ANNUAL REPORT

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OFFICE OF SMALL BUSINESS ADVOCATE

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I. INTRODUCTION

Business and residential customers generally have a similar interest in keeping a proposed utility rate increase as small as possible. However, their interests often conflict on the issue of rate structure, *i.e.*, the share of a rate increase to be borne by each particular category of customer.

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

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

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

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 2012-2013 is $1,286,000. 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 the Small Business Advocate, four attorneys, and two support staff personnel.

John R. Evans has been serving as the Small Business Advocate since March 25, 2013.

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.

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[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 cannot 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

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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."

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 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 2012. The case summaries set forth below are current as of late November 2013.

A. Electric Highlights

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

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

1. Transmission and Distribution Rates

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

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

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

The OSBA filed a complaint 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. On June 14, 2011, the Commonwealth Court issued a decision on the contested issues.

The Court agreed with the OSBA that the Commission erred by failing to articulate reasons for rejecting the OSBA's exception regarding interest related to the Companies' belated readjustment of transmission rates following their 2006-2007 rate case. As a result, the Court remanded to the Commission for an appropriate adjudication of the OSBA's exception.

In addition, the Court affirmed the Commission's decision that the Companies should not be allowed to recover marginal losses. As a result, the OSBA's argument that the Companies should be denied interest on the recovery is moot.

The Companies appealed the decision of the Commonwealth Court to the Pennsylvania Supreme Court, which denied allocatur. The Companies then filed an appeal with the United States District Court for the Eastern District of Pennsylvania, citing, among other things, the issue of federal preemption of the issues decided by the Commission and the Commonwealth Court. The proceeding in the U.S. District Court is ongoing at the time of this writing.

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.

On April 27, 2011, the Commission granted the industrial intervenors' Petition for Reconsideration of a possible special rate for an industrial customer and remanded the matter to the ALJ. The OSBA is participating in the remand proceeding to make sure that non-industrial customers are not required to finance that special rate.

A second prehearing conference was held before the ALJ on May 16, 2011. The OSBA submitted direct, rebuttal, and surrebuttal testimony in the remand proceeding.

On September 16, 2011, an evidentiary hearing was held before the ALJ. The OBSA submitted a main brief and a reply brief in the remand proceeding.

On January 27, 2012, the ALJ's Recommended Decision on Remand was issued. The ALJ recommended that no special rate relief be permitted for the industrial intervenor's customer.

The OSBA filed exceptions in support of the ALJ's Recommended Decision on Remand.

On June 21, 2012, the Commission entered an Order adopting the ALJ's Recommended Decision on Remand and denying special rate relief for the industrial intervenor's customer.

PPL Electric Utilities
Distribution Rate Increase
Docket No. R-2012-2290597

On March 30, 2012, PPL Electric Utilities Corporation ("PPL" or "Company") submitted a filing to the Commission that proposed to increase the company's distribution rates by $104.6 million per year. This was the fourth rate filing by PPL after 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 has yet to abide by that promise.

The OSBA filed a complaint against the proposed increase on April 25, 2012. Thereafter, the OSBA served direct, rebuttal, and surrebuttal testimony.

The OSBA also filed both a main brief and a reply brief.

On October 19, 2012, the ALJ issued her Recommended Decision.

On November 8, 2012, the OSBA filed Exceptions to the Recommended Decision. The OSBA argued that the promised movement of all rate classes to their cost of service had still not happened, and, according to the Recommended Decision, would not happen in this case, either. The OSBA also filed Reply Exceptions on November 19, 2012.

On December 28, 2012, the Commission entered an Order adopting most of the Recommended Decision. Ultimately, the OSBA succeeded in bringing most of PPL's small business customers to their cost of service in this case. The remaining PPL small business customers were successfully brought closer to their cost of service, which will translate into savings on their monthly electric bills.

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.

The Commission subsequently approved the West Penn amendments and the annual filings of the other EDCs.

In late December 2012, the OSBA intervened in the "Phase II" EE&C cases for the various EDCs across the Commonwealth.

To date, the OSBA has been monitoring the Phase II EE&C cases. Upon review of the filings, and after discussing the filings with the OSBA's expert witnesses, it was determined that the Phase II cases had little impact on small business customers. Simply put, the legislature mandated these programs exist and the Commission has established the basic guidelines. Consequently, most of the significant issues regarding the EE&C plans were resolved in Phase I, including (a) how kWh and kW savings are measured using the Technical Resource Manual, (b) what economic test applies to the program, (c) how benefits are quantified, including how electric energy and demand costs are derived for the longer term and what the discount rate should be, (d) how the net to gross issue is addressed, (e) how costs are allocated among programs and classes, and (f) how costs are recovered and reconciled.

Therefore, the OSBA has been monitoring the Phase II EE&C cases to ensure there no unreasonable or unfair burden is placed upon small business customers.

For example, the First Energy Companies (MetEd, Penelec, Penn Power, and West Penn) continued their efforts to meet Commission-mandated targets for reducing energy consumption and increasing the efficiency of electric infrastructure in their Phase II EE&C filings. After a successful Phase I (where the First Energy Companies met their targets), the Companies refined the programs available to consumers in their Phase II filings. The OSBA has monitored the EE&C process and has participated in numerous stakeholder meetings where the First Energy Companies have discussed their progress toward meeting the Commission-mandated goals and have explained the reasons for the choices of programs which they have implemented. During the Phase II EE&C period, the OSBA has not submitted any filings regarding the First Energy programs with the Commission, but has made several suggestions to the Companies during the stakeholder process. The Companies have responded with specific programs, including financial incentives, designed to assist the small business consumers of the First Energy Companies to decrease their electric consumption and improve the efficiency of equipment. *See* Docket Nos. M-2012-2334387, M-2012-2334392, M-2012-2334395, and M-2012-2334398.

PPL Electric Utilities Corporation
Petition for Approval of its Act 129 Phase II
Energy Efficiency and Conservation Plan
Docket No. M-2012-2334388

On August 3, 2012, the Commission entered an Implementation Order with respect to the Energy Efficiency Conservation Program at Docket Nos. M-2012-2289411 and M-2008-2069887 ("Implementation Order"). In the Implementation Order, the Commission stated that tentative consumption reduction targets would become final for any electric distribution company ("EDC") that did not petition the Commission for an evidentiary hearing by August 20, 2012.

PPL Electric Utilities Corporation ("PPL Electric") requested such a hearing and on November 15, 2012, it filed a Petition for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan ("Phase II Plan").

The OSBA intervened in this matter on December 5, 2012. After review of PPL Electric's Phase II Plan and comprehensive discovery, the OSBA determined that it was in the best interest of PPL Electric's small business customers as filed. As such, the OSBA did not submit testimony.

An evidentiary hearing was held on January 16, 2013, followed by Main Briefs and Reply Briefs submitted by interested parties.

By Order entered on February 13, 2013, the record was certified to the Commission.

The Commission entered an Order on March 14, 2013, approving the Phase II plan in part, and denying it in part. On May 1, 2013, PPL Electric submitted a tariff filing consistent with the Commission's Order, which was approved by the Commission on June 3, 2013.

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.

Unlike the litigated result in the cases of the other EDCs, the cost allocation issue was resolved as part of a settlement of West Penn's SMIP proceeding. The settlement rejected the OCA's cost allocation methodology. As a result, Small C&I customers could save $20 million to $40 million over the life of the SMIP. Furthermore, the OSBA reserved the right to challenge recovery of certain costs incurred by West Penn under the Company's initial proposal to deploy smart meters on an accelerated basis.

In calendar year 2012, EDCs were in the deployment phase of their various smart meter programs. Significantly, the EDCs were at widely varying stages of that process. At the time of this writing, it appears that it will be a couple of years until full deployment of smart meters is accomplished by the EDCs.

4 Default Service

Pike County Light and Power Co.
Default Service (2012-2014)
Docket No. P-2011-2252042

On July 15, 2011, Pike County Light and Power Co. ("Pike") filed a petition for approval of its plan to supply default service to customers from June 1, 2012, through May 31, 2014.

As it did in its previous default service plan, Pike proposed to acquire electricity for its default service customers through spot market purchases, a proposal which the OSBA supported. The Office of Consumer Advocate ("OCA") argued that a portion of the default service load could be procured through a fixed price financial hedge. All other parties to the proceeding opposed the OCA's position, except the OSBA, which did not take a position because the OCA's proposal was limited to residential customers.

In her Recommended Decision ("RD"), ALJ Elizabeth Barnes accepted the OCA's position, and recommended that a fixed price financial hedge be used to procure default service electric supply for residential customers. Pike and Direct Energy filed exceptions to the RD, and the Commission, in an Opinion and Order entered May 24, 2012, granted those exceptions, adopting the spot market procurement recommended by Pike.

The OCA appealed the Commission's decision to the Commonwealth Court, primarily on the basis that the governing statute, Act 129, mandates a more balanced approach to default service procurement than was adopted by the Commission in this case. At the time of this writing, the appeal is still pending in the Commonwealth Court, although the OSBA has not been an active party because the issue on appeal does not affect small business customers.

PPL Electric Utilities
Reconciliation and Recovery of Default Service Costs
Docket Nos. M-2010-2213754, M-2011-2243137, P-2011-2256365

a. Transmission Service Charge ("TSC") Reconciliation

On December 10, 2010, PPL Electric Utilities Corporation's ("PPL Electric" or the "Company") submitted its final 2010 Transmission Service Charge ("TSC") reconciliation report. On February 8, 2010, a Recommended Decision approved the unchallenged reconciliation.

