ANNUAL REPORT

OF THE

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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 2013-2014 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.

[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:
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> * * *
>
> > (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 2013. The case summaries set forth below are current as of April 2014.

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.

Duquesne Light Company
Docket No. R-2013-2372129

On or about August 13, 2013, Duquesne Light Company ("Duquesne" or the "Company") filed Supplement No. 81 to Tariff Electric-Pa. P.U.C. No. 24 with the Commission. The Company's filing requested an additional $76.3 million in annual distribution rate revenue with a return on equity of 11.25%.

The OSBA filed the direct, rebuttal and surrebuttal testimony of its expert witness.

The OSBA participated in the negotiations that led to the Joint Petition for Approval of Non-Unanimous Settlement ("Settlement") and is a signatory to the Settlement.

In its filing, Duquesne identified two specific objectives that guided the development of the Company's proposed revenue allocation: 1) each rate class should be moved closer to full cost of service, as determined by the Company's class cost-of-service study ("COSS"), subject to the condition that 2) no individual rate class should receive an increase greater than 1.5 times the Company's requested system average increase in distribution revenue (so as to limit customer impacts).

However, as noted by the OSBA in direct testimony, Duquesne's proposed revenue allocation was problematic, in part because the Company proposed to assign an aggregate decrease of $2.1 million to the HVPS, SE, SL and UMS rate classes. As a result, the aggregate revenue increase required of the Company's remaining rate classes at proposed rates was $78.4 million ($76.3 million plus $2.1 million).

In an effort to move all classes closer to cost and to avoid rate decreases, the OSBA first proposed a detailed alternative allocation of the distribution rate increase at the Company's full revenue requirement. The Settlement reflected the OSBA's proposed revenue allocation for the Company's customer classes.

Rate GMH is available to commercial and industrial space heating customers. The Settlement incorporates a customer charge of $42 per month for Rate GMH, which is the same amount paid by Rate GS/GM (<25 kW) customers, and therefore maintains the current GMH Rate Structure as recommended by OSBA.

Duquesne requested approval of a tariff rider ("PRA Rider") which would permit the Company to align future distribution rates with future pension funding outside of the context of a base rate proceeding.

The OSBA objected to the requested PRA Rider because the level of Duquesne's pension expense, as it may affect the Company's distribution rates, is a base rate case issue. Consequently, the PRA Rider was eliminated from the Settlement as recommended by the OSBA.

The Joint Petition of for Non-Unanimous Settlement was submitted to the Commission on January 16, 2014. At the time of this writing, no recommended decision has been issued by the ALJ.

2. <u>Conservation</u>

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.

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

The OSBA reviewed these Phase II 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.

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.

On November 20, 2013, PPL Electric submitted a Petition for Approval of Changes to Its Phase II Act 129 Energy Efficiency and Conservation Plan, which proposed forty (40) modifications to its Phase II Plan. The aggregate impact of the proposed changes, if approved, will not impact the overall Phase II Plan budget, but will result in increases in benefits and costs to Residential, low-income, and government, non-profit and institution ("GNI") customers and decreases in costs to small commercial and industrial and large commercial and industrial customers.

Comments to the Petition were filed on December 23, 2013, by the PP&L Industrial Customer Alliance ("PPLICA") and the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") raising concerns with, *inter alia*, the increase in costs for programs aimed at GNI customers. The OSBA submitted reply comments addressing those concerns on January 13, 2014.

On March 6, 2014, the Commission issued an Opinion and Order approving 38 of the 40 proposed changes and rejecting proposed training measures that would result in no direct savings, consistent with the OSBA's reply comments.

3. **Smart Meters**

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

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

In calendar year 2013, 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. <u>Default Service</u>

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.

On July 26, 2013, at Docket No 1179 CD 2012, the Commonwealth Court issued an Order affirming the Commission's decision. The OCA appealed the Commonwealth Court's decision to the Supreme Court of Pennsylvania, which subsequently denied allocator, thereby ending the OCA's appeal.

Pike County Light and Power Company
Default Service (2014-2016)
Docket No. P-2013-2371666

On June 28, 2013, Pike County Light & Power Company ("Pike") filed its Petition for approval of its default service plan covering the period June 1, 2014 through May 31, 2016. The plan proposed by Pike is essentially the same as the two previous default service plans submitted by Pike and approved by the Commission. This includes the procurement of electricity supply through the spot market, which was the method initially recommended by the OSBA.

Parties have engaged in discovery and filed testimony and briefs. The OSBA, having no major quarrel with the proposed plan for small business customers, did not file briefs. The OCA, even though its position was rejected by the Commission and Commonwealth Court in Pike's previous default service case, argued for a portfolio approach to procurement for residential customers.

As of this writing, the parties are awaiting a recommended decision by the ALJ.

Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company
Default Service (2014-2016)
Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378

On November 4, 2013, the four First Energy Companies filed a consolidated Petition for approval of their default service plans running from June 1, 2014, through May 31, 2016. The parties have agreed to a procedural schedule and are in the process of discovery.

The intervenors, including the OSBA, have filed direct testimony as of this writing. The OSBA recommended several changes to the Companies' proposals for small business energy procurements, including the elimination of spot market procurements and 48 month procurements.

Discovery and the filing of testimony are ongoing at this time.

PPL Electric Utilities
Reconciliation and Recovery of Default Service Costs

a. Transmission Service Charge ("TSC") Reconciliation

Docket Nos. M-2010-2213754, M-2011-2239805, 2217 CD 2013

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 June 7, 2013, PPL Electric filed a petition for approval of a plan to refund certain historical overcollections of TSC charges.

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 ("August 15 Order"). The Commission directed PPL Electric to submit a revised plan to issue TSC refunds consistent with the August 15 Order and remanded the proceeding to the ALJ ("TSC Remand Proceeding"). However, the Commission also 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.

PPLICA and PPL Electric each filed a Petition for Reconsideration of the Commission's August 15 Order on August 30, 2013. The OSBA filed an answer in support of PPLICA's Petition for Reconsideration, because it agreed that the Commission erred in allowing PPL Electric to leave in place the 2010 reconciliation based on 2009 historical estimates of TSC demand usage rather than directing it to reconcile based on actual demand data.

PPL Electric submitted a revised TSC refund plan on September 16, 2013, in the TSC Remand Proceeding. At the time of this writing, the procedural schedule has been suspended with respect to the revised TSC refund plan pending submission of a joint petition for settlement of the TSC Remand Proceeding.

The Commission issued an order on November 14, 2013, denying both Petitions for Reconsideration ("November 14 Order"). PPLICA filed a Petition for Review of the August 15 Order and November 14 Order with the Commonwealth Court on December 13, 2013. The OSBA has intervened in that appeal to protect the interest of PPL Electric's small business customers. The Commission filed a motion to quash PPLICA's

[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.

appeal on the grounds that the August 15 Order and November 14 Order were not final orders because the TSC Refund Proceeding is still pending before the ALJ.

At the time of this writing, the Commonwealth Court appeal has been suspended and the parties are engaged in active settlement negotiations.

b. <u>Generation Service Charge ("GSC") Reconciliation</u>

C-2013-2367475

On June 6, 2013, the OSBA filed a Complaint against the rates, terms and other provisions of the Generation Supply Charge-1 Reconciliation Report ("GSC-1 Reconciliation Report") filed on May 17, 2013, by PPL Electric for the period May 1, 2012, through April 30, 2013. The complaint alleged that the GSC-1 reconciliation mechanism has resulted in inexplicably high and unstable rates for Small Commercial and Industrial – Fixed ("Small C&I") customers.

