Annual Report

of the

Pennsylvania
Office of Consumer Advocate

Fiscal Year 1998-1999

Irwin A. Popowsky
Consumer Advocate

555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048 Office
(717) 783-7152 Fax
EMail Address: paoca@ptd.net
Internet: www.oca.state.pa.us

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INTRODUCTION

The Office of Consumer Advocate (OCA) was established by the General Assembly in 1976 in order to represent the interests of Pennsylvania utility consumers before the Pennsylvania Public Utility Commission (PUC) and other state and federal agencies and courts that regulate the utility services received by Pennsylvania consumers.

The OCA is a statutorily independent office, administratively included within the Office of Attorney General. The statute that established the OCA requires the Office to file an annual report. The following report is a summary of the OCA’s major activities during the Fiscal Year 1998-1999.

Sonny Popowsky has served as the Consumer Advocate of Pennsylvania since 1990. The OCA’s present employee complement consists of 32 persons, including the Consumer Advocate, attorneys, and other professional, administrative and clerical personnel. The OCA has its own operating budget which is funded through a direct assessment on the public utilities that are regulated by the PUC. The OCA’s budget is not derived from the General Fund.

The OCA was created to ensure that consumers of utility services in Pennsylvania receive vigorous professional representation before the state and federal agencies and courts that regulate these important services. The OCA participates before the PUC in all major base rate cases, purchased gas cost cases, and non-base rate cases with major impact on consumers. Other proceedings before the PUC include alternative regulatory plans by telephone utilities, retail competition issues, rulemakings and policy statements. OCA also participates in matters before the Federal Energy Regulatory Commission and the Federal Communications Commission. While the OCA’s cases vary in size and scope, each case is important to individual consumers since it involves either the price they must pay each month for vital public services or the quality of the service they receive. In addition, the quality and price of utility service are important to the economic well-being and competitiveness of Pennsylvania.

As stated in last year’s OCA Annual Report, the last few years saw an unprecedented level of activity at the OCA on behalf of Pennsylvania electric consumers. The OCA presented comprehensive testimony by six nationally respected experts in each of the major utility restructuring proceedings held by the PUC pursuant to the General Assembly’s landmark Electric Choice legislation. The OCA’s testimony and subsequent legal briefs addressed virtually all of the major policy questions that helped determine whether consumers will benefit from electric competition.

Although there were numerous other parties addressing most of these issues, the Public Utility Commission Orders in each of the litigated cases relied time and time again on the OCA’s policy and technical recommendations in arriving at what the Commission deemed to be a just and reasonable result. For example, with respect to the critical determination of market value in calculating the utility’s stranded costs, the Commission concluded that the OCA witness’ analysis was the most “reasonable”, “credible”, and “objective” of all those presented. In each of the restructuring proceedings, the Commission also
adopted the OCA position on the calculation of stranded costs on certain regulatory assets and non-utility generating plants; the appropriate methodology for unbundling and allocating costs among transmission, distribution and generation rates; the future scope and funding level of universal service and renewable energy programs for low-income customers; and a number of critical consumer protection issues relating to such matters as termination procedures, switching fees and the application of a rate cap.

While the Commission Orders were subject to further review and settlement discussions during the last fiscal year, the basic framework of the Commission Orders, based substantially on the OCA expert testimony and analysis, remained intact. Overall, it is worth noting that the Commission’s adoption of certain critical OCA stranded cost recommendations resulted in reductions of more than five billion dollars in the stranded costs that will be paid by Pennsylvania consumers.

While the primary focus of the OCA’s litigation activities in 1997 and early 1998 was on electric restructuring, the OCA has turned more recently to the dramatic changes being brought about by efforts to inject greater competition in the natural gas and telecommunications industries. The OCA also has continued its traditional role with respect to rate increase proposals of Pennsylvania’s numerous large and small water companies.

With respect to natural gas restructuring, the OCA was actively involved in the negotiations that led to the enactment of Natural Gas Choice legislation in 1999. In the proceedings that have now begun under that legislation, the OCA, as in the electric restructuring proceedings, has assembled a team of experts to address all the major consumer issues in these cases. These issues include the unbundling of competitive and non-competitive service rates, the deferral of costs related to restructuring under the Act, universal service programs for low income consumers, and consumer education and protection requirements in the new partially deregulated natural gas markets. The goal of the OCA in these proceedings is to ensure that all consumers benefit from the competitive changes in the natural gas industry.

In telecommunications, the OCA actively participated in the Commission’s recent “global” proceedings which addressed the full gamut of regulatory and competitive issues that will provide the framework for the future of the telecommunications industry in Pennsylvania. The OCA focused its expert testimony and briefs in that case on consumer protections such as rate caps and universal service funding to ensure that the rates of all Pennsylvania consumers, including rural consumers, remain affordable. The OCA also supported efforts to ensure that competitive benefits be made available to all consumers in an orderly and timely fashion.

In the water industry, the OCA has continued to represent consumers in numerous base rate increase proceedings, application proceedings, and consumer complaint proceedings. The OCA has sought to ensure that Pennsylvania consumers receive safe and potable water service at just and reasonable rates and that people who need water service are able to obtain it.
In addition to its litigation activities, OCA participates on behalf of utility consumers in state and federal legislative debates. The OCA has been called on to present formal testimony both in the Pennsylvania General Assembly and in the United States Congress regarding critical utility issues that affect Pennsylvania consumers.

The OCA also responds to numerous individual utility consumer complaints. The OCA handled close to 2,000 consumer inquiries and complaints in Fiscal Year 1998-1999. In many instances, the OCA helped these consumers receive refunds or rate reductions. In other cases, the OCA has helped consumers receive necessary utility line extensions at reasonable costs or expanded toll-free local telephone calling areas to help keep their overall bills down.

An increasing portion of the OCA’s efforts is spent on educating consumers about changes in the utility industry. Without adequate consumer education, consumers will not be able to benefit from the increased choices made possible by competition and, may, in fact be harmed by such practices as slamming and cramming about which they might not be aware. Last year, the OCA hired a Consumer Education and Outreach Coordinator to direct its consumer education efforts. The Consumer Advocate and other members of OCA staff have participated in consumer presentations and forums around the Commonwealth to help educate consumers about changes in the utility industry and to advise them about cases that affect them. The OCA also has established an Internet “Web” site to keep consumers informed about these matters and regularly sends mailings to consumers and members of the General Assembly about upcoming cases and public hearings.

As noted above, the OCA has increased its emphasis on consumer education to inform consumers how they can benefit from changes that have recently occurred in the public utility industry. Competition in portions of the electric, natural gas, and telephone industries means that utility consumers can now purchase a range of utility services from different suppliers. In an effort to enhance its services to utility consumers in Pennsylvania, the OCA recently has made available its Residential Electric Shopping Guide to help residential electric customers choose their electric generation supplier. This guide provides comparative price information for residential customers in each of the major electric distribution service territories and has been widely circulated in print form and from the OCA’s website. In the current year, the OCA is continuing to increase its efforts in Consumer Education.

This remains a critical period in the regulation of utilities in Pennsylvania. The current transition to greater competition in many utility functions could lead to lower prices and improved service for all Pennsylvanians. Alternatively, this transition could lead to the establishment of essentially unregulated monopolies, where many customers without the protections of either regulation or effective competition could see higher rates and deteriorated service. It is essential that Pennsylvania consumers be fully and competently represented and informed throughout this transition period. The OCA recognizes the importance of its role in advocating for the interests of Pennsylvania consumers and keeping consumers informed with respect to the utility industry.
Through this annual report, the OCA will summarize its activities in fulfilling this role in Fiscal Year 1998-1999.
ELECTRICITY

Pennsylvania

On December 3, 1996, Governor Tom Ridge signed the Electricity Generation Customer Choice and Competition Act into law which initiated the process of transitioning Pennsylvania’s electric generation industry from a wholly regulated industry to a partially competitive industry. The goal of the Act is to bring competition to retail electric generation service for all Pennsylvania consumers. As reported in last year’s Annual Report, during Fiscal Year 1997-1998, the process was well underway and the OCA participated actively to represent the consumer interests as the electric utility industry was restructured into a competitive market for generation and a regulated distribution and transmission industry.

By the beginning of Fiscal Year 1998-1999, the electric utility restructuring proceedings had been ruled upon by the Commission and challenges to the Commission’s Orders were pending as appeals before the Commonwealth Court. In addition, actions were pending before the original jurisdiction of the Commonwealth Court and in the federal district court. The OCA sought to actively participate in these state and federal court actions. The Commission then convened comprehensive settlement negotiations among all interested parties to these state and federal actions. As set forth in detail below, the OCA actively participated in these settlement negotiations.

Also during Fiscal Year 1998-1999, the Commission continued to establish regulations, orders and guidelines necessary to develop and sustain a competitive marketplace for electric generation. Through rulemakings, orders, policy statements, guidelines and working groups, the Commission addressed concerns related to restructuring of the electric industry. The OCA took an active role in these proceedings, and participated in many of the working groups.

In addition to its work on restructuring proceedings, the OCA participated in a number of complaint proceedings, continued its work in the proceedings involving the merger between Duquesne Light Company and the Allegheny Power System, and responded to Petitions filed by electric utilities or alternative providers regarding a number of matters. As set forth in more detail below, the OCA has also been involved in numerous electric matters before the Federal Energy Regulatory Commission.

Electric Restructuring Proceedings

Duquesne Light Company

On May 29, 1998, the Commission entered an Order allowing Duquesne to recover $1.33 billion in stranded costs, after taxes, over a seven year CTC recovery period, assuming the merger with Allegheny Power System was completed. If the merger with Allegheny Power was not completed, the Commission approved Duquesne’s proposal to divest its generation. In the event of divestiture, the
On August 27, 1998, Duquesne filed a plan with the Commission for divestiture of Duquesne’s generation assets, indicating that its planned merger with Allegheny Power had been terminated. On October 14, 1998, Duquesne modified its plan to include an exchange of generation assets with FirstEnergy Corporation to address concerns regarding the marketability of Duquesne’s minority ownership of some of the generating assets, particularly the nuclear assets (the Generation Swap). In the Generation Swap, Duquesne proposed to substitute its partial, minority ownership interest in eight generating units, with a total capacity of approximately 1400 MW, including three nuclear units, with an undivided ownership and operational control interest in three coal-fired stations with a generating capacity of 1300 MW. At the same time, Duquesne acquired a financial commitment from FirstEnergy that the net proceeds from Duquesne’s transfer of assets will be sufficient, at a minimum, to maintain or reduce the level of stranded cost recovery in the Commission’s administrative determination of Duquesne’s stranded cost. Duquesne also capped its nuclear decommissioning liability and other potential environmental liabilities. In addition, Duquesne proposed to auction the electric supply portion of its Provider of Last Resort obligation at the same time it auctioned its generating assets.

The Office of Consumer Advocate filed Comments addressing many aspects of the proposed divestiture and generation exchange. For its Comments, the OCA, with the assistance of its expert witnesses in the case, performed an analysis of the economics of the generation exchange. The OCA’s Comments were generally supportive of Duquesne’s generation exchange and divestiture, recognizing that the generation exchange would improve the marketability of the assets and bring greater value to ratepayers from the divestiture. In addition, under the generation exchange agreements, Duquesne was able to assure that there would be no risk to ratepayers to pay any increased stranded cost if the divestiture did not produce the level of proceeds anticipated by Duquesne.

The OCA, however, raised various issues regarding the proposed generation exchange and divestiture. Of importance, the OCA recommended that the language of the agreements be clarified to assure that a firm cap on Duquesne’s nuclear decommissioning liability, and thus its ratepayers’ liability, was established in the generation exchange. In addition, the OCA argued that the Commission should make clear that Duquesne’s proposed auction of the electric supply function of its provider of last resort obligation does not relieve Duquesne of its responsibility to provide electricity at or below the rate cap levels in accordance with the Act. Finally, the OCA recommended that the Commission further review the generation exchange when the Final Agreements were executed, due diligence was completed and all final details were resolved.

On December 18, 1998, the Commission issued an Order authorizing Duquesne to proceed with the generation exchange and divestiture, but requiring Duquesne to submit another filing when the agreements were finalized and due diligence was completed. In its Order, the Commission adopted
many of the recommendations of the OCA and directed the Company to incorporate these recommendations in its Final Agreements with FirstEnergy.

On May 3, 1999, Duquesne Filed an Application for Certificate of Public Convenience and Commission approval to transfer Duquesne’s interest in several of its generating stations and transmission assets to FirstEnergy in exchange for Duquesne’s acquisition from FirstEnergy of several other generation and transmission assets. (Docket No. A-110150F.0020). In this filing, Duquesne presented the final agreements between Duquesne and FirstEnergy to complete the exchange. These final agreements contained some modifications in the terms of the agreements between Duquesne and FirstEnergy and contained additional details about aspects of the agreements and the divestiture. Although the OCA continued to generally support the generation exchange and divestiture, the OCA raised issues regarding the final agreements. Of particular importance, the final agreements called for an increase in the level of decommissioning funding provided to FirstEnergy, exposed Duquesne to the risk of certain tax liabilities associated with the nuclear decommissioning trust fund, exposed Duquesne to potential increased labor costs which could arise out of the exchange and required Duquesne to incur additional environmental remediation costs at one of its generating stations. If Duquesne were allowed to recover these costs from ratepayers, the possibility existed that ratepayers would pay more in stranded costs than under the Commission’s original Order. The OCA argued that Duquesne should agree that these costs will not increase stranded costs over the amount contained in the Commission’s restructuring order. Duquesne agreed and this principle was adopted by the Commission. The OCA also raised an issue regarding the appropriate methodology for reflecting any decrease in stranded cost that might arise as a result of the divestiture. Duquesne proposed to shorten its CTC collection period rather than immediately reducing rates if the divestiture resulted in less stranded cost than the Commission Order. The OCA argued that rates should be immediately reduced if the divestiture resulted in a lowering of stranded cost and the rate cap should continue in place.

On July 15, 1999, the Commission issued a Final Order approving the asset exchange and allowing the divestiture to proceed. The Commission incorporated Duquesne’s agreement to ensure that there was no increase in stranded cost above the level previously approved by the Commission as a result of the divestiture. In addition, the Commission accepted Duquesne’s proposal to shorten the time period over which it collected stranded cost if stranded cost were reduced, rather than immediately reducing rates. The Commission directed the parties to continue to discuss methods of providing rate relief to customers and of maintaining the rate cap protections contemplated by the Act. At the end of the Fiscal Year 1998-1999, the OCA was continuing these discussions with Duquesne and Duquesne was moving forward with the divestiture process.

The OCA was also involved in three appeals arising from Duquesne’s restructuring proceeding. Two of those appeals were resolved by the parties prior to being heard in Commonwealth Court. In Duquesne Light Company v. Pennsylvania Public Utility Commission, Docket No. 2566 C.D. 1998, Duquesne challenged the Commission’s Order on compliance which rejected Duquesne’s proposal to update one of its regulatory asset claims in its restructuring proceeding to include increased costs.
Duquesne argued that the Commission’s refusal to allow it to increase its stranded cost claim was an error of law and an abuse of the Commission’s discretion. On May 10, 1999, the OCA filed a Brief in Commonwealth Court in support of the Commission’s Order. As of the close of Fiscal Year 1998-1999, the case was pending before Commonwealth Court.

**Metropolitan Edison Company and Pennsylvania Electric Company**

On June 30, 1998, the Commission entered its Order in the restructuring proceedings involving Metropolitan Edison Company (R-00974008) (Met-Ed) and Pennsylvania Electric Company (R-00974009) (Penelec). As reported in last year’s Annual Report, the Commission adopted many of the positions of the OCA in its Final Orders. In both the Met-Ed and Penelec cases, the Commission adopted the OCA’s market prices and models, fuel prices, and inflation forecast for the purposes of valuing each company’s stranded cost claim. As to Met-Ed’s stranded cost claim, the Commission allowed the Company to recover $975 million in stranded and transition costs, slightly more than the OCA’s recommendation of $853.7 million. For Penelec, the Commission authorized recovery of $858 million, slightly more than the OCA’s recommendation of $670 million. In reaching this decision, the Commission adopted many OCA adjustments including adjustments to the regulatory asset claims and the non-utility generation (NUG) claims. The Commission also approved the proposal of Met-Ed and Penelec to divest their owned generation assets, including Three Mile Island Unit 1, through an auction process.

Fifteen appeals were filed from the Commission Order, including appeals by Met-Ed and Penelec, appeals by the NUG projects, and cross appeals by the OCA, the industrial customers, and the marketers (MAPSA). In addition, Met-Ed and Penelec filed an action in the United States District Court for the Eastern District of Pennsylvania. The OCA intervened in these appeals and was prepared to seek to intervene in the District Court action. After these state and federal actions were filed, the Commission then convened settlement negotiations among the parties to these proceedings. The OCA actively participated in these negotiations and a settlement of nearly all parties was reached and approved by the Commission. The Settlement provided for a 2.5% rate reduction for Met-Ed for 1999 and 3.0% for Penelec for 1999. In addition, the Settlement provided for a system average shopping credit of 4.35¢/kwh in Met-Ed’s service territory for 1999 and 4.404¢/kwh in Penelec’s service territory for 1999. The shopping credits are projected to increase throughout the stranded cost recovery period. In addition, the Settlement incorporated the Commission’s Order regarding funding levels for universal service programs that provided for expansion of each Company’s existing programs and provided additional competitive safeguards.