On March 22, 2011, PPL Electric informed the Commission that there was an error in the December 2010 TSC reconciliation report. Specifically, PPL Electric had used 2008 demand data rather than 2009 demand data to reconcile the 2010 TSC demand charges. On April 29, 2010, PPL Electric filed its TSC reconciliation of actual costs and revenues for December 1, 2010 through March, 31, 2011, which reflected a correction of the demand miscalculation.

However, Commission staff review of this matter raised a policy issue with regard to the manner in which PPL Electric allocates demand for TSC reconciliation purposes. PPL Electric allocated its 2010 actual TSC demand charges based on allocators calculated using *historical* 2009 TSC demand usage. Staff review indicated that using 2009 demand allocators may have resulted in a misalignment between certain costs and cost causers and may have created inter-class subsidies.

Therefore, the Commission entered an order on May 19, 2011 ("TSC Order"), which deferred the Recommended Decision and raised the possibility of a change in the allocation of TSC costs among rate classes. The TSC Order also invited comments from the statutory advocates on this issue. The OSBA submitted comments in response to that invitation on June 20, 2011, because it believed that a change in allocation could adversely affect the Company's small business customers.[3] During the course of this protracted proceeding, the OSBA re-evaluated its position and determined that use of such forecasted rather than actual demand data to reconcile demand-related costs in the TSC is inappropriate. This revised view was presented on July 20, 2012, by OSBA witness Robert D. Knecht in his Direct Testimony in PPL Electric's second default service proceeding at Docket No. P-2012-2302074.

On August 15, 2013, the Commission entered an order allowing PPL Electric to leave in place the 2010 reconciliation based on 2009 historical estimates of TSC demand usage. However, the Commission entered an order concurrently in the statewide *Investigation re Transmission Service Charge (TSC) Reconcilation Methods* at Docket No. M-2011-2239714, directing all EDCs to use actual demand data to reconcile TSC costs on a going-forward basis.

b. Generation Service Charge ("GSC") Reconciliation

On May 20, 2011, PPL Electric filed its Calculation of Generation Supply Charge-1 for the application period June 1, 2011, through August 31, 2011 ("June GSC-1"). The June GSC-1 proposed to recoup an $18.6 million undercollection (for the period December 1, 2009, through May 31, 2011) over three months by increasing the GSC-1 for small commercial and industrial customers from 9.276 cents per kWh to 12.171 cents per kWh (including Gross Receipts Tax or "GRT"). Of the 12.171 cents per kWh, 4.15 cents per kWh was related to PPL Electric's reported undercollection of costs in previous periods.

On May 31, 2011, the OSBA filed a Complaint alleging this rate to be unjust, unreasonable, unduly discriminatory, and otherwise contrary to law, particularly as it pertained to small business customers.[4] Subsequently, the OSBA filed direct and surrebuttal testimony.

The OSBA's argument is that the GSC-1 charged was unjust and unreasonable because the reported undercollection being recouped by PPL Electric through the GSC-1 was not a true undercollection. Rather, it was the result of (1) PPL Electric's flawed reconciliation accounting method that reconciles incurred costs and billed revenues rather

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[3] By Order entered May 19, 2011, at Docket No. M-2011-2239714, the Commission initiated a generic investigation into how an EDC should reconcile past period over and under collections in its TSC. The OSBA also submitted comments in that proceeding.

[4] The OSBA has also filed complaints against the GSC-1 rate for the application period September 1, 2011, through November 30, 2011, at Docket No. M-2011-2258733, the GSC-1 rate for the application period December 1, 2011, through February 29, 2012, at Docket No. M-2011-2274191, the GSC-1 rate for the application period March 1, 2012, through May 31, 2012, at Docket No. M-2012-2289949, the GSC-1 rate for the application period June 1, 2012, through August 31, 2012, at Docket No. M-2012-2305798. In the interest of judicial economy, these complaints were held in abeyance pending the outcome of the litigated proceeding because they deal with similar issues.

than earned revenues and (2) PPL Electric's apparent under-reporting of revenues. The OSBA argued that the Commission should find PPL Electric's reconciliation accounting mismatch to be unreasonable and make refunds to small business customers accordingly. The OSBA also requested a detailed audit by the Commission's Bureau of Audits, focusing explicitly on the issues identified by the OSBA in this proceeding. Specifically, that the reported undercollection that resulted from PPL Electric's reconciliation accounting method does not explain the entire reported 2010 undercollection. A review of PPL Electric's revenues for 2010 revealed that an apparent under-reporting of revenues may account for the unexplained shortfall. This conclusion is based on the fact that the per-kWh revenues reported by PPL Electric are not consistent with the tariff rates charged. Because only the Company is in a position to explain this variance, which PPL Electric has not adequately done, the OSBA argued that an audit is necessary to evaluate PPL Electric's default service cost and revenue records for 2010 properly.

A hearing was held on October 5, 2011 followed by submission of Main Briefs and Reply Briefs.

A Recommended Decision ("RD") was issued on April 4, 2012, granting the OSBA's complaint insofar as it: (1) seeks a determination that the accounting method used by PPL Electric Utilities Corporation which did not include two weeks of revenues in January 2010 but did include the entire month's expenses was inappropriate for the purposes of Section 1307(e); (2) seeks to require PPL Electric Utilities Corporation to reconcile the GSC-1 rate class annually; and (3) seeks Commission direction to its Bureau of Audits to conduct an audit of PPL Electric. The RD further directed PPL Electric to reconcile the GSC-1 rates annually with quarterly updates, and to include its calculation of what the rates would be if the reconciliation were done quarterly so that a comparison can be made.

PPL Electric filed Exceptions to the RD on April 24, 2012, and the OSBA filed Reply Exceptions on May 4, 2012.

The Commission filed an Opinion and Order on July 19, 2012, overturning the RD finding that the OSBA had not met its burden of proving that PPL Electric's reconciliation accounting method is unreasonable. The Commission, however, shared the OSBA's concerns that the traditional methods of reconciliation accounting associated with default service costs in the post-rate cap era may result in excessive rate volatility and inaccurate price signals for electricity consumers in Pennsylvania. Because the Commission agreed with PPL's argument that any changes to this methodology should not be made for a single utility and a single reconciliation clause, but instead should be made on a prospective basis in a generic proceeding where all affected utilities have the opportunity to participate, the Commission stated that it would be issuing an order to open a docket that will seek comments and reply comments on "Default Service Reconciliation Interim Guidelines."

The Commission entered such order on August 14, 2012, at Docket No. M-2012-2314313, pursuant to which the OSBA filed comments and reply comments. That matter is currently still pending before the Commission.

c. Proposed Reconciliation Rider and Competitive Transition Rider

On August 5, 2011, PPL Electric filed a petition seeking authorization to implement a Reconciliation Rider ("RR") and Competitive Transition Rider ("CTR") related to the transmission service and generation supply service that the Company provides to its default service customers. Pursuant to the RR, the Company would refund over-collections to, and recover under-collections from, customers who were default service customers when the over-collection or under-collection occurred. The proposed CTR would be a temporary, non-bypassable reconcilable rider that would refund, or recover, the balance of historic over-collections or under-collections in existence on the effective date of the RR to all distribution customers, shopping and non-shopping.

The OSBA generally supported the Company's proposal to implement the RR, but with certain modifications. Specifically, that: (1) the RR should be reconciled on a rolling annual basis, as opposed to the fixed annual basis initially proposed by the Company; (2) new customers should not be subject to the RR for 12 months; and (3) interest charges on under-collections and credits on over-collections should be set at or near the Company's short-term borrowing and earnings rates. PPL Electric subsequently agreed with the first and second of these recommendations, but not the third.

The OSBA supported the implementation of the migration rider aspect of the RR for reasons of cost causation and equity. PPL Electric's current reconciliation mechanisms allow customers to avoid reconciliation charges for undercollections that occurred while they were default service customers by choosing to shop. Similarly, the current reconciliation mechanisms allow customers to take advantage of reconciliation refunds for over-collections that occurred while they were shopping customers by returning to default service. The RR, in contrast, more closely assigns charges and refunds to customers who took service when the over/under-collection occurred. Thus, the RR better aligns the recovery/refund of any variance with the customers who caused it.

The OSBA argued that PPL Electric's current reconciliation mechanisms distort retail competition because they include in the Price To Compare ("PTC") reconciliation charges/refunds that are unrelated to current costs to provide default service, but rather are charges/refunds for historical variances in default service costs and revenues.

The OSBA further supported the RR as a way to address the instability of PPL Electric's default service rates. PPL has experienced substantial problems with reconciliation resulting in unstable rates. The RR should reduce volatility by spreading variances over a longer time period.

In contrast, the OSBA opposed the Company's proposal to implement the CTR because it is unnecessary and inequitable. The Company presented no evidence that there will be a substantial variance on the effective date of the RR, or that any such variance cannot be timely recovered through the RR. Nor did the Company present any evidence that *all* shopping customers will have contributed to the over- or under-collection that exists on the effective date of the RR. The OSBA argued that imposing the CTR on all shopping customers without any clear showing that they contributed to the over- or under-collection is inconsistent with the regulatory principle of cost causation and is inequitable.

The OSBA submitted direct, rebuttal and surrebuttal testimony. An evidentiary hearing was held on December 5, 2011, followed by submission of Main Brief and Reply Briefs.

A Recommended Decision ("RD") was issued on April 4, 2012, recommending that PPL Electric be permitted to implement the RR, but not the CTR, consistent with the OSBA's position.

Exceptions were filed by certain parties on April 24, 2012. The OSBA and other parties filed Reply Exceptions on May 4, 2012.