A significant amount of information was supplied to the OSBA by PPL Electric both formally in response to interrogatories as well as informally throughout the procedural schedule, which resulted in the OSBA's concerns being adequately addressed. The OSBA and PPL Electric engaged in extensive settlement discussions resulting in a settlement of all issues. The OSBA determined that the settlement is in the best interest of PPL Electric's Small C&I customers because it: (1) identifies and implements certain forecasting changes in connection with PPL Electric's reconciliation of the GSC-1, which aim to decrease variability in the GSC-1 rates for Small C&I customers; (2) provides for additional monitoring and evaluation of the operation of the GSC-1 for accuracy of forecasts; (3) provides for ongoing communication between PPL Electric and the statutory advocates with respect to reconciliation of the GSC-1; and (4) avoids the necessity of further administrative and possible appellate proceedings at substantial cost to the parties and ultimately to PPL Electric's customers.

The Commission approved the settlement without modification on December 16, 2013. The OSBA continues to monitor PPL Electric's quarterly GSC-1 reconciliation filings pursuant to the settlement.

c. <u>Act 129 Compliance Rider ("ACR") Reconciliation</u>

Docket Nos. M-2013-2389549, M-2013-2389551

On October 22, 2013, PPL Electric filed Tariff Supplement Nos. 139 and 140 proposing changes to its Act 129-1 Compliance Rider ("ACR-1") and Act 129-2 Compliance Rider ("ACR-2"), respectively. ACR-1 is designed to recover costs from Phase I of PPL Electric's EE&C Plan and ACR-2 is designed to recover costs from Phase II. PPL Electric proposed interim adjustments to the ACR-1 and ACR-2 to avoid a significant over-collection of costs from Residential and Small C&I customers and a significant under-collection of costs from Large C&I customers. The need for the adjustment was due to the fact that the actual allocation of government, non-profit and institutional ("GNI") costs to each of the customer classes differed significantly from PPL Electric's forecasted cost allocation that had been used to set the ACR-1 and ACR-2 rates.

PPLICA filed a complaint on December 23, 2013, against Supplement Nos. 139 and 140 alleging that they would result in unjust and unreasonable rates and rate volatility for Large C&I customers. PPLICA requested that the Commission prevent PPL Electric from collecting revenues attributable to divergence from its originally projected GNI program costs, or alternatively, suspend the tariff supplements and open an investigation to review the rates, terms, and provisions included in the tariff supplements.

The OSBA intervened in this matter to ensure that any over-collection of costs from Small C&I customers is appropriately and timely refunded.

At the time of this writing, this matter is currently in the early stages of litigation.

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.

f. CAP Shopping Plan

On May 1, 2013, PECO filed a petition for approval of a Customer Assistance Program Shopping Plan ("CAP Shopping Plan"). The Commission had directed PECO to develop such a plan to allow CAP customers to shop in its October 12, 2012 Order. The OSBA initially anticipated limited participation in this phase of the proceeding given that customer assistance programs like PECO's are exclusively for residential customers and small business customers typically have no interest at stake. However, when Direct Energy Services, LLC ("Direct Energy") proposed that the costs of PECO's CAP Shopping Plan should be recovered from *all* distribution customers, not just residential customers, the OSBA was compelled to object. The OSBA argued that such a proposal is not only inequitable, it is also inconsistent with the policy and precedent of the Commission as well as PECO's Commission-approved RME cost recovery mechanism. Commission policy is that CAP costs be allocated only to the customer class whose members are eligible to participate in the program, *i.e.*, residential customers.

On January 9, 2014, the Commission approved PECO's CAP Shopping Plan in part and denied it in part. Direct Energy's cost recovery proposal was rejected. PECO, OCA, and CAUSE-PA filed Petitions for Reconsideration of the January 9 Order, which were denied by the Commission on the merits on March 12, 2014. The OCA and CAUSE-PA have filed Petitions for Review of the Commission's January 9 and March 12 Orders at Commonwealth Court. The OSBA has intervened in the appeals. At the time of this writing, PECO's CAP Shopping Program has been stayed pending the final outcome of these appeals.

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. Ultimately, the collaborative was unable to reach any agreement on the proper design of a TOU program for PPL.

Consequently, PPL submitted a TOU program design of its own on August 23, 2013. On October 7, 2013, the Commission remanded the Company's proposed TOU program to the Office of Administrative Law Judge for the creation of a record, hearings, and the preparation of a recommended decision at the new Docket No. P-2013-2302074.

The OSBA has submitted rebuttal and surrebuttal testimony in the TOU Remand proceeding. An evidentiary hearing has also been held.

At the time of this writing, the OSBA is drafting its main brief in the TOU Remand proceeding.

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.

Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan and Retail Market Enhancement Programs for the Period of June 1, 2014 through May 31, 2017 and Potential Associated Affiliated Interest Transactions Docket Nos. P-2013-2357013 and G-2013-2357004

On April 5, 2013, UGI Utilities, Inc. – Electric Division ("UGI" or the "Company") filed its Default Service Plan for June 1, 2014, through May 13, 2017, with the Commission. The Company's filing also included proposals for retail market enhancement programs and possible affiliated interest transactions.

The OSBA filed a Notice of Intervention on May 13, 2013.

The OSBA filed direct testimony in this proceeding. The OSBA also participated in the extensive settlement negotiations among the various parties to this proceeding. Ultimately, the parties were able to reach a settlement agreement.

As a general rule, the OSBA supports default service procurement plans that involve separate purchases of supplies by customer class in order to use the procurement method that is most appropriate for the class, and to ensure that default service costs are properly allocated among the classes. With respect to small business customer classes, the OSBA has generally supported the use of full requirements load following ("FRLF") contracts, in order to set reasonably stable default service rates and to shift the risk of large changes in shopping rates to default service suppliers. UGI's previous default service plan reflected these policy positions, but that plan has not worked in practice.

Specifically, for small business customers with loads up to 500 kW, the Company attempted to procure 90 percent of the supplies using 12-month FRLF contracts. However, more often than not, those procurements have failed to achieve Commission approval, and the Company has generally used a spot market procurement approach as a contingency. Consequently, UGI's procurement proposal in this proceeding represents a substantial departure from the existing plan.

The OSBA recognized that it was not feasible to have a separate default service procurement for small business customers based on a FRLF contract approach. Thus, the OSBA supported the Company's proposal to combine the residential and non-residential customers into a single class for procurement, and to conduct that procurement using FRLF contracts.

The Settlement proposed a compromise between the Company's originally filed position and the position advocate by the OCA. The Settlement will require the Company to acquire 50% of its estimated annual requirement for all default service customers with peak loads below 100 kw (both residential and non-residential) from the purchase of blocks (7x24 and 5x16) and spot purchases and sales from and into the PJM market. The remaining 50% of the estimated annual requirements would be provided through the solicitation of FRLF contracts as originally proposed by the Company.

The OSBA supported the Settlement as it adopted the position advocated by the OSBA on this difficult issue.

The Settlement also adopted the recommendation of the OSBA to improve the price stability of any future procurements. Specifically, the OSBA recommended that the Company have two initial procurements with a 6-month term and a 12-month term, each for one-half of the small business customer load. These initial procurements would then be followed by procurements every six months, each for one-half the small business customer load, and each with a 12-month supply term. This would improve rate stability since the wholesale price for only one-half the load would change at any particular time.

On yet another issue, there is genuine disagreement between UGI and the OSBA in regards to what administrative costs are properly included in default service rates. In the OSBA's view, the Company includes certain administrative costs in its default service charges that serve to benefit both default service and shopping customers. Such costs are properly recovered from all customers, either in base rates or in some other non-bypassable charge. The Settlement only partially addresses that disagreement by proposing a reasonable solution to yet another difficult procurement issue. The OSBA agreed to settle this issue in light of the specific circumstances facing UGI, namely that it is a small electric distribution company ("EDC") and that it has very little residential and small non-residential customer shopping. The OSBA conditioned its support of the settlement on the recognition that UGI's policies for recovery of administrative costs related to electricity supply shall not be used as precedent for any other Pennsylvania EDC.