Equally important, the OCA successfully negotiated for significant extensions to the transmission and distribution rate caps beyond those provided in the Act. For customers who remain with provider of last resort service, an extension of the rate cap applicable to this service beyond the rate caps required in the Act was successfully negotiated. In addition, beginning in 2000, and ramping up through 2004, each Company is required to conduct a competitive bid for a portion of its provider of last resort service. The Commission will review the competitive bidding process at each step of the ramp up to
determine if the bid process should proceed to the next level. The Settlement also opens up billing and metering services to competition. Finally, the Settlement approves the planned divestiture of assets by Met-Ed and Penelec and provides for all net proceeds of the divestiture to be used to offset all categories of stranded cost.

Two appeals were filed challenging the Commission’s approval of the Settlement. One appeal was subsequently settled and withdrawn, but the second appeal was resolved by the Commonwealth Court. The Commonwealth Court upheld the Commission’s Order.

Since the Settlement, the OCA has continued to participate in informal working groups established to implement the terms of the Settlement Agreement. In particular, the OCA has participated in working groups concerning competitive metering and billing and the competitive provision of provider of last resort service. The OCA has worked in these groups to ensure that essential consumer protections, such as those regarding metering, payment processing, service cancellation and service termination are maintained even if the customer selects an alternative provider.

**Pennsylvania Power & Light Company**

On June 15, 1998, the Commission entered an Order which resolved Pennsylvania Power & Light Company’s (PP&L) restructuring proceeding. (Docket No. R-00973954). In its June 15, 1999 Order, the Commission again adopted many of the OCA’s position, including the OCA’s market price study and methodology for calculating stranded cost. The Commission, however, did not adopt all of the OCA’s proposed adjustments. The Commission found that PP&L had $2.864 billion of stranded cost rather than the OCA’s recommended level of $1.08 billion. The Commission allowed PP&L to recover this stranded cost over an eight year recovery period. In regard to universal service programs, the Commission adopted the OCA’s recommended funding level of $11.7 million for the Customer Assistance Program (CAP) and $4.7 million for the Low Income Usage Reduction Program (LIURP). In addition, the Commission adopted the OCA’s position that customers who return to PP&L after they shop must be treated no differently than customers who do not shop. This was particularly important for some residential customers who are being served by rate schedules that are now closed to new customers.

During Fiscal year 1998-1999, seven appeals and cross appeals were filed challenging the Commission’s Final Order. In addition, PP&L filed an action in the original jurisdiction of the Commonwealth Court of Pennsylvania and in the United States District Court challenging the Commission’s action. The OCA sought to actively participate in these actions. Following these state and federal court actions, the Commission convened extensive settlement negotiations in an attempt to resolve all issues regarding PP&L’s restructuring proceeding. The OCA fully participated in these settlement negotiations and the parties were able to successfully reach a settlement of all matters. The settlement provides for a 4% rate reduction for all PP&L customers for 1999, and it provides system average shopping credits of 3.81¢/kwh in 1999 with a steady escalation through the entire stranded cost recovery period. Under the settlement, PP&L will recover $2.97 billion in stranded cost over a ten year time frame. The Settlement
also retained the expanded funding levels for CAP and LIURP approved in the Commission’s Order, and maintained other critical consumer protections contained in the Commission’s Order.

Of importance, the OCA successfully negotiated an extension to the rate caps provided by the Act. The cap on PP&L’s transmission and distribution rate, which would have expired on June 30, 2001 under the Act, was extended to December 31, 2004. The cap on PP&L’s generation rates and its provider of last resort service were extended to the end of 2009, rather than ending in 2005. In addition, the Settlement calls for PP&L to competitively bid a portion of its provider of last resort service beginning in 2002. PP&L’s retained provider of last resort service is also designed to reflect the successful bid while retaining the protections of the rate cap extension. The Settlement also opens up billing and metering services to competition.

At the conclusion of the settlement process, additional working groups and negotiations were necessary to implement the various terms and conditions of the settlement, particularly the competitive metering and billing provisions. The OCA actively participated in these negotiations to ensure that all consumer protection principles were maintained in these competitive metering and billing standards. Issues of concern to the OCA included meter installation, meter reading, payment processing, service cancellation and service termination. The OCA worked at every step of the process to ensure that ratepayers retained essential consumer protections even after selection of an alternative provider.

Also related to PP&L’s restructuring proceeding, on April 1, 1999, PP&L filed a Petition for a Supplemental Qualified Rate Order. (Docket No. R-00994637). Under the Settlement, PP&L was required to pursue securitization of its stranded cost and return 75% of the savings to ratepayers. In pursuing this option, PP&L determined that additional procedures, beyond those specified in the Settlement, were required to implement the securitization in the most cost-effective manner. PP&L filed a Petition requesting the Commission to establish procedures related to the computation, design and reconciliation of the charges that would result from securitization. The OCA filed an Answer to PP&L’s Petition raising a number of concerns with PP&L’s proposal. In particular, the OCA identified a number of adjustments proposed by PP&L that could result in a double count of certain costs already included in rates, and the OCA identified concerns with PP&L’s proposal regarding the reconciliations that may implicate the rate caps. In addition, the OCA challenged PP&L’s request for a $2 million per year service fee that was unsupported in the filing. After extensive negotiations, a settlement was reached among the parties to the proceeding. Among other provisions, under the settlement, the parties agreed upon a methodology to correct for any potential double counting of costs already included in rates, agreed to a reduced service fee, and clarified the operation of the reconciliation mechanism with the rate cap.

**West Penn Power Company**

On May 29, 1998, the Commission issued its Order in West Penn Power Company’s restructuring proceeding. (Docket No. R-00973981). In its Order, the Commission authorized the recovery of $525 million in stranded cost if the merger with Duquesne Light Company was completed.
If the merger was not completed, and the merger savings are eliminated, the Commission authorized West Penn to recover $594.8 million. As in the PECO decision, the Commission adopted the OCA’s market valuation model, the OCA’s market price study and numerous OCA assumptions to determine the value of West Penn’s generating assets. Additional issues advocated by the OCA and other consumer groups were also favorably addressed by the Commission. The Commission directed West Penn to increase its funding for its two universal service programs, LIPURP (a Customer Assistance Program) and LIURP (a low income usage reduction program). For LIPURP, the Commission directed a funding level of $5.88 million by 2002 and for LIURP, the Commission directed a funding level of $2.202 million by 2002. The Commission allowed West Penn to defer any shortfalls in recovery of these program expenses for future rate recovery. The Commission also adopted many of the OCA’s recommendations regarding consumer protection issues and directed West Penn to incorporate these protections into its tariffs.

Eleven challenges to the Commission’s Order were filed in the Commonwealth Court of Pennsylvania. In addition, West Penn filed an action in the original jurisdiction of the Commonwealth Court and in the United States District Court for the Western District. The OCA intervened in all of the appeals and sought to participate in the original jurisdiction action and the federal court action. Following these state and federal challenges, the Commission convened a settlement conference in an attempt to resolve all matters relating to West Penn’s restructuring proceeding. After extensive negotiations, a settlement was reached in West Penn’s restructuring proceeding. The settlement provided for a 2.5% rate reduction for all of West Penn’s customers in 1999. In addition, the settlement provided for system average shopping credits that began at 3.16¢/kwh in 1999 and are expected to increase throughout the stranded cost recovery period. West Penn was provided with recovery of $670 million in stranded cost, in the event that its merger with Duquesne Light Company is not completed, with a recovery period ending in December 2008.

The OCA also successfully negotiated extensions to the rate caps set forth in the Act. For West Penn’s transmission and distribution rates, the rate cap is extended from June 30, 2001 until December 31, 2005 for all customers. The generation rate cap, and the rate at which West Penn must supply provider of last resort service, is extended from 2005 under the Act to December 31, 2008, although at a slightly higher level than current rates. Importantly, in the Settlement, it was agreed that all costs for West Penn’s universal service programs could be recovered in current rates, thus eliminating the deferral of these costs for future recovery from ratepayers. Additionally, West Penn agreed to implement a two-year Renewable Pilot Program for low income customers by committing an additional $610,000 to this program. The Renewable Pilot Program will test the application of renewable measures, such as solar hot water heating, photovoltaic applications and small scale wind projects as measures to reduce energy bills for low income customers.

Additionally, the Settlement calls for West Penn to competitively bid a portion of its provider of last resort service beginning in 2001. It is the intention of this bid process to determine whether further rate relief can be obtained for West Penn’s customers. The Settlement also opens up competitive metering and billing in West Penn’s service territory. Finally, the Settlement provided for specific consumer
protection measures and adopted the Commission’s Order regarding numerous consumer protection matters where the Commission had adopted the OCA’s position.

Subsequent to the entry of the Commission’s Order approving the Settlement, West Penn filed a Petition for a Supplemental Qualified Rate Order (Docket No. R-00994649). Under the Settlement, West Penn was required to pursue securitization of its stranded cost and return 75% of the savings to ratepayers. In this process, West Penn determined that additional procedures and clarifications were necessary to secure a AAA-rating for the transition bonds. West Penn filed its Petition requesting approval of various procedures and seeking certain clarifications of the Commission’s Order in the Settlement. The OCA filed an Answer to West Penn’s Petition raising numerous concerns. Of particular concern were West Penn’s proposals regarding adjustments and reconciliations that may have resulted in a double counting of costs already included in rates. West Penn’s proposed adjustments to the level of the shopping credit to comply with the rate cap provisions of the Act caused concern over the continuing level of the shopping credit.

The parties entered into settlement negotiations and were able to resolve almost all of the issues raised by West Penn’s Petition. The unresolved issue, regarding potential reductions in the shopping credit from adjustments to the transition bond charges during reconciliation was referred to the Commission for disposition. Before the Commission, the OCA argued that West Penn should pursue securitizing less than 100% of its stranded cost so that it would only have to reduce its shopping credit under extraordinary circumstances. The Commission, however, adopted West Penn’s proposal. At the end of Fiscal Year 1998-1999, West Penn had not yet completed its securitization.

Pennsylvania Power Company

At the end of Fiscal Year 1997-1998, the Commission had not yet ruled on Pennsylvania Power Company’s (Penn Power) restructuring proceeding (Docket No. R-00974149). In its proceeding, Penn Power claimed $272.2 million in stranded costs. The OCA had recommended that Penn Power be permitted recovery of $199 million in stranded cost. During the course of the proceeding, the parties were able to agree on a number of issues, including the market price forecast for use in calculating stranded cost. On July 22, 1998, the Commission entered its Order resolving all remaining matters in Penn Power’s restructuring proceeding. The Commission’s Order authorized Penn Power to recover $234 million in stranded cost over a seven year recovery period. With this level of recovery, the Commission established shopping credits beginning at 3.7259¢/kwh in 1999 and escalating to 5.0850¢/kwh in 2006.

Additionally, as it did in its other restructuring orders, the Commission directed Penn Power to allow two-thirds of its customers to have choice by January 2, 1999 with all customers having choice by January 2, 2000. The Commission adopted the OCA position on numerous issues, including the OCA’s recommendations regarding universal service programs and consumer protection measures. As to universal service programs, the Commission adopted the OCA’s proposed funding level for Penn Power’s Customer Assistance Program (CAP) of $1,613,125 which would assist between 3,400 and 4,500 low income
customers and directed the Company to gradually expand its program to this level. The Commission also
directed the Company to increase its funding for its low income usage reduction program (LIURP) to the
OCA’s recommended level of $645,250 over a three year period. The Commission, however, approved
Penn Power’s proposal to defer these costs and recover them in the future. As to the consumer protection
measures, the Commission adopted the OCA’s proposal, particularly regarding service termination,
payment processing, credit and collection practices, switching fees and applications for service. Through
a series of comments to Penn Power’s compliance filings, these protections were successfully implemented
in Penn Power’s tariffs.

Following the issuance of the Commission’s Order, Penn Power appealed the decision to
the Commonwealth Court challenging the Commission’s phase-in of customer choice. The OCA filed a
cross appeal to Penn Power’s appeal challenging the Commission’s failure to reduce rates to Penn Power’s
customers as recommended by the OCA. Following the submission of Briefs on the merits to the
Commonwealth Court, the parties entered into settlement negotiations. The parties were able to reach a
successful settlement. Under the settlement, Penn Power agreed that the cap on its transmission and
distribution rates will be extended to December 31, 2001, or approximately six months beyond the rate
cap provided in the Act. In addition, Penn Power agreed to extend its generation rate cap, and the rate
at which it serves its provider of last resort function, by an additional year. Importantly, Penn Power
agreed to forego the deferral and future rate recovery of the universal service costs. Under the settlement,
two-thirds of Penn Power’s customers remain eligible for customer choice in 1999 and 2000, and the last
third will be eligible on January 1, 2001. On May 3, 1999, the Commission entered an Order approving
the Settlement.

Since the approval of the Settlement, the OCA has continued to work with Penn Power
on the design and development of its Customer Assistance Program. The OCA provided Comments to
Penn Power on its preliminary design for the expansion of its CAP and will continue to work with Penn
Power on the implementation of its CAP.

In a related matter, the OCA intervened in Penn Power’s Application seeking approval
to transfer certain of its generating assets to Duquesne Light Company as part of Duquesne’s proposal in
its Restructuring proceeding to conduct a divestiture of generating assets. (Docket No. A-110450F.0015).
As discussed above, to complete its divestiture, Duquesne proposed to transfer its partial ownership
interest in three nuclear and five fossil plants, totaling approximately 1435 MW of generating capacity to
FirstEnergy Corp., Penn Power’s parent company, in exchange for ownership interest in eleven units at the
Avon Lake, New Castle and Niles Generation stations, totaling 1300 MW. The units at New Castle and
Niles are currently owned by Penn Power. The OCA filed a Protest raising two key concerns regarding
the transfer. First, the OCA argued that Penn Power’s ratepayers should not be exposed to any increased
nuclear decommissioning liability in the future as a result of Penn Power’s acquisition of the Beaver Valley
Nuclear Generating Station. Second, the OCA argued that the generation exchange must not impair Penn
Power’s ability to serve at or below the rate cap levels agreed upon in the settlement. The Company
agreed with the OCA on both of these points and this agreement was embodied in the Commission’s Final Order approving the transfer of the assets.

**PECO Energy Company**

As reported in last year’s Annual Report, the restructuring proceeding of PECO Energy Company was the first proceeding that was settled before the Commission. (Docket No. R-00973953, et. al). The OCA fully participated in this effort. The settlement retained the shopping credits of approximately 4.46 ¢/kwh in the first year (slightly above 5 ¢/kwh for residential customers), and provided for slight increases thereafter. The settlement also provided for the recovery by PECO of up to $5.26 billion of stranded investment through December 31, 2010, with permission to securitize up to $4 billion of that total. In addition, the settlement provided for an 8% rate reduction for all customers in 1999 and a 6% rate reduction for all customers in 2000. In one form or another, the settlement also retained or strengthened those aspects of the Commission’s Order, outlined above, which are beneficial to consumers. Accordingly, the Commission determinations regarding issues such as universal service, consumer education, competitive safeguards, and the accelerated phase-in to competition were included or strengthened within the final PECO settlement. Equally important, the OCA successfully negotiated for significant extensions to the Act’s transmission and distribution rate caps as well as the generation rate cap applicable to provider of last resort service, beyond those provided in the Act. Additionally, the Settlement contains a provision for competition for at least a portion of PECO’s default provider of last resort service for residential customers. PECO’s rate for this service is designed to reflect the successful bid price while retaining all of the protections of the rate cap.

During Fiscal Year 1998-1999, the OCA continued its work on implementing provisions of the Settlement. Throughout the Fall of 1998, the OCA participated in a collaborative process established to define the terms and conditions for Competitive Default Service (CDS) provided for in PECO’s Settlement. The OCA participated fully in this collaborative process, working to ensure that there was no derogation in service to residential customers as a result of competitively bidding the provider of last resort service. In addition, the OCA sought to ensure that the terms and conditions, as well as the bid procedure, provided the maximum opportunity for all bidders so that the benefits of this competitive process could be realized. Through the collaborative process, and in subsequent Comments filed before the Commission, the OCA addressed such issues as technical and financial fitness of the bidders; continuation of rate cap protections; termination of service procedures; customer service and consumer protection measures; and rate structure of the bids. In addition, the OCA urged the Commission to consider allowing bids for only the generation portion of the provider of last resort service. On April 30, 1999, the Commission entered an order establishing terms and conditions for Competitive Default Service that adopted many of the OCA’s positions.

