granted waivers of the statute which the OSBA believed were legally impermissible. The Commission also declined to order an immediate proceeding on cost of service and revenue allocation issues. However, the Commission directed PGW to file a full base rates case by the end of 2009.

The OSBA filed a Petition for Reconsideration with the Commission. PGW filed an Answer and New Matter. The OSBA filed a response to the New Matter. PGW filed a Motion to Strike the OSBA's response. By Order entered March 26, 2009, the Commission entered an Order rejecting the OSBA's Petition. However, in so doing, the Commission clarified that its decision to grant the $60 million rate increase did not rely on the waiver of any provisions of the Public Utility Code. Furthermore, the Commission indicated that the OSBA would be permitted to challenge PGW's revenue allocation in the rate case to be filed by the end of 2009.

Philadelphia Gas Works
Base Rate Increase (2006-2007)
Docket No. R-00061931

On December 22, 2006, Philadelphia Gas Works ("PGW" or the "Company") filed a tariff seeking approval of rates and rate changes to increase the distribution revenues of PGW by $100 million per year.

The OSBA filed a complaint against the proposed increase. The OSBA's primary concerns revolved around the size of the requested increase and the manner in which the Company proposed to allocate the rate increase across the classes of customers. The evidence reflected that PGW's business customers were overpaying based on the actual cost of service prior to the rate increase and would be overpaying to an even greater extent after the rate increase. At the same time, the evidence reflected that PGW was under-recovering its costs from the residential classes.

The OSBA successfully argued that there was a substantial inequity in the way PGW proposed to collect its rate increase. The Commission agreed with the OSBA that commercial customers were subsidizing residential customers. As a remedy, the OSBA and the OTS argued that if the Commission awarded PGW less than a $100 million increase, first-dollar relief should be provided to the overpaying classes to mitigate the subsidy. The basic theory of first-dollar relief is that none of the rate increase goes to customer classes that are overpaying for utility service until the rates of underpaying classes are increased enough to cover the actual cost of providing service to those underpaying classes.

The Commission ultimately awarded PGW only a $25 million annual increase in distribution revenues. Because the Commission adopted first-dollar relief, none of the $25 million rate increase was allocated to business customers. Therefore, the Company's small business customers are saving about $6.8 million per year.

The Commission rejected the OSBA's proposal to phase out the allocation of universal service costs to non-residential customers over a three-year period. The OSBA's proposal was rejected because the Commission concluded that the combined effect of allocating the $25 million rate increase solely to the residential classes and phasing out the requirement that non-residential customers share in paying universal service costs would amount to rate shock for the residential customers. However, the Commission did acknowledge that the Commission's policy is to allocate universal service costs solely to the residential class, thereby preserving the opportunity for the OSBA to argue this issue in future cases.

Additionally, the Commission directed the Company to submit a cost-based rate for Interruptible Transportation ("IT") customers. The result of the redesign of the IT rate (from a market-based to a cost-based rate) resulted in a revenue shortfall of $2.671 million. In its compliance filing, PGW proposed to assign the entire revenue shortfall to the residential classes.

The OCA excepted to PGW's proposed allocation of the $2.671 million shortfall. However, the OSBA agreed with PGW. As the OSBA pointed out, the Commission was aware that the revenue shortfall created by moving IT rates to cost of service would have to be made up by a class or classes other than IT, but the Commission neither stated nor implied that the responsibility for the shortfall should be allocated differently than the responsibility for the $25 million rate increase.

In approving first-dollar relief, the Commission had acknowledged that "the record before us reflects a *substantial inequity* in rates between the residential classes and the non-residential firm sales customers." That inequity, which the Commission sought to address by awarding first-dollar relief, would be exacerbated if the $2.671 million shortfall were recovered from any class but the residential classes. The Commission agreed with the OSBA and allocated the shortfall to the residential classes, thereby saving small business consumers about $500,000 per year in increased rates.

PGW filed an appeal with the Commonwealth Court at 1914 C.D. 2007. The OSBA filed a notice of intervention in the Commonwealth Court proceeding. After the filing of briefs and an oral argument, the Commonwealth Court issued an unreported opinion on February 4, 2009, in which the Court upheld the Commission's decision to limit PGW's increase to $25 million. On February 19, 2009, PGW filed a Motion with the Commonwealth Court for Reconsideration, for Reargument and/or for Argument *En Banc*. On April 2, 2009, the Commonwealth Court denied the Motion.

On May 4, 2009, PGW filed a Petition for Allowance of Appeal in the Supreme Court. On December 2, 2009, the Supreme Court denied the Petition.

Pike County Light & Power Co.
Base Rate Increase
Docket No. R-2008-2046520

On July 18, 2008, Pike County Light & Power Company ("PCL&P" or "Company") requested an increase in annual gas distribution revenues of approximately $454,900. The OSBA filed a complaint as well as direct, rebuttal and surrebuttal testimony.

Ultimately, the OSBA and the other parties reached a settlement that allowed PCL&P an additional $260,000 in annual distribution rate revenue.

There was a difference of opinion among the parties about the proper cost of service methodology. The consensus among the parties, except the Company, was that the Company's methodology was not consistent with recent Commission precedent. However, given the size of the requested increase, the fact that PCL&P has very few business customers, and the fact that the Company was willing to make modifications to its methodology in its next case, the OSBA elected not to litigate the issue in this proceeding.

The Commission approved the settlement by order entered February 26, 2009.

UGI-Central Penn Gas
Base Rate Increase
Docket No. R-2008-2079660

On January 28, 2009, UGI Central Penn Gas Inc. ("CPG" or "Company") filed Tariff Supplements with the Commission requesting increases in total operating revenue. If approved by the Commission, the two Tariff Supplements, in the aggregate, would have increased CPG's annual gas distribution revenues by $22.1 million and resulted in an awarded 12.25% return on equity.

The OSBA filed a complaint and submitted direct, rebuttal, and surrebuttal testimony. In testimony, the OSBA raised the following concerns:

1. Whether the proposed return on equity of 12.25% is consistent with the risk-adjusted cost of equity capital for natural gas distribution companies similar to CPG;

2. Whether CPG's filed proposals to assign rate increases that are well above the system average to small business rate classes are consistent with the results of a reasonable cost allocation study and with the regulatory principles specified in *Lloyd v. Pennsylvania Public Utility Commission*,

904 A.2d 1010 (Pa. Cmwlth. 2006);

3. Whether the proposed rate designs for the tariffs that apply to small business customers are consistent with reasonably allocated costs, with the objective of avoiding intra-class cross-subsidies, with the principle of gradualism, and with other sound ratemaking concepts, in that CPG proposed more than a five-fold increase in the customer charge for some small business customers; and

4. Whether the Company's proposal to establish a merchant function charge as a percentage of gas supply costs properly unbundles costs related to gas-supply from distribution base rates, represents a sound rate design mechanism for the recovery of these costs, and obviates the need for a purchase-of-receivables program.