On August 15, 2013, the ALJ issued a recommended decision approving the Settlement.

On September 12, 2013, the Commission entered an Order adopting the recommended decision and approving the Settlement.

5. <u>Miscellaneous</u>

Joint Petition of UGI Utilities, Inc. - Gas Division, UGI Penn Natural Gas Inc., and UGI Central Penn Gas Inc. For Approval to Implement Growth Extension Tariff Pilot Program to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies' Service Territories
Docket No. P-2013-2356232

On April 4, 2013, UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively, "UGI" or the "Companies") filed a Joint Petition for Approval to Implement Growth Extension Tariff Pilot Programs to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies' Service Territories ("Joint Petition") with the Commission.

The Companies' Joint Petition proposed an innovative pilot project for the recovery of system expansion costs to serve new customers that wished to convert to natural gas service. Specifically, the Companies have determined that existing regulatory procedures are preventing some expansions of the gas distribution systems that would provide benefits to both utility shareholders and ratepayers. To begin to address this issue, the Companies propose to adopt a Growth Expansion Tariff ("GET") rider which will apply to new residential and small general service customers who take service from specific system expansions.

Under current regulatory policy, system expansions whose costs exceed the net margins that the Companies would reasonably be expected to earn from the new customers must be paid for by the new customers in the form of contributions-in-aid-of-construction ("CIACs"). The Companies have concluded that certain system expansions that would otherwise provide economic benefits to customers are not being undertaken, generally because (a) the upfront CIAC required of individual customers is too high for some customers, particularly when combined with the cost of furnace modifications, and (b) the existing mechanism does not reasonably allow for customers served by a particular expansion to convert to gas over an extended period of time. The Company therefore proposes to establish a tariff rider designed to recover costs for certain system expansion projects that would otherwise need to be recovered in CIACs.

The OSBA filed a notice of intervention on June 11, 2013.

The OSBA filed direct and surrebuttal testimony in this proceeding. The OSBA also actively participated in the settlement negotiations. Ultimately, the parties were able to reach a settlement of all issues raised by the Joint Petition.

Three issues were critical to the OSBA in the Joint Petition. First, in direct testimony, the OSBA reviewed the cost of capital assumptions used by UGI which are the basis of the calculations for the Companies' GET customer charges. The OSBA argued that Mr the assumptions used by the Companies in this proceeding are not in keeping with current financial reality. Consequently, the OSBA proposed a series of changes to the Joint Petition. Specifically, the OSBA advocated a different pre-tax weighted average cost of capital ("WACC"). The parties reached a settlement by setting the pre-tax WACC at 11.92 percent. The 11.92 percent does not represent any particular calculation of that value, but is a significant drop from the 12.86 originally proposed by the Companies. Furthermore, the 11.92 percent is only 37 basis points higher than the 11.55 percent proposed by the OSBA. Consequently, the pre-tax WACC set forth in the settlement to this proceeding is reasonably consistent with the testimony of the OSBA.

Second, the OSBA argued that the Joint Petition incorrectly calculated the GET surcharge. Specifically, to calculate the cost that must be recovered from GET charges, the Companies first calculate the investment that is supported by current rates. However, the Companies' calculation appeared to be incorrectly understated, resulting in an overestimate of the revenues required from the GET Gas tariff charge. In particular, the Companies' calculation of supported investment does did not reflect the investment justified by the interest component of the return. The OSBA proposed to remedy this problem by adjusting the calculation of Supported Investment by including interest expense in the calculation. UGI agreed to the OSBA proposal, and the OSBA proposal was included in the settlement.

Third, the Joint Petition proposed a rate design for both residential and non-residential customers. UGI correctly stated that the cost of expanding the system to serve smaller non-residential customers is similar to the cost of serving residential customers. However, the rate design proposed by the Joint Petition would produce very different customer bills for similarly sized residential and general service customers. Instead of the Companies' proposed unequal charges to its residential and small business customers, the OSBA proposed a rate design that would treat both customer classes fairly. The settlement adopted the rate design proposals advocated by the OSBA, thus resulting in a rate design that does not discriminate against small businesses in UGI's service territory.

On January 23, 2014, the ALJ issued a recommended decision approving the settlement.

On February 20, 2014, the Commission entered an Order adopting the recommended decision and approving the settlement.

6. On-Bill Financing

On October 17, 2012, the Commission announced the first of several stakeholders' 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 has prepared recommendations and comments for the Commission staff as the Commission 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.

As of this writing, the Commission's staff is working on the pilot program, but has not finalized a program to present to the Working Group.

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, 1012, Columbia Gas Company of Pennsylvania, Inc. ("Columbia Gas") filed Supplement No. 190 to Tariff Gas – Pa. P.U.C. No 9, requesting

$77.3 million in additional annual distribution revenues, producing 11.25% return on common equity. The OSBA filed a Complaint against the Columbia Gas filing, and was an active participant in the case.

The OSBA filed the direct, rebuttal, and surrebuttal testimony of its witness Robert D. Knecht.

The OSBA actively participated in the negotiations that led eventually to a joint settlement of this proceeding, and was a signatory to the Joint Petition for Settlement which was filed with the Commission on July 1, 2013. On July 12, 2013, ALJ Cheskis issued a Recommended Decision approving the Joint Settlement.

The OSBA cited the resolution of the following issues as material to its statement in support of the settlement. 1) reduction of revenue requirement from $77.3 million to $55.25 million, which also decreased the return on equity; 2) the black box nature of the settlement on revenue allocation put the OSBA's proposal for allocation within the range of proposals considered for settlement; 3) Columbia Gas accepted several proposals of the OSBA with respect to cost allocation; 4) the settlement adopted a class-differentiated merchant function charge, as proposed by the OSBA and others; 5) the gas procurement charge was increased to a realistic level, after the OSBA noted that it was understated in the initial proposal; 6) storage gas working capital costs were reasonably allocated among customers, even though the OSBA would prefer that none of these costs be recovered from distribution rates; 7) the settlement properly assigns no increase to the customer charge for smaller customers in the SGS/SCD/SGDS rate classes; and 8) Columbia Gas has agreed to consider an alternative approach proposed by the OSBA to simply charges and credits even more than was achieved in this proceeding.

The Joint Settlement was approved by the Commission by Order entered August 15, 2013.

Peoples TWP, LLC
Docket No. R-2013-2355886

On April 30, 2013, Peoples TWP, LLC ("Peoples TWP" or "Company") submitted Original Tariff Gas – Pa. P.U.C. No. 8 ("Tariff No.8"), along with supporting information required by 52 Pa. Code §§ 53.51, *et seq*. The proposed Tariff, as originally filed, would have increased the distribution revenues of Peoples TWP by $18.7 million per year based on a future test year ending December 31, 2013.

On May 21, 2013, the OSBA filed a Formal Complaint and Public Statement in this proceeding.

The OSBA served multiple rounds of discovery, submitted direct, rebuttal, and surrebuttal testimony, and also participated in the negotiations which have led to the Joint Petition for Settlement ("Settlement"). The OSBA is a signatory to the Settlement.

The OSBA took no active position regarding revenue requirement in this proceeding. However, based on the OSBA's review of the positions of the parties regarding revenue requirement, the OSBA supports the proposed increase of $13.8 million as a reasonable compromise among the various positions.

