ANNUAL REPORT

OF THE

PENNSYLVANIA
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."

Small business customers usually take service in rate classes designated by the utilities for small commercial and industrial ("Small C&I") customers, medium commercial and industrial ("Medium C&I") customers, or Commercial customers.

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 2010-2011 is $1,251,000. 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 the Governor 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 ratemaking 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 MERGERS AND ACQUISITIONS

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 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

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[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 *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 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 those benefits were not "substantial" and, therefore, did not justify approval of the transaction.

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 2010:

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

Citizens' Electric Company
Distribution Rate Increase
Docket No. R-2010-2172665

On June 2, 2010, Citizens' Electric Company ("Citizens'" or the "Company") filed a proposed tariff to increase its total electric distribution revenues by approximately $787,276 per year, *i.e.*, by 21.5%. The Company's proposed rate increase would have produced an 11.75% rate of return on equity ("ROE").

The OSBA filed a complaint and testimony against the proposed rate increase.

Ultimately, the parties (other than Bucknell University) negotiated a settlement of all issues. The following provisions were of particular significance to the OSBA in concluding that the settlement was in the best interests of small business customers:

First, Citizens' agreed to reduce the rate increase to $600,000 per year. That provision of the settlement was consistent with the OSBA's argument that the Company's requested ROE was excessive.

Second, the settlement resolved the OSBA's concern with Citizens' proposal to implement a Direct Load Control ("DLC") program. As proposed, this pilot program was to be open to customers in the residential (RS) and small commercial (GLP-1) rate classes but not to customers in any other class. However, the Company proposed to recover the costs associated with the DLC program through its Generation Service Supply Rate ("GSSR"), which is paid by *all* default service customers, regardless of class. Therefore, the OSBA objected to the use of the GSSR as the mechanism for recovery of the DLC costs because those costs should be recovered solely from the classes, *i.e.*, RS and GLP-1, for which the costs were incurred. The settlement allowed the Company to implement the DLC pilot but to recover the costs through the distribution rates of the RS and GLP-1 classes rather than through the GSSR.

Third, Citizens' proposed a revenue allocation that purportedly moved all major rate classes closer to cost of service as measured by the Company's cost of service study ("COSS"). The OSBA took the position that, while the Company's proposal was reasonable at the full requested revenue requirement level, the rates of return for the GLP-1, GLP-3, and Outdoor Lighting classes would be in excess of 13.0% even though the system average would be only 9.41%. To rectify this problem, the OSBA recommended that these three classes (GLP-1, GLP-3, and Outdoor Lighting) be granted first dollar relief ("FDR") in the event that the Company was awarded a smaller rate increase than requested.

In contrast, the OCA performed its own COSS and proposed a new revenue allocation on the basis of that COSS. Under the OCA's proposal, the GLP-1, GLP-3, and Outdoor Lighting classes would have provided rates of return significantly in excess of the system average (as measured by the OCA's COSS) even if the original rate increase were reduced.

The settlement revenue allocation was a compromise that fell between the revenue allocation proposals of the OSBA and the other parties. As a result of the compromise, the GLP-1, GLP-3, and Outdoor Lighting classes received a distribution rate increase well below the system average increase of 16.32%. Specifically, GLP-1 received a 1.32% increase, GLP-3 received a 4.34% increase, and Outdoor Lighting received a 2.5% increase. As a result, the small business GLP-1 and GLP-3 classes will save about $124,000 per year in comparison to the amount they would have paid under the OCA's proposal.

Fourth, Citizens' proposed implementing a monthly customer charge for GLP-1 of $14.00. Citizens' provided information to reflect that it incurs direct customer costs of only $13.22 per month to serve GLP-1 customers. However, the Company provided no cost-based justification for the difference between its actual costs and the proposed customer charge of $14.00. Therefore, the OSBA recommended a customer charge of $13.25 per month for GLP-1 that was consistent with the Company's customer cost analysis.

In addition to instituting a customer charge for GLP-1, Citizens' proposed increasing the monthly customer charge for GLP-3 from $50.22 to $150.00. However, Citizens' provided information to reflect that it incurs direct customer costs of only $48.20 per month to serve GLP-3 customers. Therefore, the OSBA recommended no increase in the current customer charge of $50.22, in that the current customer charge was already above cost.

The settlement set the customer charges for GLP-1 and GLP-3 at $13.25 and $50.22, respectively, which are the amounts recommended by the OSBA.

Bucknell University opposed the settlement. Of particular concern to Bucknell was the Company's proposal (adopted by the settlement) regarding how to recover distribution revenues from customers in the GLP-3 class. In that regard, Bucknell proposed an alternative that would have shifted costs from the University to the small business customers in the GLP-3 class. The OSBA objected to Bucknell's proposal because it was made after the hearing, thereby depriving the OSBA of the opportunity to present countervailing testimony.

The administrative law judge recommended approval of the settlement and rejection of Bucknell's proposal. By Order entered January 13, 2011, the Commission agreed with the administrative law judge.

Duquesne Light Company
Distribution Rate Increase
Docket No. R-2010-2179522

On July 23, 2010, Duquesne Light Company ("Duquesne" or the "Company") filed a tariff to increase distribution rates by $87.3 million per year. The increase was intended to produce an 11.25% rate of return on equity ("ROE").

On August 12, 2010, the OSBA filed a complaint against the proposed increase. Subsequently, the OSBA, and other parties, filed direct, rebuttal, and surrebuttal testimony. Thereafter, the parties negotiated a settlement.

The following are the principal reasons the OSBA signed the settlement:

First, in the settlement, Duquesne agreed to a revenue increase of $45.7 million per year rather than the $87.3 million per year the Company originally requested. The smaller rate increase is consistent with the OSBA's argument that an 11.25% ROE would produce an excessive rate increase.

Second, the settlement adopted Duquesne's proposal to split Rate GS/GM, *i.e.*, the class which includes most small business customers, into three rate schedules.

Specifically, Rate GS would be available to non-demand metered general service customers. Rate GM (< 25 kW) would be available to demand metered general service customers with monthly demands less than 25 kilowatts. Rate GM (≥ 25 kW) would be available to demand metered general service customers with monthly demands greater than or equal to 25 kilowatts. In testimony, the OSBA supported the Company's proposed split of GS/GM because it would reduce intra-class subsidization.

Third, the settlement adopted a revenue allocation which would move classes closer to cost of service than originally proposed by Duquesne. Duquesne's initial proposal would have resulted in some classes receiving distribution increases which equated to 1.75 times the requested system average increase. In response, the OSBA proposed to mitigate rate shock by limiting the rate increase for each class to 1.5 times the system average increase.

In contrast to the Company's original proposal and the OSBA's counter-proposal, the OCA proposed an alternative allocation of the distribution rate increase which would have shifted significantly more of the rate increase to small business customers.

The settlement would result in an increase which is virtually the same as the OSBA recommended for the GS, GM <25 kW, and GMH classes. For GM≥25 kW, the settlement would result in an increase of 9%, which is a compromise between the positions of the OSBA and Duquesne and which would move GM≥25 kW closer to cost of service than proposed by the Company. If approved by the Commission, the settlement would save small business customers almost $3.7 million per year in comparison to the amount they would have paid under the OCA's proposal.

The settlement is currently pending before the Commission.

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 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; instituting an investigation of the proposed rates; and reserving the right to order refunds if the investigation concluded that any revenues collected under Supplement No. 6 were 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 that 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.

By Order entered March 3, 2010, the Commission reversed the ALJ and denied the Companies the right to recover marginal losses. However, the Commission adopted the ALJ's recommendation to permit recovery of interest related to the re-adjustment of transmission rates at the conclusion of the 2006-2007 rate case.

Both the Companies and the OSBA appealed. After briefing and oral argument, the parties are awaiting a decision by the Commonwealth Court on the contested issues.

PECO Energy Company
Transmission and Distribution Rate Increase
R-2010-2161575

On March 31, 2010, PECO Energy Company ("PECO" or the "Company") filed a tariff, seeking to increase the Company's total electric distribution revenues by approximately $288.364 million per year, *i.e.*, an increase of 31.5%. The Company's proposed rate increase was intended to produce an 11.75% rate of return on equity ("ROE"). The tariff also sought to increase the electric transmission revenues of PECO by approximately $26.7 million per year, *i.e.*, an increase of 15.1%, and to begin recovering transmission costs through a reconcilable Transmission Service Charge ("TSC") rather than through base rates.

On April 20, 2010, the OSBA filed a complaint against the tariff. The OSBA subsequently filed direct, rebuttal, and surrebuttal testimony.

After negotiations, the parties reached a settlement of all but one of the issues in this case. The following are the principal factors which persuaded the OSBA that the settlement was in the best interests of PECO's small business customers:

First, in the settlement, PECO agreed to a smaller distribution rate increase than originally requested, *i.e.*, \$198.3 million per year rather than \$288.364 million per year. This provision of the settlement reflected the OSBA's argument that an ROE of 11.75% was excessive and would cause rates to increase more than warranted.

Second, the settlement allocated the distribution rate increase among the customer classes in a way which, on the whole, brought the customer classes closer to cost of service than originally proposed by PECO.

In its filing, PECO proposed a revenue allocation that purportedly moved all major rate classes closer to cost of service as measured by the Company's cost of service study ("COSS"). However, as noted by the OSBA, PECO's proposed revenue allocation was problematic, in part because it was based on a COSS which bundled transmission and distribution revenues.