On November 4, 1998, the Commission issued a Tentative Order requesting comments on PECO’s proposal for reconciliation of its stranded cost recovery through its Competitive Transition Charge (CTC). (Docket No. D-98S042). Under the Settlement, reconciliation of the CTC was to occur,
consistent with Section 1307 of the Public Utility Code, but the exact process for this reconciliation was not specified. PECO submitted its request to implement procedures for the reconciliation of the CTC mechanism. Importantly, without further adjustment, PECO proposed to reconcile the CTC on a cash basis, a different methodology than that followed under Section 1307. The OCA filed comments identifying problems with the cash basis reconciliation proposed by PECO. In particular, the OCA noted that the reconciliation proposed by PECO could result in a double count of the uncollectible expense already included in rates, thus resulting in overpayments by ratepayers. In addition, the OCA argued that the proposal would understate the stranded cost recovery thereby resulting in unnecessary adjustments to the CTC and the shopping credits. The Commission directed that the parties enter into mediation in an attempt to resolve their differences. The OCA and PECO were able to resolve most of the issues through mediation, but the issue of whether PECO should be permitted to use a cash reconciliation was returned to the Commission for disposition. On March 18, 1999, the Commission entered an Order agreeing with the OCA’s position and rejecting PECO’s proposed reconciliation methodology.

UGI Corporation-Electric Division

As reported in last year’s Annual Report, UGI Corporation—Electric Division (UGI) made its restructuring filing on August 11, 1997, making a claim for stranded costs in the amount of $54 million. (Docket No. R-00973975). The OCA filed a complaint opposing the Company’s restructuring plan September 9, 1997. In the course of the proceeding, the OCA presented the testimony of six expert witnesses. As a result of settlement negotiations between the Company, OCA and other parties, a stipulation to settle all of the contested issues regarding UGI’s restructuring claim was finalized May 21, 1998. Under the terms of the settlement UGI would be permitted to recover $32.5 million in stranded costs. The shopping credit was set at $3.67¢/Kwh for 1999 and 2000 and then at $4.3¢/Kwh for 2001 and 2002. Additionally, UGI agreed to accelerate implementation of customer choice, to allow all customers to choose their electricity supplier as of January 1, 1999. Finally, UGI agreed to increase its Low Income Usage Reduction Program (LIURP) funding by $15,000 per year to a level of approximately $130,000 and implement a Customer Assistance Program (CAP) with an initial funding level of $150,000.

The only issue not resolved by UGI’s settlement concerned PP&L’s claim that it would incur stranded costs under a wholesale supply contract with UGI as a result of UGI’s customers being permitted direct access to competitive suppliers. PP&L contended that UGI’s purchases of electricity would drop in volume as customers migrate to other suppliers, thereby stranding some of PP&L’s investment in generation assets that PP&L used to provide energy under the wholesale supply contract. PP&L argued that it had a direct claim against UGI’s ratepayers for these stranded costs. The OCA disagreed with both PP&L’s contract interpretation and its theory of recovery from UGI’s ratepayers. The OCA filed briefs in opposition to PP&L’s claim, to assure that UGI customers would not be saddled with inappropriate stranded cost. In a June 19, 1998 order, the Commission approved the partial settlement and rejected PP&L’s claim. The Commission determined that PP&L’s claim was not supported by the terms of the contract nor by PP&L’s constitutional confiscation arguments, specifically noting the arguments
of the OCA and others in response. PP&L filed an appeal in Commonwealth Court. The matter was then settled by PP&L and UGI in 1999.

### Pike County Light & Power Company

Also as reported in last year’s Annual Report, Pike County Light & Power Company (Pike) filed its restructuring plan September 30, 1997. (Docket No. R-00974150). The OCA filed a formal complaint on November 7, 1997 and investigated the Company’s filing. A wholly-owned subsidiary of Orange & Rockland Utilities, Inc. (O&R), Pike claimed $1.02 million in stranded generation and transition costs, primarily related to non-utility generation (NUG) buy-out costs under the Public Utility Regulatory Policies Act (PURPA) and costs from its affiliate. The OCA filed the testimony of three experts regarding stranded cost, tariff and rate design concerns, and universal service issues. The OCA did not quantify a recommended level of stranded cost, noting that the Pike’s stranded cost will be determined in part by parent O&R’s planned sale of generation assets.

On May 15, 1998, the OCA, Pike and other parties entered into a joint settlement. Under the terms of the settlement, Pike would be permitted to recover $701,533 in stranded and transition costs related to NUG buy-out costs, regulatory assets, consumer education and the cost of the expected divestiture filing. The Company agreed to allow all customers choice as of May 1, 1999, instead of a longer phase-in period. Under the settlement, Pike’s proposed switching fee would be eliminated and limits were set on any future switching fee. Additionally, the Company agreed to increase its funding for its emergency assistance fund and to implement a pilot program to provide low income customers with energy conservation measures, with the costs to be recovered from all customers. The settlement also established terms for the treatment of Pike’s share of any future gain or loss upon the sale by O&R of its generating assets, by setting a cap of $55,000 on the gain that might be retained by Pike’s shareholders. Any gain above that amount would offset Pike’s stranded cost otherwise recoverable through the competitive transition charge. If the proceeds would not cover the $55,000 set aside for shareholders, the CTC might be increased.

The ALJ issued a Recommended Decision in support of the settlement on June 16, 1998. The Commission issued an Order on July 23, 1998 approving the Settlement. Subsequently, Pike County filed its Application for merger with Consolidated Edison, Inc. (Docket No. A-110650F.003). The OCA filed a Notice of Intervention and Protest raising concerns about the allocation of the costs and benefits of the merger between the companies; the Company’s proposal to return only 50% of the net merger savings to ratepayers; and the method of returning the savings to both the electric and the natural gas customers of Pike County. Under the Settlement, Pike agreed to begin amortization of the costs to achieve its merger upon closing, and in its next base rate case, reflect all merger savings prospectively in rates.

Pike County’s parent company, Orange and Rockland, also completed the sale of its generating assets during Fiscal Year 1998-1999, for a total sale price of $330 million. Pike County then filed an application with the Commission to approve the sale of these assets and reflect the net proceeds
of the sale in rates in accord with the Settlement. (Docket No. A-110650.F003). After review, the Application was approved by the Commission.

Citizens’ Electric Company

Citizens’ Electric Company (Citizens’) made its electric restructuring filing on September 30, 1997. (Docket No. R-00974047). The Commission consolidated Citizens’ restructuring case with the Company’s earlier petition to roll its energy cost rate (ECR) into base rates. The OCA filed a formal complaint November 3, 1997 and actively investigated the Company’s filings. As a small electric utility, serving approximately 6,400 customers, Citizens has no generating assets of its own. Instead, Citizens’ purchases its power supply under a wholesale contract with PP&L. Accordingly, Citizens’ projected it would have zero stranded cost, unless PP&L later made a claim for recovery of its stranded cost from the Company.

The OCA, the Company, and other parties engaged in discovery and negotiations regarding the Company’s restructuring plans and ECR petition. As a result, the parties agreed to a joint settlement. Under the settlement, the Company’s CTC would be set at zero, unless and until PP&L pursued a claim for its stranded costs, at which time Citizens’ would have to request Commission approval to change its CTC to recover the stranded cost. Additionally, Citizens’ agreed to cap its distribution rates until June 30, 2001 and to cap generation rates until either all customers had retail choice or all stranded cost were recovered, whichever came later. Transmission rates were capped for no more than 54 months. The average shopping credit for customers who choose to shop would be $4.1285¢/Kwh. Customer choice would be phased in over two steps, with all Citizens’ customers to have a choice by January 2, 2000, one year earlier than required by the Act. The Commission approved the joint settlement on June 18, 1998.

Subsequently, Citizens’ filed a compliance tariff to implement the provisions of the joint settlement. Upon review, the OCA identified areas where the tariff required clarification or modification to fully implement the settlement and other Commission Orders. The OCA filed Comments with the Commission recommending modifications to the tariffs. In addition, Citizens’ filed an Application for merger with Tri-County Rural Electric Cooperative and Claverack Rural Electric Cooperative. (Docket No. A-110050F.005). The OCA filed a Protest and Notice of Intervention in this proceeding raising concerns about the impact of the proposed transaction upon the provision of affiliated services to Citizens’, the nature and quantity of potential savings created by the proposed transaction, and the allocation of savings among Citizens’, Wellsboro, Tri-County, Claverack, C&T, and the ratepayers.

The parties entered into further settlement negotiations regarding both of these matters. The parties were able to successfully resolve these issues and entered into a Settlement that provided for revised tariff language, further contribution by Citizens’ to its universal service efforts, activation of the stranded cost recovery rider, implementation of a Supplier Tariff, and agreement on a Code of Conduct if Citizens’ affiliates seek to provide competitive generation service. On January 14, 1999, the Commission approved the Settlement of these proceedings.
Wellsboro Electric Company

Wellsboro Electric Company’s (Wellsboro) electric restructuring filing was filed on September 30, 1997. (Docket No. R-00974046). The Commission consolidated this case with Wellsboro’s prior request to roll its ECR into base rates. The OCA filed a formal complaint November 3, 1997 and investigated the Company’s filings. Wellsboro made no claim for stranded cost, reflecting the fact that Wellsboro purchases its power requirements from Cleveland Electric Illuminating Company and does not have generation assets of its own.

After significant discovery and negotiations, the Company, the OCA and other parties reached a joint settlement. Under the terms of the settlement, Wellsboro would have no competitive transition charge (CTC) tariffed, since it expected no claim for stranded cost from Cleveland Electric. Wellsboro’s 6,200 customers would be offered retail choice on a phased in basis, with all customers to have choice by January 2, 2000. The Company’s ECR would be rolled into base rates, resulting in no increase and enhancing rate stability, compared to continuation of the separate fuel cost rider. The terms of the joint petition also confirmed that the Company will continue its existing universal service programs and investigate participation in a low-income usage reduction program.

The presiding ALJ recommended approval of the joint settlement on June 18, 1998. On July 9, 1998, the Commission issued an Order approving the joint settlement. The Company subsequently filed a compliance tariff to implement the provisions of the settlement. Upon review, the OCA identified certain areas where the compliance tariff required clarification or modification to fully comply with the Settlement and subsequent Commission Orders. The OCA filed Comments with the Commission identifying these areas. On December 17, 1998, the Commission entered an Order adopting most of the OCA’s recommendations.

Mergers and Acquisitions

As discussed above, the OCA addressed the merger of two small electric utilities in Pennsylvania–Pike County and Citizens’–in the context of their restructuring proceedings. In addition to these two mergers, the OCA continued its work on the proposed merger between Duquesne Light Company and Allegheny Power Systems, Inc. in Fiscal Year 1998-1999.

As reported in last year’s Annual Report, concurrent with the filing of their restructuring plans, Duquesne Light Company (Duquesne) and Allegheny Power Systems, Inc. (Allegheny Power), parent company of West Penn Power Company, requested Commission approval of a proposed merger between the two companies on August 1, 1997. The OCA filed a protest and intervention on September 2, 1997 raising numerous concerns about the Companies’ proposed merger. Central to OCA’s concerns were how the merger would impact on potential retail competition and, if approved, how the merger would provide benefits to consumers. The OCA investigated the Companies’ plans, filed testimony and then briefs. In its testimony and briefs, the OCA recommended that the anticipated merger savings be flowed
through to customers to assure that consumers benefitted from the merger. In addition, the OCA recommended that the Companies commit to joining the Midwest Independent System Operator (ISO) to mitigate any potential market power and that the Commission retain the authority to order the divestiture of up to 2500 megawatts (MW) of economic capacity in the event that the Midwest ISO is not fully functioning and able to mitigate market power problems.

In a May 29, 1998 Order, the Commission ruled in favor of the Companies’ proposed merger, but adopted numerous OCA recommendations as to merger savings and mitigation of market power issues. Finding the Companies had understated the potential merger savings, the PUC adopted OCA’s position that generation-related merger savings would amount to $70.6 million on after tax basis for Allegheny Power and $152.28 million for Duquesne. The Commission adopted the OCA’s position that these generation-related merger savings be utilized to offset stranded cost for each company. The Commission also adopted the OCA’s recommendations for distribution-related merger savings, directing rate reductions of $15.8 million per year in distribution savings for Duquesne and a $9.1 million per year distribution rate reduction for Allegheny Power, effective January 1, 2000. The PUC agreed with OCA that these savings were net of any merger transaction costs. On the issue of market power and mitigation efforts, the Commission agreed with the OCA and others that the Companies’ rate cap and offer to auction 300 megawatts of generation did not go far enough to allay concerns about market power of the merged company. As a precondition of the merger, the PUC directed the Companies to join a fully functioning independent system operator as a means of mitigating market power concerns.

On June 12, 1998, Allegheny Power and Duquesne jointly filed a petition for reconsideration, asserting that the Commission should accept their new offer to auction 570 megawatts of generation as an adequate alternative mitigation measure. The OCA opposed the Companies’ petition in an answer filed June 22, 1998 raising concerns that an auction of 570 MW may not be sufficient to mitigate market power. The OCA continued to recommend that the Commission retain authority to direct a full divestiture of up to 2500 MW, if necessary, to mitigate market power of the merged company. The Commission ruled June 29, 1998 that the evidentiary record must be reopened to examine the merits of the new offer, through hearings or alternative dispute resolution.

On July 8-10, 1998 evidentiary hearings were conducted on the Companies’ proposal to auction 570 MW of generating capacity. The OCA actively participated in these hearings, and presented the testimony of its expert witness. The OCA continued to recommend that the Commission retain the authority to order the divestiture of 2500 MW of capacity to mitigate market power if pancaked transmission rates were not eliminated and there was no fully functioning Independent System Operator (ISO) by June 30, 2000. In addition, the OCA raised numerous concerns with the structure of the Company’s proposed sale of the 570 MW Cheswick generating station and recommended that the Commission accept this proposal only if the Commission retained control and supervision of this sale. On July 23, 1998, the Commission entered an Order substantially adopting the OCA’s proposal. The Applicants were required to notify the Commission within 30 days of whether they elected to proceed under this Order. Duquesne Light Company subsequently notified the Commission that it would not
proceed with the merger. By Order entered September 17, 1998, the Commission gave the Applicants until October 5, 1998, the termination date contained in the merger agreement, to advise the Commission of whether the merger would proceed under the terms specified by the Commission. As of February 24, 1999, the Commission had received no notification and it deemed the merger Application withdrawn and the Commission docket marked closed. At this time, actions, brought by Allegheny Power, are pending in federal court requesting the federal court to order Duquesne to proceed with the merger.

**Rulemakings And Policy Statements To Implement Competition**

As part of its implementation of the Act, the Commission continued the process of instituting rulemakings and generic proceedings to establish a regulatory framework to govern all aspects of customer choice, from consumer education to licensing of suppliers to assuring quality of service of the safety, adequacy and reliability of transmission and distribution service. In addition, the Commission addressed numerous Petitions calling for clarification or modification of regulations. The OCA actively participated in all of these proceedings.

On September 18, 1998, the Commission issued an Order seeking input for its preparation of a binding set of Interim Guidelines and proposed rules regarding the role of the electric distribution company (EDC) in its provision of Provider of Last Resort Service under the Act. (Docket No. M-00960890F.017). Specifically, in this set of proceedings, the Commission sought to develop guidelines regarding the EDC’s activities in the marketplace. The OCA filed Comments in support of the Commission’s initiative, recognizing that this was the first of numerous proceedings that were needed to properly implement the provider of last resort service. In addition, the OCA raised its concerns with the potential for EDCs to utilize their monopoly position to undermine the Commission’s education efforts and the developing market. The OCA urged the Commission to establish guidelines to guard against this possibility. The OCA also recommended that the Commission Guidelines contain clear direction regarding the rate cap, compliance with consumer protection rules and Chapter 56, compliance with other relevant Commission orders and reiterating that the EDC is prohibited from terminating customers for non-payment of alternative supplier charges. On November 19, 1998, the Commission entered its Interim Guidelines adopting many of the principles set forth in the OCA’s Comments.

In Fiscal Year 1998-1999, the Commission also instituted a rulemaking to amend its filing requirements for the Annual Resource Planning Reports in light of the introduction of competition for electric generation service. (Docket No. L-00980136). On October 21, 1998, the OCA filed Comments in the Commission’s Advanced Notice of Proposed Rulemaking. In its Comments, the OCA recognized the Commission’s continued responsibility to ensure system reliability, including adequate generation reserves, in the utility planning process. The OCA also recognized that the competitive market will take over much of the economic or financial aspects of the planning process since financial risks are now borne by the supplier. The OCA recommended that the Commission’s reporting regulations focus on reliability and on the provider of last resort service. On April 17, 1999, the Commission issued its proposed amendments to 52 Pa. Code Chapter 57. The OCA supported the Commission’s proposed amendments
finding that they continued the annual reporting of information but in a more concise manner. The OCA also supported the focus of the reporting requirements on reliability. At the close of Fiscal Year 1998-1999, the Commission’s final form regulations had not yet been issued.

On February 18, 1999, the Commission entered a Tentative Order on Reliability Benchmarks and Standards. (Docket No. M-00991220). In the Order the Commission sought to establish benchmarks and standards for various indicators of an EDC’s performance and reliability regarding transmission and distribution outages. The OCA supported the Commission’s effort to establish standards and benchmarks to ensure that reliability is maintained, particularly since a utility, facing pressures associated with maintaining profitability in a competitive environment may well make short term decisions concerning operation and maintenance that will have an adverse impact upon customer reliability. The OCA, however, expressed concerns that the methodology adopted by the Commission may allow for a significant deterioration in service reliability. The OCA filed comments addressing this, and other issues. On April 30, 1999, the Commission entered its Final Order establishing tentative benchmarks and standards in accordance with the Commission’s preferred methodology. At the end of Fiscal Year 1998-1999, the OCA was continuing to review the reliability reports of the EDCs filed in compliance with the Commission’s Order.