As a result of discovery propounded by OSBA in this proceeding, and in response to certain technical recommendations made by the OSBA expert witness, the Company twice modified its cost allocation study to improve its accuracy.

Regarding revenue allocation issues, the primary issue in this proceeding was whether the Company's proposal to assign minimal increases to its "competitive" LGS customers was justified by the evidence that it filed. With respect to the issue of bypass and alternative fuel customers, both the OCA and OSBA experts initially concluded in direct testimony that the Company's filing did not present sufficient information to justify setting rates to these customers well below allocated cost, regardless of which cost allocation methodology was adopted.

Nevertheless, during the course of the proceeding, the Company generally produced sufficient information for the OSBA to reasonably conclude that some discounts to large industrial customers were justified based on the information provided, for the purposes of this proceeding only. Thus, the Settlement generally reflects the Company's position with respect to revenue allocation to the LGS class. However, the Company has recognized that it must improve its efforts to justify setting rates below allocated costs, and it has agreed to substantially improve its analysis and record-keeping regarding any competitive discounts.

The remaining interclass revenue allocation issues were settlement in a manner consistent with the OSBA's surrebuttal testimony.

Regarding rate design, the OSBA also took issue with the proposed allocation of the annual $2 million acquisition revenue credit ("ARC"). The Company proposed to allocate the $2 million credit in proportion to the revenue increase approved in this proceeding, whereas the OSBA proposed to follow the specific language of the settlement in the acquisition proceeding which specified that the credit be allocated on revenue. The Settlement adopts a compromise position between these two views, such that the ARC is allocated half based on the increase and half based on revenues.

The OSBA also took issue with the Company's calculation of the gas procurement charge ("GPC"), primarily because the Company failed to include a provision for storage gas working capital in contravention of established Commission policy. The Company proposed a GPC of 11.47 cents per Mcf. In surrebuttal, the OSBA advocated a GPC of 15.25 cents per Mcf. The Settlement adopts a GPC of 14.0 cents per Mcf, which the OSBA deems to be a reasonable settlement position.

The OSBA also addressed the Company's proposed monthly customer charges for the SGS and MGS classes.

The Commission approved the Joint Petition for Settlement on December 19, 2013.

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 2013, 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-2013-2350914; Equitable Gas Company, at Docket No. R-2012- 2287044; Columbia Gas of Pennsylvania, at Docket No. R-2013-2351073; PECO Gas, at Docket No. R-2013-2363227; 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 2013 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 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. R-2013-2360798

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.

The issues in this proceeding were primarily those referred to the ALJ are in the Commission's March 14 Order, namely 1) DSIC-recovery of costs related to customer owned service lines; 2) impact of accumulated deferred income taxes associated with DSIC investments; 3) calculation of state income tax component of the DSIC revenue requirement; and 4) return on equity, to the extent not resolved by the Commission's Order.

These are basically revenue requirement issues, where the OSBA's interests run together with those of OCA. Issues specific to small business customers, namely how the DSIC is applied across rate classes, are already resolved in the Commission's DSIC model tariff.

The parties filed briefs and reply briefs in October and November, 2013. As of this writing, no recommended decision has been filed by the ALJ, and no decision has been made by the Commission.

Equitable Gas Company, LLC
Distribution System Improvement Charge
Docket No. P-2013-2342745

On January 11, 2013, Equitable filed a Petition for Approval of its Long Term Infrastructure Improvement Plan ("LTIIP Petition") with the Commission. On January 29, 2013, the Company filed its Petition for Approval of a Distribution System Improvement Charge ("DSIC Petition").

The Commission entered an Order dated July 16, 2013, *inter alia*, approving the LTIIP Petition consistent with the Order, approving the DSIC Petition consistent with the Order, and referring three DSIC-related issues to be litigated.

The OSBA requested that an additional issue be addressed in this proceeding. Specifically, the OSBA was concerned with whether Equitable's DSIC should apply to all customers that currently pay less than 100% of the Company's full tariff rate for delivery service. At the prehearing conference, given the limited nature of the additional issue to be addressed and in the interests of judicial economy, the OSBA's request was granted.

After testimony was served, the OSBA actively participated in the negotiations that led to the settlement of the issue raised by the OSBA with respect to the application of the DSIC to competitive customers. The settlement precludes Equitable from automatically waiving the DSIC for all competitive customers. Rather, it requires Equitable to make every effort to collect the DSIC from competitive customers, thereby preventing an unnecessary shift of DSIC revenue responsibility from competitive service to non-competitive service customers. However, Equitable retains the flexibility to reduce or eliminate the DSIC surcharge for competitive customers when reasonably necessary to induce them to remain Equitable customers and not take advantage of other economically viable competitive options. As a result, the OSBA concluded that the settlement is in the best interests of Equitable's Small C&I customers.

The parties submitted a joint stipulation on January 22, 2014, with respect to the issue of concern to the OSBA.

At the time of this writing, the remaining litigated issues are pending before the Commission.

Peoples Natural Gas Company LLC
Distribution System Improvement Charge
Docket No. P-2013-2344596

On January 23, 2013, Peoples Natural Gas Company, LLC ("Peoples" or "the Company") filed a Petition for Approval of its Long Term Infrastructure Improvement Plan ("LTIIP Petition") with the Commission. Peoples filed its Petition for Approval of a Distribution System Improvement Charge ("DSIC Petition") on January 31, 2013.

The Commission entered an Order dated May 23, 2013, *inter alia*, approving the LTIIP Petition, approving the DSIC Petition subject to modifications consistent with the Order, and referring three DSIC-related issues for litigation.

The OSBA requested that limited additional issues be addressed in this proceeding. Specifically, the OSBA was concerned with: (1) whether the eligible property included in Peoples' proposed DSIC is consistent with that permitted by Act 11 of 2012; (2) whether the DSIC should apply to all customers that currently pay less than 100% of Peoples' full tariff rate for delivery service; and (3) whether the Company's proposal to include certain unaccounted for gas ("UFG") related expenditures in its DSIC calculation is appropriate. The OSBA's request was granted.

After the parties served their respective testimony, the OSBA actively participated in the negotiations that led to a settlement of the majority of the issues in the proceeding, including those issues of concern to the OSBA. Thus the OSBA concluded that the settlement is in the best interests of Peoples' Small C&I customers.

Consistent with the OSBA's position, the settlement provides for exclusion from the DSIC rate calculation of Peoples' commitment to increase its annual expenditures on its gathering facilities (UFG-related) by $3.8 million, which was contained in the settlement of Peoples' 2012 base rate case. Furthermore, the settlement precludes Peoples from automatically waiving the DSIC for all competitive customers. Rather, it requires Peoples to make every effort to collect the DSIC from competitive customers, thereby preventing an unnecessary shift of DSIC revenue responsibility from competitive service to non-competitive service customers. However, Peoples retains the flexibility to reduce or eliminate the DSIC surcharge for competitive customers when reasonably necessary to induce them to remain Peoples customers and not take advantage of other economically viable competitive options.

The parties submitted a partial stipulation of certain issues on December 12, 2013, which addressed all of the OSBA's concerns.

At the time of this writing, the remaining litigated issues are pending before the Commission.

Philadelphia Gas Works
Distribution System Improvement Charge
Docket No. P-2012-2337737

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012, (Act 11), which amended Chapters 3, 13 and 33 of Title 66 of the Public Utility Code. Act 11, *inter alia*, provides utilities with the ability to implement a Distribution System Improvement Charge ("DSIC") to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property that is part of the utility's distribution system. The DSIC eligible property for the utilities is defined in 66 Pa. C.S. §1351. Act 11 states that as a precondition to the implementation of a DSIC, a utility must file a LTIIP with the Public Utility Commission ("Commission") that is consistent with 66 Pa. C.S. §1352.

