

Annual Report

Fiscal Year 2022~2023



Commonwealth of Pennsylvania's Office of Small Business Advocate (OSBA)

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Fiscal Year 2022 – 2023

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ABOUT US

Created in 1988, the Pennsylvania Office of Small Business Advocate (OSBA) is an independent state agency that represents the interests of small business utility consumers with less than 250 employees in regulated utility matters before the Pennsylvania Public Utility Commission (PUC), state, federal regulatory agencies and courts.

Prior to 1988, small businesses were not represented before the PUC. Residential and low-income consumers were represented by the Pennsylvania Office of Consumer Advocate (OCA). Large commercial and industrial customers were represented by private law firms. Consequently, without legal representation, small business utility consumers would receive a disproportionate share of rate increases. As small businesses make up 99.6% of businesses in the Commonwealth, this disparity was exacting a heavy toll upon Pennsylvania's economy.

To correct this situation, the Legislature created an independent state agency that would protect the interests of small businesses in public utility matters. The OSBA was established by the Pennsylvania General Assembly by the Act of December 21, 1988, known as the Small Business Advocate Act, 73 P.S. 399.41., *et seq.*

THE PUBLIC UTILITY LAW PROCESS

I. Utility Ratemaking Overview

Historically, utility companies have been viewed as natural monopolies which, in the absence of regulation, could charge excessive rates to their consumers. 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, but do not unfairly overcharge any utility customer.

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. Commonwealth. 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 consumers to residential consumers.

The Commission continues to regulate water and wastewater utilities through the traditional ratemaking process. However, on June 13, 2016, Act 2016-12 (H.B. 1326) went into effect. 66 Pa. C.S. § 1329 provides a pathway for water companies to acquire wastewater utilities. Furthermore, Pennsylvania has departed from the traditional ratemaking process with regard to telephone, electric, and natural 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 (as it was defined in 1993) 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 marketplace.¹ Customers who are not satisfied with the utility’s generation rates now 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 an annual 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

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.

local gas well to the customer's premises. The PUC sets that delivery (or distribution) rate through the traditional ratemaking process.

II. Utility Mergers and Acquisitions Overview

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

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

(a) Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

* * *

(3) For any public utility or an affiliated interest of a public utility as defined in section 2101 ... to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

66 Pa. C.S. § 1102(a)(3).

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

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

66 Pa. C.S. § 1103(a).

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

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

City of York, 449 Pa. at 141, 295 A.2d at 828.²

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

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

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

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.

the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.

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.

OFFICE OF SMALL BUSINESS ADVOCATE REGULATORY IMPACT

The OSBA is the Commonwealth’s only full-time litigation office, and our statutory mandates are highly specialized. The OSBA is solely responsible for the independent legal representation and protection of the rights and interests of Pennsylvania’s 1.1 million small business consumers in matters before the PUC, corresponding state and federal regulatory agencies, and courts.

Based on the OSBA’s experience and success in highly technical litigation, additional duties were added to the office’s statutory responsibilities as part of the 1993 reforms to Pennsylvania’s Workers Compensation Act.

As prescribed, the OSBA provides expert actuarial review and evaluation of, accompanied by comments and recommendations for improvement on, the loss cost filings that are submitted annually to the PA Insurance Department by the Pennsylvania Compensation Rating Bureau (PCRB) and the Coal Mine Compensation Rating Bureau of Pennsylvania (CMCRB).

The OSBA reviewed approximately 26,000 new PUC filings, yielding legal engagement in more than thirty-three (33) new utility rate increase filings, including one (1) merger proceeding across the electric, gas, telecommunications, water, and wastewater arenas, twenty-three (23) base rate cases, and eight (8) Section 1329 proceedings, resulting in a total overall requested increase of \$836 million.

The OSBA staff has also participated in more than 250 telephonic and virtual evidentiary and public input hearings involving nearly all of Pennsylvania’s regulated utilities.