The Commission issued an Opinion and Order on July 19, 2012, accepting the recommendation that PPL Electric not be permitted to implement the CTR, but rejecting the recommendation that PPL Electric be permitted to implement the RR. The Commission found that PPL Electric had failed to meet its burden of proof that the RR is required.

PECO Energy Company
Petition for Approval of its Default Service Program
Docket No. P-2012-2283641

On January 13, 2012, PECO Energy Company ("PECO" or "the Company") made a filing seeking Commission approval of the Company's proposed second Default Service Program ("DSP II") to secure default service supply for the Company's customers for the period from June 1, 2013, through May 31, 2015.

The OSBA timely filed an Answer to the Petition on February 2, 2012.

A Prehearing Conference took place on March 13, 2012, before Administrative an ALJ, where the parties agreed to a procedural schedule and discovery modifications.

The OSBA submitted direct, rebuttal, and surrebuttal testimony.

Evidentiary hearings were held in Harrisburg on May 22, 2012, followed by the submission of main briefs and reply briefs.

A Recommended Decision was issued on August 29, 2012, followed by the filing of Exceptions and Reply Exceptions.

On October 12, 2012, the Commission issued an Opinion and Order ("DSP II Order"). The DSP II Order directed PECO to file a revised plan consistent with the Commission's revisions directed in the DSP II Order and to submit proposals, in collaboration with electric generation suppliers ("EGSs") and other interested parties, addressing certain issues.

The Company filed a Petition for Clarification and Reconsideration on October 31, 2012 ("Clarification Petition"). The Commission subsequently entered an Opinion and Order on November 21, 2012, ("Clarification Order") in response to the Clarification Petition.

Pursuant to the DSP II Order and Clarification Order, the Company engaged in collaborative discussions with interested stakeholders, a process in which the OSBA was an active participant.

On December 11, 2012, the Company submitted its Revised Default Service Plan Compliance Filing ("Revised Plan"), which reflects all of the revisions directed by the DSP II Order and Clarification Order as well as the revisions agreed to by the collaborative participants with respect to RME Programs. For those issues on which the collaborative participants did not agree, PECO included its own proposals for the Commission's consideration, which were consistent with the Company's original DSP II filing.

On February 14, 2013, the Commission issued an order on PECO's Revised Default Service Plan ("Revised Plan Order").

At the time of the Revised Plan Order, many issues had been litigated and decided by the Commission. However, the following are the issues that the OSBA took positions on because they are relevant to the interests of PECO's small business customers.

a. Small and Medium Commercial Class Procurement

The OSBA agreed with the Company's proposed procurement for the Small Commercial procurement group because it provides reasonable price stability for Small Commercial default service customers with one-year, fixed price, full requirements, load following contracts. The Commission approved PECO's proposal for Small Commercial procurement.

The OSBA recommended a modification to PECO's proposal for the Medium Commercial procurement group. The Company proposed to acquire all Medium

Commercial default service supply via six-month fixed price full requirements, load following contracts. These contracts would run back-to-back with no laddering. As a result, 100% of the default service supply would turn over every six months, which the OSBA argued could lead to unreasonable default service price volatility for Medium Commercial default service customers. The OSBA recommended that PECO instead utilize one-year (non-laddered) fixed price full requirements contracts to acquire 100% of the Medium Commercial default service supply. The Commission rejected the OSBA's recommendation and approved PECO's proposal.

b. Reconciliation of Default Service Revenues and Costs

The OSBA did not object to PECO's proposal to change from quarterly to annual reconciliation of default service costs and revenues. By moving from quarterly to annual reconciliation, PECO hoped to smooth out the current quarterly fluctuations in its PTC, thereby sending clearer price signals to customers and competitive suppliers. The OSBA agreed that eliminating unnecessary swings through annual reconciliation was preferable to PECO's current practice. The OSBA also supported as reasonable a proposal made by the Office of Consumer Advocate ("OCA") recommending that PECO reconcile each quarter based on a 12-month rolling average (also known as rolling annual reconciliation). The OSBA argued that this method would smooth out the quarterly swings that occur in PECO's PTC, and at the same time minimize distortions in default service prices, a concern of EGSs. The Commission did not approve PECO's proposal for annual reconciliation and directed that it retain quarterly reconciliation.

c. Recovery of PJM costs by EDCs

One of the EGS parties to the proceeding recommended that all costs associated with the generation deactivation charges that PJM imposes on load serving entities within a transmission zone be recovered by PECO through a non-market based charges rider ("NMB Rider") that would apply to both shopping and non-shopping customers, arguing that such charges are unknown and cannot be hedged by suppliers, and consequently, necessitate the imposition of a corresponding risk premium in their competitive bids. Although the OSBA agreed that reducing the risk premiums that suppliers impose due to uncertainty over the level of non-market based charges is a reasonable goal, it was concerned that the collection of generation deactivation charges in an NMB Rider could end up double billing those shopping customers who are already having generation deactivation charges collected from their EGS until their existing contracts expire. To avoid this problem, the OSBA recommended that any implementation of an NMB Rider be delayed for a period of time to allow for a transition period. The OSBA opposed another EGS proposal that PECO assume responsibility for all PJM transmission costs because the justification for the proposed NMB Rider, *i.e.*, reducing the risk premiums associated with transmission costs that cannot be predicted, does not apply to known transmission costs that can be predicted. Including transmission costs that can be predicted, and thus hedged, will not produce any benefit for consumers because there is no risk premium attached to such costs. The Commission did not approve the proposal for an NMB Rider either for generation deactivation charges or any other PJM transmission costs.

d. Retail Market Enhancement Programs

PECO proposed several retail enhancement programs for residential default service customers designed to encourage more residential customers to shop for electricity. The OSBA agreed that not including small business customers in these programs at this time was consistent with the Commission's directives in its Retail Market Investigation (*Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan,* Docket No. I-2011-2237952). The concern was that because there is no consistency across EDCs in defining "small commercial," it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics. In contrast, other parties argued that small commercial customers should be included in these programs because shopping among PECO's small business customers is lower compared to other commercial customers. Despite the OSBA's objection, the Commission determined that small business customers should be eligible for RME Programs.

e. Recovery of the Costs of RME Programs

The OSBA agreed with PECO's proposal to recover all of the costs associated with its RME Programs solely from EGSs through a discount on its purchased EGS receivables. Certain EGSs objected and proposed to instead recover the costs of RME Programs from default service customers, or alternatively, through a non-bypassable charge applicable to all distribution customers eligible for the RME Programs. The OSBA argued that the EGSs' cost sharing proposal was inequitable because if default service customers are to share in the cost of PECO's RME Programs, then shopping customers should contribute toward the cost of PECO's default service program. In other words, cost sharing should be a two-way street. But, if PECO's default service related procurement costs are the sole responsibility of default service customers (as is presently the case), then the costs of PECO's RME Programs should be the sole responsibility of shopping customers (or their EGSs). The Commission determined that a cap should be placed on the cost EGSs are required to contribute to RME Programs and that the excess would be paid for through either a non-bypassable surcharge or shared 50% from the POR discount and 50% from residential and small commercial default service customers. PECO's Second Revised Plan opted for the 50/50 sharing option.

On February 28, 2013, PECO filed its Second Revised Default Service Plan Compliance Filing ("Second Revised Plan"), opting to implement the Commission's second option, *i.e.*, 50/50 sharing of costs between ratepayers and EGSs.

The OSBA submitted comments addressing the cost recovery mechanism portion of the Second Revised Plan on March 13, 2013, seeking evidence from PECO that the RME Program costs could either be kept below the Commission's caps so as to avoid customers being responsible for any costs or that any costs over the caps are reasonable.

The Commission subsequently issued a Tentative Order on Reconsideration on March 14, 2013, announcing its proposed plan to suspend implementation of ROI Programs for PECO and other large electric distribution companies ("EDCs"). Comments were filed by interested parties and on April 4, 2013, the Commission issued a Final Order ("ROI Suspension Order") directing PECO and the other EDCs to suspend implementation of their ROI Programs and to submit any necessary conforming revisions to their default service plans.

PECO submitted a Third Revised Default Service Plan Compliance Filing ("Third Revised Plan") on April 15, 2013, pursuant to the ROI Suspension Order. In addition to including revisions to suspend the ROI Program as directed by the Commission, PECO proposed to change the definition of small commercial customers for purposes of eligibility in the Standard Offer Program from that which was approved in the Commission's DSP II Order (under 25kW) to that contained in PECO's existing tariff (under 100 kW). On June 13, 2013, the Commission approved PECO's Third Revised Plan, which approved the 50/50 sharing of RME Program costs between ratepayers and EGSs and the change in definition of small commercial customers for purposes of eligibility in the Standard Offer Program.

PPL Electric Utilities
Default Service
Docket No. P-2012-2302074

On May 1, 2012, PPL Electric Utilities Corporation ("PPL" or the "Company") filed a Default Service Program and Procurement Plan for the period June 1, 2013 through May 13, 2015 with the Commission.

On May 4, 2012, the OSBA filed an Answer to PPL's Default Service Petition.

The OSBA filed direct, rebuttal, and surrebuttal testimony in this proceeding.

The OSBA also filed an initial brief and a reply brief. As this office has in other cases, the OSBA argued for fixed price, load following, full requirements contracts for the Company's small business customers. The OSBA has consistently advocated that such contracts provide the degree of rate stability desired by small businesses, particularly in comparison to electric rate than change on a monthly basis, or electric supply that is obtained from the spot market.

On November 15, 2012, the ALJ issued her Recommended Decision. Among a wide variety of issues presented by this case, the ALJ agreed with the OSBA that the Company's small business customers should be provided electric supply using full requirements, load following contracts.