Ultimately, the OSBA and the other parties in the proceeding reached a settlement. The settlement addressed the OSBA's concerns as follows:

First, in the Company's original filing, CPG proposed a revenue increase of approximately $22.1 million ($19.6 million, inclusive of a $2.5 million acquisition credit related to UGI Utilities, Inc.'s acquisition of CPG in 2008). The OSBA identified that a major factor in the Company's claimed revenue requirement was an excessive return on equity. In contrast, the Settlement provides only $12.5 million per year in additional annual operating revenues. However, once the acquisition credit of $2.5 million is applied, the increase will be $10.0 million. The significant reduction in the overall revenue increase provided by the Settlement will benefit all of CPG's consumers, including the Company's small business customers.

Second, in its original filing, CPG provided the summary results of a Cost of Service Study ("COSS") at present rates, and the detailed results of a COSS at its proposed rates. In the OSBA's view, CPG's filed COSS overstated the costs of providing service to small business customers. Ultimately, the Settlement did not adopt any specific COSS methodology, but adopted a revenue allocation more consistent with the results of CPG's COSS (as revised to reflect OSBA's recommendations) than the revenue allocation originally proposed by the Company.

Third, the OSBA was concerned that despite the fact that both classes significantly overpay at current rates, CPG's original revenue allocation actually moved Rate GS farther away from cost of service and made minimal progress in moving Rate GDS closer to cost of service. Specifically, CPG proposed that Rate GS receive a 47.1% increase, which was above the system average increase of 44.5% (excluding storage). Furthermore, CPG proposed that Rate GDS receive a 39.6% increase, which was below the system average increase of 44.5% (excluding Storage).

Under the Settlement, the parties agreed that Rate GS will receive a 21.0%

increase and Rate GDS will receive a 24.3% increase. The system average increase under the Settlement is 25.5% (excluding Storage). Therefore, both Rate GS and Rate GDS are receiving below system average increases under the Settlement (excluding Storage). In comparison to CPG's proposed allocation of the rate increase, Rate GS customers are saving about $481,000 per year. Moreover, both classes benefit from the fact that the Settlement provides a smaller reduction in the Storage rate than proposed by CPG in the filed case.

Fourth, in the Company's original filing, CPG proposed to segregate its uncollectible costs into two components: merchant gas supply uncollectibles and distribution service uncollectibles. The gas supply uncollectible costs were to be recovered through a Merchant Function Rider ("MFR"). CPG proposed to impose a uniform percentage MFR of 1.37% on retail sales customers in Rates R and G (which is the vast majority of the COSS rate class "GS") as an alternative to developing a purchase of receivables program ("POR").

The OSBA's witness testified that by imposing a uniform percentage MFR on both Rate R (residential) and Rate G (non-residential) customers without also adopting a mandatory POR program, CPG would be creating an incentive for Natural Gas Suppliers ("NGSs") to favor Rate G customers over Rate R customers and would be putting CPG's own revenues at risk. However, OSBA's witness testified that these problems could be avoided either by CPG's adopting a mandatory "without recourse" POR program for retail suppliers or by CPG's establishing a class-specific MFR. The class-specific MFR would be set at a lower rate for Rate G and a higher rate for Rate R, to reflect the fact that the rate of nonpayment by Rate R customers is significantly higher that that of Rate G customers.

The Settlement adopts OSBA's proposal that the MFR percentages differentiate between Rate R and Rate G customers. Specifically, the MFR percentage for Rate R is 2.60% and the MFR percentage for Rate G is 0.14%. By differentiating MFR percentages for Rate R and Rate G, CPG is avoiding creating an incentive for NGSs to favor small business customers over residential customers because the price-to-compare for small business customers will already reflect the lower uncollectibles rate for the Rate G class.

The Commission approved the settlement by Order entered August 27, 2009.

UGI-Penn Natural Gas
Base Rate Increase
Docket No. R-2008-2079660

On January 28, 2009, UGI Penn Natural Gas Inc. ("PNG" or "Company") filed Tariff Supplements with the Commission requesting increases in total operating revenue. If approved by the Commission, the two Tariff Supplements, in the aggregate, would have increased PNG's annual gas distribution revenues by $38.1 million and resulted in an awarded 12.25% return on equity.

The OSBA filed a complaint and submitted direct, rebuttal, and surrebuttal testimony. In testimony, the OSBA raised the following concerns:

1. Whether the proposed return on equity of 12.25% was consistent with the risk-adjusted cost of equity capital for natural gas distribution companies similar to PNG;

2. Whether PNG's proposals to assign rate increases at about the system average to Rate N and well above the system average to Rate DS were consistent with the results of a reasonable cost allocation study and with the regulatory principles specified in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006);

3. Whether the proposed rate design for the Rate N and Rate DS customers was consistent with reasonably allocated costs, with the objective of avoiding intra-class cross-subsidies, with the principle of gradualism, and with other sound ratemaking concepts, in that PNG proposed an increase of more than 100% in the customer charge for the smaller Rate N customers and a more than six-fold increase for the smaller Rate DS customers; and

4. Whether the Company's proposal to establish a merchant function charge as a percentage of gas supply costs would properly unbundle costs related to gas-supply from distribution base rates, represent a sound rate design mechanism for the recovery of these costs, and obviate the need for a purchase-of-receivables program.

Ultimately, the OSBA and the other parties in the proceeding reached a settlement. The settlement addressed the OSBA's concerns as follows:

First, the OSBA was concerned with the magnitude of PNG's proposed revenue increase of $38.1 million per year, which included an excessive return on equity. The settlement provided that the Company would receive only $19.75 million per year in additional annual operating revenues. The significant reduction in the overall revenue increase provided by the settlement benefited all of PNG's consumers, including the Company's small business customers.