As the only one of its kind nationally, the OSBA plays a pivotal role in the Commonwealth, on behalf of Pennsylvania’s small business utility consumers. The goal of the OSBA, is to ensure that all of Pennsylvania’s small businesses have access to safe, reliable, and affordable utility service. This is especially critical now to our small business consumers as they continue to persevere post COVID.

I. Worker's Compensation Representation

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, 2022, the OSBA recommended that the PCRB's filing be approved as filed. The filing recommended an overall decrease of 6.25% in statewide industrial loss costs. 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, 2022, the OSBA recommended that CMCRB's filing be approved as filed. The filing recommended an overall increase of .03% in statewide loss costs. Subsequently, the department approved the CMCRB's request.

II. Utility Representation

As provided in the statute, the OSBA engages in major rate cases, merger cases, and any other non-rate proceedings that have a significant impact on small commercial and industrial, and to represent the best interests of small commercial and industrial customers for matters before the Pennsylvania Public Utility Commission.

A. Electric Overview

The rates charged by an Electric Distribution Company (EDC) include the cost of purchasing electricity from a supplier, 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 EDC's 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 deliver electricity through those wires which shopping customers have bought from electric generation suppliers (EGSs).

The OSBA participated in and advocated for small businesses in 14 electric proceedings.

1. Electric Proceedings

Citizens Elec 2022 BRC (R-2022-3032369)

FirstEnergy 2023-2027 DSP (P-2021-3030012, 13, 14 & 21)

Citizens 2022 CHP Pilot Program (P-2022-3034250)

Duquesne 2020 Income Payment Plan (P-2020-302277 & M-2019-3008227)

PECO Amend USCEP (P-2020-3020727, M-2018-3005795)

FirstEnergy DSIC & LTIPs (P-2015-2508931, 8936, 942 & 8948)

Pike City Elec 2022 DSIC (P-2020-3022285)

PECO Elec 2021 BRC (R-2021-3024601)

PECO 2020 DSP V (P-2020-3019290)

PPL 2020 Phase IV EE&C (M-2020-3020824)

PPL Estimated Bills for Electric Service December 2022 (M-2023-3038150)

Pike City 2023 DSP (P-2023-3039927)

FE 2023 Merger (A-2023-3038771, 8792, 8793, 8794, 8795, 8807, 8808; G-2023-3038818, 8819, 8820, 8821; & G-00020956)

ATSI, MAIT, TRAILCO 2023 Purchase (A-2023-3040481, A-2023-3040482, A-2023-3040483; G-2023-3040484, G-2023-3040485 & 0486)

B. Gas Overview

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 NGDC'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.

The OSBA participated in and advocated for small businesses in 30 gas proceedings.

1. Gas Proceedings

Columbia Gas 2022 Green Path Rider (R-2022-3032167)

PECO Gas 2022 1307(f) (R-2022-3032250)

PECO Gas 2022 BRC (R-2022-3031113)

UGI Gas 2022 BRC (R-2021-3030218)

Columbia Gas 2022 BRC (R-2022-3031211)

UGI Gas 2022 1307(f) (R-2022-3032242)

Valley Gas 2022 BRC (R-2022-3032300)

Columbia Gas 2022 1307(f) (R-2022-3031172)

Peoples Gas 2022 1307(f) (R-2022-3030664)

PNG 2022 1307(f) (R-2022-3030661)

PECO Gas 2023-2027 2nd LTIP (P-2022-3034521)

Pike City Gas 2022 DSIC / P-2019-3007304)

UGI Amend USECP (M-2019-3014966, P-2020-3019196)

PNG 2023 1307(f) / R-2023-3037928)

PGW Supp No. 152 PA PUC No. 2 (R-2022-3034229)

PGW 2023-2024 1307(f) (R-2023-3038069)

PGW 2023 BRC (R-2023-3037933)

Columbia Gas 2023 1307(f) (R-2023-3038630)

PECO 2023 1307(f) (R-2023-3040285)

PECO 2023 NGPR (P-2023-3040480)

UGI Gas 2023 1307(f) (R-2023-3040290)

PGW 2022-2023 1307(f) (R-2022-3030686)

PNG & PG 2021 Merger (A-2021-3029831 & 33)

Grays Ferry & Vicinity v PGW (C-2021-3029259)

Leatherstocking Gas 2022 BRC (R-2022-3032764)

PGW 2017-2022 USECP (M-2016-2542415)

PGW Amend USECP (P-2020-3018867)

PGW 2023-2027 USECP (M-2021-3029323)

PGW 2022 WNA (P-2022-3034264)

NFG 2022 BRC (R-2022-3035730)

c. Mergers and Acquisitions Overview

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.