On March 19, 1999, the Commission entered a Tentative Order setting forth procedures for the implementation of full retail choice in the Commonwealth. (Docket No. M-00991230). In the Tentative Order, the Commission, recognizing that all customers were now eligible for customer choice, proposed procedures that would allow all customers to be considered eligible for choice and simply select an alternative supplier. The Commission also sought comments on different approaches with respect to sharing customer information with electric generation suppliers (EGSs). The OCA filed Comments on April 8, 1999. In its Comments, the OCA agreed with the Commission’s proposal to consider all customers eligible for choice, but expressed concern with the issue of the release of confidential customer information. The OCA argued that customers should be permitted to restrict the release of at least three categories of information: 1) telephone number, 2) usage history, or 3) all information. The OCA further commented that the Commission’s proposed procedure, which required a customer to check off a block and return a postcard to the EDC to restrict the release of information, may be acceptable but only for these limited purposes and only if the use of the information is limited and the EGS is required to keep the information strictly confidential. On May 18, 1999, the Commission entered a Final Order adopting its procedures and prohibiting the release of all telephone numbers. In addition, the Commission strictly limited the EGS’s use of the information to only the sale of generation service, and it required that the EGS strictly maintain the confidentiality of the information with no further release permitted without the customer’s affirmative consent. Several appeals were filed challenging the Commission’s Order. At the close of Fiscal Year 1998-1999, those appeals were pending before the Commonwealth Court.

Also during this time, the Commission’s working groups on a many implementation issues and processed continued and the OCA continued its active participation in these working groups. Of particular importance, the OCA continued its work on the Pilot Implementation Committee (PIC) and it
participated actively in the Business Practices Working Group, a group that considered various business practices associated with the provision of competitive metering and billing. Among other things, this group considered the processes necessary for the implementation of provisions of the Commission’s Standards and Billing Practices (Chapter 56), which provide essential consumer protections, in a competitive billing and metering environment.

The OCA also continued its active involvement on Advisory Boards and in working groups that were addressing the provision of universal service in accordance with the Act. The OCA participated actively in the collaborative process to develop standards and guidelines for the Renewable Pilot Programs for low-income customers that were approved as part of the settlement process. This collaborative worked on establishing guidelines to provide a framework for the design and implementation these important programs. In addition, in accordance with the Settlement of West Penn Power Company, the OCA worked directly with West Penn and other Joint Petitioners in the actual design of its program. At the close of Fiscal Year 1998-1999, the design work on these programs continues.

As part of the implementation of the restructuring proceeding settlements for PECO Energy, PP&L, Inc., Metropolitan Edison Company, Pennsylvania Electric Company, and West Penn Power Company, the OCA also worked with the other Joint Petitioners to establish the Boards of Directors and the by-laws for the Sustainable Energy Funds created by the settlements. The Sustainable Energy Funds were established to provide funding and support to promote (1) the development and use of renewable energy and clean energy technologies; (2) energy conservation and efficiency; and (3) renewable business initiatives. The OCA worked with the other Joint Petitioners in the nomination and approval of representative Boards as well as in establishing initial recommendations for the Boards regarding by-laws for operation. By Order entered June 4, 1999, the Commission approved the Boards for each of the utilities. In addition, the Commission established a Statewide Board to provide oversight, guidance, and technical assistance to the Sustainable Energy Funds. The OCA was named a member of the Statewide Board.

Other Electric Matters

In addition to the activity that was related to the restructuring proceedings, the OCA continued its work on other important electric matters, including matters involving advertising by EDCs, corporate reorganizations, non-utility generation (NUG) contracts, and retirements of generating stations.

In October of 1998, the Mid-Atlantic Power Supply Association (MAPSA) filed a Formal Complaint and Petition for Emergency Order against PECO Energy Company (Docket Nos. P-00981615, C-00981846, et al.) and PP&L, Inc. (Docket No. C-00981845) alleging that PECO and PP&L had engaged in marketing activities through direct mailings to customers of their provider of last resort service in a manner that was unfair, deceptive, false and misleading. As to PECO, MAPSA also alleged that PECO had engaged in a mass media campaign that was also unfair, deceptive, false and misleading. The Clean Air Council filed a similar complaint against PECO regarding the same advertising
The OCA participated in the expedited hearing process and filed Briefs and Reply Briefs on the issues raised by the case. The OCA was particularly concerned with the advertisements for the provider of last resort service that were inconsistent with the Commission’s consumer education initiatives, PECO’s obligations under the Joint Settlement, and the Commission’s Interim Guidelines. The OCA argued that the advertisements, which encouraged customers to remain with PECO and not explore competitive alternatives, promoted the provider of last resort service over competitive alternatives. The OCA argued that this promotion was improper and inconsistent with the Commission’s Orders, consumer education initiatives and the Joint Settlement.

On May 19, 1999, the Commission entered an Order directing PECO to refrain from its current marketing practices which promote, solicit and advertise Provider of Last Resort Service over competitive alternatives and which deceptively and inaccurately portray, communicate or infer that Provider of Last Resort Service is a competitive service at this time. The Commission also referred the matter to the Pennsylvania Office of Attorney General for further investigation and necessary proceedings. Both PECO Energy and MAPSA have appealed the Commission’s Order to the Commonwealth Court. At the end of Fiscal Year 1998-1999, the matter was pending before the Commonwealth Court.

In another case involving PECO Energy, PECO petitioned the Commission for approval to invest the assets on its nuclear decommissioning trust fund pursuant to the prudent investor guidelines and standards rather than the more restrictive standards currently in place. (Docket No. P-00991670). This standard was adopted by the Commission for other nuclear decommissioning trust funds in Pennsylvania and it has also been adopted by the Federal Energy Regulatory Commission (FERC). The OCA supported PECO’s efforts to maximize the fund returns within these guidelines. The Guidelines ensure that a trustee with appropriate experience in risk/return analysis and with knowledge of the nuclear industry can maximize the fund returns within the specified guidelines. Maximizing the fund returns should reduce or mitigate the level of future required contributions to the trust from ratepayers.

The OCA also participated in three other cases of note involving PP&L, Inc. On October 20, 1998, PP&L, Inc. filed a Petition for amendment of the Commission’s prior Order that had established certain conditions associated with the Commission’s approval of PP&L, Inc.’s Application to form a Holding Company structure. PP&L sought to amend certain limitations placed upon PP&L’s right to acquire diversified assets; limitations on the rights of PP&L’s affiliates to acquire non-utility assets, with notification; certain conditions concerning PP&L’s relationships with its affiliates; and certain conditions regarding regulatory matters. The OCA filed an Answer to the Petition agreeing that certain of the original conditions, established in 1994, may need to be revisited in light of the Customer Choice Act. The OCA argued, however, that not all conditions should be modified or eliminated. Following the filing of the OCA’s Answer, the parties entered into settlement negotiations. Based on these negotiations, the OCA and PP&L were able to reach agreement on amended holding company conditions. The amendments continue to address investments in diversified businesses, relationships with affiliates, reporting requirements, and regulatory matters such as the Commission’s continuing jurisdiction, but the conditions reflect the introduction of competition where appropriate.
Also during Fiscal Year 1998-1999, PP&L filed a Petition for approval to retire from service the Holtwood Unit 17 Coal-Fired Steam Electric Station in Lancaster, Pennsylvania. (Docket No. P-00991669). In its Petition, PP&L questioned whether the Commission retained jurisdiction to rule on this matter, but if the Commission found that it did retain jurisdiction, PP&L asserted that Holtwood was uneconomic and requested the necessary approvals for retirement. The OCA answered PP&L’s Petition arguing that the Commission, in this case, clearly retained jurisdiction to review this matter pursuant to Section 521 of the Public Utility Code. In addition, the OCA pointed out that such review is particularly important in light of the Commission’s on-going obligation under Chapter 28 of the Public Utility Code to ensure reliability as well as the provisions of Section 2808(a) which govern the stranded cost recovery of a unit that is no longer operated on a continued basis. The OCA argued that the Commission must assure itself that retirement of the Holtwood Station will not jeopardize system reliability, and that the plant is uneconomic on a production cost basis. Subsequent to the filing of the OCA’s Answer, the parties held a series of informal discussions regarding the issues raised by the OCA. These informal discussions were able to resolve the concerns raised by the OCA, and the matter was returned to the Commission for final disposition.

On December 16, 1998, PP&L filed a Petition with the Commission seeking a temporary waiver of certain provisions of 52 Pa. Code Chapter 56, the Commission’s regulations providing standards and billing practices for residential utility service. PP&L requested the temporary waiver as it was installing a new computer system for its billing services, and was concerned with potential start-up problems associated with the new computer billing system. The OCA answered PP&L’s Petition, commending PP&L for recognizing these potential problems, but finding many of PP&L’s requests to be overbroad. The OCA encouraged the Commission to direct PP&L to work with the Commission’s Bureau of Consumer Services to identify potential problems and find more focused ways to resolve the problems rather than a blanket waiver of the Commission’s regulations. The OCA also argued that if the Commission were to grant any temporary waivers, the Commission should ensure that various commitments made by PP&L were fulfilled and that customers were not unnecessarily disadvantaged by the waiver. The OCA then addressed each of the provisions, making various conditions or recommendations regarding each provision if a waiver of that provision is granted. On February 12, 1999, the Commission entered an order adopting all of the positions and recommendations of the OCA.

On May 20, 1999, Pennsylvania Electric Company (Penelec) filed a Petition with the Commission for approval of rate recovery of costs associated with an amendment to an agreement with one of its NUG projects, Inter-Power of Pennsylvania, for its project located in Barr Township, Cambria County. (Docket No. P-00991700). The amendment to the contract came about as a result of a proposal made to Penelec by Interpower in response to Penelec’s reverse NUG auction conducted in 1997 as a means to mitigate its potential NUG stranded cost. The OCA filed an Answer supporting Penelec’s efforts to mitigate its NUG stranded cost but requesting further information to properly evaluate the proposal. Under the proposal, ratepayers would receive about $4.073 million on a net present value basis to be used to reduce stranded cost, but the amendment also called for the elimination of the Suspense Account which provided assurance that the project would continue to perform under the contract. At the end of Fiscal
Year 1998-1999, the parties were engaged in informal discussions to obtain information and fully evaluate the proposed amendment.

On May 12, 1999, Pennsylvania Power Company (Penn Power) filed an Application for a Certificate of Public Convenience authorizing Penn Power to transfer its transmission assets to an affiliated company, American Transmission Systems, Inc. (ATSI). (Docket No. A-110450F.016). The transaction is intended to be an intermediate step in the overall plan to transfer assets to a regional transmission organization or to create a structure wherein third parties may divest their transmission assets. The OCA filed a Protest identifying numerous areas of concern and calling for a full investigation of this request. In particular, the OCA called for 1) a full cost/benefit analysis to determine if there was a net benefit to ratepayers; 2) a review for consistency with aspects of Penn Power’s restructuring proceeding; 3) a review of the financing of the transaction; 4) implementation of appropriate affiliate transaction rules and accounting protocols; 5) a determination of the Pennsylvania Commission’s jurisdiction over the new entity, particularly concerning construction, and siting of new transmission lines as well as reliability and safety of the grid; and 6) a review for any potential anti-competitive effects pursuant to Section 2811 of the Public Utility Code. At the end of Fiscal Year 1998-1999, the OCA’s Protest was pending before the Commission.

In a matter involving West Penn Power Company (West Penn), the OCA intervened in an appeal filed by West Penn challenging a Commission Order regarding potential modifications to the agreement with one of its NUG projects, AES Beaver Valley. In early 1998, West Penn had filed a Petition for Declaratory Order requesting the PUC to rule on whether the Company was required to purchase increased energy and capacity from the facility that would become available due to modifications at the facility. (Docket No. C-00844022). If it was required to make these purchases, West Penn asked the Commission to either reopen its restructuring proceeding or be granted a guaranteed exception to the rate cap provisions of the Act to recover the increased costs. The OCA opposed West Penn’s request to reopen its restructuring proceeding and it opposed its request for a guaranteed future rate cap exception in the future but agreed with West Penn’s concern about being required to make additional purchases from this project at this time. The Commission entered an Order on December 17, 1998 finding that West Penn was required to make the additional purchases, but rejecting West Penn’s request to reopen its restructuring proceeding. The Commission also declined to rule on West Penn’s request for a guaranteed future exception to the rate cap. The Commission noted that West Penn retains whatever rights it has under the Act to request such relief at the appropriate time. West Penn filed an appeal in Commonwealth Court. (Docket No. 152 C.D. 1999). On May 26, 1999, the OCA filed a Brief in Commonwealth Court in support of two aspects of the Commission’s Order. The OCA specifically supported the Commission’s denial of West Penn’s request to reopen the record to include a late-filed claim for stranded cost recovery and its refusal to grant the request for a guaranteed future rate cap exception for the recovery of these costs. At the end of Fiscal Year 1998-1999, this matter was pending before the Commonwealth Court.

Other Generic Rulemakings
On October 31, 1998, the Commission published in the Pennsylvania Bulletin a proposed policy statement regarding the resolution of issues common to complaints involving 66 Pa.C.S. §1529.1 (duty of owners of rental property). Section 1529.1 requires rental properties to be separately metered so that tenants are only paying for their own utility service. The section specifies certain remedies when the utility or commission discovers that the rental property is not separately metered. This is often referred to as “foreign load” since the situation most often entails energy usage from either common areas or another unit being registered on one tenant’s bill. The OCA filed detailed comments regarding the Commission’s proposed policy statement. Of particular concern, the OCA addressed the Commission’s proposal to allow a meter to register foreign load if the load has been disclosed in writing to the tenant and the tenant accepts financial responsibility. The OCA was concerned that this policy may not be consistent with the statute. Additionally, the OCA argued that the policy did not include sufficient protections for tenants, particularly if the foreign load is discovered after the tenant resides in the unit. The OCA also addressed the Commission’s proposal to allow a “minimal foreign load” exception, i.e., not requiring the landlord to correct the situation where the load is minimal. Again, although recognizing the Commission’s intent, the OCA expressed concern that this proposed policy was inconsistent with the statute. At the end of Fiscal Year 1998-1999, the Commission had not entered a Final Order on its Policy Statement.

Federal

FERC Electric Proceedings

Introduction

The OCA’s participation in electric proceedings before the Federal Energy Regulatory Commission (FERC) expanded significantly over the past fiscal year as FERC continued to implement its 1997 comprehensive restructuring rule known as Order No. 888. In that final rule, FERC asserted jurisdiction over all electric utility transmission facilities due to the integrated, interstate nature of those facilities. FERC also required electric utilities to provide non-discriminatory access to their interstate transmission systems for all wholesale electricity transactions. In Order No. 888, FERC also encouraged electric utilities to participate in Independent System Operator (ISO) organizations. ISOs are intended to operate, but not own, the electric utility transmission systems within their borders. FERC established 11 principles in Order No. 888 to govern ISO operations. These principles include requirements for independent governance and elimination of rate pancaking. FERC intended that independent governance would assure that electric utilities are providing non-discriminatory access to their transmission systems. Additionally, FERC intended that the elimination of rate pancaking would allow bulk power transactions to flow across multiple transmission systems for a single charge, thus eliminating barriers to competition in wholesale energy markets by lowering transaction costs.

On May 13, 1999, after assessing the progress which electric utilities have made in creating ISOs, the progress states have made in pursuing retail competition programs, and the remaining potential for discriminatory practices in the operation of the electric transmission grid nationwide, FERC issued a
notice of proposed rulemaking seeking comment on the formation of Regional Transmission Organizations (RTO). *Regional Transmission Organizations, Notice of Proposed Rulemaking*, Docket No. RM99-2-000, 64 Fed. Reg. 31390 (1999). In the RTO NOPR, FERC proposes to create regional organizations to manage the electric transmission grid within their boundaries. FERC further seeks comment on the extent to which it can or should mandate participation in such RTOs by electric utilities and other market participants, as well as sets forth proposed guidelines relating to the characteristics and functions with which RTOs must comply. As noted below, the OCA filed comments in this proceeding.

The OCA’s primary focus in FERC matters has been the development of these ISOs and RTOs for Pennsylvania’s utilities. The OCA is actively participating in the governance and structure of the three ISOs / RTOs which Pennsylvania electric utilities have joined: the Pennsylvania-New Jersey-Maryland Interconnection, L.L.P. (PJM ISO or PJM), the Midwest Independent System Operator (Midwest ISO), and the Alliance Regional Transmission Organization (Alliance RTO). The OCA is also involved in the FERC rate, tariff and formation proceedings related to these three RTOs.

The OCA’s main challenge in the federal electric arena is to ensure that the proper RTO structures and rules are in place to protect residential and small commercial customers from the potential for market power abuses and to stimulate competition in both wholesale and retail markets so that even these small consumers can benefit from retail choice.