After disaggregating the distribution and transmission components of PECO's proposed revenue allocation at the full revenue requirement, the OSBA determined that PECO's proposal failed to move all classes closer to their distribution cost of service. For example, PECO's proposal would have moved some classes from above cost of service at present rates to materially below cost of service at proposed rates. In addition, the OSBA pointed out that PECO proposed a rate increase for Rate GS, *i.e.*, the principal small business class, that would be 1.75 times the system average increase.

In an effort to move all classes closer to cost and to minimize rate shock, the OSBA proposed an alternative allocation of the distribution rate increase at the Company's full revenue requirement to prevent any class from receiving an increase that is greater than 1.5 times the system average. If PECO were awarded a smaller rate increase than requested, the OSBA proposed a disproportionate scaleback of the full revenue requirement in order to mitigate the subsidies provided by the overpaying classes, *i.e.*, Rates R (residential), OP, and HT.

In contrast to the recommendations of PECO (\$87.440 million increase for Rate GS) and the OSBA (\$75.144 million increase for Rate GS) at the full revenue requirement, the OCA recommended an increase of \$95.121 million for Rate GS. The OCA's proposed increase for Rate GS was not consistent with the principle of gradualism, in that it would have given GS customers an increase of 1.9 times the system average.

The settlement compromised the allocation of the distribution rate increase in a way which assigned Rate GS customers an increase between the proposals of the OSBA and the OCA. As a result of the compromise, Rate GS customers will save about $1.7 million per year in comparison to the amount they would have had to pay under the OCA's proposal.

Third, the settlement adopted PECO's proposal to begin collecting transmission costs through a surcharge, the TSC, rather than through base rates. The OSBA supported PECO's TSC proposal because the proposal would avoid inter-class subsidies by collecting transmission costs from the customer classes on the basis of cost of service.

Fourth, the settlement modified PECO's tariff regarding the Company's obligation to return security deposits. Specifically, the settlement provided non-residential customers the same protections provided to residential customers in receiving a return of their security deposit. The OSBA had received numerous consumer inquiries regarding when small businesses could get their PECO security deposits back. PECO's change in policy should help return small business customers' security deposits sooner, which could in turn help those customers pay other bills and avoid layoffs or closure.

The Commission approved the settlement by Order entered December 29, 2010.

PPL Electric Utilities
Distribution Rate Increase
Docket No. R-2010-2161694

On March 31, 2010, PPL Electric Utilities Corporation ("PPL" or "Company") submitted a filing to the Commission that proposed to increase the company's distribution rates by $114.675 million per year. This was the third of three rate filings by PPL, wherein the company had promised to bring its customer classes to cost of service in response to the decision of the Commonwealth Court in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006). PPL did not abide by that promise.

The OSBA filed a complaint against the proposed increase on April 29, 2010. Thereafter, the OSBA served direct, rebuttal, and surrebuttal testimony.

A settlement was reached among the parties whereby the Company would be allowed to increase its distribution rates by $77.5 million per year. No settlement was reached on the issues involving the allocation of that increase. Consequently, the OSBA filed a main brief and a reply brief on the issue of revenue allocation.

The OSBA asserted that either of the Company's two cost of service studies ("COSSs") was acceptable; but the OSBA criticized the Company's decision to propose zero rate increases, rather than the rate cuts justified by the COSSs, for the overpaying Small C&I customer classes, *i.e.*, GS-1, GS-3, and GH. To move these classes to at or near cost of service, as PPL had previously promised, the OSBA proposed to provide rate cuts through the "first dollar relief" methodology. Under first dollar relief, the overpaying classes receive rate relief before the underpaying classes, when a utility is awarded a smaller rate increase than originally requested.

In contrast to PPL's proposal for zero rate increases and the OSBA's proposal for rate cuts, the OCA proposed no rate increase for the GS-1 class but proposed significant increases for the GS-3 and GH classes. The OCA based its proposals on its own alternative COSS. The OSBA responded that the OCA's COSS was inconsistent with Commission precedent and was methodologically unsound.

The ALJ's RD was issued on October 15, 2010. The ALJ recommended the adoption of the Company's newer COSS (rather than the older PPL COSS, which relied more closely on the methodology used in previous cases). The ALJ also recommended rejection of the OCA's COSS. However, the ALJ concluded that the OSBA's "first dollar relief" proposal violated ratemaking principles, and should be rejected. Therefore, the ALJ agreed with PPL that the GS-1, GS-3, and GH classes should simply receive no rate increase, thereby moving those classes somewhat closer to cost of service (but not as close as proposed by the OSBA).

The OSBA filed exceptions and reply exceptions to the ALJ's RD.

The Commission entered its Order on December 21, 2010. The Commission upheld the ALJ's recommendation to adopt the Company's newer COSS and reject the OCA's COSS. The Commission did not agree with the ALJ's conclusion that "first dollar relief" violated ratemaking principles, but the Commission did conclude that such relief was not appropriate in this proceeding.

Although the OSBA did not succeed in winning rate cuts, the Commission's rejection of the OCA's proposal will save the GS-3 and GH classes about $11.9 million per year.

The industrial intervenors filed a Petition for Reconsideration of the Commission's Order on January 5, 2011. The industrial intervenors are seeking reconsideration of a matter not addressed by the OSBA.

Wellsboro Electric Company
Distribution Rate Increase
Docket No. R-2010-2172662

On June 2, 2010, Wellsboro Electric Company ("Wellsboro" or the "Company") filed a proposed tariff to increase the Company's total electric distribution revenues by

$872,107 per year, *i.e.*, by 23.1%. The Company's proposed rate increase would have produced an 11.75% overall rate of return on equity ("ROE").

On June 10, 2010, the OSBA filed a Complaint against the proposed increase. Subsequently, the OSBA filed direct, rebuttal, and surrebuttal testimony. After the filing of testimony, the parties negotiated a settlement of all issues.

The following provisions were of particular significance to the OSBA in concluding that the settlement was in the best interests of small business customers:

First, Wellsboro agreed to reduce the rate increase from $870,107 per year to $700,000 per year. This provision of the settlement was consistent with the OSBA's argument that the Company's requested ROE was excessive.

Second, Wellsboro proposed a revenue allocation that purportedly moved all major rate classes closer to cost of service as measured by the Company's cost of service study ("COSS"). However, the OSBA took the position that while the Company's proposal was reasonable at the full requested revenue requirement level, the rates of return for certain small business classes, *i.e.*, the CS and IS classes, and certain lighting classes, *i.e.*, the MSL and POL classes, would remain considerably above the system average. To rectify this problem, the OSBA recommended that these four classes (CS, IS, MSL, and POL) be granted first dollar relief ("FDR") in the event that the Company was awarded a smaller rate increase than requested.

In contrast, the OCA performed its own COSS and proposed a new revenue allocation on the basis of that COSS. Under the OCA's proposal, the IS, MSL and POL classes would have provided rates of return significantly in excess of the system average (as measured by the OCA's COSS) even if the rate increase were reduced.

The settlement revenue allocation was a compromise that fell between the revenue allocation proposals of the OSBA and the OCA. As a result of the compromise, the IS, CS, MSL, and POL classes either received a distribution rate increase well below the system average increase of 19.04% or received no increase at all. Specifically, CS received a 9.67% increase, IS received a 5.44% increase, MSL received no increase, and POL received no increase. As a result, small business customers will save more than $85,000 per year in comparison to the amount they would have had to pay under the OCA's proposal.

Third, Wellsboro proposed an increase in the monthly customer charge for the NRS class of $12.00. Wellsboro concluded that $12.00 was also the appropriate charge for the NRH class. However, the OSBA recommended a monthly customer charge of $10.27 for NRS and NRH because customer charges of that amount were consistent with the Company's cost analysis.

Additionally, Wellsboro proposed to implement a monthly customer charge of $20.00 for rate CS. Wellsboro provided information to indicate that it incurs direct customer costs of $28.02 per month to serve CS customers. Consistent with Wellsboro's cost analysis, the OSBA recommended a monthly customer charge of $28.00 for CS.

Wellsboro also proposed to implement a monthly customer charge of $325.00 for Rate IS customers. However, Wellsboro provided information to indicate that it incurs direct customer costs of only $42.90 per month to serve IS customers. Therefore, the OSBA proposed a customer charge based on cost of service.

The settlement set the customer charges for NRS and NRH at $10.00, CS at $28.00, and IS at $42.90. Those charges are consistent with the amounts recommended by the OSBA.

The administrative law judge recommended approval of the settlement. By Order entered January 1, 2011, the Commission approved the settlement.

West Penn Power Company
Transmission Rate Increase
Docket No. P-2010-2158084

On February 9, 2010, West Penn Power Company ("West Penn" or the "Company") filed a petition seeking to begin recovering transmission charges through a reconcilable Transmission Service Charge ("TSC").

On February 25, 2010, the OSBA intervened in the proceeding. Subsequently, the OSBA and the other intervening parties filed direct testimony. The OSBA was generally supportive of West Penn's proposal for a reconcilable TSC. However, the OSBA opposed the Company's request to reconcile its transmission revenues and costs for the period of February 9, 2010, through January 1, 2011. In effect, the Company's proposal amounted to retroactive, single-issue ratemaking.

Prior to the filing of rebuttal testimony, the parties reached a settlement. Under the settlement, West Penn will be permitted to implement the TSC. However, consistent with the opposition of the OSBA and several other parties, West Penn will not be permitted to reconcile costs and revenues for the period between February 9, 2010, and January 1, 2011.