Enacted in 2016, Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, added a new provision to Chapter 13 of the Code to provide how municipal or authority-owned water and wastewater systems assets are to be valued for ratemaking purposes when those assets are acquired by investor-owned water and wastewater utilities or entities. It sets forth a voluntary process for establishing a value for the acquired utility's assets using fair market value methodology rather than the original cost of construction of the facilities

minus the accumulated depreciation. Under that process, the acquiring utility chooses two valuation experts from a list the PUC maintains, each of whom is to conduct an appraisal to determine fair market value in accordance with the Uniform Standards of Professional Appraisal Practice. The acquiring public utility or entity also engages a licensed engineer to assess the tangible assets of the selling utility which shall be incorporated into the appraisals.

The OSBA participated in and advocated for small businesses in 17 mergers and acquisition proceedings.

1. OSBA Mergers and Acquisitions Statutory Representation

Aqua 1329 Acq of DELCORA (A-2019-3015173)

PAWC 1329 Acq of Upper Pottsgrove (A-2020-3021460)

Aqua WW 1329 Acq Willistown (A-2021-3027268)

Aqua-Peoples 2018 Purchase (A-2018-3006061, 6062, 6063)

Manwalamink & NextEra 2022 Intercompany Reorganization (A-2022-3035298, 99, 5490, 5492)

Aqua W 1329 Acq Shenandoah (A-2022-3034143)

Veolia 2022 Merger (A-2022-3035967 & A-2022-3035968)

Joint App. York Water Co. & Conewago Industrial Park Water & Sewer Co. (A-2022-3036579 & A-2022-3036582)

Veolia SUEZ WW; Water Bethel; & Water Transfer of Control (A-2021-3026515; A-2021-3026522; & 23)

PAWC 1329 Acq BASA (A-2022-3037047)

York Water & Conewago Industrial Park Water & Sewer (WW) (A-2023-3038862 & A-2023-3038864)

Aqua PA WW 1329 Acq of Beaver Falls (A-2022-3033138)

PAWC 1329 Acq of Borough of Brentwood (A-2021-3024058)

PAWC 2023 1329 Acq of Towamencin (A-2023-3039900)

Towamencin 1102 WW Montgomery Cty (A-2023-3040661)

PNG & PG 2021 Merger (A-2021-3029831 & 33)

D. Telephone Overview

Pennsylvania no longer uses the traditional ratemaking process for the majority of telephone rate cases.

In 1993, the Legislature passed Chapter 30, which ended traditional 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.

Chapter 30 also required the local telephone company to deploy high-speed (as it was defined in 1993) 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.

The current issue is determining how much a rate reduction should be provided to a telephone utility's ratepayers due to the enactment of the 2017 Tax Cut and Jobs Act (TCJA). The OSBA has successfully settled two cases involving the TCJA, but many cases remain to be resolved.

The OSBA participated in and advocated for small businesses in 20 of telephone proceedings.

1. Telephone and Broadband Proceedings

Windstream Buffalo Valley 2022 PSI (R-2022-3031745)

Windstream Conestoga 2022 PSI (R-2022-3031746)

Windstream D&E 2022 PSI (R-2022-3031747)

Windstream PA 2022 PSI (R-2022-3031748)

Consolidated Comm 2022 PSI (R-2022-3032076)

Rural ILECS 2018 Chapter 30 PSI-SPI Filings (R-2018-3001197

etc):

Northeastern Pennsylvania Telephone Company

(R-2018-3001197 & R-2019-3009237)

Consolidated Communications of Pennsylvania, Inc.