On January 24, 2013, the Commission entered an Order adopting the ALJ's recommendation that PPL's small businesses should be supplied electricity through the use of full requirements, load following contracts.

Nevertheless, at the time of this writing, this proceeding remains active. A number of issues were sent to collaboratives by order of the Commission. One such collaborative is addressing the Company's Time of Use ("TOU") rates, which, to date, have been an expensive failure for the Company's small business customers.

Duquesne Light Company
Default Service
Docket No. P-2012-2301664

On April 27, 2012, the Duquesne Light Company ("Duquesne" or "Company") initiated the above-captioned proceeding by filing with the Pennsylvania Public Utility Commission ("Commission") a Petition for Approval of a Default Service Plan for the period of June 1, 2013, through May 31, 2015, pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S.§2807(e), and 52 Pa. Code §5.41, and the Commissions Retail Market Orders at Docket No. I-2011-2237952.

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. The OSBA took no position on the Company's Proposed Retail Market Enhancement Programs, in that the programs were proposed to be limited to (and funded by) residential customers.

Evidentiary hearings were held in Pittsburgh, with many Harrisburg Parties appearing telephonically from the Keystone Building, on September 13, 2012. No cross examination was conducted after the parties reviewed the Rejoinder Testimony filed by the Company. The testimony and exhibits of the parties were entered into the record at the evidentiary hearing.

The OSBA submitted Main and Reply Briefs pursuant to the procedural schedule set forth in the Prehearing Order issued by ALJ Dunderdale and entered on June 11, 2012.

The Administrative Law Judge issued a recommended decision on November 15, 2012. The ALJ concluded that the level of Small C&I customers shopping in Duquesne's service territory is only slightly higher than the percentage of residential shopping customers. That conclusion formed the sole basis for the ALJ's recommendation that Small C&I customers be eligible for Duquesne's Standard Offer Program.

The OSBA filed objections, called Exceptions, and Replies to Exceptions to the recommended decision detailing why the Company's recommendation to exclude Small C&I customer from its RME programs was proper and how the record was devoid of any evidence as to how the programs could be modified in since the Small C&I customer group is not a clone of the Residential Class.

The Commission issued a Tentative Order on March 14, 2013, providing notice of its intent to reconsider the issue of the implementation of the Retail Opt-In ("ROI") Programs in four ongoing default service cases. On April 4, 2013, the Commission issued a final order directing Duquesne and other EDCs to postpone implementation of the ROI Programs as set forth in their default service plans.

Citizens and Wellsboro
Default Service Plan
Docket No. R-2012-2307827

On May 31, 2012, Citizens' Electric Company of Lewisburg, PA ("Citizens"), and Wellsboro Electric Company ("Wellsboro") (collectively, "the Companies") filed with the Pennsylvania Public Utility Commission ("Commission") their proposed Third Default Service Plan ("DSP") for the period beginning June 1, 2013 and ending May 31, 2015. The Companies' then current DSP, which was approved by the Commission via Order entered February 26, 2010, at Docket Nos. P-2009-2110798 and P-2009-2110789, was scheduled to expire on May 31, 2013.

The OSBA filed a Complaint and Public Statement on June 20, 2012. The Companies filing was advertised in the June 16, 2012, issue of the *Pennsylvania Bulletin*. The Notice in the *Pennsylvania Bulletin* required formal protests, petitions to intervene, and answers were to be filed on or before July 2, 2012. This OSBA filed a Protest on July 2, 2012, in conformance with the Notice in the *Pennsylvania Bulletin*.

During this proceeding, settlement discussions were held among the parties. As a result of those discussions, the parties reached a settlement in principle. In recognition of the settlement in principle, the Administrative Law Judge issued an Order suspending the procedural schedule and canceling the hearings scheduled for October 11 and 12, 2012.

The OSBA actively participated in the negotiations that led to the Joint Petition for Settlement ("Settlement") and is a signatory to the Settlement.

In its Complaint and Prehearing Memorandum the OSBA raised the concern that materials filed by the Companies in support of the Joint Default Service Program were insufficient to justify the continued use of the Companies' Stratified Procurement Plan for an additional two years, from June 1, 2013, through May 31, 2015, and that the default service rates produced by the Stratified Procurement Plan may be unjust, unreasonable, and otherwise contrary to law.

Subsequent to the Prehearing Conference, the Companies filed the Direct Testimony and Exhibits of their witnesses on July 16, 2012. On August 15, 2012, the Companies forwarded Supplemental Direct Testimony of witness Eric W. Winslow. The OSBA issued discovery and filed the Direct Testimony and Exhibits of its witness Brian Kalcic on August 22, 2012. Ultimately, the OSBA did not recommend any changes to the Companies' proposed method for procuring electricity supplies for default service customers over the two-year period ending May 31, 2015. However, the OSBA did recommend that the Commission require the Companies to continue to submit an annual benchmark report that compares the procurement cost results achieved under the Companies' proposed procurement plan, to the outcomes obtainable from certain alternative procurement strategies.

The Commission originally directed the Companies to prepare and submit Benchmark Analyses in the *Petition for a Joint Default Service Plan for Citizens' Electric Company of Lewisburg, Pennsylvania and Wellsboro Electric Company for the Period of January 1, 2008 through May 31, 2010-Benchmarks*, Docket Nos. P-00072306 and P-00072307 (Order entered March 28, 2008) (Benchmark Order).

Under the Settlement, the Companies have agreed to continue to perform and provide the Benchmark Analysis and submit copies to the Commission, the OSBA, the Office of Consumer Advocate ("OCA") and the Bureau of Investigation and Enforcement ("I&E").

The Commission approved the settlement by Order dated December 5, 2012.

5. Mergers and Acquisitions

Exelon-Constellation Merger
Docket No. P-2011-2247936

On April 28, 2011, Exelon Corporation ("Exelon") and Constellation Energy Group ("Constellation" and together the "Companies") announced that they had reached an agreement to combine the two companies in a stock-for-stock transaction, expected to close in the first quarter of 2012. On May 20, 2011, the Companies filed with the Federal Energy Regulatory Commission ("FERC") a "Joint Application for Authorization of

Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act" at Docket No. EC11-83-000.

Exelon and Constellation have taken the position that the Commission does not have jurisdiction over the proposed merger. Therefore, they have not filed an application for a Certificate of Public Convenience pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. §1102(a)(3), or made any other filing seeking Commission approval of any aspect of the proposed merger.

The proposed merger could result in anticompetitive conduct and the unlawful exercise of market power because of the elimination of one retail electricity supplier, one natural gas retail supplier, and one wholesale electricity supplier. Consequently, the proposed merger could adversely affect the rates paid by small business customers for electricity and for natural gas.

Therefore, on June 16, 2011, the OSBA initiated a proceeding before the Commission to seek the Commission's intervention in the FERC proceeding regarding the proposed merger and to bring Constellation and Exelon before the Commission in order to protect the interests of small business customers from an adverse impact on the competitive retail markets for electricity and natural gas in Pennsylvania. Specifically, the OSBA sought: (i) Commission intervention in the FERC proceeding; (ii) a Commission investigation of the proposed merger's effect on Pennsylvania's retail electricity and natural gas markets; and (iii) a declaratory order regarding the Companies' obligations with respect to their licenses as electric generation suppliers ("EGSs") and natural gas suppliers ("NGSs").

The Commission filed a Motion to Intervene in the FERC Proceeding on June 30, 2011, thereby rendering the OSBA's first request for relief moot.

Subsequently, the OSBA requested to hold its petition for declaratory orders regarding the Companies' NGS and EGS licenses in abeyance until such time as the Companies commence to consolidate their respective retail marketing businesses.

The Commission assigned this case to the Office of Administrative Law Judge for hearing and the preparation of a recommended decision on the remaining issue, whether the Commission should investigate the proposed merger's effect on Pennsylvania's retail electricity and natural gas markets.

The OSBA submitted direct and rebuttal testimony. The parties agreed that an evidentiary hearing was not necessary. Subsequently, the OSBA submitted a Main Brief and Reply Brief.

A Recommended Decision was issued on December 19, 2012, recommending that the Commission deny the OSBA's petition because good cause has not been shown to initiate an investigation into the merger.

In light of the fact that the merger was ultimately consummated on March 12, 2012, the OSBA chose not to pursue its request for an investigation any further.

The Commission entered and Opinion and Order on April 18, 2013, adopting the Recommended Decision.

6. Miscellaneous

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.

On January 30, 2012, the Commission entered its final order in the case, disagreeing with the position taken by the OSBA, and approving the accounting method used by Met-Ed relative to its treatment of NUG over-collection revenue.

7. On-Bill Financing

On October 17, 2012, the Commission announced the first of several stakeholder's meetings of the On-Bill Financing Working Group. The basic thrust of this Working Group is to identify the primary issues relevant to the potential implementation of on-bill financing for energy efficiency and conservation project purchase and installation expenses. The Working Group is to prepare recommendations and comments for the Commission staff as the Commission [or the Working Group?] prepares a pilot program for small business electric customers to finance energy efficiency and conservation improvements to their facilities and to repay the financing on their electric bills.

The OSBA has been an active member of the stakeholders group since its inception, and continues to play an active role as the process proceeds.

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. Distribution Rates

Columbia Gas of Pennsylvania
Base Rate Increase
Docket No. R-2012-2321748

On September 28, 2012, Columbia Gas of Pennsylvania, Inc. ("Columbia" or the "Company") filed a tariff to raise distribution rates by $77.3 million per year. The OSBA filed a complaint on October 18, 2012.