On April 5, 2012, the Commission held a working group meeting for discussion and feedback from stakeholders regarding its implementation of Act 11. On May 10, 2012, the Commission issued a Tentative Implementation Order addressing and incorporating input from the stakeholder meeting. On August 2, 2012, the Commission issued the Final Implementation Order ("Implementation Order"), at Docket Number M-2012-2293611, establishing procedures and guidelines necessary to implement Act 11.

In its Implementation Order, the Commission specifically provided for a city natural gas distribution operation (*i.e.*, PGW), whose rates are established using the cash flow method of ratemaking, we proposed that the utility could claim amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage and issuance costs. *See* 66 Pa. C.S. § 1357(c). These provisions would reflect the fact that PGW's rates are established using the cash flow method of ratemaking. 66 Pa. C.S. § 2212(e).

On December 3, 1012, Philadelphia Gas Works ("PGW") filed its Long Term Infrastructure Improvement Plan. On January 18, 2013, Philadelphia Gas Works ("PGW"), filed a Petition for approval of a distribution system improvement charge.

On February 7, 2013 the Small Business Advocate intervened in PGW's DSIC proceeding in order to protect the interests of PGW's small business customers. A thorough inquiry by the Commission into all of the elements of PGW's petition is necessary to ensure that PGW's proposals for making and paying for distribution system improvements are in accord with the Public Utility Code and with the Commission's regulations and policies.

The OSBA participated in the investigation, issued interrogatories and reviewed the Company's filings.

On April 4, 2013, the Commission issued an Order denying approval of the Company's Tariff citing the objections of the OSBA and other active parties to the proceeding. The Commission directed PGW to file a revised tariff addressing the inconsistencies noted in the Commission's April 4, 2013 Order.

On April 15, 2013 PGW filed its revised tariff. On May 9, 2013 the Commission issued an Order directing PGW to file a further revised DSIC tariff ("Compliance Tariff"). The OSBA reviewed the Compliance Tariff and did not have any objections to Compliance Tariff

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

Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company LLC for All of The Authority and the Necessary Certificates of Public Convenience (1) to Transfer All of the Issued and Outstanding Limited Liability Company Membership Interest of Equitable Gas Company LLC to PNG Companies, LLC, (2) to Merge Equitable Gas Company LLC with Peoples Natural Gas Company LLC, (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company LLC to Affiliates of EQT Corporation, (4) to Transfer Certain Assets between Equitable Gas Company LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff of Peoples Natural Gas Company LLC

Docket Nos. A-2013-2353647, A-2013-2353649, and A-2013-2353651

The Application was filed by Peoples Natural Gas Company, LLC ("Peoples"), Peoples TWP, LLC ("Peoples TWP"), and Equitable Gas Company, LLC ("Equitable") (hereinafter collectively "Applicants"), with respect to (1) the proposed transfer of membership interests and acquisition of rights ("Proposed Acquisition") of Equitable, an indirect subsidiary of EQT Corporation ("EQT") to PGN Companies LLC ("PNG"), an indirect subsidiary of SteelRiver Infrastructure Fund North America LP ("SRIGNA"); (2) the merger of Equitable with Peoples, and the operation of Equitable as an operating division of PNG; (3) the transfer of certain storage and transmission assets of Peoples to EQT; (4) the transfer of certain assets and/or the exchange of services between EQT and Equitable; (5) certain PNG ownership changes associated with the transaction; (6) certain associated gas capacity, storage, interconnects, leases, and supply services agreements among Peoples, Peoples TWP, Equitable, and/or EQT; (7) certain changes in Peoples' tariff necessary to carry out the proposed transactions. By their Application, the Applicants requested the Commission's approval of the Proposed Acquisition, under Chapters 11, 13, 21 and 22 of the Public Utility Code, 66 Pa. C.S. Ch. 11, 13, 21 and 22.

The OSBA filed a Notice of Intervention and Protest on April 10, 2013.

The Application raised several issues of concern that the OSBA determined would require the Commission to either reject the Proposed Acquisition or to approve it only after imposing conditions. These issues include:

> Whether the Proposed Acquisition, if approved, would impede the development of the natural gas retail markets, thereby negatively impacting the price ratepayers must pay for energy; and
>
> Whether the Proposed Acquisition, if approved, would lack an affirmative public benefit, especially given that the Joint Applicants fail to provide for an appropriate sharing of merger savings with ratepayers.

The OSBA issued discovery and actively participated in the proceeding filing the direct, rebuttal, and surrebuttal testimony of its expert witness. Prior to the evidentiary hearing, the active parties reached a settlement in principle, with the exception of PennFuture. At the evidentiary hearing on September 11, 2013, the ALJ was apprised of the settlement in principle, the issues raised by PennFuture were litigated, and the parties' testimony was admitted to the record.

Subsequent to the evidentiary hearing, the Joint Applicants and PennFuture were able to resolve the outstanding issues raised by PennFuture.

The OSBA actively participated in the settlement negotiations that led to the proposed settlement, and is a signatory to the Joint Petition For Approval Of Settlement of All Issues ("Joint Petition").

The Joint Petition sets forth a comprehensive list of issues that were resolved through the negotiation process. The following issues were of significance to the OSBA when it concluded that the Joint Petition was in the best interests of the Joint Applicants' Small C&I customers.

Extension and/or Maintenance of Competitive Service Contracts

The Joint Applicants proposed to maintain or extend certain existing discounted delivery rate contracts for a minimum of five years from the closing of the Proposed Transaction. The applicable discounts are those received by Equitable customers whose sole competitive option includes Peoples/People TWP and Peoples/Peoples TWP customers whose sole competitive option is Equitable. The Joint Applicants proposed to maintain/extend such contracts for five years from the date of closing of the Proposed Transaction, or through the end of the contract by its own terms, whichever is later.

In Direct Testimony, OSBA's expert witness noted that the Joint Applicants serve 216 such customers at discounted rates that provide for an aggregate delivery discount of $15.615 million per year. This revenue shortfall is recovered from the Joint Applicants' remaining customers that pay full tariff rates for delivery service.

OSBA recommended that the Commission should impose a condition that requires Peoples and Peoples TWP to impute revenues contributed by competitive service customers that have a rate discount solely as a result of competition between Peoples/Peoples TWP and Equitable using the applicable full retail rate for delivery service in any base rate proceeding filed during the duration of the applicable contract extensions.

OSBA also explained that currently there is a pending statewide generic investigation initiated by the Commission regarding gas-on-gas competition between natural gas distribution companies ("NGDCs") at Docket Nos. P-2011-2277868 and I-2012-2320323 ("Gas-on-Gas Investigation"). This investigation will address whether or not NGDCs should be permitted to offer rate discounts in response to gas-on-gas competition as a result of overlapping service territories going forward.

The Joint Applicants opposed the OSBA's proposed condition that the Commission require Peoples and Peoples TWP to impute revenues contributed by competitive service customers in any base rate proceeding filed during the duration of the applicable contract extensions.

The Joint Petition resolves the extension of discounted delivery rate contracts as follows:

> If the Commission determines in the Investigation at Docket No. I-2012-2320323, that all natural gas distribution companies that offer discounted distribution rates must absorb all or a portion of gas on gas discounts by the effective date of Peoples' or Peoples TWP's next general rate proceeding, Peoples and Peoples TWP agree to impute revenues for those competitive service customers whose rate discounts are solely the result of competition between the Joint Applicants (Peoples, Peoples TWP and Equitable), to the extent required, and at the levels proscribed, by the Commission's action at Docket No. I-2012-2320323, in the test period used to establish rates. Nothing in this paragraph shall be construed to prohibit Peoples or Peoples TWP from contending in such proceeding that the tariff rates for classes of customers receiving such discounts be set at the cost to serve tariff rate.