(R-2018-3001104 & R-2019-3009336)

Hickory Telephone Company

(R-2018-3001217)

Lackawaxen Telecommunications Services, Inc

(R-2018-3001199 & R-2019-3009233)

Windstream Buffalo Valley, Inc.

(R-2018-3001132 & R-2019-3010106)

Windstream Conestoga, Inc.

(R-2018-3001135 & R-2019-3010097)

Windstream D&E, Inc.

(R-2018-3001133 & R-2019-3010100)

Windstream Pennsylvania, LLC

(R-2018-3001150 & R-2019-3010101)

Bentleyville Communications Corporation

(R-2018-3001213 & R-2019-3009230)

Marianna & Scenery Hill Telephone Company

(R-2018-3001201 & R-2019-3009241)

Ironton Telephone Company

(R-2019-3007261 & R-2020-3016018)

Citizens Telephone Company of Kecksburg

(R-2019-3007258 & R-2020-3016016)

TDS Telecom/Mahanoy & Mahantango Telephone

Company (R-2019-3007949)

TDS Telecom/Sugar Valley Telephone Company

(R-2019-3007948)

E. Water and Wastewater Overview

Water utility rate cases, as well as wastewater utility rate cases, normally proceed under traditional ratemaking standards.

However, the advent of Section 1329, which provides a process whereby a water utility can acquire a wastewater utility, has changed the face of water litigation before the PUC and Commonwealth Courts. Water utilities throughout the Commonwealth have taken advantage of the opportunity that Section 1329 affords them, and the OSBA has been quite busy with all the resulting litigation.

It is the OSBA's understanding that the easy path to acquisition, which Section 1329 affords water utilities, is under review by the Legislature. Such acquisitions have frequently resulted in large rate increases for both water and wastewater utility customers.

The OSBA participated in and advocated for small businesses in 18 water and wastewater proceedings.

1. OSBA Water and Wastewater Statutory Representation

PWSA 2018 Compliance (M-2018-2640802, 0803, P-2018-3005037, 5039)

York WW 2022 BRC (R-2022-3032806)

York Water 2022 BRC (R-2022-3031340)

PAWC 2022 W & WW BRC (R-2022-3031672 & R-2022-3031673)

PAWC 2021 Arrearage Management (P-2021-3028195)

PWSA Line Leak Repair (P-2022-3030253)

Borough of Ambler 2022 BRC (R-2022-3031704)

NEWPA 2022 WW CPCN & AIA (A-2022-3033924 & G-2022-3033925)

City of Lancaster 2021 BRC (R-2021-3026682)

PWSA 2022 DWSL (P-2022-3031586)

Aqua PA Water & WW 2021 BRCs (R-2021-3027385 & R-2021-3027386)

Aqua Replacement Lead Service Lines (P-2020-3021766)

CUPA W & WW 2021 BRCs (R-2021-3025206 & R-2021-3025207)

Columbia Water 2023 BRC (R-2023-3040258)

PWSA W, WW, & STRMWTR 2023 BRC (R-2023-3039920, R-2023-3039921 & R-2023-3039919)

PWSA 2023 CAC (P-2023-3040578)

CAN DO 2023 W & WW BRC (R-2023-3040153 & R-2023-3040151)

Aqua PA WW Supp 3 to PA PUC 3 (R-2022-3037141)

F. Non-Certified Overview

Frequently, a statutory advocate, a utility, or a state agency will file a request with the PUC to review a specific area of utility law and practice.

Two examples, set forth below, include the request of a broadband supplier for the PUC to decide whether it had followed all the requirements of Chapter 30 to install broadband in parts of the Commonwealth.

The second example is a request to the PUC to address how utilities will use the federal funds provided by the Infrastructure Investment and Jobs Act (IIJA).

In both proceedings, the PUC provided guidance and decisions on the issues.