Second, PNG's cost of service study ("COSS") showed that Rate N and Rate DS were overpaying classes at current rates and at proposed rates. Specifically, both of these small business classes provided a well above-system average rate of return at both current and proposed rates while residential customers were underpaying at both current and proposed rates. Although no COSS was used in the settlement (including PNG's COSS), the Company's original revenue allocation assigned an increase to the Rate N class that was only slightly below system average and proposed to assign an increase well above system average to the Rate DS class. Specifically, PNG proposed that Rate N receive 99% of the system average increase, which was only slightly below the system average increase. Furthermore, PNG proposed that Rate DS receive 125% of the system average, which was well above the system average increase. Under the settlement, the parties agreed that Rate N would receive a below-average increase, at 63% of the system average increase, and Rate DS would receive an increase that was 98% of the system average increase. Therefore, in comparison to PNG's proposed allocation of the rate increase, Rate N customers are saving about $1,170,000 per year and Rate DS customers are saving about $354,000 per year.

Third, the OSBA was concerned with the excessive increase PNG proposed for both Rates N and DS customer charges. PNG proposed a customer charge of $43 for Rate N and a $250 customer charge for Rate DS. The OSBA was concerned that smaller Rate N customers would be paying for the larger and more expensive meters, services, and regulators required by larger Rate N customers. The OSBA was also concerned that increasing the Rate DS customer charge to $250 in one step would result in rate shock and would strongly discourage customers who are now served under Rate GS from switching to Rate DS, *i.e.*, discourage shopping. The settlement on customer charges was a compromise among the parties. The settlement lowered the customer charge to $32.50 for Rate N and $175.00 for Rate DS. Because Rate N's customer charge was not set at the cost for an *average* meter, service and regulator, the Rate N intra-class cross-subsidies are smaller than originally proposed by the Company. Furthermore, the customer charge to which the parties agreed in the settlement for Rate DS took into consideration the OSBA's concern about "rate shock." As indicated above, the settlement aligned Rate DS much more closely with the cost of service than the Company's original proposed revenue allocation. Although Rate DS was assigned a rate increase that was only modestly below system average, the settlement customer charge mitigated the intra-class subsidy the smaller Rate DS customers would have provided to the larger Rate DS customers under the Company's original proposal.

Fourth, the OSBA was concerned that PNG proposed to impose a uniform percentage Merchant Function Rider ("MFR") of 2.39% on retail sales customers in Rates R (residential) and N (non-residential) as an alternative to developing a purchase of receivables program ("POR"). By imposing a uniform percentage MFR on both Rate R and N customers without adopting a mandatory POR program, PNG would be creating an incentive for Natural Gas Suppliers ("NGSs") to favor Rate N customers over Rate R customers and would be putting PNG's own revenues at risk. The OSBA proposed that either PNG adopt a mandatory "without recourse" POR program for retail suppliers or PNG establish a class specific MFR which would be set at a lower rate for Rate N and a higher rate for Rate R, to reflect the fact that the uncollectibles rate is significantly higher for Rate R than for Rate N. The settlement adopted OSBA's proposal, in that the MFR percentages differentiate between Rate R and Rate N customers. Specifically, the MFR percentage for Rate R is 3.20% and the MFR percentage for Rate N is 0.4%. By differentiating MFR percentages for Rate R and Rate N, PNG avoided creating an incentive for NGSs to favor small business customers over residential customers because the price-to-compare for small business customers already reflects the lower uncollectibles rate for the Rate N class.

The Commission approved the settlement by Order entered August 27, 2009.

UGI-Central Penn Gas
Base Rate Reduction
Docket No. P-2009-2145774

On December 4, 2009, UGI – Central Penn Gas, Inc. filed with the Commission a Petition to voluntarily reduce the Company's base rates in anticipation of Federal Energy Regulatory Commission ("FERC") approval of the transfer of certain natural gas storage facilities.

The OSBA filed an Answer to the Petition on December 23, 2009. The OSBA believes that the Petition is premature, as the FERC has not yet ruled on the proposed transfer. In addition, the OSBA is investigating whether the company's proposed refund is properly calculated.

The Commission has not yet taken any action on the Petition.

2. <u>Gas Cost Rates</u>

Section 1307(f) of the Public Utility Code requires the Commission to conduct an annual review of the gas purchasing practices of each of the major NGDCs. At the conclusion of the review, the Commission must establish the Gas Cost Rate ("GCR") for the NGDC and must deny recovery of any costs which are unjust and unreasonable or otherwise inconsistent with a least cost procurement policy.

During 2009, the OSBA participated in the following GCR cases: T. W. Phillips Gas, at Docket No. R-2008-2075250; National Fuel Gas, at Docket No. R-2009-2083181; Philadelphia Gas Works, at Docket No. R-2009-2088076; Peoples Natural Gas Company, at Docket No. R-2009-2088069; Equitable Gas Company, at Docket No. R-2009-2088072; Columbia Gas of Pennsylvania, at Docket No. R-2009-2093219; PECO Gas, at Docket No. R-2009-2108705; UGI Utilities-Gas Division, at Docket No. R-2009-2105911; UGI Central Penn Gas, at Docket No. R-2009-2105909; and UGI Penn Natural Gas, at Docket No. R-2009-2105904.

Columbia Gas of Pennsylvania
Gas Cost Rate Refund
Docket No. P-2009-2130769

On September 16, 2009, Columbia Gas of Pennsylvania, Inc. ("Columbia") filed a Petition for an accelerated refund of its overcollected purchased gas costs with the Commission.

The OSBA filed an Answer to the Petition on September 28, 2009. The OSBA stated its concern that because Columbia's overcollection amount was so high and unexpected, there may be serious problems with the Company's methods of projecting its needed capacity. In addition, the OSBA pointed out that amortizing that refund over 12 months (which is consistent with normal procedure) would help mitigate the impact of any gas price increases over the next 12 months.

The Commission approved Columbia's Petition on October 8, 2009. However, in response to the OSBA's concerns, the Commission required that Columbia file a detailed evaluation of its gas price forecasting and cost accounting procedures in order to help identify the causes of the over-recovery. As required by the Commission, Columbia filed that report as a part of the Company's quarterly purchased gas cost ("PGC") filing in January 2010.

UGI-Central Penn
Gas Cost Rate Refund
Docket No. P-2009-2139177

On October 29, 2009, UGI Central Penn Gas, Inc. ("CPG") filed with the Commission a Petition for the approval of a one-time credit to refund an overcollection of purchased gas costs. As proposed by the Company, the credit was also to include a refund resulting from a change in inventory accounting methodology.

On November 13, 2009, the OSBA filed an Answer to the Petition. The OSBA particularly objected to CPG's proposal to change its inventory accounting methodology in a Petition that was supposed to be addressing the overcollection of purchased gas costs. As the OSBA pointed out, the Company failed to show that the inventory accounting change would be beneficial to ratepayers in the long run.