The settlement is pending before the Commission.

2. **Conservation**

Mandatory Conservation Plans
Major Electric Distribution Companies

Governor Edward Rendell signed Act 129 of 2008 (“the Act” or “Act 129”) into law on October 15, 2008. The Act required 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.

On or before September 15, 2010, the EDCs made filings to facilitate the first annual Commission review of their EE&C plans. The OSBA reviewed these filings but ultimately contested only the proposal by West Penn to make major changes in the EE&C plan previously approved by the Commission.

Specifically, West Penn proposed to reduce its heavy reliance on smart meters and to add new programs and expand existing programs in order to meet the conservation reductions mandated by Act 129. The net effect of the amendments was to shift about $6 million in costs from Residential customers to Small C&I customers. The OSBA and West Penn reached an agreement under which the EDC could implement the proposed changes, but the question of whether Small C&I customers would be charged an additional $6 million would be deferred for future litigation.

Commission decisions are pending regarding the West Penn amendments and the annual filings of the other EDCs.

UGI Utilities-Electric Division
Voluntary Conservation Plan
Docket No. M-2010-2210316

On November 9, 2010, UGI Utilities, Inc. – Electric Division ("UGI" or "Company") filed a Petition for Approval of its Energy Efficiency and Conservation Plan with the Commission. Because UGI Electric serves only 62,000 electric customers, the Company's Petition was a voluntary proposal rather than one mandated by Act 129 of 2008.

The OSBA filed a notice of intervention and answer in regards to the petition on November 29, 2010.

A prehearing conference was held before an ALJ on January 5, 2011, and a procedural schedule was set for this case.

The OSBA is examining issues as to whether the costs of the Company's plan are reasonable, and whether any cross-subsidization would occur among the Company's customer classes as a result of this plan. In addition, the OSBA is reviewing the Company's fuel switching proposal, as well as the Company's revenue decoupling proposal.

Evidentiary hearings will be held in May 2011.

3. <u>Smart Meters</u>

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 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 have effectuated 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 was 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 assumed 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 assumed 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 Commission approved the SMIP for each of the EDCs other than West Penn. In approving those SMIPs, the Commission rejected the OCA's cost allocation proposal and adopted the position advocated by the EDCs and the OSBA. As a result, Small C&I customers will save tens of millions of dollars in comparison to the amounts they would have had to pay under the OCA's proposal. For example, PECO's Small C&I customers saved about $2.7 million in 2010 and could save about ten times that amount over the life of the Company's SMIP. Similarly, the Small C&I customers of Met-Ed, Penelec, and Penn Power could save an estimated $28 million to $34 million over the life of their SMIP.

West Penn's SMIP remains in litigation, principally because of the Company's agreement with the OCA to slow down the pace of smart meter deployment. However, if the Commission again rejects the OCA's cost allocation methodology, Small C&I customers could save $20 million to $40 million over the life of the SMIP.

4. **Default Service**

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 was in general agreement with the Company's proposal to serve Small 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.

Following the filing of testimony, the parties negotiated a settlement. Consistent with the OSBA's testimony, the settlement rejected the recommendation of EGSs to rely on shorter term contracts than proposed by Duquesne. As the OSBA pointed out, shorter term contracts would expose small business customers to excessive volatility in default service rates.

The settlement also adopted the OSBA's recommendation that Duquesne be required to report its procurement results publicly. As the OSBA pointed out, having procurement results available to the public would help inform the parties' positions in other default service proceedings. Under the settlement, Duquesne agreed to disclose aggregate procurement results within two days of Commission approval of the results.

The Commission approved the settlement by Order entered on July 30, 2010.

Pennsylvania Power Company
Default Service
Docket No. P-2010-2157862

On February 8, 2010, Pennsylvania Power Company ("Penn Power" or "Company") filed a default service plan for the period from June 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 parties negotiated an agreement to resolve the issues in this proceeding.

The OSBA generally supported Penn Power's filed proposal to utilize load-following, full-requirements contracts to acquire default service supply for its commercial customers. In addition to adopting this aspect of the Company's proposal, the settlement resolved several other issues of concern to the OSBA. Those issues which were satisfactorily resolved included Penn Power's providing a breakdown of charges for the Company's transfer from MISO to PJM and the allocation of those costs to shopping and non-shopping customers alike, a commitment by the Company to make a good faith effort to obtain three bidders for each procurement of alternative energy credits, an agreement by the Company to update seasonal weighting factors, Penn Power's agreement to disclose procurement results, and an agreement to adopt the OSBA's position regarding capacity charges.

By Order entered November 17, 2010, the Commission approved the settlement.

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 Energy's aggregation program and shopping with EGSs.

In the amended petition, Pike recommended that Direct Energy'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 weighed 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.

By Order entered July 26, 2010, the Commission granted Direct Energy's Exceptions. In short, the Commission ruled that each aggregation customer will remain with Direct Energy at the end of the aggregation program unless that customer affirmatively chooses to receive default service from Pike or to receive service from an EGS other than Direct Energy. The Commission reasoned that by remaining with Direct Energy for up to three years, the aggregation customers have, in effect, affirmatively chosen service from Direct Energy.

By Order entered October 14, 2010, the Commission rejected the OSBA's proposal to maintain Commission oversight of the rates charged by Direct Energy to the aggregation customers after the aggregation program ends.

Pike County Light & Power Co.
Default Service (2011-2013)
Docket No. P-2010-2194652

On August 19, 2010, Pike County Light & Power Company ("Pike" or "the Company") filed a petition, seeking Commission approval of a plan to supply its default service customers for the period from June 1, 2011, through May 31, 2013.

The OSBA supported Pike's proposal to continue to acquire default service electricity for Pike customers through spot market purchases. The OSBA also supported Pike's proposal to continue the default service rate design that was currently in place.

However, the OSBA made two recommendations to help inform customers that Direct Energy's aggregation program is being terminated as of June 1, 2011. First, the OSBA recommended that a shopping guide be included in a letter sent to all customers prior to the termination of Direct Energy's aggregation program. Second, the OSBA recommended that customers' bills be modified to include references to electronic and physical information sources for competitive pricing, including the Pike website (which presents a history of default service prices), the Pike shopping guide, and the OCA shopping website.

After filing testimony, the parties reached a settlement. Under the settlement, Pike's current default service plan and rate design will continue through May 31, 2012. The settlement also reflects the OSBA's recommendations regarding how Pike's customers should be informed that Direct Energy's aggregation program is being terminated as of June 1, 2011.

The settlement is awaiting Commission action.

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

On October 1, 2009, UGI Utilities, Inc. – Electric Division ("UGI" or "Company") 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.

The OSBA filed direct testimony in this proceeding. In that testimony, the OSBA stated that it supports, in general, the load-following, full-requirements contracts UGI proposed to use in order to acquire default service supply for the commercial and industrial group customers for the period beginning June 1, 2011. The OSBA also stated its support for the Company's proposal to combine the commercial and industrial customers with peak loads between 0-100 kW and 100-500 kW into a single group for procurement purposes.

However, the OSBA did raise other issues with the Company's petition. Specifically, the OSBA recommended that the Company's proposed procurement window be reduced to one month, that the Company have a more comprehensive contingency plan, and that the Company disclose its procurement results.

A settlement was reached that addressed the additional OSBA issues.

On April 15, 2010, the ALJ issued a Recommended Decision approving the settlement.

On May 11, 2010, the Commission entered an Order adopting the Recommended Decision and approving the settlement.

West Penn Power Company
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, applied to electric generation service provided to Penn State's Main Campus.

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.

By Order entered September 11, 2008, the Commission rejected Penn State's argument that the rate cap extension was applicable to Penn State's Main Campus. 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 in a decision reported at 988 A.2d. 771 (Pa. Cmwlth. 2010).

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 Commission's Office of Trial Staff ("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.

By Order entered February 26, 2010, the Commission approved the Companies' request to continue using the Stratified Procurement Plan for the period of June 1, 2010, through May 31, 2013. However, the Commission denied the Companies' requested modification for an abbreviated approval process regarding the purchase of multiple-year products. The Commission also limited the Companies' requested modification to add financially-settled products to its portfolio. Specifically, the Commission allowed the Companies to use *cleared* financial products obtained in the New York Mercantile Exchange ("NYMEX") and Intercontinental Exchange ("ICE") but denied the Companies the right to use non-cleared products. Even though the Commission limited the Companies' use of financial products to cleared products, the Commission stated that the Companies were not precluded from seeking to modify the default service plan in the future to add non-cleared financial products as long as the Companies provided a clearer explanation of the parameters and restrictions they propose to apply to transactions for financial products.

The Commission further directed the Companies to continue the annual benchmark reports. However, the Commission directed the parties to consider revising the third benchmark to eliminate the analysis of EDCs in New Jersey and include PPL Electric Utilities Corporation ("PPL") and Pennsylvania Electric Company ("Penelec"). The parties were directed to file a status report on their discussions of these possible changes in the benchmark analysis.

The Companies subsequently sent a status report of the benchmark discussions to the Commission but indicated that the parties had not resolved the issue of possible changes to the third benchmark analysis.

On September 2, 2010, the Companies filed a Petition for Expedited Approval to Amend Joint Default Service Program. Specifically, the Companies requested that the default service plan for the period of June 1, 2010, through May 31, 2013, be amended to allow the use of non-cleared financial products.