1. OSBA Non-Certified Statutory Representation

DRIVE Declaratory Order Broadband (P-2021-3025296)

OCA-OSBA-PULP 2022 Initiation IIJA / P-2022-3032929)

III. Small Business Outreach and Education

In addition to its litigation caseload, the OSBA handles individual small business consumer complaints and inquiries, assisting and directing them toward swift resolutions. Small business consumers throughout the Commonwealth of Pennsylvania can contact the OSBA regarding a utility issue they may be encountering through our contact us form on our website, a direct call to our office or staff, or from referrals received by the PUC, and legislators.

Relationship building and significant outreach are critical to future discussions with key stakeholders regarding the need for protections and programs for small business consumers. This is particularly important, because previous COVID protections are now only provided on a case-by-case basis.

Thus, the OSBA provides one-on-one support and resources to our small business utility consumers such as:

- Assistance with payment arrangements, service shutoffs, and utility overcharging issues; and
- Telephonic and electronic small business owner contacts, communications, and referrals to the DCED Business One-Stop Shop, legislators, and others for their specific small business needs, etc.

Additionally, the OSBA collaborated with the PUC's regulated energy and utility advocates, legislators, and stakeholders to discuss the critical need for protections, programs, and

an acknowledgement of the major role that small businesses play in the Commonwealth's economy.

The following are examples of successes, highlighting the OSBA's first-time capture and implementation of:

- Inclusion of small business language in PUC's newsletters, press releases, and internal communication.
- Pre-filing meetings with regulated utility's leadership.
- Meet and greets with legislators, PUC commissioners and staff, PA's One Stop Shop, Governor's Action Team, National Federation of Independent Businesses (NFIB), City of Harrisburg's Economic Development Team and a host of other agencies.
- Toured multiple commercial corridors across the Commonwealth to meet with business owners one on one; and
- In-person attendance at various townhalls across the Commonwealth.

IV. Case Accomplishments

In the past fiscal year, the OSBA's presence and participation in utility proceedings before the PUC has resulted in cost savings for small business consumers across the Commonwealth in excess of over \$99 million dollars in utility rates.

The OSBA's significant impact on the Commonwealth's small business utility consumers various utility bills demonstrate the success of our advocacy for all of Pennsylvania's small business utility consumers.

Petition of Pike County Light & Power Company for Approval of Default Service Plan and Waiver of Commission Regulations Docket P-2023-3039927

The OSBA identified major issues with Pike's proposed hedging plan and past implementation activities. The OSBA observed that Pike appeared to be relying on the plan's flexibility concerning hedge purchases to engage in market timing and other speculative behavior and made decisions that appeared to elevate market judgment over strict adherence to the plan. Hedge purchases must be implemented under a consistently applied set of guidelines.

To address this issue, the OSBA recommended that the Company formally incorporate into its written hedging plan metrics for accelerating or deferring hedging transactions within a transaction window.

The OSBA also recommended that, regardless of any established annual transaction windows within the hedging plan, the Company should target a specific month, early in each period, to commence its efforts to secure the relevant financial hedges.

The intention of these guideposts, combined with the overall four percent (4%) price cap on any counterparty bid, ensures that hedging transactions are completed in consistent fashion period after period, with reasonable bounds on the application of an unplanned market judgment.

The OSBA also noted that Pike had been able to secure only one counterparty to facilitate hedging transactions. Based on a review of transactions with this lone counterparty, there appeared to be the possibility for bid gaming by the counterparty with respect to Pike's price cap and procurement timing requirements.

Having only one counterparty, this indicated that small business utility consumers may not be benefitting from a truly competitive environment with respect to the hedging program. The OSBA argued that Pike must secure additional counterparty agreements to ensure competitive pricing of the hedging transactions.

Pike agreed with the OSBA and advised that it was in the final stages of securing a second counterparty. In addition, Pike committed to secure additional counterparties for its hedging program.

Both issues presented by the OSBA, strict guideposts for the hedging plan, and the requirement to obtain additional counterparties, were accepted by Pike, the parties, the ALJ, and the Commission.

The York Water Company 2022 Rate Case Dockets R-2022-3031340, R-2022-3032806

The York Water Company filed for an increase in rates for its water service, as well as a proposal to recover part of York's wastewater revenue requirement from its water service customers.