On November 19, 2009, the Commission entered an Order partially approving CPG's Petition. The Commission agreed with the OSBA that the Company had not provided sufficient evidence as to why the $4.4 million refund due to the proposed accounting methodology change should be included in the one-time refund of purchased gas overcollections. The Commission denied this piece of the Petition, stating that such a change would have to be the subject of hearings before it could be approved.

3. <u>Acquisitions and Mergers</u>

Dominion Peoples
Sale
Docket No. A-2008-2063737

On September 16, 2008, a Joint Application was filed by The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Peoples"), Peoples Hope Gas Companies LLC ("PH Gas") and Dominion Resources, Inc. ("Dominion") (collectively, the "Joint Applicants"), seeking approval of the transfer by sale of 100% of Peoples' issued and outstanding capital stock to PH Gas by Dominion.

The OSBA filed a Notice of Intervention and Protest and submitted direct and rebuttal testimony.

The OSBA was concerned that the proposed acquisition failed to provide substantial affirmative benefits to the public. The OSBA was also concerned about the Joint Applicants' plan to contract for both gas procurement and customer care services with PPL affiliates without competitive bidding and without providing any evidence that the plan would result in better rates for Peoples' customers. Furthermore, the OSBA was concerned that Peoples' was over-earning its authorized return on equity.

Ultimately, the OSBA and the other parties in the proceeding reached a settlement.

The settlement resolved the OSBA's concern that Peoples' was over-earning, in that Dominion agreed to provide a $35 million credit (plus interest) to Peoples' ratepayers. The credit will be allocated among the rate classes in proportion to any base rate revenue award in Peoples' next base rate proceeding. Mitigating any increase granted in Peoples' next distribution rate case will provide a substantial benefit to ratepayers.

The settlement also resolved the OSBA's concern that Peoples' ratepayers could be charged unjust and unreasonable rates because of the Joint Applicants' plan to contract for both gas procurement and customer care services with PPL affiliates. The settlement states that Dominion will provide gas procurement and customer care services to PH Gas for 18 months. During those 18 months, the Joint Applicants can decide whether they want to succeed Dominion in performing the full gas procurement and customer care service functions in-house or if they want to hire a third party to perform those services. If the Joint Applicants decide to hire a third party to perform these functions, then they must issue a request for proposals after consulting with the statutory parties.

4. **<u>Miscellaneous</u>**

Purchase of Receivables

The distribution rates of a natural gas distribution company ("NGDC") typically include charges to cover the utility's cost of compiling, sending, and collecting bills and to cover the billed amounts which are likely to be uncollectible. A customer is required to pay these charges regardless of whether the customer buys gas from the NGDC, *i.e.*, the customer is a non-shopper, or the customer buys gas from a natural gas supplier ("NGS"), *i.e.*, the customer is a shopper.

An NGS incurs similar costs to compile and send bills to its customers and to collect those bills and a similar cost to cover the bills which are uncollectible. The NGS can be expected to include these costs in the price it charges to its customers for gas. As a result, NGSs frequently argue that it is unfair that shopping customers must pay these billing, collection, and uncollectibles costs twice, *i.e.*, once to the NGS as part of the price of gas and once to the NGDC as part of the distribution rate. According to the NGSs, this so-called "double charge" inflates the price of gas offered by NGSs, thereby inhibiting customers from shopping.

NGDCs typically respond to this argument by pointing out that an NGDC does not avoid the cost of billing, collection, and uncollectibles when a customer shops, in that the utility must still incur those costs to collect for the delivery, *i.e.*, distribution, of the gas the customer purchased from an NGS.

As a way of addressing this issue and removing a possible barrier to shopping, the Commission has encouraged NGDCs to establish purchase of receivables ("POR") programs. Under a POR program, the NGDC purchases the NGS's receivables, thereby relieving the NGS of most of the costs related to billing and collection and of most of the risk related to being unable to collect the bills. To reflect the fact that the NGDC is assuming the risk of not being able to collect some of the NGS's bills, the NGDC typically purchases the receivables at less than face value, *i.e.*, at a discount.

One issue which arises is what is to be done if the discount is too low, *i.e.*, if the NGDC is unable to collect as large a portion of the NGS's receivables as was expected. In the OSBA's opinion, non-shopping customers should not be required to make up any of the NGDC's shortfall in collecting an NGS's receivables. Specifically, the cost of shopping should be borne entirely by shopping customers. Furthermore, making non-shopping customers liable for the shortfall would undermine the incentive for the NGDC to negotiate an appropriate discount rate.

The OSBA is raising these arguments in the following NGDC POR cases which are pending before the Commission: PECO Gas, at Docket No. P-2009-2143588; UGI-Gas Division, at Docket No. P-2009-2145498; Columbia Gas, at Docket No. P-2009-

2099333; National Fuel Gas, at Docket No. P-2009-2099182; and T. W. Phillips, at Docket No. P-2009-2099192.

C. <u>Telephone Highlights</u>

1. <u>Rates</u>

D&E Companies
Price Change Opportunity (2006)
Docket Nos. 847 CD 2008 and 940 CD 2008

In May of 2006, the Denver and Ephrata Telephone and Telegraph Company, the Buffalo Valley Telephone Company, and the Conestoga Telephone and Telegraph Company (collectively, the "D&E Companies") submitted their annual price change opportunity ("PCO") filings to the Commission. These annual PCO filings were made pursuant to the requirements set forth in Chapter 30 of the Public Utility Code, as well as the D&E Companies' respective alternative form of regulation plans. In effect, these filings permit a telephone company to increase its revenues from non-competitive services to keep pace with inflation.

Over the course of the next two years, the Commission issued a series of orders in regards to the D&E Companies' 2006 PCO filings. In May of 2008, the D&E Companies and the OCA appealed the various Commission orders to the Commonwealth Court.

One issue on appeal was whether there are caps on local exchange rates, thereby preventing rural telephone companies from implementing rate increases to which they would otherwise be entitled under their annual PCO filing. Those PCO filings provide additional revenue to the telephone companies to help them pay for broadband deployment across the Commonwealth. The Commission held that there are no such caps. The OSBA filed a brief, and participated in oral argument, in Commonwealth Court in support of the Commission.

On December 15, 2009, the Commonwealth Court issued an unreported memorandum opinion which affirmed the Commission's Orders. Among other things, the Court held that there are no caps on local exchange rates resulting from increases pursuant to a rural telephone company's annual PCO filing. Both the Commission and the OSBA filed motions asking the Commonwealth Court to report the opinion so that parties may rely on the Court's holdings in other proceedings before the Commission. On February 16, 2010, the Court converted the memorandum opinion into a reported opinion.