The OSBA had several concerns with the Companies' proposal. First, rather than proposing a gradual approach to including non-cleared financial products in their portfolio, the Companies requested approval to use non-cleared financial products for up to 100% of their 7x24 base load and up to 50% of their 5x16 intermediate load. Second, despite touting the benefits of using non-cleared financial products, the Companies provided no estimate of the magnitude of the anticipated savings. Third, the Companies proposed no change in the third benchmark.

Ultimately, the parties reached a settlement. The settlement mitigated the OSBA's concerns because it lowered the percentage of non-cleared financial swaps that would be used to meet the Companies' base load (7x24) to 60%. Moreover, the Companies agreed in the settlement not to change the percentages and types of authorized non-cleared financial products set forth in the settlement for the duration of the current default service plan, *i.e.*, through May 31, 2013, thereby giving the Commission the opportunity to evaluate what, if any, savings non-cleared financial products can provide in customers' default service rates. Furthermore, the third benchmark was revised by eliminating the analysis of EDCs in New Jersey, and including PPL and Penelec.

The settlement is awaiting Commission action.

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

West Penn Power Company
Merger
Docket Nos. A-2010-2176520 and A-2010-2176731

On May 14, 2010, West Penn Power Company d/b/a Allegheny Power ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corporation ("FirstEnergy") ("Joint Applicants") filed the Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company, and FirstEnergy Corporation ("Joint Application") seeking approval to merge West Penn and TrAILCo's parent company, Allegheny Energy, Inc. ("Allegheny Energy"), with FirstEnergy.

On June 14, 2010, the OSBA filed a protest against the merger. As stated in the protest, the OSBA's principal concern is the merger's negative impact on default service rates.

Following the filing of testimony, a settlement was reached by some of the parties. However, the OSBA is not a settling party.

The OSBA's major objection to the settlement is that it does not restrict FirstEnergy's use of Allegheny Energy's low-cost generation to expand the share of the Pennsylvania retail market dominated by First Energy's EGS affiliate, FirstEnergy Solutions ("FES"). A key element of that retail market expansion is municipal aggregation. Under municipal aggregation, a residential or small business customer in a participating municipality will receive service from FES unless the customer affirmatively chooses to remain on default service or to purchase service from a different EGS. Despite the fact that legislation authorizing municipal aggregation has not yet been enacted, FES has already solicited contracts with municipalities governed by the Home Rule Charter and Optional Plans Law.

As pursued by FirstEnergy, municipal aggregation will violate the Public Utility Code because residential and small business customers in the participating municipalities will automatically receive aggregation service, rather than default service, if they do not affirmatively opt out of the aggregation.

Furthermore, FirstEnergy's municipal aggregation strategy will increase the risk faced by suppliers of full-requirements contracts, thereby resulting in higher default service rates for non-shopping customers during the January 1, 2011, through May 31, 2013, default service period.

Finally, because of its advantage as the incumbent utility and its ownership of local generation capacity, FirstEnergy's municipal aggregation strategy will make it harder for other EGSs to compete with FES.

Although the settlement will produce some affirmative benefits, those benefits will be far outweighed by the harm FirstEnergy's municipal aggregation strategy will do to default service customers. Therefore, the OSBA proposed that the Commission reject the proposed transfer of control of Allegheny Energy to FirstEnergy, unless the Commission imposes the following additional conditions:

a. First Energy Corporation and its affiliates shall not engage in municipal aggregation in the Met-Ed, Penelec, Penn Power, and West Penn service territories prior to the enactment and implementation of authorizing legislation or June 1, 2013, whichever is later; and

b. FirstEnergy shall administratively locate the generating assets of FirstEnergy Corporation and Allegheny Energy, Inc., in separate subsidiaries that shall not coordinate regarding whether to bid in a particular default service procurement and regarding what price to bid.

The matter is pending before the Commission.

RESA/Dominion Retail/FirstEnergy Solutions
Municipal Aggregation
Docket Nos. P-2010-2207062, P-2010-2207953, and P-2010-2209253

FirstEnergy's affiliated EGS, FirstEnergy Solutions ("FES"), has solicited contracts with the Borough of Edinboro ("Edinboro"), the City of Warren ("Warren"), the City of Farrell ("Farrell"), and the City of Meadville ("Meadville") for municipal aggregation. Under municipal aggregation, a residential or small business customer in a participating municipality will receive service from FES unless the customer affirmatively chooses to remain on default service or to purchase service from a different EGS.

In response to FES's activities, the Retail Energy Supply Association ("RESA") and Dominion Retail, Inc. ("Dominion") filed petitions with the Commission.

By its petition, RESA requested that the Commission immediately issue a Secretarial Letter directing any EGS engaging in opt-out municipal aggregation to stay any such activities and not execute any contract. RESA also requested that the Commission initiate an investigation into the municipal aggregation activities of EGSs in Pennsylvania. RESA further requested that, upon completion of the investigation, the Commission issue an Order declaring the following: (1) activities by any EGS in Pennsylvania to secure approval from home rule municipalities or other municipalities to enter opt-out municipal aggregation contracts is contrary to the Public Utility Code and the Commission's rules and regulations, and therefore is illegal; and (2) any EGS engaged in opt-out municipal aggregation activities must cease and desist from pursuing or entering into such aggregation contracts in Pennsylvania pending any Commission investigation or until such time as these aggregation arrangements are authorized by statute or Commission rule.

By its petition, Dominion requested that the Commission declare the Meadville Ordinance, and any similar ordinances, illegal and void unless and until authorized by statute. Dominion also requested that the Commission issue an Order prohibiting any EDC or EGS from engaging in any municipal aggregation program until authorized by the General Assembly.

Subsequently, FES filed its own petition, requesting that the Commission either rule that no approvals are necessary for FES to participate in the opt-out municipal aggregation programs of Meadville, Warren, Edinboro, or Farrell or approve FES's participation in those programs.

The Commission issued a Secretarial Letter which consolidated the three aforementioned petitions and set a deadline for interested parties to file answers. The Commission also directed each EDC not to switch any customer to an EGS pursuant to an "opt-out" municipal aggregation contract and directed each EGS not to switch any customer from default service (or the customer's existing EGS) pursuant to an "opt-out" municipal aggregation contract until the legal issues are addressed and resolved by the Commission.

The OSBA filed an answer, in which the OSBA argued that until legislation is passed, it is unlawful for an EGS to enter into a contract with a home rule municipality to supply electricity through an opt-out municipal aggregation program.

The matter is pending before the Commission.

6. Alternative Energy

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 alternative energy credits ("AECs") in the marketplace.

During 2010, the OSBA participated in numerous proceedings involving the procurement of AECs. Many of those proceedings dealt with the long-term acquisition of solar AECs in order to provide an incentive for the construction of solar AEC projects.

7. Miscellaneous

Purchase of Receivables

The distribution rates of an 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 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 arose frequently was 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.

Rather than purchase the EGS’s receivables at a discount, PECO has been recovering the EGS’s uncollectibles through distribution rates as part of its POR program developed in the restructuring settlement. PECO proposed to continue that practice as part of a revised POR filed at Docket No. P-2009-2143607. In that proceeding, PECO proposed that the revised POR program take effect on January 1, 2011. PECO also asked to be allowed to terminate shopping customers for delinquencies incurred prior to January 1, 2011.

The parties to the PECO proceeding ultimately agreed to settle most issues. Of particular concern to the OSBA, the settlement provided for notification of customers regarding termination provisions, EGS charges, and the price to compare. The settlement also included a prohibition (first agreed to in PECO’s default service proceeding) against recovery of shortfalls in EGS uncollectibles by PECO from non-shopping customers.

However, the parties were unable to reach agreement on PECO’s request to be allowed to terminate customers for unpaid EGS charges for basic electricity supply, which were incurred or billed before January 1, 2011. Both the OSBA and the OCA opposed PECO’s request, primarily on the grounds that the restructuring settlement prohibited termination during the time period those pre-January 1, 2011, EGS charges were incurred.

On June 18, 2010, the Commission entered an Order approving the settlement. However, the Commission also rejected the position of the OCA and the OSBA on terminating customers for pre-January 1, 2011, EGS charges.

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. However, the Commission did not take final action on the matter.

During 2010, the Bureau of Audits prepared similar Audit Reports for the year ended December 31, 2009. The OSBA filed additional Comments, noting that Met-Ed's NUG stranded cost balance as of December 31, 2008, was unchanged from the previous Audit Report and, therefore, that Met-Ed's stranded cost balance continues to be $14.7 million too high.

At its public meeting of July 29, 2010, the Commission adopted an Order approving the 2010 Audit Reports. However, the Commission did not adjudicate the issue on which the OSBA commented, *i.e.*, the proper balance as of December 31, 2008.

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 existed 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 was that PECO appeared 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 conducted discovery and engaged in discussions aimed at answering the questions posed by the Commission. On February 24, 2010, the parties filed a Stipulation and Joint Memorandum. The Stipulation provided the information sought by the Commission and the ALJ, explained PECO's recovery of decommissioning expenses, and provided the basis for the Commission to close the investigation. The Joint Memorandum requested (1) approval of the Stipulation, (2) approval of PECO's recovery of decommissioning expenses, and (3) termination of the investigation.