**FERC Electric Rulemaking Proceedings**

1. **Notice of Proposed Rulemaking on Regional Transmission Organizations, RM99-2-000**

   On May 13, 1999, FERC issued a notice of proposed rulemaking seeking comment on the formation of RTOs, including comment on the characteristics and functions which such RTOs should exhibit and undertake. FERC also sought comment on whether participation in RTOs should be mandatory or voluntary. The OCA led the effort to file comments on behalf of the National Association of State Utility Consumer Advocates (NASUCA). The OCA filed Initial Comments and Reply Comments on NASUCA’s behalf. The most important issue addressed in those comments is the need for a truly independent governance structure for RTOs. RTOs must be free from undue influence exerted by market participants.

   In addition to governance issues, NASUCA urged FERC to develop a pro-active market monitoring function for RTOs, to invest RTOs with the authority to require interconnection of new generation facilities to a particular utility’s transmission system, and to reject the use of extra “incentives” to encourage utilities to join RTOs. NASUCA urged FERC instead to mandate that all electric utilities join RTOs, citing the success achieved within the PJM ISO in establishing active, competitive generation markets. FERC has not yet issued a final rule in this proceeding.
2. Order No. 888 Appeals

The OCA had actively participated with NASUCA in the proceedings which led to the issuance in 1997 of Order No. 888, requiring open-access transmission and recovery of stranded generation costs. In Order No. 888, FERC allowed electric utilities to recover 100% of their stranded wholesale electric generation costs as a result of the unbundling process, and further opined that the agency would consider granting stranded cost recovery for the retail portion of the business to any utility whose state commission lacked authority to allow stranded cost recovery. The OCA, NASUCA and most other sectors of the industry appealed Order No. 888 in May, 1997. The OCA joined with NASUCA and others in filing a brief relating to the stranded cost issues. Because of the OCA’s experience in arguing the stranded cost recovery issue in the natural gas proceedings stemming from Order No. 636 which unbundled the natural gas pipeline industry, the OCA led the effort in the instant proceeding with respect to the argument in the briefs demonstrating the inconsistency in FERC’s treatment of stranded cost recovery in this industry and FERC’s actions in the gas industry. This case was awaiting oral argument at the end of the fiscal year.

ISO Proceedings and Related Cases

1. Pennsylvania-New Jersey-Maryland Independent System Operator (PJM ISO)

The OCA continues to participate in proceedings at FERC regarding the restructuring of the PJM Interconnection, Docket Nos. ER97-3189 et al., into an ISO. FERC approved PJM’s filing by order dated November 25, 1997, but required PJM to make certain modifications in its Operating Agreement, Reliability Assurance Agreement, and Tariff. For example, FERC required PJM to implement a market monitoring plan to ensure the competitiveness of the wholesale electric markets PJM operates. Since November 1997, PJM has filed numerous amendments to its agreements and tariff to comply with FERC’s Order.

The OCA actively participated in the collaborative processes which lead to many of these filings. Through this participation, the OCA is able to influence the manner in which PJM addresses issues that arise as retail competition gains momentum in Pennsylvania. Senior Assistant Consumer Advocate Denise Goulet currently serves as Chair of the PJM Public Interest and Environmental Organizations User Group (PJM PIEO-UG). This User Group is comprised of environmental groups, citizens groups, and the state consumer advocate offices from the four states and the District of Columbia which lie within the region governed by the PJM ISO. Throughout this fiscal year, the PJM PIEO-UG has become more proactive in addressing issues of concern within PJM. For example, the OCA led an effort to draft User Group comments relating to the draft indices developed by PJM’s Market Monitoring Unit (MMU). The MMU sought comment on its draft indices which it plans to use as guidelines for market surveillance to determine whether market power problems exist or whether certain PJM structural rules inhibit competition.
The OCA also monitors the activities of various other PJM Committees and User Groups, including the following: Members Committee, Energy Market Committee, Reliability Committee, Tariff Advisory Committee, Transmission Expansion Advisory Committee, Customer Choice User Group, and Installed Capacity & Energy Cap User Group. Through participation in these committees, the OCA has been able to influence PJM decisions relating to proposed revisions of the ISO’s rules and tariffs.

For example, in August and September, 1998, a significant issue arose concerning the ability of alternate electric suppliers in Pennsylvania to acquire the capacity they needed to satisfy installed capacity obligations imposed by the PJM ISO’s tariff rules. PJM requires all load serving entities (LSEs, which include marketers) in PJM to carry an Installed Capacity Obligation as a means of ensuring that the LSE has sufficient capacity resources for reliability purposes. However, some marketers complained that the traditional electric utilities who own the vast majority of the generating capacity in the Commonwealth and in PJM were unwilling to sell capacity to the competitive LSEs at reasonable market prices. PJM filed at FERC on October 14, 1998 and implemented on October 15, 1998 a Visible Capacity Market mechanism which provides a voluntary auction for capacity credits. Recognizing that a voluntary auction mechanism might not resolve the concerns expressed by the OCA, the Pennsylvania Commission and others, relative to the capacity obligations issue, PJM amended the voluntary, monthly visible capacity market to require a mandatory day-ahead market as well. The amendment imposes a default bid for those capacity owners who do not voluntarily bid their excess capacity into the market on a day-ahead basis. The mandatory day-ahead market was implemented for the period January 1, 1999 through May 31, 1999 as an effort to jump start the voluntary auction mechanism. In April and May, 1999, at the urging of the OCA and others, PJM extended the mandatory day-ahead capacity market for an additional year.

While the OCA has supported both the voluntary and temporary mandatory auction mechanisms, the OCA continues to work with PJM members on these and related issues, including the development of a Capacity Deficiency Rate (CDR) and the reconsideration of the spot energy price cap. The interaction of these rules in PJM are intended to ensure reliability of electric supply to meet PJM customer needs. However, some participants in PJM’s markets, such as the alternative LSEs, argue that these rules stymie retail competition within PJM. To ensure that robust competition has a realistic chance to develop in Pennsylvania’s retail markets, the OCA, in conjunction with the PJM committees, is reviewing these rules to ensure that Pennsylvania consumers receive both reliable and reasonably priced electricity.

The OCA also tracks the amendments to the Operating Agreement and Tariff that PJM files at FERC as a result of the collaborative processes in these committees and user groups. The OCA intervenes in those proceedings that might have an adverse impact on residential and small commercial consumers in Pennsylvania. For example, the OCA joined with the consumer advocate offices in Delaware, New Jersey and Maryland (Joint Consumer Advocates) to recommend modifications to the Market Monitoring Plan that PJM filed with FERC on June 29, 1998. On March 10, 1999 FERC approved the Market Monitoring Plan with the recommendations made by the Joint Consumer Advocates.

2. Midwest Independent System Operator (Midwest ISO), Docket No. ER98-1438-000
Several midwestern utilities collaborated during 1997 with various stakeholders to develop an ISO structure for the Midwest. In January 1998, they filed a tariff and various agreements with FERC to implement the structure they agreed upon in the collaborative process. The OCA did not participate initially in the FERC proceeding, since no Pennsylvania utility had announced an intent to become a participant in the Midwest ISO. In March 1998, however, Allegheny Power System and Duquesne Electric Company stated that they would join the Midwest ISO as a means of complying with a Pennsylvania Public Utility Commission’s Order in their state merger proceeding which, among other things, required the merging companies to participate in a fully functioning ISO as a condition of merger approval. At that time, the OCA formally intervened in the Midwest ISO case and began to actively participate in the proceedings. On September 16, 1998, FERC conditionally approved the Midwest ISO with certain modifications and specifically set certain issues for hearing.

The OCA attended several settlement conferences in this case. Most parties, including FERC Trial Staff and the OCA, were able to reach agreement on many of the issues that had been set for hearing. One issue, discussed and partially settled, was the Midwest ISO participants’ request to receive a level of return on equity that would provide an incentive to electric utilities in the area to join the Midwest ISO. The parties stipulated to the floor level of return based on the cost of equity, but reserved the incentive adder issue for briefs to be submitted directly to FERC. The parties requested that FERC decide whether, as a matter of policy, the Midwest ISO should be allowed to receive an additional 100 basis points on its equity return. FERC approved the settlement and established a briefing schedule for the incentive return issue. The OCA led the effort to draft and submit a joint consumer advocate brief on behalf of consumer advocate offices in Pennsylvania, Ohio, Indiana, Illinois, and Missouri. The OCA and the Joint Consumer Advocates opposed the Midwest ISO Participants’ request to receive an increased incentive rate of return on equity. FERC has not yet issued an order on either the equity return issue set for paper hearing or the other issues set for evidentiary hearings.

3. **Alliance Regional Transmission Organization (Alliance RTO), Docket Nos. ER99-3144-000 and ER99-80-000**

The OCA also has actively participated during the fiscal year in the collaborative process which led to the filing on June 3, 1999 with FERC of an application to form the Alliance RTO. FirstEnergy Corporation, one of the utilities participating in this effort, has a subsidiary in Pennsylvania, Pennsylvania Power Company. The OCA intervened in these proceedings and filed comments highlighting the OCA’s concerns with the independence of the governance structure and the rate proposals. The OCA’s concerns focused on the Alliance RTO governance structure providing the electric utilities forming this entity significant veto power and undue influence over the RTO’s operations. The OCA contended that many of these utilities remain vertically integrated, and as such, exert significant market power in energy markets. Additionally, OCA’s comments raised the concern that the Alliance structure provides for the continuation of rate pancaking and thus eliminates one important benefit that ISOs and RTOs can provide, i.e. access to broader geographic markets at lower costs. FERC has not issued any orders concerning the Alliance RTO filing.
The OCA additionally has been a part of the debate as to whether the Midwest ISO should merge with the Alliance RTO. Currently the Midwest ISO and the Alliance RTO split the Midwest region, and the boundaries of the Midwest ISO are not contiguous. Such a structure hinders the ability of both entities to resolve parallel path flows, rate pancaking, and other operational problems within their borders, thus potentially dampening competition. There have been meetings between the Midwest ISO and the proposed Alliance RTO. The OCA has been tracking the developments from those meetings, but to date little progress has been made.

4. FirstEnergy Corporation’s Application to Transfer Assets to Subsidiary, Docket No. EC99-53-000

FirstEnergy Corporation (FirstEnergy) filed an application with FERC on March 19, 1999, for authorization to transfer ownership and operational control of its jurisdictional transmission facilities to American Transmission Systems, Inc. (ATSI). ATSI would be a wholly-owned subsidiary of FirstEnergy. This application is a first step to develop the Alliance RTO into a for-profit Transco, i.e., a corporation which would own some or all of the transmission facilities of the electric utilities within its borders. ATSI would either then become the for-profit Transco or would transfer the facilities to such an entity. The OCA intervened in this proceeding on April 21, 1999 and filed comments regarding the reasonableness of FirstEnergy’s application. FERC has not issued an order or established a litigation schedule in this matter. The OCA will actively participate in any further proceedings that the FERC authorizes.
NATURAL GAS

Pennsylvania

Natural Gas Competition Issues

As reported in OCA’s last annual report, over the last few years, a number of natural gas utilities in western Pennsylvania began to open their tariffs up to give residential and small commercial customers a competitive choice of the company that acquires and delivers the gas supplies to their local gas utility, rather than the local gas utility being the exclusive supplier of these services. These changes were made possible by a series of FERC orders that gave access to many shippers to interstate pipeline facilities that are necessary to deliver natural gas from gas production regions, primarily in Appalachia and the southwest. While these choices have been available to most large commercial and industrial customers for years, the obstacles to smaller customer participation in this competitive environment have been reduced over time to the point where, as the General Assembly is well aware, it is now feasible for gas suppliers to compete for smaller customers.

The General Assembly’s passage of the Natural Gas Choice and Competition Act and Governor Ridge’s signing of that Act into law on June 22, 1999 culminated the process of making competitive choices available to all natural gas customers. The Office of Consumer Advocate was an active participant in the industry stakeholder group that was reconvened in early 1999 and played a key role in the development of this legislation.

The passage of that law begins a new phase in the regulation of natural gas services in Pennsylvania. Natural gas suppliers must be licensed and bonded by the Commission. The Act requires the Commission to ensure that customers are provided with adequate and accurate information to enable them to make informed choices of their natural gas services and, in furtherance of this objective, the Commission is to implement, together with the natural gas utilities, a consumer education program. The Commission is also required to ensure that customer services and consumer protections are maintained at least at the same level of quality. The Act further requires the implementation of appropriately funded universal service and energy conservation programs for low-income customers. Finally, the overall objective of the Act is to introduce a competitive market for gas supply services while meeting these other objectives. Clearly, this is a challenging task with numerous issues to be addressed, including the disposition of contracts for interstate pipeline delivery services, ensuring reliability without imposing prohibitive economic costs on suppliers, providing for non-discriminatory treatment of suppliers and preventing preferential treatment of affiliate suppliers, and otherwise putting in place a program that is flexible and will change as the marketplace matures.

OCA anticipates that a substantial portion of its resources over the next year will be devoted to addressing the Act. Fortunately, the Electricity Generation Customer Choice and Competition Act provides a sound template to address many of the issues that will need to be addressed for natural gas
services over the next year, particularly with respect to customer services and consumer protection requirements. OCA will be actively involved in each natural gas utility’s restructuring proceeding and in the Commission’s establishment of generic guidelines as it implements natural gas customer choice in Pennsylvania.

**Base Rate Proceedings**

As noted in last year’s annual report, on March 16, 1998 **PG Energy, Inc.** filed a request for a $15 million, or 8.25%, rate increase. (Docket No. R-00984280). This included a proposed increase for residential customers of 11.42%, including an increase in the customer charge from $6.25 per month to $11.00 per month. On March 25, 1998, OCA filed a formal complaint. OCA actively investigated the Company’s claims and submitted testimony supporting a rate increase of $2.14 million, including a recommended return on common equity of 10%. Evidentiary hearings were held on July 29-30 and August 3-5, and August 12, 1998. After lengthy and extensive negotiations, the parties reached a settlement which was submitted on September 29, 1998. The settlement provided for a rate increase of $7.4 million, including a 5.3% increase to residential customers and an increase of the customer charge to $8.50 per month.

**Purchased Gas Cost Proceedings**

OCA continued its assessment of gas utilities’ gas purchasing practices during the year pursuant to Section 1307(f) of the Public Utility Code. OCA continued to address a wide range of issues in these cases and continued, in particular, to provide careful evaluation of utility contractual commitments with interstate pipelines to which significant purchased gas costs are attributable. In particular, in **Equitable Gas Company**’s 1998 1307(f) proceeding (Docket No. R-00984279), OCA contended that Equitable should not secure upstream firm interstate pipeline transportation capacity on Kentucky West Virginia (KWVa) and Columbia Gas Transmission (Columbia) as the Company had proposed. KWVa is an affiliate of Equitable. In a settlement reached in this proceeding, the Company agreed not to renew these contracts, reducing rates by approximately $6 million. Additionally, the settlement reduced retail sales customers’ rates by approximately $1.5 million per year by shifting a portion of Equitable’s pipeline costs from its affiliate, Equitrans, to transportation service customers. Finally, Equitable agreed to redesign its standby rates for transportation customers in its 1999 and 2000 1307(f) filings, reducing retail sales customer rates by approximately $325,000 during the 1999 purchased gas cost period and $3.0 million during the 2000 purchased gas cost period.

OCA also engaged in collaborative discussions with **Peoples Natural Gas Company** regarding its interstate pipeline contractual commitments and the design of its retail customer choice program that resulted in a settlement submitted as part of Peoples’ 1999 1307(f) proceeding that will reduce Peoples’ contractual commitments with its affiliated interstate pipeline supplier, CNG Transmission Corporation, as well as commitments with Tennessee Gas Pipeline Company. The termination of Peoples’
contract with Tennessee alone will reduce the Company’s purchased gas costs by approximately $5.8 million per year.

Additionally, OCA continued to address a variety of other issues, including gas companies’ proposals for performance-based gas purchasing programs. These include programs under which gas utilities’ spot gas purchases are compared to published spot gas indices, and the utility is rewarded or penalized for its performance; capacity release incentive programs, under which a gas company’s performance in the capacity release market is compared to historic levels of performance; incentives for making sales off-system; and gas company proposals to purchase a portion of their gas supply based upon long-term contracts and hedging programs. As discussed above, OCA also reviewed gas companies’ contracts and evaluated numerous standard purchasing issues such as the level of interstate pipeline capacity held by gas companies, the allocation of gas costs between customer groups, the recovery of capacity costs from customers utilizing transportation service, and gas commodity price projections, among other issues.

**Merger Proceedings and Other State PUC Proceedings**

On February 11, 1998, Peoples Natural Gas Company filed an Application to transfer its gas production assets to its affiliate, CNG Producing Company. (Docket No. A-12250F0008). OCA filed a Protest and Notice of Intervention and submitted testimony with respect to this application. A similar application had been rejected by the Commission in 1997. The matter was consolidated with Peoples’ Section 1307(f) proceeding and was resolved as part of the settlement of that proceeding. The settlement provided three key elements: (1) a reduction to base rates of 9.55¢/Mcf rather than the 8.84¢/Mcf proposed by the Company; (2) the production of gas from these wells at anticipated below-market prices for the period from 1999-2004; and (3) the flow-through of the benefits of below-market prices to retail choice customers.