In any rate case before the Commission, different parties will propose different revenue allocations to a Utility's various customer classes. In this York case, other parties argued for a large increase to York's small business utility customers. However, the OSBA argued against that large increase, and obtained a smaller increase for York's small business utility consumers, saving small businesses over \$250,000 per year.

York also proposed to recover \$2.7 million of its claimed wastewater revenue requirement from its water service consumers under Act 11. The figure of \$2.7 million

represented the difference between York Water's total claimed wastewater revenue requirement of \$8.3 million and the Company's total proposed wastewater revenues of \$5.6 million.

The OSBA opposed the overall magnitude of York's proposed shift in wastewater revenue responsibility to its water consumers. The OSBA argued for a significantly lower recovery of York's wastewater revenue requirement from the Company's water consumers. The OSBA was able to successfully reduce the \$2.7 million in wastewater revenue requirement down to \$1.3 million. This saved York's water consumers, including its small businesses, \$1.4 million per year.

Pennsylvania-American Company Water 2022 Rate Case **Dockets R-2022-3031672, R-2022-3031673**

The Pennsylvania American Water Company filed for an increase in rates for its water service, as well as a proposal to recover part of PAWC's wastewater revenue requirement from its water service customers.

In any rate case before the Commission, different parties will propose different revenue allocations to a utility's various customer classes. In this PAWC case, the company argued for a large increase to PAWC's small business utility customers. However, the OSBA argued against the large increase, and obtained a smaller increase for PAWC's small business utility consumers, saving small businesses \$896,000 per year.

PAWC also proposed to recover \$72.9 million of its claimed wastewater revenue requirement from its water service customers under Act 11. The figure of \$72.9 million represented the difference between PAWC's total claimed wastewater revenue requirement of \$208.1 million and the Company's total proposed wastewater revenues of \$135.2 million.

The OSBA opposed the overall magnitude of PAWC's proposed shift in wastewater revenue responsibility to its water consumers. The OSBA argued for a significantly lower recovery of PAWC's wastewater revenue requirement from the company's water consumers. The OSBA was able to successfully reduce the \$72.9 million in wastewater revenue requirement down to \$26.96 million. This saved PAWC's water consumers, including its small businesses, just over \$45.93 million per year.

Gray's Ferry & Vicinity v PGW **Docket C-2021-3029259**

Grey's Ferry is a natural gas fired cogeneration facility which took natural gas transportation service from PGW under Rate GTS, pursuant to a 25-year contract which ran from 1997 to the end of calendar year 2022.

In 2021, after many months of negotiations, PGW and Gray's Ferry were unable to reach agreement on the rates to be paid following the expiration of the contract. Gray's Ferry filed a complaint with the Commission. Given the potential cost impact on the small business ratepayers that the OSBA represents, the OSBA also filed a complaint and was active in the case.

The case was fully litigated and forced Commission to address how to set rates for a large industrial customer with its contract ending.

In the end, this industrial consumer is now obligated to contribute to PGW's Universal Service programs as a firm service consumer. This benefits PGW's small business utility consumers as it reduces the contribution that they are required to make to PGW's universal service programs.

Citizen Electric Company Distribution Rate Increase **Docket R-2022-3032369**

On April 29, 2022, Citizens Electric Company ("Citizens") filed to increase the Company's distribution revenues. The proposed increase would increase the total electric distribution revenues of Citizens by \$999,270 per year, a 7.1% increase in annual distribution revenues.

In the settlement, the OSBA agreed to a distribution rate revenue increase of \$930,000 per year. At a time when all types of utility service are becoming more expensive, the significant (18.0%) reduction in the company's proposed cost-based distribution revenue increase provided by the settlement will benefit small business utility consumers.

The principal reason the OSBA signed the settlement is that the settlement increases for the small business classes reflect a favorable compromise among the various parties' positions. Had the Commission given equal weight to the positions of the parties excluding the OSBA, the overall increase to the small business classes would have been \$190,886, which is \$31,966 greater than the increase provided by the settlement.

As a result, the OSBA concluded that the settlement revenue allocation provides a meaningful benefit to small business utility consumers.