2. <u>Access Charges</u>

Verizon Pennsylvania Inc.
Access Charges
Docket No. C-20027195

This proceeding is the latest in a series of cases beginning with the 1999 *Global Order* at Docket Nos. P-00991648 and P-00991649, the 1999 Verizon North and Verizon Pennsylvania ("Verizon" or the "Company") *Merger Order* at Docket No. A-310200, and the 2002 *Generic Access Charge Investigation* at Docket No. 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 OCA submitted a settlement that limited the *total* local exchange 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 per month or less. The settlement provided for Verizon's business customers to pay the balance of the remaining local exchange 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 ("ALJ") recommended that the Verizon-OCA settlement be approved because six of the seven parties that presented witnesses agreed with portions of the settlement.

The OSBA filed exceptions and reply exceptions to the RD.

On February 26, 2004, Verizon, the OCA, and the OSBA reached an agreement on the issues litigated by the OSBA. The Verizon-OCA-OSBA settlement limited the *specific* business rate increase to less than $1 per business line per month, and provided that the average increase for business local exchange lines could not 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. In addition, the Commission remanded the case to the Office of Administrative Law Judge for the further development of a record, and issuance of a recommended decision, on issues that were not decided in the July 28, 2004, Opinion and Order. The issues on remand include (but are not limited to) the consideration of specific access charge reduction proposals, the removal of implicit subsidies from access charges, and the reduction or elimination of the carrier charge.

On December 7, 2005, the ALJ issued an RD in the remand proceeding. Thereafter, the OSBA submitted exceptions and reply exceptions in response to the RD.

The OSBA and several other parties had argued that the Verizon Access Charge Remand case should be stayed, pending the outcome of the *In re Developing a Unified Intercarrier Compensation Regime*, (FCC Rel.: March 3, 2005), CC Docket No.01-02, *Further Notice of Proposed Rulemaking*, FCC 05-33 ("*Unified Intercarrier Compensation"*) proceeding at the Federal Communications Commission ("FCC"). Therefore, the OSBA excepted to the ALJ's recommendation against waiting for the Unified Intercarrier Compensation proceeding to conclude.

The ALJ had also recommended that Verizon's carrier charge be eliminated. The OSBA excepted to this recommendation, observing that the contribution of the interexchange carriers ("IXCs") to the cost of the local loop is already far below their appropriate share of those costs. Eliminating the carrier charge will simply exacerbate that problem. The ALJ also recommended reducing Verizon's other access charges to their interstate levels, to which the OSBA excepted for the same reasons it opposed elimination of the carrier charge. In addition, the OSBA excepted to the ALJ's recommendation that all access charge reductions occur over a very short time period.

If access charges are eliminated or reduced, Verizon will suffer a loss of revenues. Under Chapter 30, Verizon may seek to replace those lost revenues by requesting an increase in its local exchange rates. The ALJ recommended that Verizon's non-contract customers pay for the entire offsetting local exchange rate increases caused by Verizon's loss of access charge revenue and that none of the increased rates be borne by Verizon's contract customers. The OSBA excepted to this recommendation as a violation of the express language of 66 Pa. C.S. § 3016(f)(1), which forbids requiring non-competitive services to subsidize competitive services.

In addition, the ALJ recommended that rate caps be placed upon Verizon's residential customers, so that any local exchange rate increase will be capped for residential customers, but not for business customers. There is no record evidence to support the ALJ's recommendation. The OSBA excepted to this recommendation and has argued that the matter of the proper allocation of any rate increase should be addressed in a further proceeding.

On January 8, 2007, the Commission ordered that this case be stayed, pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding or until January 8, 2008, whichever arrived first. The Commission expressed concern the FCC proceeding may impact this case in significant and unpredictable ways, and concluded that coordinating its actions with those of the FCC would be the best way to proceed.

In the fall of 2007, Verizon and certain other parties petitioned the Commission to extend the stay, while several other parties opposed any additional stay. On September 12, 2008, the Commission entered an order extending the stay until September 12, 2009, or until a final outcome in the FCC's *Unified Intercarrier Compensation* proceeding, whichever occurs first.

On August 12, 2009, Verizon petitioned the Commission to extend the stay once again. Several other parties opposed any additional stay. The Commission has not yet acted on Verizon's petition but has also not yet reinstituted the proceeding.

Rural Local Exchange Carriers
Access Charges
Docket No. I-00040105

On December 20, 2004, the Commission entered an Order instituting an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers ("RLECs"). The investigation was instituted as a result of the Commission's prior Order entered July 15, 2003, at Docket No. M-00021596, which discussed implementing continuing access charge reform in Pennsylvania. The July 15, 2003, Order also provided that a rulemaking proceeding would be initiated no later than December 31, 2004, to address possible modifications to the Pennsylvania Universal Service Fund ("PAUSF") regulations.

The December 20, 2004, Order directed that the Office of Administrative Law Judge conduct a proceeding to develop a record and present a recommended decision on a variety of questions related to access charge reform.

The ALJ conducted two prehearing conferences in February and April 2005. On May 23, 2005, the OSBA and other parties filed a Motion to Defer this proceeding. Specifically, the parties requested a stay of the investigation because it would be unreasonable for the Commission to take action prior to the conclusion of the FCC's *Unified Intercarrier Compensation* proceeding. The FCC proceeding has the potential to impact directly, if not render moot, the universal service and access charge issues in the Commission's proceeding. On August 30, 2005, the Commission granted the Motion to Defer.

On August 30, 2006, certain parties petitioned the Commission to further stay this proceeding for another 12 months, or until the conclusion of the FCC's *Unified Intercarrier Compensation* proceeding, whichever arrived first. On November 15, 2006, the Commission granted that petition and further stayed this proceeding.

On April 24, 2008, the Commission entered an order that generally continued the stay of this proceeding, but reopened the investigation for the limited purpose of addressing whether the cap of $18.00 on residential monthly local exchange service rates, and any corresponding cap on business monthly local exchange service rates, should be raised. The OSBA filed direct, rebuttal, and surrebuttal testimony in the limited investigation. In her recommended decision, the ALJ agreed with the OSBA that there are no caps on local exchange rate increases resulting from the annual price change opportunity ("PCO") filings made by the RLECs. The ALJ also agreed with the OSBA that the PAUSF should not be used to mitigate rate increases resulting from those annual PCO filings. Furthermore, the ALJ agreed with the OSBA that the PAUSF should be reformed to focus on low-income customers. Several parties filed exceptions to the ALJ's recommended decision. The OSBA filed reply exceptions on a number of issues. The Commission has not yet acted on the recommended decision or on the exceptions thereto.