The Commission issued the ALJ 's Recommended Decision ("RD"), which recommended that the Stipulation be admitted into the record without Paragraph 32. Paragraph 32, which was the focus of the OSBA's efforts in this matter, made clear that PECO may not recover future decommissioning costs that result from the extension of operating licenses of the nuclear units previously owned by PECO.

Exceptions to the RD were filed by the OSBA and others. By Order entered July 22, 2010, the Commission concluded that the Stipulation should be admitted into the record, including Paragraph 32, and adopted the RD consistent with that conclusion.

Therefore, the OSBA successfully prevented the future recovery of decommissioning costs that result from the extension of operating licenses of PECO's previously-owned nuclear facilities.

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. By Order entered March 9, 2010, the Commission approved the TOU tariff, but the Commission also agreed with the OCA that PPL should not be permitted 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. This protection against recovery of a potential shortfall will also be applicable to Small C&I customers.

B. Gas Highlights

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 use its pipes to deliver 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>

Columbia Gas of Pennsylvania
Base Rate Increase
Docket No. R-2009-2149262

On January 28, 2010, Columbia Gas of Pennsylvania ("Columbia" or "the Company") filed a tariff to raise distribution rates by $32.27 million per year. The OSBA filed a complaint on February 4, 2010.

After the filing of direct and rebuttal testimony, the parties were successful in negotiating a settlement.

Issues addressed to the OSBA's satisfaction in the settlement included the implementation of a smaller rate increase than proposed by the Company ($12 million v. $32.27 million), an allocation of that rate increase in a way which brought the small business classes closer to cost of service, the withdrawal of the Company's proposal to increase rates between cases through a Distribution System Improvement Charge, and an agreement to treat Columbia's tax refund in a manner consistent with Commission precedent.

By Order entered August 18, 2010, the Commission approved the settlement.

PECO Energy Company-Gas Division
Base Rate Increase
Docket No. R-2010-2161592

On March 31, 2010, PECO Energy Company ("PECO" or the "Company") filed a tariff to increase the total gas distribution revenues of PECO by approximately $43.8 million per year.

The OSBA filed a complaint against the proposed rate increase and also filed testimony.

Through its complaint and testimony, the OSBA raised numerous concerns. First, the OSBA objected to PECO's request for a rate of return on equity ("ROE") of 11.75%. Based on Commission precedent and the effect of the recession on equity returns, the OSBA proposed that the Company be awarded an ROE of no more than 10.40%.

Second, the Company did not assign any revenue derived from miscellaneous service charges to its gas operations. To remedy the problem, the OSBA recommended that the Commission direct the Company to book $53,250 of miscellaneous service revenue to its gas operations and to reduce the requested rate increase by that amount.

Third, PECO proposed a revenue allocation that it contended would move all major rate classes closer to the cost of service indicated by the Company's Cost-of-Service Study ("COSS") and would reduce by 50% the difference between the Rate GC (small business) and Rate L class rates of return and the system average rate of return. However, the Commission directed the parties to address whether it was possible to bring Rate GC and Rate L to cost in this case rather than doing so over two cases. In response, the OSBA recommended that Rate GC be moved to cost of service in the instant case rather than over two cases.

Fourth, the OSBA made recommendations regarding PECO's security deposit for small business customers. Specifically, the OSBA recommended that the same deposit hold period and timely payment history standards applied to residential customers should be used for PECO's customers served on Rate GC. In addition, the OSBA recommended that the then-current language of PECO's Rules and Regulations which determined when PECO is permitted to require a new deposit from a customer should be retained. The OSBA pointed out that the proposed new language in the tariff would allow the Company significantly greater latitude in requiring a new deposit from an existing customer due to the fact that PECO's proposed tariff language did not delineate the types of conditions and/or customer account activity that would constitute a customer's having "bad credit" or a "lack of creditworthiness."

The parties reached a settlement which adequately addressed the OSBA's principal concerns.

First, PECO agreed to reduce the revenue requirement from $43.8 million per year to $19.636 million per year under the settlement. Assuming (without conceding) that PECO would have won every other contested issue, the revenue increase provided by the settlement equated to an implicit ROE for PECO below the 10.40% ceiling recommended by the OSBA.

Second, the settlement moved both Rate GC and Rate L closer to cost of service than proposed by the Company. As a result, small business customers in Rate GC will save more than $2.5 million per year in comparison to what they would have paid under the Company's proposal for allocating the rate increase.

Third, the Company agreed to provide small business customers with the same deposit hold period and timely payment history standards that are applied to residential customers. The parties further agreed to add definitions to the tariff to limit the Company's discretion in determining who has "bad credit" and who is considered "creditworthy."

By Order entered December 29, 2010, the Commission approved the settlement.

Peoples Natural Gas Company
Base Rate Increase
Docket No. R-2010-2201702

On October 28, 2010, the Peoples Natural Gas Company ("Peoples" or "Company") submitted a filing with the Commission that proposed to increase the company's rates by $70.2 million per year.

On November 17, 2010, the OSBA filed a complaint against the proposed increase.

A prehearing conference was held before an ALJ on December 20, 2010, and a procedural schedule was set.

The OSBA is focusing on issues regarding the Company's proposed cost of service studies, revenue allocation, and rate design. The OSBA is also reviewing a number of other issues, including the Company's proposed Distribution System Improvement Charge and Purchase of Receivables program.

Evidentiary hearings will be held in March 2011.

Philadelphia Gas Works
Base Rate Increases
Docket Nos. R-2008-2073938
and R-2009-2139884

On November 14, 2008, the Philadelphia Gas Works ("PGW" or the "Company") filed a Petition for Extraordinary or Emergency Rate Relief ("Petition") and a tariff (at Docket No. R-2008-2073938), seeking approval 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 on November 18, 2008.

PGW did not file an updated cost of service study ("COSS"). According to PGW, the Company did not have time to prepare a COSS 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 among the customer classes, 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 rate 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.

As directed by the Commission's March 26, 2009, Order at Docket No. R-2008-2073938, PGW filed a rate case at Docket No. R-2009-2139884 on December 18, 2009. By that filing, PGW sought to make the $60 million (actually $59.1 million) extraordinary rate increase permanent and also sought to increase rates by an additional $42.7 million.

On January 7, 2010, the OSBA filed a complaint at Docket No. R-2009-2139884 in opposition to the Company's rate filing.

From the standpoint of cost of service and revenue allocation, PGW was requesting a total increase of $101.8 million, *i.e.*, the continuation of the entire extraordinary rate increase plus an additional $42.7 million. PGW proposed to assign a net rate increase of $6.9 million to Commercial customers, which consisted of continuing the $9.1 million increase in Commercial rates awarded in the extraordinary rate proceeding and implementing a $2.3 million reduction in Commercial rates as part of the additional overall increase of $42.7 million.

Revenue allocation proposals at the full revenue requirement were filed by various parties. For Commercial customers, the net increase proposals included PGW ($6.9 million), OSBA ($3.0 million), OCA ($9.2 million), Philadelphia Housing Authority ($6.8 million), and the Commission's Office of Trial Staff ("OTS") ($2.9 million).

The case was eventually settled for a total increase of $75.1 million, *i.e.*, the continuation of the entire $59.1 million extraordinary rate increase plus an additional increase of $16.0 million. The settlement increase for the Commercial class was $6.1 million, which was a net reduction of $3.1 million in the rates tentatively approved in the extraordinary rate proceeding.

In testimony, PGW actually proposed that if the Company were awarded a smaller rate increase than requested, the Commercial class should receive a larger increase than if PGW were awarded the entire $101.8 million. Under PGW's formula, Commercial customers would have paid $8.3 million with a total rate increase for the Company of $75.1 million. Therefore, the settlement will save Commercial customers $2.2 million per year in comparison to the Company's proposal.

In testimony, the OCA proposed a scaleback methodology that would have given Commercial customers an overall increase of $9.2 million out of the $75.1 million. Therefore, the settlement will save Commercial customers $3.1 million per year in comparison to the OCA's proposal.

In addition to the allocation of the rate increase among customer classes, the OSBA testified on several other issues, including the following:

First, the OSBA questioned PGW's proposal for a substantial buildup in Company equity on the backs of ratepayers in the current economic environment. The OSBA's objection was implicitly recognized in the settlement by dedicating the entire $16 million increase to Other Post-Employment Benefits ("OPEB") and by incorporating a provision requiring PGW to report on employee benefits costs.

Second, the OSBA supported strict enforcement mechanisms to assure that a portion of any rate increase would be used to draw down unfunded OPEB liabilities. This point was recognized in the settlement, in that the entire $16 million net increase was dedicated to OPEB funding.

Third, the OSBA recommended the adoption of a merchant function charge for collection of gas sales uncollectibles from sales customers only. This recommendation was reflected in a settlement provision in which PGW agreed to pursue a purchase of receivables program in a future proceeding.

Fourth, the OSBA recommended that the collection of universal service costs from non-residential customers be phased out over three years. In that regard, non-residential customers are usually not required to contribute to the cost of universal service programs, in that only residential customers are eligible to participate in the programs. The requirement that PGW's non-residential customers contribute is a carryover from the way universal service was funded before jurisdiction over PGW was transferred to the Commission. Although the OSBA's proposal was not adopted, the settlement did preserve the OSBA's right to pursue the issue in future proceedings.

Fifth, the OSBA recommended that economic incentives for conservation be built into the universal service program as a way to reduce the amount which small business customers must pay for the program. This proposal was incorporated into the settlement as a promise by PGW to seek approval of such an incentive in a future proceeding. Later in 2010, PGW made a filing which includes such an incentive. That proceeding is pending before the Commission.