The OSBA determined that the Joint Petition is reasonable and in the best interest of the Joint Applicants' Small C&I customers with respect to the extension of competitive service contracts. The Joint Petition permits the Joint Applicants to extend the applicable contracts as proposed. However, if the Gas-on-Gas Investigation results in a finding that discounted rates must be absorbed by NGDCs, Peoples/Peoples TWP will be required to impute revenues for those competitive service customers whose rate discounts are the result of competition between the Joint Applicants in the test period used to establish rates. Effectively, the Joint Petition does not permit the results of the Gas-on-Gas Investigation to be trumped by the terms of the settlement in this proceeding.

Long-Term Commercial Agreements

As part of the Proposed Transaction, the Joint Applicants propose to enter into certain long-term commercial agreements with EQT and/or its subsidiaries. These agreements include the following 20-year transportation and/or storage agreements with EQT: (1) the Sunrise Transportation Agreement; (2) the Sunrise Transportation and Storage Agreement; and (3) the Peoples Asset Transportation and Storage Agreement (collectively the "Commercial Agreements").

The Joint Applicants believe that the 20-year terms of the Commercial Agreements are necessary to ensure that capacity is available to satisfy their long-term growth forecast. However, OSBA's expert witness explained that changes in either the Joint Applicants' long-term growth forecast and/or changes in the natural gas market over the next twenty years could render one or more of these long-term agreements uneconomic. Therefore, ratepayers would assume the risk of the Commercial Agreements if they are approved as proposed.

In order to ensure that ratepayers do not bear such risk, OSBA recommended that the Commission should impose a condition that requires Peoples and Peoples TWP to bear the burden of proof going forward that the Commercial Agreements are consistent with a least cost gas procurement policy.

The Joint Petition resolves the issue as follows:

> The Peoples Division PGC rates to sales and transportation customers will be adjusted on one day's notice following the Closing to reflect the charges for services to be provided by Equitrans, L.P. ("Equitrans") on the Allegheny Valley Connector ("AVC") and adjustments to retainage rates approved in Peoples 1307(f)-2013 proceeding to remove retainage to be charged on the transferred assets as set forth in "Appendix B". The Peoples Division rates shall be adjusted to reflect costs under the new agreements for

> capacity and supply on an actual basis in quarterly PGC filings and in the next Peoples' Division annual PGC filing pursuant to Section 1307(f) of the Public Utility Code. The Peoples rates shall continue to be subject to reconciliation to actual costs pursuant to Section 1307(f) of the Public Utility Code. Peoples agrees to demonstrate that it is managing these agreements to comply with its least cost procurement obligation in its annual Section 1307(f) filings. Peoples will have the right to conduct an annual audit of the computation of any charges under the AVC agreement with the cooperation of EQT and provide that report to I&E, OCA and OSBA.

The OSBA determined that the Joint Petition is reasonable and in the best interest of the Joint Applicants' Small C&I customers with respect to the Commercial Agreements. As stated above, Peoples agrees to "*demonstrate that it is managing* [the Commercial Agreements] *to comply with its least cost procurement obligation in its annual Section 1307(f) filings."* This agreement by Peoples reasonably resolves the OSBA's concern about the economic risks of these long-term agreements.

Retainage

PIOGA was a party to the proceeding and its witness argued in his direct testimony that marketers or producers should not be required to pay for any unaccounted for gas ("UFG") associated with gas deliveries to the Joint Applicants' Goodwin System, where, historically, UFG levels have been shown to be excessive. Alternatively, PIOGA recommended that if retainage is to continue to be recovered from marketers or producers operating on the Goodwin system, such retainage should be limited to some reasonable level.

OSBA responded that to the extent the Commission adopts PIOGA's position to limit and/or eliminate the retainage rate that applies to marketers or producers, the Commission should not permit Peoples or Peoples TWP to collect from ratepayers otherwise unrecovered UFG costs (*i.e.*, costs previously recovered from producers).

The Joint Petition is reasonable and in the best interest of the Joint Applicants' Small C&I customers because it does not adopt PIOGA's position to relieve marketers' and producers' of certain retainage obligations.

Demand-Side Management Program

The OSBA opposed the proposal made by PennFuture to implement a five-year Demand-Side Management ("DSM") program with a total budget of $205 million to be recovered from ratepayers. Because the settlement between the Joint Applicants and

PennFuture does not implement this proposal and reserves the rights of all parties with respect to any future DSM proposals, the OSBA does not oppose it.

Public Benefit

The Joint Applicants claimed a number of affirmative public benefits described in detail at pp. 41-55 of the Application and the OSBA will not repeat them here. Through extensive discovery and settlement negotiations, the OSBA determined that the Proposed Transaction, as modified by the Joint Petition, satisfies the required substantial affirmative public benefit standard.

On November 14, 2013, the Commission approved the settlement.

6. Miscellaneous

Petition for Generic Investigation or Rulemaking Regarding "Gas-On-Gas" Competition Between Jurisdictional Natural Gas Distribution Companies
Docket No. P-2011-2277868

Generic Investigation Regarding Gas-on-Gas Competition Between Jurisdictional Natural Gas Distribution Companies
Docket No. I-2012-2320323

On December 8, 2011, the OSBA, together with the Commission's Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), Peoples TWP LLC ("TWP"), and Peoples Natural Gas Company ("Peoples") (together, the "Joint Petitioners") filed with the Commission a joint petition requesting that the Commission institute an investigation or rulemaking to address distribution base rate discounting among natural gas distribution companies ("NGDCs") with overlapping service territories, often referred to as "gas-on-gas competition."

The Joint Petition arose out of the settlement of Peoples' base rate proceeding at Docket No. R-2010-2201702 ("Peoples Settlement"). In the Peoples Settlement, Peoples, I&E, the OCA, and the OSBA agreed that issues related to gas-on-gas competition should be resolved by requesting a generic proceeding rather than in Peoples' base rate case.

At the time of the Peoples Settlement, other NGDCs had also agreed that gas-on-gas competition issues should be uniformly resolved on a state-wide basis; specifically, Equitable Gas Company LLC ("Equitable") in the settlement of its 2008 base rate proceeding at Docket No. R-2008-2029325, Columbia Gas of Pennsylvania, Inc. ("Columbia") in the settlement of its base rate proceeding at Docket No. 2010-2215623, and in the settlement of the acquisition of T.W. Phillips Gas and Oil Co. ("PTWP") at Docket No. A-2010-2210326.

At the Initial Prehearing Conference on August 31, 2012, the parties disagreed about the appropriate scope of the proceeding. The participating NGDCs argued that the Secretarial Letter had greatly limited the scope from that requested in the Joint Petition. They argued that this proceeding should not deal with the question of whether gas-on-gas competition should be permitted to continue, but rather only how flexed revenues should be treated for ratemaking purposes. The OSBA and the OCA, in contrast, argued that the Secretarial Letter did not intend to limit the scope of the proceeding from that requested in the Joint Petition.

After the parties submitted comments with regard to the proper scope of the investigation, an order was issued on December 11, 2012, agreeing with the OSBA that the Commission's intention was initiate a fully litigated proceeding, specifically to determine the full impact of flexing distribution rates, to address if this competition should be allowed to continue, and if so, how that should be fairly applied.

The OSBA and its experts have opposed "gas-on-gas competition" for over 20 years because it is not really competition at all, but rather an inequitable form of price discrimination where price differences are set based solely on whether a customer is legally entitled to be served by a different NGDC and not the cost to serve that customer. It results in captive ratepayers subsidizing discounted rates offered to ratepayer that happen to be fortunate enough to live in overlapping service territories.