By Order entered August 5, 2009, the Commission lifted the stay on the remainder of the access charge investigation it had ordered in 2004. The reopened investigation is in the evidentiary stage.

3. <u>Acquisitions and Mergers</u>

Embarq
Change of Control
Docket No. A-2008-2076038

In November of 2008, the United Telephone Company of Pennsylvania LLC d/b/a/ Embarq Pennsylvania and Embarq Communications, Inc. ("Applicants") filed an application with the Commission seeking approval for the indirect transfer of control of the Applicants to CenturyTel, Inc. The application proposed to carry out the transfer of control through a stock-for-stock transaction between CenturyTel and the Applicants' parent, Embarq Corporation.

Under appellate case law, the Commission is not permitted to approve a change of control unless the transaction would provide substantial public benefits. The OSBA was not able to identify any public benefit that would arise from this proposed transaction. Consequently, the OSBA filed direct, rebuttal, and surrebuttal testimony in opposition to the transaction.

In his Initial Decision ("ID"), the administrative law judge ("ALJ") recommended that the Commission approve the transaction without any of the conditions proposed by any non-company party. The OSBA filed a single Exception to the ID, arguing that the ALJ made an error when he rejected the OSBA's proposed condition to share the synergy savings with customers via a freeze in noncompetitive service rates for five years.

By Order entered on May 28, 2009, the Commission approved the transaction and the issuance of a certificate of public convenience, subject to acceptance by the Joint Applicants of certain conditions. However, the Commission expressly denied the OSBA's Exception and expressly rejected the OSBA's proposed condition. In so doing, the Commission embraced the ALJ's view that it is an affirmative public benefit for the synergy savings to be used to strengthen Embarq PA as a competitor.

On June 26, 2009, the OSBA filed a Petition for Review with the Commonwealth Court. The OSBA contended that the Commission violated Pennsylvania law when it concluded that strengthening Embarq PA as a competitor was an affirmative benefit of the transaction. As the OSBA pointed out, the premise of Chapter 30 is that competition will be an effective way to control telecommunications rates. However, providing Embarq PA with money it can use to undercut its competitors' prices is tantamount to giving the utility a weapon with which to drive competitors out of the market, after which Embarq PA will be able to raise its rates.

On August 31, 2009, the Commission filed an Application for Remand with the Commonwealth Court. The stated purpose of the remand was to consider imposing some conditions approved by the Federal Communications Commission ("FCC"). The OSBA opposed the Application. Nevertheless, the Commonwealth Court agreed to remand the proceeding to the Commission for the limited purpose of considering the imposition of some or all of the FCC conditions.

On November 25, 2009, the Commission issued a Tentative Order regarding the FCC conditions, and invited the comments of interested parties. The OSBA did not file comments to the Commission's Tentative Order. However, based upon the conflicting comments of other parties, the OSBA filed reply comments requesting that the matter be sent to the Office of Administrative Law Judge for hearings.

The Tentative Order, the comments, and the OSBA's request for hearings are pending before the Commission.

D&E Companies
Change of Control
Docket No. M-2009-2093218

On May 21, 2009, Denver and Ephrata Telephone and Telegraph Company, Buffalo Valley Telephone Company, The Conestoga Telephone and Telegraph Company, and D&E Systems, Inc. (collectively, the "D&E Companies") and the Windstream Corporation ("Windstream") filed with the Commission a Joint Application for the transfer of control of the D&E Companies to Windstream.

On June 22, 2009, the OSBA filed a Notice of Intervention and Protest with respect to the Joint Application.

In direct testimony, the OSBA argued that there were no affirmative public benefits from the transaction, and that the transaction's stated goal of strengthening the merging companies as competitors would actually harm competition in their service territories. In short, the OSBA was concerned that Windstream could use the expected synergy savings to undercut competitors' prices and could then raise rates if those competitors abandoned their efforts to compete. Consequently, the Joint Application, as originally filed, not only lacked the substantial public benefits required by the Pennsylvania Supreme Court, but it also constituted a substantial public harm.

The parties reached a settlement in this proceeding. The settlement will cap the rates for residential and business local exchange service in the former D&E territory for two years and in the Windstream territory for one year. By placing a cap on certain local exchange rates, the settlement will produce two substantial public benefits. First, it will grant the Applicants' residential and business customers a measure of rate stability for two years (one year for Windstream's customers). Second, the capping of those local exchange rates will require the Applicants to use the merger savings for two years to fund their ongoing operations. As a result, the merged entity will be less likely to use whatever merger savings result from this transaction to engage in predatory pricing as a competitor in the telecommunications marketplace. Thus, in the Applicants' service territories, the goals of Chapter 30 in regards to the promotion of competition will be preserved.

The Commission approved the settlement by Order entered November 6, 2009.

D. <u>Water and Wastewater Highlights</u>

Aqua Pennsylvania, Inc.
Distribution System Improvement Charge
Docket No. A-2008-2079310

On December 8, 2008, Aqua Pennsylvania, Inc. ("Aqua PA") filed Supplement 88 to Tariff Water-Pa. P.U.C. No. 1, seeking to increase the cap on the Company's Distribution System Improvement Charge ("DSIC") from 5% to 7.5% of billed revenues, thereby increasing DSIC-eligible capital expenditures by a claimed $65.5 million. The DSIC permits Aqua PA to increase its rates (up to the cap) between rate cases as an incentive for the utility to accelerate improvements to its distribution system.

The OSBA and OCA filed Complaints against the proposed tariff.

Aqua PA sought to justify its filing principally on the basis that Pennsylvania American Water Company ("PAWC") had received an increase in its DSIC cap from 5%

to 7.5% of billed revenues in 2007 and on the basis that Delaware had increased that state's DSIC rate to 7.5%. In response, the OSBA argued that Aqua PA failed to meet its burden of proving that an increase was warranted on the basis of the facts in this case. In support of that argument, the OSBA pointed out that the Commission had specifically limited the decision in the PAWC case to the facts of that case.

The ALJ recommended approval of Aqua PA's requested cap increase. The OSBA and OCA filed Exceptions, and Aqua PA and the Office of Trial Staff filed Reply Exceptions. By Order entered July 23, 2009, the Commission adopted the ALJ's recommendation and denied the Exceptions of the OSBA and OCA, thereby approving Aqua PA's request for an increase in its DSIC cap to 7.5% of billed revenues.