On April 5, 1999, Peoples filed an Application for merger of its parent company, Consolidated Natural Gas Company, with Dominion Resources, Inc., (DRI) a Virginia company. (Docket No. A-122250F0010). The Office of Consumer Advocate filed a Protest and Notice of Intervention and began an inquiry into the appropriateness of this merger. On June 16, 1999, OCA reached a settlement with the merging companies that provided for a rate case stay-out through January 1, 2003 and provided that restructuring costs pursuant to the Natural Gas Choice and Competition Act claimed in any future rate case would be offset by any merger related savings. The merged companies also agreed to provide OCA and the PUC with notice of the use of interstate pipeline capacity currently held by Peoples to serve DRI and agreed not to seek recovery of any increase in pipeline capacity costs attributable to CNGT’s provision of service to DRI or an affiliate through January 1, 2008. Finally, DRI committed to offer residential service as an electric generation supplier to customers in 16 counties in Pennsylvania within 12 months of the closing of the merger.
OCA also continued its participation in a complaint proceeding involving damage to water lines alleged to be caused by Peoples Natural Gas Company’s cathodic protection system.

**Federal**

**FERC Natural Gas Proceedings**

**Introduction**

The OCA continues to actively participate in FERC proceedings relating to interstate pipelines in order to protect Pennsylvania residential and other small natural gas consumers as FERC moves forward with light-handed regulation of the natural gas industry. Throughout this decade, FERC has initiated several rulemaking proceedings in an effort to provide an environment in which robust competition in wholesale natural gas markets can develop and to investigate the extent to which competition can serve as a substitute for traditional, cost-based rate regulation of the pipelines. On July 29, 1998, FERC combined most of the issues addressed in those proceedings into two comprehensive proceedings: a Notice of Proposed Rulemaking (NOPR) in Docket No. RM98-10-000 relating to short-term transportation markets and a Notice of Inquiry (NOI) in Docket No. RM98-12-000 relating to long-term transportation markets.

The OCA submitted comments in each of the proceedings discussed above, on behalf of itself and the National Association of State Utility Consumer Advocates (NASUCA), urging FERC to recognize that its primary responsibility under the Natural Gas Act, 15 U.S.C. § 717 et seq., remains the protection of all natural gas consumers from the pipelines’ abilities to wield market power. While many segments of the industry have enjoyed the benefits of competition in the market for natural gas supply, residential and other small consumers often remain captive customers of interstate pipelines for essential transportation and storage services.

The OCA also continues to play an important role in ensuring that rates for interstate pipelines serving Pennsylvania remain just and reasonable. Significant cases in which the OCA has actively participated in a lead counsel role with several other parties include litigation and settlement of environmental remediation expense issues on the Columbia Gas Transmission Corporation system in Docket No. RP95-408-000. Those efforts resulted in a settlement in early 1999 resolving recovery from ratepayers of Columbia’s environmental costs associated with this EPA-mandated remediation program over the anticipated 15 year life of the program. Net savings for Pennsylvania customers could exceed $16 million over this period if Columbia’s total program costs exceed $300 million. The settlement, at a $300 million cost level, would require Columbia’s shareholders to absorb in excess of 45% of total expenses.

In addition to these proceedings, the OCA continues to play an important role in every ratemaking and rulemaking proceeding involving an interstate pipeline serving Pennsylvania, as summarized below.
FERC Rulemaking Proceedings

1. Short and Long Term Transportation Markets, Docket Nos. RM98-10-000 and RM98-12-000

On July 29, 1998, FERC initiated two related, comprehensive rulemaking and policy proceedings inquiring into the wisdom of allowing competitive market forces and/or light-handed regulation to govern interstate pipeline rates and services. FERC proposes to lift price caps on all short-term transactions, including capacity release, interruptible and short-term firm transactions.

To mitigate any remaining market power, FERC proposed to require all such short-term capacity transactions to go through an auction process and to make the terms and conditions for such services comparable. FERC also proposed to allow pipelines to implement negotiated terms and conditions of service for long-term transactions, and to mitigate any market power concerns by establishing the pipelines’ existing tariffed services as recourse or default services. Finally, FERC sought comment on whether it should modify existing policies governing capacity expansions, incentive rate proposals, right of first refusal mechanisms, rate of return and straight-fixed variable rate design in order to incent shippers back into long-term contracts and provide greater revenue stability for pipelines. FERC also sought comment on its policy governing expansion projects in an effort to provide incentives for future investment in new pipeline capacity.

The OCA led NASUCA’s efforts to respond to these proposed rulemaking notices. The OCA and NASUCA filed initial comments on January 22, 1999, and filed supplemental comments on April 22, 1999. In these comments, the OCA and NASUCA generally supported lifting the remaining price restrictions in the secondary market, i.e. the capacity release market. However, the primary market in which pipelines sell interruptible, short-term and long-term firm capacity remains a natural monopoly in which pipelines continue to exercise market power over smaller consumers. Consequently, the OCA and NASUCA opposed market based rates and negotiated rates for pipelines who cannot demonstrate that their transportation markets are sufficiently competitive as to warrant light-handed regulation. The OCA and NASUCA further urged FERC to revise its current pricing policy which favors rolled-in rates for new pipeline capacity. While FERC has not yet issued a final rule in either proceeding, FERC did issue an order in Docket No. PL99-3-000 revising its pricing policy for capacity expansions essentially adopting NASUCA’s position. FERC reversed its prior policy and adopted a presumption in favor of incremental pricing, i.e. placing the costs of the expansions on the new customers imposing the costs on the system.

The OCA’s and NASUCA’s comments also urged FERC to adopt policies which provide adequate protection for small, captive consumers and to adopt policies which will allow state retail choice programs to proceed unencumbered by federal rules. For example, the OCA and NASUCA urged FERC to extend the Right of First Refusal rule to marketers serving retail load behind an LDC’s city gate so as ensure that pipeline capacity historically dedicated to a state remains dedicated to that state in the wake of retail choice programs. Additionally, the OCA and NASUCA urged FERC to eliminate straight-fixed variable rate design and to require pipelines to develop greater flexibility in contract terms so that LDCs
may more easily adjust to load migration as retail choice programs get underway. Finally, the OCA and the Ohio Office of Consumers Counsel, another NASUCA member, jointly filed separate comments urging FERC to consider implementation of an auction for gas imbalances as a means of addressing certain supplier of last resort concerns in states implementing retail choice programs.

2. Complaints Procedures, Docket No. RM98-13-000

On July 29, 1998, FERC issued a notice of proposed rulemaking seeking comment on revisions necessary in its process for handling complaints. FERC noted that the dynamic nature of the more competitive wholesale markets for electricity and natural gas required a more expedited process for handling complaints. The OCA led the effort to file comments in this proceeding on behalf of numerous consumer advocate offices across the country. The OCA filed joint comments on October 2, 1998, urging FERC to expedite the processing of complaints, but to retain responsibility for final decisions in such proceedings. The OCA also commented upon FERC’s noticed intent to mandate the use of Alternate Dispute Resolution procedures for all complaints, urging FERC to allow the complainant to elect between ADR and a more traditional litigation path. FERC issued its final rule on March 31, 1999, essentially adopting the OCA’s and the Joint Consumer Advocates’ recommendations with respect to expediting the complaint process. FERC subsequently issued an order on rehearing affirming its authority such to provide for expedited process.

3. Pipeline Capacity Expansions, Docket No. RM98-9-000

On December 21, 1998, the OCA filed joint comments with consumer advocate offices in West Virginia and Iowa on FERC’s proposed revisions to its regulations governing pipeline certificate proceedings. FERC had proposed to eliminate the prior notice requirement for pipelines before by-passing an LDC’s system. The OCA urged FERC to retain the prior notice requirement, and further requested that FERC reconsider its policy which allows pipelines to construct new lines which will by-pass local distribution company systems. FERC’s current policy requires the LDC to demonstrate that it had a written service agreement with the by-pass customer before FERC will allow the LDC to reduce its contract entitlements with the pipeline to reflect the lost load. Most LDCs serve large customers under tariffs as opposed to individual service agreements and are thus unable to meet FERC’s test. Thus, the LDC remains liable for the stranded pipeline capacity costs which it often seeks to pass on to residential consumers in state proceedings. The OCA urged FERC to change from a presumption against contract demand reductions to a presumption in favor of such reductions. By orders dated April 24, 1999 and September 29, 1999, FERC retained the prior notice requirement, but reject the OCA’s request to reconsider the contract demand reduction policy.


On October 28, 1998, FERC issued a notice that it intended to hold a public conference seeking comment from state commissions and others as to which FERC rules might be inhibiting retail
choice programs currently being undertaken by many states. The OCA filed written comments on March 12, 1999, flagging the Shipper-Must-Have Title rule and SFV rate design as impediments to retail choice programs. The OCA further noted that FERC should extend to marketers certain rights and flexibilities currently enjoyed by LDCs under existing pipeline tariffs, including the Right of First Refusal in renewing pipeline contracts and the flexibility to elect Maximum Daily Obligation entitlements at city gates which exceed the shipper’s total Daily Contract Quantity. FERC has not yet issued a ruling in this docket. Since many of these issues overlap with issues raised in Docket Nos. RM98-10-000 and RM98-12-000, it is possible FERC will address many issues raised here in the context of the two comprehensive rulemaking dockets.

Order 636 -- Remand and Restructuring Appeals

FERC issued Order No. 636 on April 8, 1992 mandating a comprehensive restructuring of the interstate natural gas industry. That Order required pipelines to unbundle sales functions from transportation functions and opened access to competitive natural gas supply markets for all consumers. By order dated July 16, 1996, the D.C. Circuit Court of Appeals upheld the Commission’s SFV rate mandate, but remanded the Gas Supply Realignment (GSR) cost recovery policy to FERC for further consideration. After the remand, all cases involving challenges to pipeline GSR cost recovery issues were settled. The pipelines serving Pennsylvania each agreed to absorb substantial shares of these costs as a result of the OCA’s and NASUCA’s success in the D.C. Circuit.

One issue remanded concerned FERC’s proposal to impose a 20 year contract term matching requirement on LDCs seeking to exercise a right of first refusal to renew their pipeline contracts. On February 27, 1998, FERC issued Order No. 636-C on remand limiting the matching term requirement for firm contracts under the right of first refusal mechanism to five years in recognition of the short term nature of current market transactions. The OCA had supported this move toward shortening the matching requirements in order to facilitate natural gas retail choice programs. The Interstate Natural Gas Association of America (INGAA), the trade association for the pipelines, appealed this decision to the D.C. Circuit. The OCA intervened in August 1998 in this appeal in support of the FERC order. The appeal awaits the establishment of a briefing schedule.

FERC Gas Base Rate Proceedings

1. Transcontinental Gas Pipeline Company, Docket No. RP95-197-000

Transcontinental Gas Pipeline Company (Transco) filed on March 1, 1995 to increase rates by $132 million annually. On November 1, 1996, FERC approved a settlement reflecting a reduction of $58 million annually in Transco’s rates and a savings for Pennsylvania ratepayers of approximately $7 million annually.
Rate of return issues were litigated at separate hearings held during the fall of 1996. The Presiding Administrative Law Judge issued his Initial Decision in December 1996, approving an overall return for Transco higher than that recommended by OCA. In Opinion No. 414 issued August 1, 1997, FERC established a return policy which extends substantial deference to pipelines to establish equity thick capital structures. The OCA argued that this policy provides windfall profits to the pipelines at the expense of ratepayers. On rehearing in Order No. 414-A, issued July 29, 1998, FERC affirmed its decision and rejected all rehearing requests. The OCA appealed this decision to the DC Circuit as part of a joint effort with the North Carolina Utilities Commission and the Transco Municipal Group.

The OCA also raised an important rate design issue concerning the pricing of expansion capacity. This issue was consolidated with the identical issue in Transco’s 1997 rate case discussed below, at Docket No. RP97-71-000.

2. Columbia Gas Transmission Corporation, Docket No. RP95-408

Columbia Gas Transmission Corporation (Columbia Gas) filed on August 1, 1995 to increase rates by $147 million annually. FERC approved a settlement on cost-of-service issues in Phase I by order dated April 17, 1997, providing for a reduction in Columbia Gas’s filed rates of $178 million annually. The cost of service settlement saved Pennsylvania ratepayers approximately $21 million annually.

The environmental issues severed into Phase II were scheduled to go to hearing in 1998. The OCA filed direct testimony in November 1997 challenging the prudence of Columbia Gas’s handling of poly-chlorinated biphenyls (PCBs) and oily wastewaters, contaminants which Columbia Gas must now clean-up under the oversight of the United States Environmental Protection Agency. The $20.8 million in environmental expenses at issue in this case represent the costs for the first year of Columbia Gas’s clean-up program, a program which could take 10 to 15 years to complete. The OCA recommended allowing no more than $5.6 million in rates. In September, 1998, the OCA and the Columbia Customer Group reached a global settlement which will govern Columbia’s remediation program throughout the anticipated fifteen year remediation period reducing expenditures to an average of $10 million annually. The Settlement thus provides significant benefits to Pennsylvania consumers of approximately $16 million in savings over that period. FERC approved this settlement.

3. Transcontinental Gas Pipeline Company, Docket No. RP91-71-000 and RP95-197-000

Transco filed on November 1, 1996 to increase rates by $83 million annually. FERC approved a settlement of cost-of-service issues in June 1998 which saves Pennsylvania consumers in excess of $11 million annually.

A substantial controversy existed in this case with respect to Transco’s claimed rate of return due to FERC’s policy changes in Opinion No. 414, discussed above at Transco’s Docket No. RP95-197-000 and due to FERC’s new policy for calculating an appropriate return on equity. The OCA
jointly sponsored a witness on this issue with the NC Utilities Commission and the Transco Municipal Group recommending a substantial reduction in the return sought by Transco. Those issues remain pending before FERC on rehearing.

Rate design issues concerning Transco’s proposal to roll-in to pre-expansion customer rates the costs of incremental Leidy Line facilities used to serve incremental customers were consolidated for hearing and decision with the identical issue raised in Transco’s last rate case at Docket No. RP95-197-000, discussed above. The OCA supported maintaining incremental pricing for the Leidy Line expansion facilities. The OCA’s analysis of the facts in the case when measured against FERC’s criteria for rolled-in rates disclosed that rolled-in rates were not justified in this case because the incremental facilities at issue were built to serve, and are primarily used to serve, only the incremental customers. The Presiding ALJ issued his Initial Decision rejecting rolled-in rate treatment in March 1998. On April 16, 1999, FERC issued its order reversing the ALJ and approving rolled-in pricing for these facilities. The OCA filed a request for rehearing in May, 1999, which is still pending.

4. **Equitrans, Inc., Docket No. RP97-346-000**

Equitrans, Inc. (Equitrans) filed on April 30, 1997 to increase rates by $4 million. On August 31, 1998, Equitrans filed a settlement of all issues in this proceeding. The OCA supported the settlement because it provides for a reduction in rates below pre-filed levels and further provides for a lower level of stranded costs as well as a wider spread of those costs across all customers on the system, consistent with the OCA’s positions on these issues. The Commission approved the settlement by order dated April 29, 1999. Pennsylvania consumers will realize annual savings of approximately $4 million as a result of this order.

5. **CNG Transmission Corporation, Docket No. RP97-406-000**

CNG Transmission Corporation (CNG) filed on July 1, 1997 to increase rates by $71.1 million. UGI Utilities, Inc. and others filed testimony seeking to roll-in to non-expansion customer rates the costs of incremental facilities used to serve expansion customers. This issue is similar to that discussed above in Transco’s Docket No. RP97-71-000 proceeding. The parties successfully reached agreement on all issues except SFV rate design. The settlement, filed August 31, 1998, provides for rolling rates back to the level in effect prior to the filing of the rate case, provides for a decrease in rates for incremental rate customers on the Lebanon to Leidy line with no shift of the revenue loss to non-expansion customers; and a phase-in of rolled-in rate treatment for certain storage customers over a three year period. The OCA supported the settlement. The Commission approved the settlement by order dated November 24, 1998. Pennsylvania consumers will realize annual savings of approximately $6 million as a result of this order.

**FERC Miscellaneous Rate Proceedings**
1. **Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, Docket Nos. RP98-249-000 and RP98-250-000**

   Columbia Gas and Columbia Gulf filed on June 16, 1998, to implement negotiated terms and conditions of service on their pipeline systems. The OCA intervened on July 17, 1998 opposing the Columbia Companies’ requests as premature considering that these issues are pending before FERC in generic rulemaking proceedings at Docket Nos. RM98-10-000 and RM98-12-000, and as discriminatory since residential consumers are unlikely to benefit from such negotiations and may be harmed by deterioration in service quality as a result. To date, FERC has taken no action on these filings and is likely to continue to defer action pending issuance of a final rule in Docket Nos. RM98-10-000 and RM98-12-000.

2. **Texas Eastern Transmission Corporation, Docket No. RP98-83-000**

   Texas Eastern filed in December 1997 a request that FERC issue a declaratory ruling that Public Service Electric & Gas Company’s (PSE&G) attempt to release all its capacity on Texas Eastern to an inadequately funded affiliate of PSE&G violated the Commission’s capacity release regulations. Texas Eastern claimed that PSE&G’s proposal was a plan to avoid payment for that capacity through the end of PSE&G’s contract, which would leave significant stranded capacity on this pipeline system. The OCA intervened in this proceeding in order to protect the interests of Pennsylvania residential customers with respect to stranded costs. FERC issued its order granting Texas Eastern the relief it sought in February 1998. PSE&G appealed this order to the D.C. Circuit Court of Appeals where the proceeding awaits the establishment of a briefing schedule.