After lengthy negotiations among the parties, a settlement of issues was reached, which included an annual increase of $55.25 million in operating revenues as opposed to the requested $77.3 million.

The OSBA is a signatory to the settlement.

The Administrative Law Judge issued a recommended decision approving the settlement, and the Commission entered an opinion and order on May 23, 2013, adopting the RD and approving the settlement.

Peoples Natural Gas Company, LLC
Base Rate Case
Docket No. R-2012-2285985

On February 28, 2012, Peoples Natural Gas Company, LLC ("Peoples") submitted a filing with the Commission that proposed to increase the company's rates by $28.4 million per year.

On March 19, 2012, the OSBA filed a complaint against the proposed increase.

A prehearing conference was held before an ALJ on May 8, 2012, and a procedural schedule was set. The OBSA submitted direct, rebuttal, and surrebuttal testimony.

A settlement was reached among the parties in this proceeding. The settlement adopted nearly all of the OSBA's recommendations set forth in its testimony.

First, the settlement limited the overall amount of the revenue increase to provide Peoples with a return on equity of less than 10.4%. Peoples originally requested 11.25%, and the OSBA submitted testimony recommending that People's return on equity be set at 10.4% or less.

Second, the OSBA recommended changes to People's revenue allocation proposal. Specifically, the OSBA argued to limit the rate increases to Peoples' residential and small business customers based on the concept of gradualism. The settlement adopted the OSBA's position.

Third, the OSBA recommended changes to Peoples rate design proposal. The Company originally proposed maintaining separate delivery charges for small commercial versus small industrial customers taking service on Rate SGS. The OSBA argued that that all SGS customers should eventually pay the same consolidated delivery charge. To that end, the OSBA recommended that Peoples' SGS delivery charges be set so as to reduce the current difference in delivery charges paid by SGS customers by 25%. The settlement adopted the OSBA's position.

Fourth, the OSBA recommended rejecting Peoples' proposal to share excess PES [What does PES stand for?] Program revenues evenly between ratepayers and shareholders. Instead, the OSBA suggested that the Company apply its "share" of excess PES Program revenue toward mitigating lost and unaccounted for gas ("LUFG") on its gathering system. Such mitigation would significantly benefit both ratepayers and local producers. The settlement adopted the OSBA's position.

The Commission entered an order on September 27, 2012, approving 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 2012, the OSBA participated in the following GCR cases: T. W. Phillips Gas, at Docket No. R- 2011-2273539; National Fuel Gas, at Docket No. R-2012-2281465; Philadelphia Gas Works, at Docket No. R-2012- 2286447; Peoples Natural Gas Company, at Docket No. R-2012- 2292082; Equitable Gas Company, at Docket No. R-2012- 2287044; Columbia Gas of Pennsylvania, at Docket No. R-2012- 2293303; PECO Gas, at Docket No. R-2012- 2302784; UGI Utilities-Gas Division, at Docket No. R-2012-2302220; UGI Central Penn Gas, at Docket No. R-2012- 2302219; and UGI Penn Natural Gas, at Docket No. R-2012- 2302221.

Once again, a major priority for the OSBA in the 2012 cases was assuring that the NGDCs continued to make progress in reducing their 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, 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.

The OSBA also sought to assure that the NGDCs had implemented all elements of the settlements in prior years' Section 1307(f) cases.

3 Price to Compare

On June 23, 2011, the Commission issued a Revised Final Rulemaking Order at Docket No. L-2008-2069114. Subsequently, on May 25, 2012, the Commission issued a Secretarial Letter at that same docket. In both the Order and Secretarial Letter, the Commission directed that natural gas supply costs should be unbundled in order to create a more level playing field for all market competitors. In response to the Commission action, NGDCs would submit a filing that would unbundle certain costs related to gas procurement and load balancing from base distribution rates into a bypassable gas procurement charge ("GPC") that will apply only to retail sales customers who purchase gas from the NGDC. The GPC would be part of the Price to Compare ("PTC") for that NGDC.

The OSBA actively participated in a series of PTC filings submitted by the NGDCs.

PECO Energy Company – Gas Division
Petition Pursuant to 66 Pa. C.S. 1308(a) for Approval of its
Proposed Tariff Revision
Docket No. P-2012-2328614

On September 28, 2012, PECO Energy Company – Gas Division ("PECO" or "Company") filed a Petition pursuant to Pa. C.S. §1308(a) and the Commission's Revised Final Rulemaking Order and accompanying regulations at Docket No. L-2008-2069114 ("Order"). In accordance with the Commission's Order, the purpose of PECO's filing was to remove natural gas procurement costs from base rates and recover them through separate surcharge mechanisms on a revenue neutral basis.

On October 19, the OSBA filed an Answer to PECO's Petition.

A Prehearing Conference was held on December 12, 2012, at which the parties agreed to a procedural schedule.

The OSBA filed direct and the surrebuttal testimony.

Subsequently, the parties successfully negotiated a settlement of all issues.

In its filed testimony, the OSBA raised two issues of concern to small business customers: whether the sales volumes used by PECO to calculate the GPC were appropriate; and whether such sales volumes should be adjusted prior to PECO's next base rate case. The settlement adequately addressed both of these concerns, and provided a just and reasonable outcome to a difficult and complex case. As a result, the OSBA determined that the settlement was in the best interests of the Company's Small C&I customers.

On the first issue (whether the sales volumes used by PECO to calculate the GPC were appropriate) the OSBA took issue with the Company's forecast default service supply, determining that the implicit rate of decline in default service sales was not supported by PECO's recent actual sales experience. The OSBA recommended that PECO's forecast of default service sales instead be based on PECO's most recent sales experience using the average change over a multi-year period. The annual sales volume and GPC in the settlement is consistent with the sales volume and resulting GPC proposed by the OSBA.

PECO's Petition also proposed to adjust its default sales volumes prior to its next base rate case, which would result in a change to the GPC between base rate proceedings. The OSBA took the position that such an adjustment was contrary to the Commission's regulations. The settlement provides that PECO will not adjust default service sales volumes prior to the Company's next base rate proceeding.

A Recommended Decision was issued on March 28, 2013, recommending that the Commission approve the settlement in its entirety without modification.

The Commission entered an Order on April 18, 2013, approving the settlement.

Peoples TWP
PTC Filing
Docket No. R-2012-2327529

Peoples TWP, LLC's ("Peoples TWP" or "Company") made a filing with the Commission on October 1, 2012, proposing to unbundle and reconcile gas supply costs. The Office of Small Business Advocate ("OSBA") filed an Intervention in this matter on November 27, 2012.

By Order entered November 8, 2012, the Commission initiated an investigation into the lawfulness, justness and reasonableness of the Company's existing and proposed rates. The proceeding was assigned to the Office of Administrative Law Judge for hearings and the issuance of a Recommended Decision.

The OSBA, with the assistance of its expert witness, Robert D. Knecht; actively engaged in discovery and participated in the negotiations that led to the Joint Petition for Settlement ("Settlement") of the issues in this case. The OSBA is a signatory to the Settlement.

The OSBA raised the following issues:whether the Company has reasonably included all (and only) costs associated with gas procurement in the gas procurement charge ("GPC"); how working capital costs for gas in storage should be reflected in charges to natural gas suppliers ("NGSs") in the GPC, and/or in base rates; whether the Company will clearly and reasonably present the price to compare ("PTC") on small business customer bills in a way that will facilitate comparison shopping; whether retaining the Company's migration rider in its current form is reasonable and consistent with the revised PTC; whether the Company's reconciliation methods for the purchased gas cost ("PGC") distort competitive price signals, whether they are consistent with sound accounting principles, and whether they are consistent with the migration rider; and whether the cost allocation method used for removing GPC costs from base rates and recovering GPC costs from PGC ratepayers is consistent with cost causation principles.

The issues raised above were addressed in discovery and in the Settlement to the OSBA's satisfaction.

The OSBA concluded that the Company's proposal to establish an equal and offsetting base rate reduction ("BRR") and GPC is reasonable for Peoples TWP, because the Company has no retail shopping customers. Moreover, the OSBA concluded that the Company's proposal to apply the BRR and GPC to "non-competitive" customers only is appropriate, because imposing rate reductions and charges on "competitive" customers will have no impact on the negotiated rates paid by those customers.

Under its filed proposal, the Company did not include any working capital costs in the GPC. Based on its analysis of the filing and the Company's tariff, the OSBA was concerned that, under the Company's current Choice Plan, the Company is recovering all storage gas working capital costs and cash working capital costs on behalf of its PGC customers in base rates while it *may* be requiring competitive NGSs to bear some of those costs for shopping customers. Therefore, it may be appropriate for some working capital costs to be included in the GPC.

Nevertheless, the OSBA believes that it is not necessary to make such a change at this time, for several reasons. First, Peoples TWP has no retail shopping customers, and there do not appear to be any NGSs actively pursuing retail customers on the Company's system. Second, while the Company is engaged in a collaborative with NGSs to investigate ways to develop a competitive retail market, no NGSs actively participated in this proceeding. This suggests that there is little near term NGS interest in serving this service territory. Third, Peoples TWP indicated that it intends to file a base rates case next year, and intends to offer a proposal for modifying its Choice and purchase of receivables programs in that proceeding.

In light of these considerations, the OSBA determined that there was no need to pursue a complicated evaluation of the exact nature of the Company's cost responsibility for shopping and non-shopping customer working capital costs at this time, if there is little NGS interest and the whole issue is to be reviewed again next year. The settlement document therefore requires that the Company will address these issues at a more appropriate time, and with a wider view of the whole nature of the Company's Choice program.