The OSBA believes that this price discrimination should be eliminated as quickly as is practicable. However, the OSBA recognizes that this policy has been in place for many years, that many customers have entered into contracts for discounted rates, and that both NGDCs and "competitive" customers likely entered into flex rate agreements in good faith. The OSBA therefore supports a reasonable transition away from gas-on-gas price discrimination, *i.e.*, phasing out existing discount agreements followed by competition by NGDCs on full tariff rates.

The OSBA conducted discovery and submitted testimony, a Main Brief, and a Reply Brief.

At the time of this writing, this matter is pending before the ALJ.

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*.

2. <u>Rates</u>

CenturyLink
Rate Filing
Docket No. R-2013-2367099

On May 31, 2013, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink" or the "Company") filed the document titled "Tariff Filing Changes Under Supplement No. 147 to Tariff-Telephone Pa. P.U.C. No. 27" ("Supplement No. 147") with the Commission. CenturyLink claimed that that proposed adjustments in Supplement No. 147 would increase the Company's revenue by "slightly more than $1 million."

The OSBA filed a Complaint against Supplement No. 147 on June 19, 2013. The OSBA argued that there is no basis in law or in CenturyLink's Amended Network Modernization Plan for the filing of this proposed rate increase.

In this proceeding, the Parties disagreed as to the ability of CenturyLink, under its Amended Chapter 30 Plan, to implement an increase in rates based on its accumulated bank of increases outside the context of CenturyLink's Annual Price Stability Index/Service Price Index ("PSI/SPI") filing. That PSI/SPI filing occurs annually on or about September 1 each year and is set forth in detail in CenturyLink's Amended Chapter 30 Plan.

Specifically, Part 3 of CenturyLink's Amended Chapter 30 Plan, entitled "Price Stability Plan for Noncompetitive Services," governs how the Company can obtain annual revenue increases. The OSBA examined all of the specific language of CenturyLink's Amended Chapter 30 Plan. The OSBA definitely concluded that the filing of the Supplement No. 147rate filing did not conform to the timing requirements of the Company's own Amended Chapter 30 Plan.

The OSBA agreed to settle the case with CenturyLink under the following conditions. First, that CenturyLink acknowledge that the OSBA argued that the Company has no authority to make the Supplement No. 147 rate filing outside of the annual PSI/SPI filing. Second, that this settlement is not to be used as precedent for any other telephone company in the Commonwealth to make sure an out-of-time rate filing. Finally, that CenturyLink essentially view the Supplement No. 147 rate filing as an "early" PSI/SPI filing, and that the normal PSI/SPI will contain no rate increases whatsoever.

On July 29, 2013, the Commission entered an Order approving the settlement. However, the Commission was careful to note its agreement with the OSBA's arguments in this case. The Commission was not convinced by any of CenturyLink's arguments that the Company had any legal authority to file Supplement No. 147. Furthermore, the Commission echoed the OSBA's concern that this settlement was in no way to become precedent for this type of filing by any other telephone company in the Commonwealth.

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

Pennsylvania American Water Company
Base Rate Increase
Docket No. R-2013-2355276

On April 30, 2013, Pennsylvania-American Water Company ("PAWC" or the "Company") filed a tariff to increase the Company's rates by $58,618,335 (10.1%) per year.

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

The issue of primary significance to the OSBA was the issue of wastewater allocation. The OSBA objected to the Company's proposal to recover $9.092 million of its claimed wastewater revenue requirement from water service customers.

The Company determined its proposed level of wastewater revenues by equalizing wastewater usage charges with its proposed Zone 1 water consumption rates, by customer class. The Company argued that the concept of single tariff pricing supports the consolidation of water and wastewater rates. The OSBA disagreed, explaining that the fundamental premise of single tariff pricing is that customers receiving *like service* should pay the same rates for that service and water service and wastewater service are not like services. Therefore, there is no single tariff pricing basis for consolidating the rates for such services.

Although the OSBA did not oppose some shift of PAWC's claimed wastewater revenue requirement to water customers, it did not believe it is necessary to *decrease* rates for its wastewater customers in order to mitigate potential rate impacts on those customers. The OSBA recommended a shift of $6.482 million by eliminating the proposed wastewater decreases to its Pocono, Northeast, Claysville, Coatesville and Clean Treatment divisions, which totaled $2.610 million in aggregate. Current wastewater rates in those divisions would instead remain unchanged.

In rebuttal testimony, the Company revised its wastewater revenue requirement claim, decreasing it by $2.282 million. The Company also reduced its shift of wastewater revenue requirement to water customers by the same amount resulting in a proposed shift of $6.86 million in revenue responsibility to water customers.

Because of the $2.282 reduction in the Company's claimed wastewater revenue requirement, the OSBA reduced its recommended shift in revenue responsibility dollar for dollar, from $6.482 million to $4.213 million.

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

The settlement shifts $5.4 million of wastewater revenue requirement to water service customers. Of that amount, $0.740 million will be shifted to the Company's Commercial and Industrial ("C&I") classes, which is only slightly greater than the OSBA's recommended C&I revenue shift of $0.683 million. As such, the OSBA determined that this is a reasonable outcome that eliminates the risks of litigation on this issue.

The parties submitted a joint petition for settlement on October 18, 2013.

The ALJ issued a Recommended Decision on November 8, 2013, recommending approval of the settlement in its entirety without modification.

By Order entered December 19, 2013, the Commission approved the settlement without modification.

Columbia Water Company
Base Rate Increase
Docket No. R-2013-2360798

On April 25, 2013, Columbia Water Company ("Columbia") filed Supplement No 60 to Tariff Water – PA P.U.C. No 7, requesting an increase in annual base rate revenues of $773,210. The OSBA intervened in the proceeding on behalf of Columbia's small business customers.

In base rate cases, the OSBA typically looks at revenue allocation to make sure that customers taking service under a small business rate are not being unfairly treated with respect to the allocation of additional revenues which the company has requested. It appeared to OSBA that there were no serious issues regarding revenue allocation in this proceeding, and consequently, the OSBA did not file testimony in this case.

Overall, the parties participated in evidentiary hearings, including one public input hearing, and briefed the issues each party had identified. The OSBA did not file briefs, having no issues to argue.

A Recommended Decision was issued by ALJ Dennis J. Buckley on November 21, 2013. Exceptions and Reply Exceptions were filed by the parties. The OSBA filed no Exceptions.

As of this writing, the Commission has not entered an Order in this proceeding.

United Water Pennsylvania, Inc.
Distribution System Improvement Charge ("DSIC")
Docket No. P-2013-239178

On October 23, 2013, United Water Pennsylvania, Inc. ("United") filed a Petition to raise its distribution system improvement charge to 7.5% of billed revenues. The OSBA intervened in this proceeding.

There being no contended issues, the parties agreed to have the Commission assign this proceeding to its Technical Utility Services ("TUS") division for disposition rather than litigate the proceeding under the Office of Administrative Law Judge.

At the time of this writing, the OSBA has not received word from TUS regarding the disposition of this proceeding. It is anticipated that TUS will approve the request for a DSIC increase to 7.5% of billed revenues.

York Water Company
Base Rate Increase
Docket No. R-2012-2336379

On May 29, 2013, The York Water Company submitted a filing with the Commission that proposed a general rate increase of $7,116,392 per year.

On July 25, 2013, the OSBA filed a Complaint against the proposed general rate increase.