Sixth, the OSBA made numerous comments about PGW's proposed energy conservation programs for non-residential customers. Of particular significance, the OSBA recommended that revenues lost by PGW because of the residential and non-residential energy efficiency programs not be recovered from ratepayers on an automatic basis. The settlement adopted that proposal.

By Order entered July 29, 2010, the Commission approved the settlement.

TW Phillips Gas & Oil Company
Base Rate Increase
Docket No. R-2010-2167797

On April 30, 2010, T.W. Phillips Gas and Oil Company ("T. W. Phillips" or "Company") filed a tariff seeking a distribution rate increase of $12.61 million per year. The requested rate increase assumed a rate of return on equity ("ROE") of 11.75%.

The OSBA filed a complaint and direct testimony in opposition to the increase.

Before the filing of rebuttal testimony, the parties negotiated a settlement. The settlement resolved the following issues which the OSBA addressed in testimony:

First, the settlement gave the Company a smaller increase than requested ($8.47 million v. $12.61 million). The increase of only $8.47 million responded, in part, to the OSBA's argument that the Company's requested ROE was excessive and would result in a larger rate increase than necessary.

Second, the settlement adopted a compromise allocation of the rate increase among the classes. That compromise moved classes closer to cost of service.

In testimony, the OSBA proposed to reduce the subsidies provided by the small business classes to the residential class by a greater amount than proposed by the Company. Therefore, under the OSBA's proposal, small business rates would have gone up by less than the Company proposed and residential rates would have gone up by more.

In contrast, the OCA proposed to increase residential rates by less than proposed by the Company and to increase small business rates by more than the Company proposed.

As a compromise, the settlement accepted the Company's proposal for allocating the rate increase among the classes. As a result, the settlement will save Small and Medium C&I customers about $450,000 per year in comparison to what they would have paid under the OCA's proposal.

Third, the settlement accepted the OSBA's position on the customer charges for non-residential customers. Specifically, the OSBA had opposed the Company's proposed increase in the customer charges for the GSS rate class because it was not cost-justified. In the settlement, the Company agreed not to increase the GSS customer charges.

Fourth, the Company proposed to increase the customer charge for its non-residential customers that pay "flex rates," *i.e.*, rates that are discounted in order to keep the customers from accepting competitive alternatives and leaving the T.W. Phillips system. In its filed case, T.W. Phillips proposed to scale back those customer charge increases if the Company was awarded a smaller rate increase than requested. However, the OSBA opposed the scaleback. As the OSBA pointed out, because flex rates are supposed to be set on the basis of the price of a competitive alternative rather than on the basis of cost of service, there is no need to provide flex rate customers a total rate which is below the price of that competitive alternative. The settlement accepted the OSBA's recommendation that the proposed increases in customer charges for flex rate customers not be scaled back.

Fifth, the OSBA identified a need to evaluate whether the Company is getting revenue from flex rate customers that is sufficient to cover the variable cost of providing that service. Consistent with the OSBA's concerns, the settlement provides that T.W. Phillips will not enter or renew any contracts with flex rate customers at rates which are either inadequate to recover the variable cost of providing supply service or lower than necessary to retain those flex rate customers on T.W. Phillips' system.

By Order entered November 4, 2010, the Commission approved the settlement.

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

On December 4, 2009, UGI – Central Penn Gas, Inc. ("CPG" or "Company") filed 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 to an unregulated affiliated interest.

The OSBA filed an answer to the petition on December 23, 2009.

A settlement was reached in this proceeding. The settlement addressed the OSBA's concern that the Company's ratepayers would see higher rates because of this transaction. Specifically, the settlement will hold the Company's ratepayers financially harmless for the remainder of the purchased gas cost year in which the sale actually occurs, plus three additional years. In other words, during the term of the settlement, the Company's ratepayers will not pay more for the storage service than they would have paid if the storage facilities had not been sold. In addition, the Company will continue to be able to use the storage facilities pursuant to a right of first refusal. This will ensure that the Company's ratepayers will retain physical access to the storage facilities if those facilities remain the most cost-effective option.

By Order entered September 28, 2010, the Commission approved the settlement with unrelated modifications.

Valley Energy, Inc.
Base Rate Increase
Docket No. R-2010-2174470

On or about April 30, 2010, Valley Energy, Inc. ("Valley") filed a tariff seeking an increase in annual distribution revenues of $420,544.

The OSBA filed a complaint and testimony against the rate increase.

The OSBA objected to Valley's request for a rate of return on equity ("ROE") of 11.50%. Based on Commission precedent and the effect of the recession on equity returns, the OSBA proposed that the Company be awarded an ROE of no more than 10.40%.

In addition, the OSBA objected to the customer charges for the Commercial ("Rate C"), Small Industrial ("Rate SI"), and Industrial Interruptible Service ("Rate IS") classes because those charges were not cost-based.

After filing testimony, the parties reached a settlement.

The settlement lowered the Company's revenue requirement from $420,544 to $235,000, which in turn lowered the Company's implicit ROE to approximately the ceiling the OSBA had proposed.

To address the rate design issues, the settlement provided for lower customer charges for the SI and IS classes than proposed by the Company. In addition, Valley agreed to present a refinement of the customer component of non-residential rate schedules in its next base rate case.

By Order entered December 2, 2010, the Commission approved the settlement.

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 2010, the OSBA participated in the following GCR cases: T. W. Phillips Gas, at Docket No. R-2009-2145441; National Fuel Gas, at Docket No. R-2010-2150861; Philadelphia Gas Works, at Docket No. R-2010-2157062; Peoples Natural Gas Company, at Docket No. R-2010-2155608; Equitable Gas Company, at Docket No. R-2010-2155613; Columbia Gas of Pennsylvania, at Docket No. R-2010-2161920; PECO Gas, at Docket No. R-2010-2174034; UGI Utilities-Gas Division, at Docket No. R-2010-2172933; UGI Central Penn Gas, at Docket No. R-2010-2172922; and UGI Penn Natural Gas, at Docket No. R-2010-2172928.

A major priority for the OSBA in the 2010 cases was reducing the NGDCs' lost-and-unaccounted-for gas ("LUFG") rates. LUFG occurs primarily because of leaks and inaccurate measurement. LUFG is costly for both non-shopping customers, *i.e.*, sales customers, and shopping customers, *i.e.*, transportation customers, because those customers must pay for extra gas that would not be needed if the LUFG rate were lower.

In addition to proposing incentives for NGDCs to reduce their LUFG rates, the OSBA focused on making sure that sales and transportation customers were paying for only their share of the LUFG, *i.e.*, that there were minimal (if any) cross-subsidies between sales and transportation customers and that there were minimal (if any) cross-subsidies among the various transportation customers in the same rate class. For example, the OSBA's advocacy in the T. W. Phillips case resulted in a settlement which shifted about $630,000 in costs from smaller to larger transportation customers.

3. <u>Mergers and Acquisitions</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 rate of return on equity ("ROE").

Ultimately, the OSBA and the other parties in the proceeding reached a settlement. The Commission approved the settlement by Order entered November 19, 2009.

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 increase awarded 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. Under the settlement, Dominion will provide gas procurement and customer care services to PH Gas for 18 months. During those 18 months, the Joint Applicants were to decide whether they wanted to succeed Dominion in performing the full gas procurement and customer care service functions in-house or if they wanted to hire a third party to perform those services. If the Joint Applicants decided to hire a third party to perform these functions, then they were required to issue a request for proposals after consulting with the statutory parties.

Peoples ultimately decided to retain the gas procurement function in-house.

In 2010, Peoples advised the parties and the Commission that customer service also will be performed by in-house personnel, with the exception of three functions: (1) bill printing/stuffing/mailing; (2) payment processing (minus exception handling); and, (3) 72-hour termination calls. As required by the settlement, Peoples provided the requests for proposals related to these functions for review and comment. No party submitted comments.

Peoples Natural Gas Company
Sale of Storage
Docket No. A-2010-2203699

On October 6, 2010, Peoples Natural Gas Company ("Peoples" or "Company") filed an application with the Commission to lease the claimed excess storage capacity at the Company's Rager Mountain Storage Facility and to transfer a portion of base and working gas in that facility.

The OSBA filed a notice of intervention in this case on November 8, 2010.

The matter is pending before the Commission.

T. W. Phillips Gas & Oil Company
Sale
Docket No. A-2010-2210326

On November 10, 2010, a Joint Application was filed with the Commission to transfer all of the shares of stock in T. W. Phillips Gas and Oil Company ("T. W. Phillips" or "Company") to SteelRiver Infrastructure Investment Fund ("Steel River").

On December 13, 2010, the OSBA filed a Notice of Intervention in this proceeding.

The Commission has assigned this case to the Office of Administrative Law Judge for hearings and the preparation of a recommended decision.

The matter is pending before the Commission.

4. Miscellaneous

Purchase of Receivables

The distribution rates of an 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 an 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 successfully raised these arguments in the following cases in which the Commission approved NGDC PORs: 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. The OSBA's concern was that capping residential rates could shift costs from residential customers to business customers.

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 at 990 A.2d 67 (Pa. Cmwlth. 2009).

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 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 might 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. Thereafter, the Commission further stayed the proceeding.

However, on May 11, 2010, the Commission entered an Order denying yet another Motion to Extend the Stay. The Commission ordered that this case be assigned to an ALJ for further proceedings and to update the record.