The Settlement was approved by the Commission without modification by order dated April 4, 2013.

NFG Corporation
PTC Filing
Docket No. R-2012-2333775

On November 9, 2012, National Fuel Gas Distribution Corporation ("NFG") submitted a filing to unbundle certain gas procurement and load balancing costs from base distribution rates into a bypassable gas procurement charge ("GPC").

The OSBA filed a Notice of Intervention on December 21, 2012.

The OSBA submitted direct, rebuttal, and surrebuttal testimony in this proceeding.

In its original filing, the Company proposed to allocate the gas purchasing costs among the various rate classes in proportion to throughput volume in order to calculate the base rate credit. NFG defaulted to an "across-the-board". The OSBA argued that this proposal was not consistent with either cost causation or the uncontested cost allocation method used by the Company in its last base rate proceeding.

A settlement was reached adopted a a three-tier approach, consisting of different reductions for small customers (Residential, Small Commercial and Public Authority), medium customers (Large Commercial and Public Authority, Small Volume Industrial Service, Intermediate Volume Industrial Service) and large customers (Large Volume Industrial Service, Large Industrial Service). Each of these tiers is assigned a base rate reduction using a cost allocation method that is consistent with cost causation. This solution was consistent with the OSBA testimony, and far superior to the Company's original proposal for a flat per-mcf reduction for all rate classes.

Furthermore, in its original filing, NFG proposed to calculate the GPC using actual historical costs. However, the Company proposed to calculate the GPC itself using lower forecast sales volumes, reflecting an assumed increase in future shopping rates. The OSBA argued that the Company's methodology failed to reflect the fact that GPC costs would decline, if, in fact, sales volumes decline in the future. In particular, reductions in sales volumes would reduce both storage gas working capital and cash working capital costs. Since these two cost items represent a significant majority of the GPC costs, the OSBA concluded that the Company's proposal would substantially over-recover costs, and was therefore not revenue neutral.

The settlement reduced the GPC in contrast to the Company's original proposal, with no reduction in overall GPC costs. This will result in a much closer balance between revenues earned in the GPC and base rate revenue reductions, and is consistent with the OSBA testimony submitted in this proceeding.

On April 25, 2013, the ALJ issued a Recommended Decision approving the settlement.

On May 23, 2013, the Commission approved the settlement.

4. Distribution System Improvement Charge

Columbia Gas of Pennsylvania
Distribution System Improvement Charge ("DSIC")
Docket No. P-2012-2338282

On December 7, 2012, Columbia Gas of Pennsylvania ("Columbia" or "the Company") filed a Petition for Approval of its Long-Term Infrastructure Improvement Plan ("LTIIP"), at Docket No. P-2012-2338282. Subsequently, as part of that plan, Columbia filed a Petition for Approval of its Distribution System Improvement Charge ("DSIC"), at a separate docket, which was consolidated with the LTIIP docket.

On March 14, the Commission entered an Order authorizing Columbia to begin to collect the DSIC, subject to refund, and identified four issues to which litigation would be limited. Those issues are: DSIC-recovery of costs related to customer owned service lines; impact of accumulated deferred income taxes associated with DSIC investments; calculation of state income tax component of the DSIC revenue requirement; and return on equity.

The parties to the proceeding agreed that the authorized return on equity of 9.7% would not be a subject of litigation, further limiting the issues in dispute.

At the time of this writing, discovery is ongoing, and the parties have agreed to a procedural schedule which has been approved by the ALJs.

5. Mergers and Acquisitions

UGI-Central Penn Gas, Inc.
Sale to Affiliated Interest
Docket Nos. A-2012-2289607 and G-2012-2289623

On February 21, 2012 UGI Central Penn Gas ("CPG") filed for Commission approval of the sale of pipeline facilities to UGI Storage ("UGI Storage"), an associated reduction in CPG base rates and, an affiliated interest approval for a lease agreement between CPG and UGI Storage. The subject of the proposed sale is an 11 mile natural gas pipeline, appurtenant facilities, and right-of-way located in Tioga County, Pennsylvania ("TL-96 Line"). The pipeline facilities were used to enable the CPG Mansfield service area, and surrounding areas, to supplement deliveries from other sources with storage supplies from both the Tioga and Meeker storage fields delivered to Wellsboro through the TL-94 Line.

The proposed sale was apparently prompted by a need to facilitate the continued receipts of Marcellus shale supplies at the TL-96 Interconnection until substitute supplies are procured for delivery at other locations.

CPG represented that the proposed sale would benefit the local economy, would provide greater supply diversity in Northeastern Pennsylvania, and would make lower cost gas available to CPG's retail customers.

However, the OSBA determined that the filing raised significant questions, including (but not limited to) the following, which must be answered adequately prior to Commission action on the Application: what is the economic value of the assets to be transferred to UGI Storage; is the economic value of the assets greater than the proposed corresponding base rate reduction; how was the proposed sale price established; whether the costs properly allocated to the various rate classes; would the proposed sale of the assets increase, decrease, or have no effect on the purchased gas cost ("PGC") rates charged to CPG's retail customers; what, if any, impact would the proposed sale of the assets have on the costs imposed on CPG's retail customers related to lost-and-unaccounted-for-gas ("LUFG"); and what impact would the proposed sale of the assets have on the ability of CPG's retail customers served by that line to shop for gas.

The OSBA notes that the Settlement was reached without the need for Parties to file expert testimony in this proceeding. In its Protest in this matter, the Pennsylvania Office of Consumer Advocate ("OCA") indicated, "The Commission must examine whether alternative uses of the TL-96 line would provide greater ratepayer benefits. Additionally, under Chapter 21, the Commission must determine if the proposed cost-based sale, as opposed to a market-based sale, is in accord with law." The OSBA conceptually agreed with the OCA's position in this respect, but observed that neither CPG nor OCA had adduced any evidence relating to alternative uses or market-based sale value for these assets. However, in the Auburn Line proceeding (Docket Nos. A-2010-2213893 and G-2010-2213894), the OSBA advanced and fully litigated similar arguments. These arguments were rejected by the Commission. Because OSBA does not deem the circumstances in this proceeding to be sufficiently different from those in the Auburn Line proceeding to justify an alternative finding, the OSBA does not oppose the proposed transaction on that basis.

Because the Settlement transpired prior to any formal proceedings, there was no hearing or the further adjudication of this matter by the Office of Administrative Law Judge. On May 18, 2012, the Office of Administrative Law Judge transferred the Application to the Bureau of Technical Utility Services (TUS) for disposition.

On December 5, 2012, the Commission approved the settlement and dismissed the OSBA's protest.

6. Miscellaneous

Equitable Gas Company
BTU Adjustment
Docket No. R-2012-2304727

On May 15, 2012, Equitable Gas Company, LLC ("Equitable" or "Company") filed Tariff Supplement numbers 79, 80, and 81. The purpose of the filings was to modify the Company's billing methodology so that its customers would be billed for the heating value of natural gas ("Btu Adjustment") instead of the current method which bills customers based on volume ("Mcf").

The filing was assigned to the Office of Administrative Law Judge for investigation, hearings, and the issuance of a recommended decision. The Office of Small Business Advocate ("OSBA") filed an Intervention on June 19, 2012. The Commission's Bureau of Investigation and Enforcement ("I&E") entered a Notice of Appearance, and the Office of Consumer Advocate ("OCA") filed a Complaint. The Retail Energy Supply Association ("RESA") and Dominion Retail ("Dominion") filed Petitions to Intervene. A telephonic prehearing conference was held before ALJ Johnson on June 22, 2012. Attending were the Company, the OSBA, I&E, OCA, and RESA. The ALJ approved a schedule for the case. At that time, the parties were also engaged in discovery.

Equitable submitted the direct testimony of its witnesses on June 25, 2012. The OSBA, OCA, I&E, and RESA submitted direct testimony on July 25, 2012. Equitable and Dominion filed rebuttal testimony on August 15, 2012. Hearings were held before the Administrative Law Judge in Harrisburg on August 27, 2012.

The OSBA identified one issue that was of particular concern in this proceeding, which is Equitable's attempt to isolate a single base rate variable for adjustment outside the context of a full base rate proceeding, which is single issue ratemaking. Single issue ratemaking is prohibited by the Commission.

The Company was attempting to recoup its claimed base rate revenue or delivery service revenue losses stemming from the purchase of higher BTU content gas. In sum, the Company argued that due to the higher Btu content of its current gas supply (which includes both Appalachian gas and Marcellus Gas Supply), customers use less gas by volume, causing the Company to experience a resulting decline in delivery service revenues (*i.e.*, margins).

The witnesses for OCA, I&E, and the OSBA all presented testimony on the issue of the Company's misplaced attempt to recover lost delivery revenues outside the context of a full base rate proceeding. For Equitable to attempt to isolate a single base rate variable for adjustment in this proceeding is single issue ratemaking. Single issue ratemaking is prohibited by the Commission. Therefore, the proposal to modify customers billing to account for changes in the heating value (*i.e.*, BTU content) of natural gas delivered on its system must be addressed in a base rate case and cannot appropriately be addressed in the context of the Company's filing at these dockets.

The ALJ found that Equitable was attempting to generate the same $38.4 million revenue increase established in its 2008 general base rate filing by changing its billing system. The ALJ agreed with the OSBA and other parties that there are multiple factors that determine the revenue requirement which must be examined in a general base rate filing, and ultimately rejected the Company's filing as classic, but prohibitive, single issue rate making which is prohibited if it impacts on a matter considered in a base rate case.

The Commission entered an order on December 20, 2012, which rejected the Company's request to modify its billing system based on the heat content of gas as prohibited single issue ratemaking.