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

A partial settlement was reached in this case. In response to settlement discussion with the OSBA and other parties, the settlement proposed to increase the company's revenue by $5.0 million. This was $2,116,392 less than the increase originally requested by the company. The reduced revenue requirement was consistent with the OSBA's criticism of the excessive rates of return frequently requested by water companies in the Commonwealth.

The partial settlement also represents a victory between the cost of service study presented by the company (and supported by the OSBA) and that presented by the Office of Consumer Advocate. The OCA argued for a cost of service study that would have significantly raised rates for York Water's small business customers. The partial settlement did not adopt the cost of service study advocated by the OCA.

The OSBA generally supported the revenue allocation as proposed by York Water. However, the OSBA recommended in testimony that York Water should adjust the revenue increases to the Commercial and Industrial class customers so that each class moves to full cost of service, as measured by the Company's cost of service. The settlement adopted the OSBA's recommendation. The partial settlement set the combined Commercial and Industrial rate increase to $1.543 million. This amount is within $23,000 of the OSBA's recommended Commercial and Industrial rate increase of $1.520 million.

Although the OSBA was a signatory to the partial settlement, the OSBA was put in the unfortunate position of having to file a reply brief in this proceeding

In the Company main brief, York Water asserted the legal argument that the Commission has "a great deal of discretion in determining the allocation of costs in a base rate proceeding." The OSBA was forced to respond to this incorrect assertion.

Specifically, 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.

On December 6, 2013, the ALJs issued a recommended decision approving the partial settlement. The ALJs gave no credence to York Water's legal argument that the Commission has "a great deal of discretion in determining the allocation of costs in a base rate proceeding."

On January 9, 2014, the Commission entered an Order adopting the recommended recision and approving the partial settlement.

E. Legislation

Section 9 of the Small Business Advocate Act, 73 P.S. § 399.49, requires the OSBA to make reports to the Governor and the General Assembly regarding matters within the OSBA's jurisdiction. 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.

Furthermore, the OSBA was an active participant in legislative hearings both in Harrisburg and other locations across the Commonwealth. During 2013, the Small Business Advocate provided testimony before the House Consumer Affairs Committee, the House Democratic Policy Committee and the House Appropriations Committee.

In addition, written and oral testimony was given by John Evans to the Consumer Affairs Committee regarding proposed telecommunications legislation that would affect small businesses in a deregulated marketplace.

Mr. Evans also provided oral testimony to the Policy Committee in reference to a proposed Senate bill that would have affected small businesses and their ability to select default electricity services.

The Appropriations testimony centered on the OSBA's annual budget request, which does not involve the expenditure of any Commonwealth funds. The OSBA's annual appearance at this hearing provides lawmakers with an opportunity to ask questions concerning the OSBA's general operations and policies.

F. List of Proceedings

1. 2013 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 2013 in the following such proceedings:

Investigation of Pennsylvania's Retail Natural Gas Supply Market
Docket No. I-2013-2381742
Comments – 12/12/2013
[*no reply comments permitted*]

2. 2013 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 2013:

Electric

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Smart Meter Deployment Plans **(M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994)**

Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge **(P-2012-2325034)**

Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan and Retail Market Enhancement Programs for the Period of June 1, 2014 through May 31, 2017 and Potential Associated Affiliated Interest Transactions **(P-2013-2357013 and G-2013-2357003)**

Petition of the United Way of Allegheny County and Southwest PA 211 for Approval of a Universal Service Partnership Pilot Program to Provide Information Concerning Utility Assistance Programs to Customers in Southwest Pennsylvania **(P-2013-2359539)**

Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation **(M-2013-2365092)**

Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan of June 1, 2014 through 5/31/2016 **(P-2013-2371666)**

Pennsylvania Public Utility Commission v. Duquesne Light Company **(R-2013-2372129)**

PPL Electric Utilities Corporation Act 129 Compliance Rider Supplement No. 139 to Tariff Electric – Pa PUC No. 201 **(M-2013-2389549)**

PPL Electric Utilities Corporation Act 129 Compliance Rider Supplement No. 140 to Tariff Electric – Pa PUC No. 201 **(M-2013-2389551)**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs **(P-2013-2391368, P-2013-2391372, P-2013-2391375, and P-2013-239178)**

Gas

Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge **(P-2012-2338282)**

Pennsylvania Public Utility Commission v. Peoples TWP, LLC **(R-2013-2341604)**

Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation **(R-2013-2341534)**

Petition of Philadelphia Gas Works for Approval of a Distribution System Improvement Charge **(P-2012-2337737)**

Petition of Equitable Gas Company, LLC for Approval of a Distribution System Improvement Charge **(P-2013-2342745)**

Pennsylvania Public Utility Commission v. Philadelphia Gas Works **(R-2013-2346376)**

Petition of Peoples TWP LLC for Approval of a Distribution System Improvement Charge **(P-2013-2344595)**

Petition of Peoples Natural Gas Company LLC for Approval of a Distribution System Improvement Charge **(P-2013-2344596)**

Pennsylvania Public Utility Commission v. Equitable Gas Company, LLC **(R-2013-2346441)**

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. **(R-2013-2351073)**

Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC **(R-2013-2350914)**

Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company LLC for All of The Authority and the Necessary Certificates of Public Convenience (1) to Transfer All of the Issued and Outstanding Limited Liability Company Membership Interest of Equitable Gas Company LLC to PNG Companies, LLC, (2) to Merge Equitable Gas Company LLC with Peoples Natural Gas Company LLC, (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company LLC to Affiliates of EQT Corporation, (4) to Transfer Certain Assets between Equitable Gas Company LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff of Peoples Natural Gas Company LLC **(A-2013-2353647, A-2013-2353649, and A-2013-2353651)**

Pennsylvania Public Utility Commission v. PECO Energy Company **(R-2013-2363227)**

Pennsylvania Public Utility Commission v. Peoples TWP, LLC **(R-2013-2355886)**

Pennsylvania Public Utility Commission v. UGI Utilities, Inc. **(R-2013-2361771)**

Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc. **(R-2013-2361763)**

Pennsylvania Public Utility Commission v. UGI Central Penn Gas, Inc. **(R-2013-2361764)**

Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. For Approval to Implement Growth Extension Tariff Pilot Programs to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies' Service Territories **(P-2013-2356232)**

Water

Pennsylvania Public Utility Commission v. Columbia Water Company **(R-2013-2360798)**

Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company **(R-2013-2355276)**

Pennsylvania Public Utility Commission v. The York Water Company **(R-2012-2336379)**

Petition of United Water Pennsylvania for Approval of a Tariff Supplement to Revise its Maximum Distribution System Improvement Charge to 7.5% of Biller Revenues **(P-2013-2389331)**

<u>Steam</u>

Joint Application of NRG Energy Center Harrisburg LLC and NRG Energy Center Pittsburgh LLC for Certificates of Public Convenience under Section 1102(a)(3) of the Pennsylvania Public Utility Code and Any Other Required Approvals Related to an Indirect Change of Control Resulting from an Internal Restructuring of NRG Energy, Inc. **(A-2013-2350006)**

Pennsylvania Public Utility Commission v. NRG Energy Center Harrisburg LLC **(R-2013-2350265)**

<u>Telephone</u>

Pennsylvania Public Utility Commission v. CenturyLink **(R-2013-2367099)**

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

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

V. THE OSBA'S WORKERS' COMPENSATION ACTIVITIES

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

A. PCRB Filing

After an independent analysis of the PCRB's filing for the year beginning April 1, 2013, the OSBA recommended an overall decrease of 12.0% in statewide industrial loss costs in lieu of the 5.35% 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, 2013, the OSBA recommended an overall decrease of 24.7% in statewide loss costs in lieu of the 12.6% 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 (1/21/13 to present)
Legal Assistant