Aqua Pennsylvania, Inc.
Base Rate Increase
Docket No. R-2009-2132019

On November 18, 2009, Aqua Pennsylvania, Inc. ("Aqua PA" or the "Company") filed Supplement No. 100 to Tariff Water Pa. P.U.C. No. 1 ("Supplement No. 100"), seeking to increase the Company's rates by $43.2 million per year, which would result in a return on equity of 12.0%.

The OSBA filed a Complaint against the proposed Tariff. The case is in the evidentiary stage.

Pennsylvania-American Water Company
Base Rate Increase
Docket No. R-2009-2097323

On April 24, 2009, the Pennsylvania-American Water Company ("PAWC") submitted a filing to the Commission that proposed to increase the Company's rates by $58 million per year.

The OSBA filed a Complaint against the proposed increase. The OSBA also served direct and rebuttal testimony in the proceeding. Prior to completion of the litigation schedule, the parties reached a settlement.

In testimony, the OSBA raised concerns that the Company was allocating too much of the proposed rate increase to the Private Fire and Other Water Utilities – Group B customer classes. As the OSBA testified, those two customer classes were already overpaying for their service. As a result of the settlement, these two customer classes received no increase in their base rates.

The OSBA also testified against the Company's proposal to increase the consumption charges for the Commercial blocks by different percentages. Simply put, the Company's proposal could have resulted in some Commercial customers receiving a greater than average rate increase just because of the way the blocks were designed. The settlement corrected this problem by increasing all the Commercial consumption blocks by the same percentage.

Finally, the OSBA objected in testimony to the Company's request for a return on equity of 12.0%. The settlement proposed an overall rate increase of $30.75 million instead of the originally proposed $58 million. This resulted in a return on equity of less than 10.78%, which was the OSBA's recommendation.

The Commission approved the settlement by Order entered November 6, 2009.

E. Steam Highlights

NRG
Merger
Docket Nos. A-2009-2093057, 2093058, and 2093059

On February 26, 2009, Exelon Corporation ("Exelon"), Exelon Xchange Corporation, and PECO Energy Company ("Applicants") filed an Application for the approval of the transfer of control of NRG Energy Center Pittsburgh and NRG Energy Center Harrisburg to Exelon. The Application was part of an attempted hostile takeover by Exelon of NRG's assets nationwide.

The OSBA filed a Notice of Intervention and Protest on March 26, 2009. Subsequently, the OSBA filed direct testimony stating that there were few actual benefits of the proposed transaction; there was no guarantee of improved quality of service; there was no cost savings to the consumer as a result of the transaction; and there was no commitment that NRG's physical plant would be improved after the conclusion of the transaction.

On July 23, 2009, the Applicants withdrew their Application because they had terminated their effort to take over the NRG companies.

F. Legislation

Section 9 of the Small Business Advocate Act, 73 P.S. § 399.49, requires the OSBA to make reports to the Governor and the General Assembly regarding matters within the OSBA's jurisdiction. In addition to testifying at a budget hearing before the

House Appropriations Committees, the Small Business Advocate testified before the House Consumer Affairs Committee on electric energy issues. The OSBA also responded to inquiries from individual legislators and legislative staff members.

G. List of Proceedings

1. 2009 Generic Proceedings

The OSBA participates before the Commission in numerous rulemaking and other proceedings which are not specific to a single utility. In most instances, the OSBA files comments that advocate positions of particular importance to small business customers. The OSBA filed comments in 2009 in the following such proceedings:

Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009 **(I-2009-2099881)**

Rulemaking: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets **(L-2008-2069114)**

Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181-62.185 **(L-2009-2069117)**

2. 2009 PUC Cases

The OSBA participates in major rate increase cases before the Commission; the annual Gas Cost Rate cases for Pennsylvania's 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, steam, and wastewater utilities. In addition to continuing to participate in cases carried over from preceding years, the OSBA entered its appearance in the following new proceedings in 2009:

Electric

Petition of PPL Electric Utilities Corporation for Approval of a Rate Mitigation Plan **(P-2009-2091280)**

Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Its Default Service Programs **(P-2009-2039053 and P-2009-2039054)**

Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company to Amend the Default Service Procurement Plan and Request for Expedited Consideration **(Docket No. P-2009-2096036)**

Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits **(Docket No. P-2009-2094494)**

Pennsylvania Public Utility Commission v. Pike County Light & Power Company **(Docket No. M-2009-2087947)**

Metropolitan Edison Company's Five-Year Report of Competitive Transition Charge Revenues and Stranded Cost Recovery **(Docket No. R-00974008)**

Pennsylvania Electric Company's Five-Year Report of Competitive Transition Charge Revenues and Stranded Cost Recovery **(Docket No. R-00974009)**

Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 Through May 31, 2013 **(Docket Nos. P-2009-2110780 and P-2009-2110798)**

Investigation into PECO Energy Company's Electric Service Tariff PA P.U.C. No. 4 **(Docket No. I-2009-2101331)**

PPL Electric Utilities Corporation Retail Markets **(M-2009-2104271)**

Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan **(M-2009-2093218)**

Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Side Response Plan **(M-2009-2093217)**

PPL Electric Utilities Corporation for Approval of an Energy Efficiency and Conservation Plan **(M-2009-2093216)**

Petition of PECO Energy Company for Approval of Its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of Its Compact Fluorescent Lamp Program **(M-2009-2093215)**

Joint Petition for Consolidation of Proceedings and Approval of an Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company **(M-2009-2092222)**

Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge **(P-2009-2129502)**

Petition of PECO Energy Company for Approval of Its Smart Meter

Technology Procurement and Installation Plan **(M-2009-2123944)**

Duquesne Light Company Smart Meter Procurement and Installation Plan **(M-2009-2123948)**

Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of Its Smart Meter Technology Procurement and Installation Plan **(M-2009-2123951)**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Its Smart Meter Procurement and Installation Plan **(M-2009-2123950)**

PPL Electric Utilities Corporation for Approval of a Smart Meter Technology Procurement and Installation Plan **(M-2009-2123945)**

Reports on the Audit of Non-Utility Generation Related Stranded Cost Recovery through the Competitive Transition Charge for Metropolitan Edison Company and Pennsylvania Electric Company **(D-2009-2093381 and D-2009-2093382)**

PPL Electric Utilities Corporation Supplement No. 71 to Tariff Electric - Pa PUC No. 201, Issued July 31, 2009, Effective for Service on and After January 1, 2010 **(R-2009-2122718)**