Equitable Gas Company
Gathering
Docket No. R-2012-2312577

On June 29, 2012, Equitable Gas Company, LLC ("Equitable" or "Company") filed an Application seeking various Commission approvals to allow Equitable to acquire the Goodwin and Tombaugh gathering systems from Equitrans, L.P., its affiliate. Equitable's willingness to acquire the subject gathering systems in contingent on the Commission's approval of Supplement No. 86 to Equitable's Tariff Gas – PA P.U.C. No. 22 ("Supplement No. 86") which was submitted along with the Application. Supplement

No. 86 would establish a rider for the recovery of costs related to the Goodwin and Tombaugh gathering systems.

The OSBA filed a Protest on September 6, 2012. The OSBA also filed the Direct, Rebuttal, and Surrebuttal Testimony of its witness Brian Kalcic. In its Protest and testimony the OSBA recommended that the Commission deny the Company's request to acquire the Goodwin and Tombaugh Gathering Systems ("G&T"). The OSBA also recommended that the Commission deny the Company's proposal to implement Rider E

The OSBA identified several significant questions which needed to be answered prior to Commission action on the Application including the following: what is the economic value of the assets to be transferred to Equitable; what are the potential gas cost savings; would the proposed sale of the assets increase, decrease, or have no effect on the purchased gas cost ("PGC") rates charged to Equitable's retail customers; and what, if any, impact would the proposed sale of the assets have on the costs imposed on Equitable's retail customers related to lost-and-unaccounted-for-gas ("LUFG").

In the proceeding, Equitable proposed to acquire ownership of approximately 379 miles of pipeline and related assets which comprised the G&T Gathering Systems from its affiliates, Equitrans Gathering, LLC and Equitrans, LP, for a net book value of $1.9 million. Additionally, the Company proposed that Rider E would be used to recover the costs associated with projects that "provide, or continue to provide customer savings through increased reliance on Pennsylvania produced Appalachian production."

The salient features of the proposed transaction, as modified by the Settlement, are: the assets will be transferred from Equitrans Gathering, LLC and Equitrans, LP to Equitable; the value of the transfer, or cost paid by Equitable to its affiliates, will not be recoverable through future rates or otherwise recovered from Equitable's ratepayers; and Rider E is withdrawn.

As a result of the provisions, referenced above, ratepayers would not be responsible for any acquisition costs or any costs otherwise recoverable in Rider E. At the same time, the Settlement preserved natural gas service to approximately 1,600 customers, while providing twelve months of time for Equitable to complete a comprehensive evaluation of the G&T systems to determine whether or not continued operation of those systems is warranted.

On February 8, 2013, the Administrative Law Judge ("ALJ") recommended that the Commission reject Equitable's Application on the grounds that the proposed acquisition was risky and potentially very expensive. The ALJ found that the Gathering Systems had high levels of lost and unaccounted for gas (LUFG), with levels over 50% on the Tombaugh System and over 70% on the Goodwin System. R.D. at 24. The ALJ stated that there was no evidence regarding what portion of the LUFG was due to measurement errors and what portion was due to leakage. The ALJ concluded that, without this information, it was impossible to know whether Equitable's cost estimate to operate the systems was reasonable and whether it was reasonable for Equitable's ratepayers to share some of the costs of investigating and rehabilitating the systems.

On February 19, 2013, Equitable filed a Petition for Leave to Withdraw Application and Tariff Supplement, Without Prejudice, or, in the Alternative, Motion to Stay and Defer Proceedings for Consideration with the Peoples/Equitable Acquisition Proceeding (Petition), filed by Equitable Gas Company.

The Commission approved the Company's Petition to Withdraw on April 4, 2013.

C. Telephone Highlights

1. Access Charges

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.

The OSBA served direct, rebuttal, and surrebuttal testimony.

Evidentiary hearings were held before an ALJ in June 2011.

The OSBA submitted both a main brief and a reply brief.

At the time of this writing, a Recommended Decision from the ALJ has not yet been issued.

On November 18, 2011, the Federal Communications Commission (FCC) released its extensive *USF/ICC Transformation Order* that had been adopted on October 27, 2011. The *Transformation Order* has been appealed, but it has not been stayed. In compliance with the *Transformation Order*, Verizon changed its terminating switched access rates so that they matched their equivalent federal counterpart levels as of July 2013.

On October 3, 2013, the Commission issued a Secretarial Letter asking the parties for their comments regarding how to proceed with this open investigation in light of Verizon's actions and the *Transformation Order*.

On October 23, 2013, the OSBA responded to the Secretarial Letter and recommended that the proceeding be held in abeyance until such time as the appeals of the *Transformation Order* are resolved.

At the time of this writing, the Commission has not issued an order stating how the Verizon access charge investigation will proceed, or whether it will be terminated.

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.

On July 18, 2011, the Commission entered an order in this proceeding. The Commission order supported the arguments made by the OSBA throughout the long course of this proceeding. Access reductions were required, but required a contribution towards the cost of the RLEC's local loop through the use of a $2.50 carrier charge.

Furthermore, the Commission clarified that there is no cap on residential rates, thus not requiring small business customers to be the "payors of last resort."

On August 2, 2011, AT&T filed a Petition for Reconsideration with the Commission. The OSBA filed an Answer opposing AT&T's Petition on August 12, 2011.

At the time of this writing, the parties are awaiting a substantive decision by the Commission on the AT&T Petition.

On November 18, 2011, the Federal Communications Commission (FCC) released its extensive *USF/ICC Transformation Order* that had been adopted on October 27, 2011. The *Transformation Order* has been appealed, but it has not been stayed. In compliance with the *Transformation Order*, Verizon changed its terminating switched access rates so that they matched their equivalent federal counterpart levels as of July 2013.

At the time of this writing, the Commission has given no indication how it plans to proceed with the rural access charge investigation in light of the *Transformation Order*.

D. Water and Wastewater Highlights

Pennsylvania American Water Company
Base Rate Increase
Docket No. R-2011-2232243

On April 29, 2011, Pennsylvania-American Water Company ("PAWC" or the "Company") filed a tariff to increase the Company's base rates by $70.7 million per year, which would result in a rate of return on equity ("ROE") of 11.5%.

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

The OSBA objected to the Company's request for an ROE of 11.5%. Based on recent 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%.

The OSBA did not object to the Company's proposed revenue allocation with respect to the Commercial and Industrial classes, finding it to be reasonable and cost-based.

The OSBA did object 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. OCA proposed a revenue allocation that left private fire rates unchanged, but rolled-in the

5.6% DSIC. The result of this proposal would have been a $172,938 increase in base rates for the private fire class, who were already paying rates above cost of service.

In addition, the OSBA objected to a proposal by AK Steel for industrial customer charges that were not cost-based.

The OSBA also took issue with the OCA's proposal that PAWC complete a new customer class demand study prior to its next base rate case. The OSBA did not oppose a new demand study in principle, but had two concerns with the OCA's proposal: (1) how much the demand study would cost and how those costs were to be recovered from ratepayers; and (2) whether completing the new study prior to PAWC's next base rate case is feasible.

Finally, the OSBA opposed the Company's proposed Purchased Power Adjustment Charge and the Purchased Water Adjustment Charge that would allow PAWC to change rates between rate cases.

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

First, the settlement increased PAWC's revenues by approximately $36 million instead of the $70.7 million originally requested by the Company. Consequently, the revenue increase provided by the settlement equated to an implicit ROE for PAWC that was below the 10% ceiling recommended by the OSBA.

Second, the settlement adopted the Company's proposal to leave private fire rates unchanged and to not roll-in the current DSIC surcharge of 5.6%. Although the private fire class is above cost of service at present rates and would remain above cost of service at the Company's proposed rates, refraining from rolling in the DSIC and keeping private fire rates unchanged allows this over-paying rate class to move closer to its cost of service.

Third, the settlement rejected AK Steel's proposal with respect to customer charges for industrial customers that were not cost-based and instead adopted the Company's proposal.

Fourth, the settlement addressed the OSBA's concerns regarding the cost and feasibility of a new customer class demand study prior to PAWC's next base rate case. The settlement provides for a new demand study only if, after discussing the specifics of the plan to perform the study, the parties agree that it is appropriate for such a study to be completed. The study will be deemed completed and will be submitted as part of the Company's testimony in its next base rate case only if at least one year of data has been collected and analyzed. The settlement preserves the right of any party to oppose the Company's use of the study to allocate costs in its next base rate case or to oppose the amount and/or method of PAWC's recovery of the cost of the new demand study.

Fifth, the Company withdrew the proposed Purchased Power Adjustment Charge and the Purchased Water Adjustment Charge.

By Order entered November 11, 2011, the Commission approved the settlement.

On February 8, 2012, the Company distributed to the parties for their review and approval a study conducted by Gannett Fleming at PAWC's request of the feasibility and cost of conducting a customer class demand study. At the time of this writing, a customer class demand study has commenced, but is not yet completed.

Borough of Hanover/Hanover Municipal Water Works
Base Rate Case
Docket No. R-2012-2311725

On June 29, 2012, the Borough of Hanover/Hanover Municipal Water Works ("Hanover" or the "Borough") submitted a filing with the Commission that proposed to increase the rates of customers outside the Borough (and therefore under the Commission's jurisdiction) by $980,783 per year.

On August 6, 2012, the OSBA filed a complaint against the proposed increase.

A Prehearing Conference was held on September 11, 2011, before an ALJ Melillo, at which time the parties agreed to a procedural schedule and discovery modifications.