3. **National Fuel Gas Distribution Corporation, Docket No. RP99-190-000**

   On December 22, 1998, National Fuel filed a request with FERC for a waiver of the Shipper-Must-Have-Title rule in order to facilitate a system-wide retail choice program. National Fuel noted that it receives the bulk of its gas supplies from Tennessee Gas Pipeline Company and that Tennessee’s tariffs are structured in such a manner as to limit National Fuel’s ability to release certain pricing and operational flexibilities to marketers. In order to implement a retail choice program that will continue to provide reliable and reasonably priced transportation services to retail customers behind its city gate, National Fuel sought permission to retain the pipeline capacity contract and allocate use of that capacity to marketers in lieu of formally releasing that capacity to marketers. The OCA intervened in support of National Fuel’s request in order to ensure that Tennessee’s tariff did not bring retail choice to Pennsylvania consumers at a higher cost or at the cost of reliability of service. By order dated February 24, 1999, FERC granted National Fuel’s request.
4. Transcontinental Gas Pipeline Corporation, Docket No. RP98-381-000

On August 31, 1998, Transco filed an application to implement three new firm transportation services on its production area pipeline system in Louisiana and Texas. Transco proposed to substitute these firm services for the existing interruptible service it provides on these lines. The OCA intervened opposing Transco’s request. Firm shippers on Transco’s system, including several Pennsylvania LDCs, use the interruptible service on the production area lines to obtain gas supplies for their systems. This service is known as IT feeding FT and receives firm priority in Transco’s scheduling. During Order No. 636, Transco developed the IT feeding FT concept as a means of avoiding assigning particular production area transportation paths to particular shippers. Such an assignment process would have limited firm shippers’ access to all production areas. The OCA and many other parties opposed Transco’s attempt to now so limit firm shippers on the system. Requiring assignment of firm transportation paths along specific pipeline segments, as would be required under Transco’s proposed new firm services, would have reduced flexibility and increased pipeline costs for Pennsylvania consumers. By order dated February 24, 1999 FERC agreed and rejected Transco’s proposal. Although Transco sought rehearing of this decision, the Commission issued a final order upholding its ruling.

FERC Appellate Proceedings

1. East Coast Distributors v. FERC, Case No. 98-1396

The OCA intervened in this appeal of FERC’s June, 1998 order approving the GRI settlement which transitions GRI over a seven year period to a voluntary funding mechanism. Several east coast local gas distribution companies appealed the order approving the settlement as unduly discriminatory. The OCA supported FERC’s order. During the summer of 1999, East Coast Distributors negotiated a settlement with GRI which does not disturb the FERC approved settlement. The appeal was subsequently withdrawn.
TELECOMMUNICATIONS

Pennsylvania

Global Proceeding

In October, 1998, the Commission invited all interested parties to negotiate concerning a number of proceedings that had been pending before the PUC, some for many years. The issues addressed included universal service, access charge reform, rate caps, and the numerous rules and rates necessary to bring about local telephone competition. These negotiations extended for approximately 6 months but were unsuccessful in reaching agreement among all parties.

Beginning in April, 1999, the Commission then established a procedure for litigating all issues outstanding in consideration of two petitions for settlement (Docket Nos. P-00991649, P-00991648). The OCA cooperated with a number of other parties, formed a Consumer Parties group, offered testimony on a range of issues, and fully litigated this proceeding. Through that litigation the OCA encouraged the Commission to act consistent with the interest of consumers as follows:

- Cap all of Bell Atlantic’s basic local service rates at their current levels through 2003;
- Establish a Universal Service Fund to set a $16.00 limit on local residential rates, and otherwise maintain local rates at or below that limit for all Local Exchange Carriers, including small rural companies;
- Prevent local exchange companies from raising their basic local service rates in order to make up for revenue losses resulting from competition in services that are subject to some competition;
- Require Bell Atlantic to automatically enroll eligible low income consumers in the Lifeline program and otherwise expand the program in order to raise the level of enrollment above current levels;
- Require Bell Atlantic to offer various network elements to Competitive Local Exchange Carriers (CLECs) in order to encourage CLECs to serve residential customers and customers in the non-urban portions of Pennsylvania;
- Reject Bell’s contention that the PUC was only permitted to change the rules under which Bell would operate if Bell approved of such changes;

The Global Proceeding was pending before the Commission at the end of the 1998-99 Fiscal Year.
Bell Atlantic/GTE Merger

On October 2, 1998, Bell Atlantic - Pennsylvania, Inc. (Bell) and GTE filed an application with the PUC to approve a merger of the Bell and GTE local telephone companies operating in Pennsylvania. (Docket No. A-310200F0002). The OCA recognized that such a merger of the two largest local telephone companies in Pennsylvania might prove anticompetitive. The OCA advocated that, if the PUC were to approve the merger, it should make certain that $79.2 million in merger related expense reductions, $54.5 million in additional revenues flowing from the merger, and $34 million per year in additional capital investment available as a result of the merger would be used to benefit consumers. These funds should be used to decrease rates for various services, and be used to achieve other objectives, e.g., greater numbers of customers enrolled in the Lifeline program and a reduction in the number of rate centers in order to avoid the need for additional area codes. The OCA also advocated various measures designed to assure that Bell and GTE would open their networks to competition from CLECs.

During the course of litigation, the Office of Attorney General entered into a Memorandum of Understanding (MOU) with Bell and GTE which required Bell and GTE to take certain actions if the merger would be approved. The MOU would reduce the GTE rates by $15 million and cap the Bell rates through December 31, 2003 at current levels. The MOU also committed GTE to offering various services, referred to as CLASS services, within 24 to 30 months of merger approval. GTE also offered to increase its customers’ eligibility for Lifeline services to 150% of the poverty level.

The OCA supported these various proposals as one means of bringing the benefits of the merger to the Bell and GTE customers. However, the OCA stressed that the PUC must require the additional measures outlined by the OCA above. A decision on these issues was pending before the PUC at the end of the Fiscal Year.

Chapter 30 Proceedings

On October 16, 1998, the United Telephone Company of Pennsylvania (United) filed its Chapter 30 Plan. (Docket No. P-00981410). The OCA, United, and other parties negotiated the issues raised by that Plan and entered into a settlement that was filed with the PUC on March 10, 1999. That settlement accomplished the following:

- set a $16.00 limit on local residential rates through December 31, 2003;
- accelerated the deployment of certain advanced services;
- reduced United access rates;
- increased the inflation offset from United’s proposed pricing plan from 1.1% to 2.0%.
While AT&T Communications of Pennsylvania (AT&T) opposed that settlement as not reducing access rates sufficiently, the PUC approved the settlement. This Chapter 30 Plan was particularly important as it represented the first time that a limitation was set as to how high residential local rates could be increased in a Chapter 30 Plan.

On December 15, 1998, GTE North, Inc. (GTE) filed its Chapter 30 Plan. (Docket No. P-00981449). GTE offered a rate of return based Plan which would have allowed GTE to raise its rates if its financial earnings were found inadequate. GTE proposed to modernize its network only so long as it was successful at selling certain services and its financial earnings were adequate. GTE requested that it be exempted from many current regulatory requirements and be able to raise its rates much more rapidly than is presently permitted.

The OCA responded to that Plan and proposed many revisions. OCA advocated that GTE’s rates should be reduced by inflation minus 6.5% each year and that it should be required to rapidly modernize its network. OCA advocated many other procedural protections in order to avoid rate increases and ensure adequate due process.

The GTE Plan was still pending before the Commission at the end of the Fiscal Year. On July 31, 1998, ALLTEL Pennsylvania, Inc. (ALLTEL) filed a Petition for Approval of Alternative Form of Regulation and Network Modernization Plan. (Docket No. P-00981423). ALLTEL proposed a Price Stability Mechanism which would allow it to raise rates each year by the amount of inflation. In addition the Company proposed numerous changes to current regulatory requirements, including proposals to (1) allow “revenue neutral” changes in rates (rate rebalancing); (2) allow for separate recovery of “exogenous events”; (3) modify the Company’s obligations and cost-recovery with respect to the Commission’s Extended Area Service Regulations; (4) waive the requirement that the Company file affiliated interest agreements pursuant to Chapter 21 of the Public Utility Code; and (5) modify certain reporting requirements, including a proposal to eliminate the filing of financial data which allows a determination of the level of the Company’s earnings.

The OCA intervened in the proceeding. The OCA recommended a productivity offset of 3.0% and limitations to monthly basic local service rate increases resulting from rate rebalancing to $1.00 each year, with an overall rate cap of $15.00 per month. Under the OCA’s proposal, attempts to rebalance rates, which would result in increases to basic local service rates of more than $1.00, should be subject to the protections afforded ratepayers under Section 1308 of the Public Utility Code. Furthermore, the ability to adjust rates for exogenous events should be clearly limited to significant exogenous events that are clearly unforeseen and beyond the LEC’s control. The OCA also recommended that the Commission carefully evaluate ALLTEL’s Network Modernization Plan, including the reporting requirements.

Briefs were filed by the active parties in March and April, 1999. The parties are awaiting a Recommended Decision at the end of June, 1999.
Also, on July 31, 1998, the **PTA Small Company Group (SCG)** filed a Petition for approval of Alternative and Streamlined Form of Regulation and Network Modernization Plans. The Small Company Group is made up of 19 Pennsylvania Telephone Association (PTA) member telephone companies. (Docket No. P-00981425 et al.) The Plans included two separate Price Stability Plans, identified as “Plan A” and “Plan B.” The Plan A Price Stability Plan (PSP) is applicable to all companies with more than 50,000 access lines and any company with less than 50,000 access lines electing to participate thereunder.\(^1\) Plan B is applicable to the remaining SCG companies. Plan B is a Simplified Ratemaking Plan that is an abbreviated form of rate base/rate of return regulation. The Companies also proposed numerous changes to current regulatory requirements, including (1) “revenue neutral” changes in rates (rate rebalancing); (2) separate recovery of “exogenous event” expenses; (3) modifying the Company’s obligations and cost-recovery concerning the PUC’s Extended Area Service Regulations; (4) waiving the requirement that the Companies file affiliated interest agreements pursuant to Chapter 21 of the Public Utility Code; (5) classifying directory advertising as a competitive service; and (6) modifying certain reporting requirements, including a proposal to eliminate the filing of earnings-related financial data which allows a determination of the level of earnings of the Companies. The OCA intervened in the proceeding. The OCA filed complaints against the present rates of two Plan A Companies that are currently overearning, i.e. D&E and North Pittsburgh (C-00981676 and C-00981623), and recommended that these companies should not be allowed rate increases until their overearnings have been reduced.

The OCA’s position, in part, reflected a productivity offset of 3.0% and limitations to monthly basic local service rate increases resulting from rate rebalancing to $1.00 per year and to a $15.00 monthly rate cap. Proposals to rebalance rates, which would result in increases to basic local service rates of more than $1.00, should be subject to the protections afforded ratepayers under Section 1308 of the Public Utility Code. Furthermore, the ability to adjust rates for exogenous events should be clearly limited to significant exogenous events that are clearly unforeseen and beyond the LEC’s control. The OCA also recommended that the Commission carefully evaluate the companies’ Network Modernization Plans, including the reporting requirements.

The OCA recommended modifications to the proposed Simplified Ratemaking Plan for the Plan B Companies to ensure due process to ratepayers. OCA proposed that Company SRP filings only be allowed when a Company’s earnings are below a Commission-established threshold level. The limited filing requirements which already exist should remain in place and time frames for investigation and presentation of rate cases should be slightly modified. Other aspects of Plan B, such as the treatment of rate rebalancing and exogenous events, should be modified consistent with OCA’s Plan A proposals. Briefs were filed by the active parties in March and April, 1999. The parties were awaiting a Recommended Decision at the end of the Fiscal Year.

\(^1\)Conestoga Telephone and Telegraph Company, Buffalo Valley Telephone Company, Denver & Ephrata, and North Pittsburgh Telephone Company
Rate Rebalancing


On July 13, 1998, Frontier Communications of Breezewood, Frontier Communications of Canton, Frontier Communications of Pennsylvania, Frontier Communications of Lakewood, and Frontier Communications of Oswayo River (Frontier) filed rate rebalancing proposals to reduce their access rates and increase basic local service rates. (Docket No. R-00984411 et al.). Comments were filed by the OCA against the Frontier-Pennsylvania filing. AT&T filed comments against all 5 filings. On October 30, 1998, the PUC assigned the cases to an ALJ for mediation on an expedited basis. On November 4, 1998, Frontier filed a motion seeking to limit issues raised in OCA’s comments, namely the relevancy of earnings, network investment/deployment, and depreciation expenses. On December 22, 1998, the ALJ granted Frontier’s Motion. The OCA filed a Petition for Review and Answer to a Material Question seeking review of the ALJ’s decision with the PUC. The Commission upheld the ALJ’s decision. On March 11, 1999, the Companies, the OCA, OTS and AT&T filed settlement agreements in the proceedings. Under the agreement, Frontier-PA agreed to withdraw its 1998 rate rebalancing filings and file revenue neutral tariff supplements to become effective in May, 1999 to reduce access charges to an agreed upon level so long as the increases to Frontier companies (with the exception of Frontier-Pennsylvania) did not exceed $1 and for Frontier-PA did not exceed $3. The Companies also agreed that the rate increase sought as part of the 1999 rate rebalancing filing would not result in any rates above $15. The parties also agreed to certain access rate reductions through 2002. The settlements were pending as of the end of FY98-99.

On July 31, 1998, Laurel Highland Telephone Company filed a revenue neutral rate rebalancing to reduce intralATA toll rates, roll in mileage charges and touch tone charges, and eliminate two and four party exchange service. (Docket No. R-00984431). The OCA filed a formal complaint on September 16, 1998. The Commission entered an option order on March 4, 1999, that proposed a phase in of the increases proposed by Laurel Highland. The Commission gave the OCA the opportunity to withdraw its complaint. The OCA notified the Commission that it did not wish to withdraw its complaint and asked for a hearing on its complaint. The OCA and the Company reached an settlement of the OCA’s complaint and submitted it to the ALJ. The settlement reflected a reduction in the second phase of the increases associated with the revenue neutral filing. As of the end of the fiscal year, the settlement was pending before the ALJ.
On August 11, 1997, Citizens Telephone Company of Kecksburg, Inc. (Citizens) filed a request for streamlined regulation and network modernization plan pursuant to Chapter 30 of the Public Utility Code and request for suspension of its interconnection obligations pursuant to Section 251(f)(2) of the federal Telecommunications Act of 1996 (Docket No. P-00971229). The Commission consolidated this proceeding with the application of Armstrong Communications, Inc. (Armstrong) to become a competitive local service provider at Docket Nos. A-310583F0002 and A-310583F0004. The events that have occurred subsequent to the consolidation are discussed below.

**Interconnection Proceedings**

Armstrong Communications, Inc. (Armstrong) is the incumbent cable service provider in portions of Westmoreland County, Pennsylvania. Citizens Telephone Company of Kecksburg (Citizens) is the incumbent local exchange carrier in Armstrong’s cable service territory in Westmoreland County. Armstrong filed an application requesting authority to render, furnish, or supply telecommunication services as a competitive local exchange carrier (CLEC) or as a reseller in Citizens’ service territory. (Docket Nos. A-310583 F0002 and A-310583F0004). As discussed above in the discussion of Citizens’ Chapter 30 proceeding (Docket No. P-00971229), the Commission consolidated the Chapter 30 proceeding with Armstrong’s application.

The Commission issued an Order on April 28, 1999, which granted Citizens a suspension until 2005 of certain interconnection obligations pursuant to Section 251(f)(2), and the Order determined that Citizens was exempt until the end of the suspension under Section 251(f)(1) of the Telecommunications Act from the obligations to provide Armstrong with the interconnection services listed in Section 251(c) of the Telecommunications Act. The Order also conditionally accepted Armstrong’s non-facilities based application to provide competitive local exchange service.

On May 28, 1999, Armstrong filed an appeal to the Commonwealth Court of the Commission’s April 28, 1999 Order (Docket No. 1359 C.D. 1999), and Citizens cross-appealed (Docket No. 1463 C.D. 1999). These appeals are pending.

**Extended Area Service Proceedings**

During the 1998-1999 fiscal year the OCA continued to provide assistance to numerous telephone consumers who have concerns about the adequacy of their local calling areas, as well as to state legislators who raise concerns on behalf of their constituents. In some instances, the OCA intervened to assist consumers who have filed formal complaints with the Commission seeking to improve their local telephone service through changes in the boundaries between exchanges or the expansion of their toll-free local calling area. Under other scenarios, the OCA has informally assisted the consumers in communicating their concerns to company counsel, assisted consumers in the litigation without formal intervention and advised consumers of optional rate plans or other alternatives that would have the effect of reducing their toll charges without litigation.
In *Tucker v. Frontier Communications of Oswayo* (Docket No. C-00957322), Frontier customers filed a complaint in 1995 to enable those customers to place calls toll free to Coudersport, the county seat of Potter County. The OCA assisted these consumers in litigating and negotiating a favorable outcome in this proceeding. The PUC approved a settlement that would allow all customers in the Shinglehouse and Millport exchanges to call Coudersport toll free without any increases in their local rates. As the Federal Communications Commission (FCC) must approve of such a settlement before it may be implemented, such extended area service remains contingent upon FCC approval.