Petition of UGI Utilities, Inc.- Electric Division for Approval of a Default Service Program Pursuant to 52 Pa. Code §§ 54.181-54.189, and Associated Potential Transactions with Affiliated Entities **(P-2009-2135496)**

Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 Through May 31, 2013 **(P-2009-2135500)**

Petition of PECO Energy Company for Approval of Its Revised Electric Purchase of Receivables Program **(P-2009-2143607)**

Gas

Pennsylvania Public Utility Commission v. T. W. Phillips Gas and Oil Company **(R-2008-2075250)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(R-2008-2079660)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(R-2008-2079675)**

Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation **(R-2009-2083181)**

Pennsylvania Public Utility Commission v. Philadelphia Gas Works **(R-2009-2088076)**

Pennsylvania Public Utility Commission v. The Peoples' Natural Gas Company, d/b/a Dominion Peoples' **(Docket No. R-2009-2088069)**

Pennsylvania Public Utility Commission v. Equitable Gas Company **(Docket No. R-2009-2088072)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(Docket No. R-2009-2093219)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(Docket No. R-2009-2108705)**

Pennsylvania Public Utility Commission v. UGI Utilities, Inc. **(Docket No. R-2009-2105911)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(Docket No. R-2009-2105909)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(Docket No. R-2009-2105904)**

Petition of Columbia Gas of Pennsylvania, Inc. For Accelerated Refund of Overcollected Purchased Gas Costs **(P-2009-2130769)**

Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works' Cash Flow Ratemaking Method **(P-2009-2136508)**

Petition of UGI Central Penn Gas, Inc. For Approval of a One Time Credit to Refund an Overcollection of Purchased Gas Costs **(P-2009-2139177)**

Petition of PECO Energy Company for Approval of Its Natural Gas Supplier Purchase of Receivables Program **(P-2009-2143588)**

Petition of UGI Utilities, Inc. - Gas Division for Approval to Voluntarily Implement a Purchase of Receivables Program and Merchant Function Charge and of a Potential Affiliated Interest Agreement Between UGI Utilities, Inc. - Gas Division and Affiliated Entities **(P-2009-2145498)**

Petition of Columbia Gas of Pennsylvania, Inc. For Approval to Voluntarily Implement a Modified Purchase of Receivables Program Pursuant to

SEARCH Filing Requirements and Interim Purchase of Receivables Guidelines **(P-2009-2099333)**

Petition of National Fuel Gas Distribution Corporation Requesting Approval of a Program for the Purchase of Natural Gas Supplier Accounts Receivable **(P-2009-2099182)**

Petition of T. W. Phillips Gas and Oil for Approval of Purchase of Receivables Program **(P-2009-2099192)**

Petition of UGI - Central Penn Gas, Inc. to Voluntarily Reduce Base Rates Following Federal Energy Regulatory Commission Approval of the Transfer of Existing Natural Gas Storage Facilities in Interstate Commerce **(P-2009-2145774)**

Telephone

Joint Application for Transfer of Control of Denver and Ephrata Telephone and Telegraph Company, Buffalo Valley Telephone Company, the Conestoga Telephone and Telegraph Company, and D&E Systems, Inc. to Windstream Corporation **(Docket Nos. A-2009-2109528, A-2009-2109530, A-2009-2109531, and A-2009-2109532)**

Pennsylvania Public Utility Commission v. The United Telephone Company of Pennsylvania, LLC d/b/a Embarq Pennsylvania **(R-2009-2128455)**

Water

Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company **(Docket No. R-2009-2097323)**

Pennsylvania Public Utility Commission v. United Water Pennsylvania, Inc. **(R-2009-2122887)**

Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc. **(R-2009-2132019)**

Steam

Application of Exelon Corporation, Exelon Xchange Corporation and PECO Energy Company for Certificates of Public Convenience Evidencing Approval of the Transfer of Ultimate Control of NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC, Approval of the Related Affiliated Transactions, and All Other Approvals or Certificates Appropriate, Customary or Necessary under the Public Utility Code to Carry Out the Transaction Described in the Application **(Docket Nos. A-2009-**

2093057, A-2009-2093058, and A-2009-2093059)

3. 2009 Appellate Court Cases

Under the Small Business Advocate Act, the OSBA is authorized to appear before the appellate courts regarding matters under the PUC's jurisdiction. In addition to participating in cases begun in prior years, the OSBA appeared in the following new appellate court cases in 2009:

Pennsylvania Commonwealth Court

The Pennsylvania State University, Petitioners v. Pennsylvania Public Utility Commission, Respondent **(18 CD 2009)**

William R. Lloyd, Jr., Small Business Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(1227 CD 2009)**

Irwin A. Popowsky, Consumer Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(2254 CD 2009)**

H. Small Business Consumer Outreach

In addition to its litigation caseload, the OSBA also handles individual small business consumer problems. Small business consumers usually contact the OSBA as a result of the OSBA's web page, referrals by the PUC, and referrals by legislators.

V. THE OSBA'S WORKERS' COMPENSATION ACTIVITIES

The OSBA's workers' compensation duties involve a review and evaluation of, and the submission of comments on, the "loss cost" 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"). 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. Individual workers' compensation insurers are not permitted to begin using the filed "loss costs" until the Department has approved the respective bureau's filing.

PCRB Filing

After an independent analysis of the PCRB's filing for the year beginning April 1, 2009, the OSBA recommended an overall 7.8% decrease in statewide industrial loss costs in lieu of the .7% increase requested by the PCRB. Subsequently, the PCRB agreed to accept an overall 3.0% decrease.

CMCRB Filing

After an independent analysis of the CMCRB's filing for the year beginning April 1, 2009, the OSBA recommended an overall reduction of 18.6% in traumatic loss costs in lieu of the 14.4% reduction requested by the CMCRB. Although the Insurance Department accepted several of the OSBA's suggested revisions, the Department determined that these revisions did not affect the overall percentage change in loss costs. Therefore, the Department approved the reduction of 14.4% proposed by the CMCRB.

VI. OSBA STAFF

William R. Lloyd, Jr. (11/24/03 to present)
Small Business Advocate

Steven C. Gray (10/11/94 to present)
Assistant Small Business Advocate

Sharon E. Webb (6/20/05 to present)
Assistant Small Business Advocate

Daniel G. Asmus (11/21/05 to present)
Assistant Small Business Advocate

Lauren M. Lepkoski (6/10/06 to present)
Assistant Small Business Advocate

Terry Sneed (7/5/05 to present)
Administrative Officer

Theresa Gillis (10/9/07 to present)
Legal Assistant