The parties were able to successfully negotiate a settlement before the non-Borough parties, including the OSBA, filed expert testimony.

Through discovery and settlement discussions, the OSBA addressed its initial concerns and determined that the settlement was in the best interest of Hanover's outside-Borough small business customers and results in rates that are just and reasonable.

First, the settlement reduces the annual increase in operating revenues initially requested by the Borough from $980,783 to $792,000.

Second, the Joint Petition incorporates the traditional ratemaking principle of gradualism by limiting the rate impact on all customer classes to 1.5 times the system average increase, consistent with the OSBA's position in other cases.

Third, the increases to each customer class are consistent with the Borough's cost of service study ("COSS").

Lastly, the settlement implements a separate consumption rate for each of the Borough's customer classes, which will facilitate further movement toward cost of service for each customer class in future base rate cases.

A Recommended Decision dated November 2, 2012, was issued recommending approval of the settlement in its entirety without modification.

On December 5, 2012, the Commission issued an Order approving the settlement.

City of Lancaster - Sewer Fund
Base Rate Case
Docket No. R-2012-2310366

On September 28, 2012, the City of Lancaster Sewer Fund ("Lancaster" or the "City") submitted a filing with the Commission that proposed to increase the rates of customers outside the City (and therefore under the Commission's jurisdiction) by $28.4 million per year.

On November 5, 2012, the OSBA filed a complaint against the proposed increase.

A Prehearing Conference was held on November 26, 2012, before an ALJ, at which time the parties agreed to a procedural schedule and discovery modifications. The OSBA filed direct testimony.

Prior to the submission of rebuttal testimony, a settlement was reached among the parties in this proceeding consistent with the positions taken by the OSBA in testimony. The issues of class revenue allocation and rate design were of significance to the OSBA when it determined that the settlement was in the best interests of the City's small business customers and results in rates that are just and reasonable.

On the issue of class revenue allocation, the OSBA accepted the City's cost of service study ("COSS"), but rejected the City's proposed class revenue allocation. Although the City's proposed class revenue allocation would move all classes closer to cost of service, the OSBA argued that a greater degree of movement could be attained in this proceeding for small business customers. The class revenue allocation adopted in the settlement is consistent with the OSBA's recommendations.

With respect to rate design, the OSBA recommended that the City change its existing single rate structure to a three-step declining block rate structure because it is not always feasible to implement a fully cost-based revenue allocation without imposing undue rate impacts on certain customers in the rate design process and such concerns would be eliminated if the City were to implement separate class rate schedules. However, because the parties were able to implement the cost-based settlement revenue allocation using the City's existing single rate structure, the OSBA chose not to pursue its rate structure recommendation at this time.

The ALJ issued a Recommended Decision on February 26, 2013, recommending approval of the settlement in its entirety without modification.

The Commission entered an Order on April 18, 2013 approving the settlement.

E. Legisation

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. The OSBA testified at a budget hearing before the House Appropriations Committees, The OSBA also responded to inquiries from individual legislators and legislative staff members.

F. List of Proceedings

1. 2012 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 2012 in the following such proceedings:

Default Service Reconciliation Interim Guidelines, **Docket No. M-2012-2314313**
Comments – 9/14/12
Supplemental Comments – 9/24/12
Reply Comments – 10/4/12

Rulemaking: Establishing a Uniform Definition and Metrics for Unaccounted-for Gas, **Docket No. L-2012-2294746**
Comments – 11/19/12
Reply Comments – 12/4/12

2. 2012 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 2012:

Electric

Petition of PECO Energy Company for Approval of its Default Service Program **(P-2012-2283641)**

PPL Electric Utilities Corporation Final Calculation of the Generation Supply Charge-1 for the Application Period March 1, 2012 through May 31, 2012 **(M-2012-2289949)**

Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation **(R-2012-2290597)**

Notice of Appearance in Petition of Duquesne Light Company for Approval of Default Service Plan For the Period June 1, 2013 through May 31, 2015 **(P-2012-2301664)**

PPL Electric Utilities Corporation Final Calculation of the Generation Supply Charge-1 for the Application Period June 1, 2012 Through August 31, 2012 **(M-2012-2305798)**

Notice of Appearance in Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015 **(P-2012-2302074)**

Joint Default Service Plan for Citizens' Electric Company of Lewisburg and Wellsboro Electric Company for the Period of June 1, 2013 through May 31, 2015 **(P-2012-2307827 and P-2012-2307931)**

Petition of PECO Energy Company for Approval of Its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2333992)**

Petition of Duquesne Light Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334399)**

Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334388)**

Petition of Metropolitan Edison Company for Approval of Its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334387)**

Petition of Pennsylvania Electric Company for Approval of Its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334392)**

Petition of Pennsylvania Power Company for Approval of Its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334395)**

Petition of West Penn Power Company for Approval of Its Act 129 Phase II Energy Efficiency and Conservation Plan **(M-2012-2334398),**

Gas

Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation **(R-2012-2281465)**

Pennsylvania Public Utility Commission v. Peoples TWP, LLC **(R-2011-2273539)**

Pennsylvania Public Utility Commission v. Philadelphia Gas Works **(R-2012-2286447)**

Application of UGI Central Penn Gas, Inc. for Approval of the Transfer By Sale of an Approximately 11 Mile Natural Gas Pipeline and Appurtenant Facilities and Rights of Way located in Tioga County, Pennsylvania, to UGI Storage Company, for Approval of an Associated Reduction in Base Rates, and for Approval if a Related Affiliated Interest Agreement **(A-2012-2289607 and G-2012-2289623)**

Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC **(R-2012-2285985)**

Pennsylvania Public Utility Commission v. Equitable Gas Company **(R-2012-2287044)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(R-2012-2293303)**

Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC **(R-2012-2292082)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(R-2012-2302219)**

Pennsylvania Public Utility Commission v. UGI Utilities, Inc. – Gas Division **(R-2012-2302220)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(R-2012-2302221)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(R-2012-2302784)**

Pennsylvania Public Utility Commission v. Equitable Gas Company, LLC **(R-2012-2304727)**

Pennsylvania Public Utility Commission v. Equitable Gas Company, LLC **(R-2012-2304731)**

Pennsylvania Public Utility Commission v. Equitable Gas Company, LLC **(R-2012-2304735)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(R-2012-2314247)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(R-2012-2314224)**

Pennsylvania Public Utility Commission v. UGI Utilities, Inc. – Gas Division **(R-2012-2314235)**

Application of Equitable Gas Company LLC for Affiliated Interest Approval and Such Other Approvals, If Any, As May Be Necessary In Regard to the Acquisition of the Goodwin Gathering System from EQT Gathering, LLC And of the Tombaugh Gathering System from Equitrans, LP **(R-2012-2312577 and G-2012-2312597)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(R-2012-2321748)**

Petition of PECO Energy Company – Gas Division – Pursuant to 66 Pa. C.S. 1308(a) for Approval of Its Proposed Tariff Revision **(P-2012-2328614)**

Peoples TWP LLC Supplement No. 21 to Peoples TWP Tariff Gas – Pa PUC No. 7 **(R-2012-2327529)**

Philadelphia Gas Works Supplement No. 55 to Gas Service Tariff PA PUC No. 2 **(R-2012-2333993)**

Equitable Gas Company, LLC Supplement No. 91 to Gas Service Tariff PA PUC No. 22 **(R-2012-2333983)**

National Fuel Gas Distribution Corporation Supplement No. 135 to Tariff Gas – Pa PUC No. 9 **(R-2012-2333775)**

Water

Pennsylvania Public Utility Commission v. Borough of Hanover/Hanover Municipal Water Works **(R-2012-2311725)**

Pennsylvania Public Utility Commission v. City of Lancaster - Sewer Fund **(R-2012-2310366)**

3. 2011 Appellate Court Cases

Under the Small Business Advocate Act, the OSBA is authorized to appear before the appellate courts regarding matters under the PUC's jurisdiction. In addition to participating in cases begun in prior years, the OSBA appeared in the following new appellate court case in 2012:

Irwin A. Popowsky, Consumer Advocate, Petitioner v. Pennsylvania Public Utility Commission, Respondent **(1179 CD 2012)**

G. Small Business Consumer Outreach

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

V. THE OSBA'S WORKERS' COMPENSATION ACTIVITIES

The OSBA's workers' compensation duties involve a review and evaluation of, and the submission of comments on, the "loss cost" filings that are submitted to the Insurance Department each year by the Pennsylvania Compensation Rating Bureau ("PCRB") and the Coal Mine Compensation Rating Bureau of Pennsylvania ("CMCRB"). The "loss cost" portion of a workers' compensation premium reflects the cost of paying wages for employees whose injuries prevent them from working. The "loss cost" portion of the premium also reflects the cost of medical care for injured workers. Individual workers' compensation insurers are not permitted to begin using the filed "loss costs" until the Department has approved the respective bureau's filing.

A. PCRB Filing

After an independent analysis of the PCRB's filing for the year beginning April 1, 2012, the OSBA recommended an overall decrease of 13.78% in statewide industrial loss costs in lieu of the 5.66% decrease requested by the PCRB. Subsequently, the Department approved the PCRB's request.

B. CMCRB Filing

After an independent analysis of the CMCRB's filing for the year beginning April 1, 2012, the OSBA recommended an overall decrease of 27.6% in statewide loss costs in lieu of the 17% decrease requested by the CMCRB. Subsequently, the Department approved the CMCRB's request.

VI. OSBA STAFF

John R. Evans (03/25/2013 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

Elizabeth Rose Triscari (5/2/11 to present)
Assistant Small Business Advocate

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

Meska Lewis (1/14/13 to present)
Legal Assistant