On December 8, 2010, a prehearing conference was held before an ALJ, and a new procedural schedule was set for this case.

Evidentiary hearings are scheduled for June 2011.

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 had 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 the Recommended Decision in the limited proceeding, 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 in the limited proceeding. 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 also lifted the stay on the remainder of the access charge investigation it had ordered in 2004.

In this second proceeding, the OSBA filed direct, rebuttal, and surrebuttal testimony. The OSBA also filed a main brief and a reply brief.

In the Recommended Decision in the second proceeding, the ALJ assigned the burden of proof to the RLECs, rather than to AT&T, which had filed the complaint. The OSBA excepted to this recommendation. In addition, the ALJ recommended the adoption of AT&T's proposal to reduce each RLEC's intrastate access rates to the level of that RLEC's interstate access rates. The OSBA did not except to the conclusion reached by the ALJ, but the OSBA did except to AT&T's methodology for calculating the reduction. Finally, the ALJ recommended what amounted to a new rate cap by creating an "affordability standard" for rates. The OSBA excepted to this recommendation, as there is no need for the Commission to treat all RLEC customers as low-income customers in need of assistance.

The OSBA also filed reply exceptions.

The Commission has not yet acted upon the Recommended Decision and the exceptions in the second proceeding.

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

Embarq Communications, Inc.
Change of Control
Docket No. A-2008-2076038
496 CD 2010

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 affirmative public benefits. The OSBA was not able to identify any substantial affirmative 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.

On March 1, 2010, the Commission entered an Order in which it rejected the OSBA's request for hearings and essentially adopted the additional conditions set forth in its November 25th Order.

On March 30, 2010, the OSBA filed another Petition for Review, seeking review by the Commonwealth Court of the Commission's May 28th and March 1st Orders.

The OSBA filed a brief and a reply brief with the Commonwealth Court.

On December 6, 2010, the Commonwealth Court heard oral argument in this case.

The OSBA is awaiting the Commonwealth Court's decision.

Qwest Communications Company
Change of Control
Docket No. A-2010-2176733

On May 14, 2010, a Joint Application was filed with the Commission by Qwest Communications Company, LLC and CenturyTel, Inc., (collectively, "Joint Applicants") seeking approval for the indirect transfer of control of Qwest to CenturyLink.

The OSBA filed a Notice of Intervention and Protest on June 14, 2010. The OSBA also filed direct testimony in this case.

Thereafter, a settlement agreement was reached in this proceeding. To address the OSBA's concerns, the settlement prevents CenturyLink (as the surviving merged company) from increasing its noncompetitive service rates by the amounts permitted in the company's 2011 and 2012 price stability mechanism filings. In addition, the settlement prohibits CenturyLink from banking the increases allowed in the company's 2011 and 2012 PCO filings for recovery in subsequent years. These settlement provisions will absorb some of the merger savings created by this transaction. As a result, the merged company will have less revenue by which it could gain an unfair advantage over other carriers in the competitive service market.

The settlement also requires both Qwest and CenturyLink to provide income and access line counts for the most recent quarter prior to the close of the transaction. In addition, for a period of three years following the close of the transaction, the resulting company, CenturyLink, will also provide quarterly income and access line count data. This data will allow the parties and the Commission to monitor the merger and the manner in which the merger savings are being used. In particular, the reports should assist the parties and the Commission in determining whether any merger savings generated by noncompetitive services are being used to help increase CenturyLink's share of the market for competitive services via predatory pricing.

The ALJ issued a Recommended Decision on September 28, 2010. The ALJ recommended the approval of the settlement.

The Commission entered an Order on October 14, 2010, which adopted the Recommended Decision and approved the settlement.

D. Water and Wastewater Highlights

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

On November 18, 2009, Aqua Pennsylvania, Inc. ("Aqua PA" or the "Company") filed a tariff to increase the Company's rates by $43.2 million per year, which would result in a rate of return on equity ("ROE") of 12.0%.

The OSBA filed a complaint and testimony against the proposed increase.

The OSBA objected to the Company's request for an ROE of 12.0%. Based on Commission precedent and the effect of the recession on equity returns, the OSBA proposed that the Company be awarded an ROE of no more than 10.78%.

The OSBA also argued that the Company was proposing to assign too much of the rate increase to the Public Authority class and to the private fire customers. The OSBA also objected to a proposal by the OCA that would have assigned an even greater share of the rate increase to private fire customers than proposed by the Company.

In addition, the OSBA took issue with the fact that the customer charges for customers with 1½" or larger meters were not cost-based.

Finally, the OSBA opposed the Company's proposal for an Energy Adjustment Charge and a Purchased Water Adjustment.

After the filing of testimony, the parties reached a settlement that mitigated the OSBA's concerns.

First, the settlement increased Aqua's revenues by $23.6 million, instead of the $43.2 million originally requested by the Company. Consequently, the revenue increase provided by the settlement equated to an implicit ROE for Aqua that was below the 10.78% ceiling recommended by the OSBA.

Second, as proposed by the OSBA, the settlement provided first dollar relief to the Public Authority class, thereby bringing that class closer to cost of service. (Under first dollar relief, the overpaying classes usually receive a disproportionate share of the reduction if the utility is awarded a smaller rate increase than requested.) The settlement also provided no increase in the base rates for public fire service in the Main Division. Furthermore, because the Company's Distribution System Improvement Charge ("DSIC") was not rolled into the base rates of Main Division private fire customers when the DSIC was reset to zero, private fire customers in the Main Division actually received an overall rate decrease. As a result of this revenue allocation, the settlement will save private fire customers about $438,000 per year in comparison to the percentage of the rate increase the OCA proposed to assign to those customers.

Third, the settlement addressed the OSBA's concern that the customer charges for 1½" or larger meters were not cost-based. Specifically, the settlement provided that customer charges for meter sizes of 1½" or larger would receive no increase (except for rolling in the DSIC increase).

Fourth, by breaking the links between some of the non-residential consumption blocks, the settlement provided an approximately uniform increase to the consumption charges of each of the Commercial class blocks.

Fifth, the Company withdrew the Energy Adjustment Charge and the Purchased Water Adjustment.

By Order entered June 16, 2010, the Commission approved the settlement.

City of Lancaster-Water
Base Rate Increase
Docket No. R-2010-2179103

On August 27, 2010, the City of Lancaster – Bureau of Water ("Lancaster" or "City") filed a tariff to increase total annual operating revenues by $8,608,024 per year, *i.e.*, by 99.8%.

On October 5, 2010, the OSBA filed a complaint against the proposed rate increase. Subsequently, the OSBA filed testimony. In that testimony, the OSBA opposed the rate increase as excessive. The OSBA also objected to proposals of other parties to shift a bigger percentage of the rate increase to Commercial customers.

The case is currently pending before the Commission.

Pennsylvania-American Water Company
Coatesville Wastewater
Base Rate Increase
Docket No. R-2010-2166212

On April 23, 2010, Pennsylvania-American Water Company-City of Coatesville Division ("PAWC-Coatesville") filed a tariff to produce approximately $8,156,652 (197.37%) in additional annual revenues.

The OSBA filed a complaint and testimony against the increase.

After the filing of testimony, a settlement was reached by some of the parties. The OSBA did not join in the settlement but did not object to it.

The settlement provided for a six-year phase-in of the rate increase. In addition, PAWC agreed not to file for another general rate increase for Coatesville wastewater customers prior to March 31, 2016 (the end of the six-year phase-in). The settlement also assigned a smaller share of the rate increase to Commercial customers than originally proposed by the Company; as a result, Commercial customers will save more than $54,000 per year in comparison to the Company's original proposal.

By Order entered December 16, 2010, the Commission approved the Settlement.

York Water Company
Base Rate Increase
Docket No. R-2010-2157140

On May 14, 2010, the York Water Company ("York" or "Company") submitted a filing with the Commission that proposed a general rate increase of $6,220,428 per year.

On June 8, 2010, the OSBA filed a complaint against the proposed general rate increase.

The OSBA filed direct testimony in this proceeding.

Thereafter, a settlement was reached. The settlement proposed to increase the Company's revenue by $3.4 million. This was 55% ($3,400,000 divided by $6,220,428) of the increase originally requested by the Company. The reduced revenue requirement was consistent with the OSBA's criticism that the Company's requested rate of return on equity ("ROE") was excessive and would result in a higher rate increase than warranted.

The settlement also adopted a compromise between the cost of service study ("COSS") presented by the Company (and accepted by the OSBA) and the COSS presented by the OCA. The settlement proposed a revenue allocation that moved the Residential, Commercial, Public Fire Protection, and Private Fire Protection customer classes closer to their full cost of service as calculated by the Company's COSS. Furthermore, the settlement provided for a lower than system average increase to the Company's Commercial and Private Fire Protection customer classes. In comparison to the OCA's proposal, the settlement will save Commercial customers almost $101,000 per year.

The settlement also eliminated an energy cost adjustment ("ECA") mechanism proposed by the company. The proposed ECA mechanism would have collected or refunded any difference between the energy costs included in base rates, as established in the Company's last rate case, and the actual energy costs incurred over the period of calculation. The OSBA opposed the ECA mechanism on both operational and legal grounds.

On October 12, 2010, the ALJ issued a Recommended Decision approving the settlement.

On November 4, 2010, the Commission entered an Order adopting the Recommended Decision and approving the settlement.

E. 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 and before the Senate Consumer Protection and Professional Licensure Committee on electric energy issues. The OSBA also responded to inquiries from individual legislators and legislative staff members.

F. List of Proceedings

1. 2010 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 2010 in the following such proceedings:

Retail Markets Working Group
Docket No. M-00072009
Proposed Guidelines for EGS Referral Programs

Alternative Energy
Docket No. M-00051865
Fuel Switching Cost-Benefit Analysis

Policy Statement in Support of Pennsylvania Solar Projects
Docket No. M-2009-2140263
Proposed Policy Statement

Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009
Docket No. I-2009-2099881
Final Report

Implementation of Act 129 of October 15, 2008; Default Service
Docket No. L-2009-2095604
Proposed Rulemaking Order

Proposed Policy Statement Regarding Default Service and Retail Electric Markets
Docket No. M-2009-2140580
Proposed Policy Statement

Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers
Docket No. M-2010-2185981
Proposed Interim Guidelines

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets
Docket No. L-2008-2069114
Proposed Rulemaking

Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices
Docket Nos. M-2010-2195286 and M-0001437
Tentative Order

2. 2010 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 2010:

Electric

Duquesne Light Company Petition for Approval of a Time-of-Use Plan **(P-2009-2149807)**

Petition of Duquesne Light Company to Contest the Finding of Non-Compliance with the Alternative Energy Portfolio Standards Act and Modify the Alternative Compliance Payment or, in the Alternative, Declare a Force Majeure for Duquesne Light Company for the 2008/2009 Alternative Energy Compliance Period **(P-2010-2153577)**

Petition of Pennsylvania Power Company for Approval of its Default Service Program **(P-2010-2157862)**

Petition of West Penn Power Company d/b/a Allegheny Power to Change Transmission Rates to a Single Kilowatt-Hour Rate Structure and to Commence Reconcilable Transmission Service Charge **(P-2010-2158084)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(R-2010-2161575)**

Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation **(R-2010-2161694)**

Pennsylvania Public Utility Commission v. Wellsboro Electric Company **(R-2010-2172662)**

Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA
(R-2010-2172665)

Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience Under Section 1102(A)(3) of the Public Utility Code Approving Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company **(A-2010-2176520 and A-2010-2176732)**

UGI Utilities, Inc. – Electric Division Petition for Approval of Modifications to Default Service Security Requirements and Waiver of Wholesale Supplier Bid Limitation **(P-2010-2184287)**

UGI Utilities, Inc. – Electric Division Petition for Expedited Interim Approval of Modifications to Default Service Security Requirements and Waiver of Wholesale Supplier Bid Limitation
(P-2010-2184286)

Pennsylvania Public Utility Commission v. Duquesne Light Company **(R-2010-2179522)**

Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan **(P-2010-2194652)**

Petition of Dominion Retail, Inc., for Order Declaring that Opt-Out Municipal Aggregation Programs are Illegal for Home Rule and other Municipalities in the Absence of Legislation Authorizing Such Programs **(P-2010-2207953)**

Petition of the Retail Energy Supply Association for Investigation and Issuance of Declaratory Order Regarding the Proprietary of the Implementation of Municipal Electric Aggregation Programs Absent Statutory Authority **(P-2010-2207062)**

First Energy Solution Corp.'s Petition for Approval to Participate in Opt-Out Municipal Energy Aggregation Programs of the Optional Third Class Charter City of Meadville, the Home Rule Borough of Edinboro, the Home Rule City of Warren, and the Home Rule City of Farrell **(P-2010-2209253)**

UGI Utilities, Inc. – Electric Division Energy Efficiency and Conservation Plan **(M-2010-2210316)**

Petition of PECO Energy Company for Approval to Procure Tier II Alternative Energy Credits **(P-2010-2210975)**

Joint Application for All of the Authority and the Necessary Certificate(s) of Public Convenience to Transfer the Interests and Shares in DQE Holdings LLC, currently owned by DUET Investment Holdings Limited, to Epsom Investment Pte Ltd, a subsidiary of GIC Infra Holdings Pte Ltd, and to Approve the Resulting Change in Control of Duquesne Light Company
(A-2010-2213369)

<u>Gas</u>

Pennsylvania Public Utility Commission v. Philadelphia Gas Works **(P-2009-2137639 and
R-2009-2139884)**

Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas Inc. for Expedited Approval to Contribute a Portion of Tennessee Gas Pipeline Company Settlement Proceeds to Operation Share **(P-2009-2149107)**

Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation **(R-2010-2150861)**

Petition of The Peoples Natural Gas Company d/b/a Dominion Peoples Requesting Approval to Use Tennessee PCB Interim Refunds for Expanded Dollar Energy Fund Grants Program, Emergency House Line Repair & Furnace Replacement Program, and GCR Credits to Small Commercial Customers **(P-2010-2152149)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(R-2009-2149262)**

Pennsylvania Public Utility Commission v. T.W. Phillips Gas and Oil Company **(R-2009-2145441)**

Petition of Columbia Gas of Pennsylvania, Inc. For Expedited Approval to Contribute a Portion of Tennessee Gas Pipeline Company Settlement Proceeds to Fund Residential Hardship Fund and Provide PGC Credits to Small Commercial Customers **(P-2010-2157040**)

Pennsylvania Public Utility Commission v. Philadelphia Gas Works **(R-2010-2157062)**

Pennsylvania Public Utility Commission v. Peoples Natural Gas Company **(R-2010-2155608**

Pennsylvania Public Utility Commission v. Equitable Gas Company **(R-2010-2155613)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(R-2010-2161920)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(R-2010-2161592)**

Equitable Gas Company, LLC Supplement No. 70 to Tariff Gas – Pa PUC No. 22 **(R-2010-2171910)**

Petition of UGI Central Penn Gas, Inc. for an Order Authorizing the Company to Revise its Accounting Methodology for Gas in Storage Inventory **(P-2010-2171611)**

Pennsylvania Public Utility Commission v. Valley Energy, Inc. **(R-2010-2174470)**

Pennsylvania Public Utility Commission v. T.W. Phillips Gas and Oil Company **(R-2010-2167797)**

Pennsylvania Public Utility Commission v. UGI Utilities, Inc. - Gas Division **(R-2010-2172933)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(R-2010-2172922)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(R-2010-2172928)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(R-2010-2174034)**

Philadelphia Gas Works' Petition to Modify Its Universal Services and Energy Conservation Plans With Respect to the Customer Responsibility Program **(P-2010-2178610)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania **(R-2010-2201974)**

Application of Peoples Natural Gas Company for Approval to Lease Excess Storage Capacity at its Rager Mountain Storage Facility to Rager Mountain Storage Company, LLC and to Transfer a Portion of the Base and Working Natural Gas in its Rager Mountain Storage Facility to Rager Mountain Storage Company, LLC **(A-2010-2203699)**

Pennsylvania Public Utility Commission v. Peoples Natural Gas Company **(R-2010-2201702)**

Petition of Columbia Gas of Pennsylvania, Inc. for an Order Authorizing the Company to Revise Its Accounting Methodology for Gas In Storage Inventory **(P-2010-2209925)**

Joint Application for All of the Authority and the Necessary Certificates of Public Convenience to Transfer All of the Issued and Outstanding Shares of Capital Stock of T. W. Phillips Gas and Oil Co., currently owned by TWP INC., to LDC Holdings II LLC, an indirect subsidiary of SteelRiver Infrastructure Fund North America LP, and to Approve the Resulting Change in Control of T. W. Phillips Gas and Oil Co. **(A-2010-2210326)**

Application of UGI Penn Natural Gas, Inc. for Expedited Approval of the Transfer By Sale of a 9.0 Mile Natural Gas Pipeline, Appurtenant Facilities and Right of Way located in Mehoopany, Pennsylvania, to an Affiliate and for Approval of Related Affiliated Interest Agreement **(A-2010-2213893 and G-2010-2213894)**

Telephone

Joint Application for Approval Under Chapter 11 of the Pennsylvania Public Utility Code of the Change of Control of Qwest Communications Company, LLC and For All Other Approvals Required Under the Public Utility Code **(A-2010-2176733)**

Water

Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company **(R-2010-2166212)**

Pennsylvania Public Utility Commission v. The York Water Company **(R-2010-2157140)**

Pennsylvania Public Utility Commission v. City of Lancaster **(R-2010-2179103)**

3. <u>2010 Appellate Court Cases</u>

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 2010:

Irwin A. Popowsky, Consumer Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(No. 28 CD 2010)**

William R. Lloyd, Jr., Small Business Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(No. 496 C.D. 2010)**

Metropolitan Edison Company and Pennsylvania Electric Company, Petitioners v. Pennsylvania Public Utility Commission, Respondent **(No. 532 CD 2010)**

William R. Lloyd, Jr., Small Business Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(No. 632 C.D. 2010)**

G. <u>Small Business Consumer Outreach</u>

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, 2010, the OSBA recommended an overall decrease of 6.19% in statewide industrial loss costs in lieu of the 0.83% initial increase requested by the PCRB. Subsequently, the PCRB agreed to accept an overall increase of 0.68%.

CMCRB Filing

After an independent analysis of the CMCRB's filing for the year beginning April 1, 2010, the OSBA recommended an overall decrease of 17.2% in statewide loss costs in lieu of the 9.5% decrease requested by the CMCRB. Subsequently, the Department approved a decrease of 10.9%.

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