One case which concluded during this fiscal year was *Andrew Koban & Victoria Smith v. GTE, Inc.*, Docket Nos. C-00970636 and C-00970643. Nearly fifteen hundred customers complained of high monthly toll bills due to short-distance toll calls to family, friends, schools, hospitals and government offices. With the assistance of the OCA, the case was successful and resulted in a Commission Order in November 1998 directing the Company to conduct a polling of its customers to determine whether they supported the implementation of EAS at a modest increase in basic monthly service rates. That polling was successful and, as a result, GTE implemented EAS from Central City to Johnstown benefitting approximately 2,377 GTE customers.

Over fifteen hundred GTE customers joined in a formal complaint against GTE in Docket No. C-00968442, *Linda Fenske v. GTE North, Inc.* This was the fourth in a series of formal complaints by members of the same customer group addressing the inadequacy of their local calling area. Many of these customers were incurring hundreds of dollars’ worth of toll bills each month just to make routine calls to schools, friends and relatives, hospitals, churches and businesses in the York and Red Lion areas. The customers asserted that the high cost of telephone service was economically disadvantageous to the Stewartstown community, as other neighboring areas had much larger toll-free calling areas.

The OCA intervened to assist this group of customers and joint efforts to demonstrate that the PUC standards for mandatory EAS were met proved successful. In February 1999, the PUC approved the Administrative Law Judge’s recommendations that a polling should be conducted to determine whether the majority of Stewartstown customers are in favor of expanding the local calling area in exchange for a small increase in their monthly customer charges.

Numerous complaints were filed by Bell customers in Haines, Miles and Penn Townships, as well as the Borough of Milheim, an area known as the “Spring Mills exchange.” These customers, numbering nearly 5,000, complained that they were able to call only two other exchanges without incurring toll charges. The OCA filed a formal intervention to assist these customers in their attempt to expand their local calling area to include Boalsburg and State College.

Hearings were held, following which the Complainants (represented by individual counsel) commenced negotiation with Bell of PA to resolve the matter in order to avoid continued litigation. A settlement was reached among the Complainants and Bell which, at the conclusion of the fiscal year, was pending before the Commission.
The OCA intervened in December 1998 to assist customers in a case captioned Keith R. McCall v. Bell Atlantic - Pennsylvania, Inc., Docket No. C-00981941. Several hundred customers in Lehighton, Pa., asserted that their phone bills were exorbitantly high because their “community of interest” straddles not only an exchange boundary but also a “LATA” boundary. Each call to a family member, school, or local business in the Palmerton area leads to an additional toll charge. As of the end of the fiscal year, the OCA was continuing to develop the complainants’ case in support of extended area service from Lehighton to Palmerton, Pa., through discovery and discussions with experts.

Through the course of the McCall investigation, another group of customers adjacent to those in Lehighton requested assistance. These customers reside in Kresgeville, Pa., and are served by Palmerton Telephone Company; yet because their “community of interest” also straddles an exchange boundary, they incur high toll charges to call Palmerton, just as the Lehighton customers. As of the end of the fiscal year, the OCA was also endeavoring to assist this group of Palmerton Telephone customers.

Other Consumer Complaints

Slamming Proceedings

The OCA took a number of actions concerning the practice of long distance “slamming.” Slamming takes place when a long distance company switches a consumer from another long distance company so that the long distance company can profit from the calls being made.

The OCA has assisted numerous consumers who have been “slammed” both by contacting the companies to return the account to the consumers’ chosen carrier and by pursuing complaints where the informal remedy has not proved satisfactory.

In February 1998, Harriet Gaige filed a Formal Complaint against AT&T, asserting that AT&T had switched her long-distance telephone service from MCI Telecommunications to AT&T without her permission. (Docket No. C-00981211). The slam had been accomplished through forgery of her husband’s signature. The OCA intervened to assist the Complainant in May 1998 and participated in a one-day hearing on June 1, 1998. In the course of the hearing, it was revealed that the Complainant’s account had been slammed not once, but twice. In addition, the Complainant’s husband’s account had also been slammed on two occasions, also through forgery. Jeremy Gaige was thus joined as an additional Formal Complainant.

AT&T attempted to defend the Complaint by arguing that the forgery had been carried out in the first instance, by an employee who had subsequently been terminated as a result of slamming allegations and in the second instance, by the employee of a contractor. The ALJ agreed with the OCA and the Complainants that AT&T could not divorce itself from the actions of either its own employee nor from the actions of an employee of a contractor. AT&T also attempted to defend itself by demonstrating the efforts it had made to prevent slamming. Although the ALJ and the Commission found the anti-
slamming efforts to be a “mitigating factor,” a fine in the amount of $20,000 pursuant to the Pennsylvania Public Utility Code was still found to be warranted.

On June 28, 1998, the OCA also filed Comments in Re: Proposed Rulemaking Order and Final Interim Guidelines on Slamming and Cramming (Docket No. L-00990140). The OCA recognized the proposed PUC slamming and cramming regulations as a positive step in the right direction. Cramming takes place when a consumer is charged for a service that the consumer did not order. The OCA also encouraged the PUC to strengthen the regulations in various ways.

OCA advocated that customers who have been the victim of cramming should be notified that they will not lose their local service if they do not pay cramming charges. Victims of cramming and slamming should also be advised of their right to complain about such a practice to the authorities which might resolve that issue on their behalf. The PUC had not issued final regulations in this docket as of the end of the 1988-99 Fiscal Year.

**Internet Calling as a Local Call**

On September 2, 1998, the PUC issued an Order that began an investigation in order to determine whether calls to an Internet Service Provider (ISP) that are carried to a telephone number in the local rate center should be considered as local calls (Docket Nos. P-00981404, P-00971256). On September 22, 1998, the OCA filed Comments in that proceeding. The OCA made clear in those Comments that the PUC should ensure that calls to an ISP as described above are local calls. The OCA emphasized the importance of allowing consumers local calling access to the Internet - both for residential customers and the various businesses, schools, libraries and health care providers that depend on that availability.

**Sprint Caller*ID**

In June 1996, Sprint United Telephone Company filed a revised Caller*ID tariff. (Docket No. P-00961068) The new service would enable the name of the subscriber whose phone is used as well as the telephone number to be identified on the Caller*ID device.

The OCA and the Pennsylvania Coalition Against Domestic Violence (PCADV) each filed Formal Complaints against this tariff, as both were concerned that the privacy protections of customers, particularly victims of domestic violence, could be compromised by such a service. Following the PUC’s Alternative Dispute Resolution process, the parties were able to achieve a settlement resolving the cases, which was finalized in July 1999, just after the close of the fiscal year. Sprint thereby agreed to offer, after notice by way of a bill insert, a new sixty-day window through which customers could place an order for permanent per line blocking free of any charges. Instructions are to be given customers concerning per call blocking while orders are being processed. Simultaneous with the distribution of the insert, the Company
is to distribute stickers, suitable for placement on a telephone handset, which would enable the telephone to be identified as one which is continually blocked or one which requires per call blocking.

The Company agreed to various employee education efforts to enable operators and customer service representatives to offer quality information on telephone privacy rights, to prepare public service announcements on such privacy issues and to consult with the OCA and the PCADV concerning national advertising and sales scripts relating to services which could impact on telephone privacy rights.

**Increase in Directory Assistance Charges**

On December 9, 1998, the OCA filed an Answer in opposition to a request filed by the Pennsylvania Telephone Association (PTA) to increase charges for directory assistance (Docket No. P-00981397). The OCA opposed this increase as no notice of the increase was given to consumers, it was not revenue neutral for companies with approved Chapter 30 Plans, and that any increase for rate of return regulated companies would require an overall earnings review.

On February 16, 1999, the PUC issued an Order approving the OCA’s position with respect to Chapter 30 companies, such that the increase would be done on a revenue neutral basis, but denying OCA’s request to block the increase for other companies.

On March 3, 1999, the OCA filed a Petition for Reconsideration concerning the above Order. The OCA generally opposed granting such increases for a single rate item without an earnings review and without giving consumers prior notice. The issues presented by this case continued to be litigated before the PUC as of June 30, 1999.

**Federal Slamming**

The OCA was active at the FCC, through the National Association of State Utility Consumer Advocates (NASUCA), in combating slamming. NASUCA filed Direct Comments with the FCC in a proceeding designed to implement federal law and respond to the large number of slamming complaints experienced by the FCC (CC Docket No. 94-129). NASUCA advocated that the consumer should not be forced to pay the slamming carrier, that the proposed third party verification system should be improved, and that IXCs should file reports on slamming. NASUCA also filed Comments in opposition to an industry proposed Third Party Administrator (TPA) system as the TPA proposed was not supported by consumers and would likely conflict with state slamming enforcement. After the FCC issued its Order on slamming on December 23, 1998, NASUCA filed a Petition for Reconsideration alleging that the FCC was in error in forcing consumers to pay for service provided by a slamming carrier, limiting consumer absolution from paying for slammed services to only 30 days, and providing customers of notice of the switching of service liability from one IXC to another. The FCC has not yet ruled on that Petition.
Area Codes

The OCA has continued to be active on the issue of area code changes that are facing Pennsylvania and the United States as a whole. The OCA has continue to advocate policies that, if implemented, would avoid the continued addition of area codes into the future.

Part of the OCA’s activity on this issue has taken place through the OCA’s involvement of Philip McClelland, Senior Assistant Consumer Advocate, as a member of the North American Numbering Council (NANC), and Joel Cheskis, Assistant Consumer Advocate as an alternate member. The NANC recommends telephone numbering policies throughout the United States, Canada and the Caribbean.

The OCA has also filed several pleadings at the FCC, as an individual agency and on behalf of NASUCA, on these same issues. On December 18, 1998, NASUCA filed Comments with the FCC in response to the NANC Report Concerning Telephone Number Pooling and Other Optimization Methods (NSD File No. L-98-134). NASUCA argued that the FCC should quickly take action to implement various techniques outlined in the NANC Report that have the potential to avoid the rapid addition of area codes and exhaust the present system that allows telephone numbers to be dialed using no more than ten digits. NASUCA advocated that the FCC should also empower states to implement these various measures.

The OCA, separately and in conjunction with other state advocate offices, filed Comments in support of many state regulatory bodies, i.e. New York, Massachusetts, Florida, Maine, and California, which requested the opportunity to implement these same techniques to avoid the exhaustion of area codes (DA 99-462, 99-460, 99-461, 99-725, 99-638, 99-928, 99-929). The FCC subsequently released Orders concerning the requests of the Florida, California, New York, and Massachusetts regulatory commissions. These orders generally allowed 1000s block pooling, but did not permit pooling of smaller units of numbers. The orders also allowed the state commissions to administer more closely the use of telephone numbers in those states.

Local Number Portability Surcharge

On July 27, 1998, the OCA filed a Petition for Reconsideration with the FCC requesting that the FCC reverse its Third Report and Order that allowed Incumbent Local Exchange Carriers (ILECs) to place a surcharge on consumers’ local bills allowing ILECs to recover costs related to Local Number Portability (LNP). (CC Docket No. 95-116). The FCC in that Order reversed an earlier Order and found that Congress had given it the power to assess charges against consumers related to LNP. The OCA argued that Congress had given the FCC no such power. Rather, the cost of LNP was to be borne by the carriers that use that service, not through surcharges on consumers. The FCC has not yet ruled on this Petition.
Truth In Billing Rulemaking  
FCC Docket No. 98-170

The OCA, through NASUCA, also participated in FCC proceedings on the format and disclosures associated with the issuance of telephone bills by local telephone companies. NASUCA filed Direct Comments and Reply Comments in the Matter of Truth-In-Billing and Billing Format, (CC Docket No. 98-170), which was proposed by the FCC to respond to the more than 10,000 calls it received from consumers with questions about charges on their telephone bills. NASUCA supported the Commission’s observation that telephone bills do not provide consumers with information in a clear and conspicuous manner to allow them to readily understand the precise nature of the charges on these bills. NASUCA advocated regulatory action to enhance the flow of full and truthful information to consumers and encouraged the FCC to use existing state regulatory consumer protection policies and programs regarding disclosures and billing as a “floor” and not a “ceiling”. Concerning bill format and content, NASUCA proposed requirements that bills contain a separate and standardized page listing any change in the status of a customer’s services, exclude non-telecommunication related services, accurately and precisely describe charges, and clearly identify service providers. NASUCA further recommended that the FCC prohibit the actual disconnection or the threat of disconnection of basic telephone service for nonpayment of other than basic charges.

The FCC issued a final order on May 11, 1999 adopting final rules, codified at 47 C.F.R. §64.2000-20001, which require telephone bills, among other things, to identify charges for which nonpayment results in disconnection of local basic service and explain the distinction between these and other types of charges, to identify as “new” a new service provider for a presubscribed service, to reform, as necessary, the identification of services to meet the plain language requirement (the term “miscellaneous” is specifically prohibited), and to list the telephone number only for entities with authority to resolve inquiries and complaints.
WATER

Base Rate Increase Proceedings

Whenever an increase to water rates is proposed by a major water utility, the OCA assembles a team of accounting, rate of return, rate design and, in some cases, engineering experts to enhance its participation on behalf of the affected consumers. In each case, OCA attorneys, with the assistance of expert consultants, thoroughly scrutinize and challenge the utility’s increased expense claims and, where appropriate, investigate allegations of inadequate quality of service.

Still pending at the conclusion of the prior fiscal year was the **Consumers Pennsylvania Water Co. - Susquehanna Division** base rate increase request for an additional $340,000, or approximately 18.76% more in revenues. (Docket No. R-00984257). The OCA, as well as three townships served by the Susquehanna Division, filed Formal Complaints against the increase. On behalf of some of their citizens, the three townships also alleged inadequate responses to applications for residential water service.

Following public input hearings, the OCA, the Company and the other Complainants were able to negotiate a settlement of the entire case, which led to an increase of $182,000 or 10%, rather than the 18.76% initially sought. The settlement also included an agreement that the Company would expand its distribution system into the neighborhoods in need of service, without imposing charges on the individual customers for the construction of the mains. Consumers agreed not to file for another base rate increase prior to January 1, 2000.

In April 1999, **Pennsylvania-American Water Company** (PAWC) filed for a base rate increase of over $40 million, an increase of 14.2%. For most of PAWC’s residential customers, this would translate into a change in monthly bills from $30.97 to $34.90. PAWC also sought changes in rates and charges for other customer classes, including rate reductions for Public Fire customers.

In June of 1999, the OCA had filed a Formal Complaint and the investigation into all aspects of the case - accounting, depreciation, rate of return, rate design and quality of service - were well underway at the end of the fiscal year.

On April 1, 1998, **Newtown Artesian Water Company** filed a request for a general rate increase of $501,905 annually, or a 14% increase and a proposal for a Purchased Water Adjustment Clause. (Docket No. R-00984322). The OCA filed a Formal Complaint against the Company’s proposed increase on July 17, 1998. The Commission instituted a formal investigation of the filing, and the parties participated in Alternate Dispute Resolution (“ADR”) through September 1998. The parties were able to reach a settlement, which was filed with the Commission on October 14, 1998. The settlement provides for a total base rate increase of $250,000, which represents a 7% increase in the Company’s projected revenues. The rates established in the settlement will continue the gradual process of bringing
the Newtown Artesian Water Company and Indian Rock Rate Areas into parity. Newtown Artesian also agreed to refrain from filing another base rate increase until April 2001. The Company further agreed to withdraw its claim for a Purchased Water Adjustment Clause as a condition of the settlement.

Another base rate increase request that reached settlement was the request of The York Water Company to increase its annual operating revenues by $1,535,946 or 8.8%. (Docket No. R-00994605). This increase request, filed on April 22, 1999, was exclusive of any revenues associated with State Tax Adjustment Surcharge and the Distribution System Improvement Charge which will automatically be rolled into the Company’s rates, in accordance with law. The Commission issued an Order instituting a formal investigation into the Company’s proposed rate increase. Subsequently, the parties began informal settlement negotiations.

The parties were able to reach a settlement on all aspects of the case and a Settlement Petition was filed with the Commission. The settlement provides for a base rate increase of $651,000, which represents a 3.7% increase in the Company’s projected revenues. The Company agreed to refrain from filing another base rate increase prior to one year after effective date of the rates resulting from this case, or until approximately October 2000.

Applications

On August 18, 1998, Philadelphia Suburban Corporation and three operating companies of Consumers Water Company known as the Roaring Creek Division, the Shenango Valley Division and the Susquehanna Division, filed an application for a “Certificate of Public Convenience” to approve the transfer, by merger, of a controlling interest in the three Consumers operating divisions. (Docket No. A-212370F.48).

On September 21, 1998, the OCA filed a Protest and Notice of Intervention asserting that the application raised questions surrounding the future impacts on customers of both companies and questions relating to the transfer of responsibilities for certain management services to Consumers operating companies. Settlement negotiations commenced soon thereafter, resulting in a stipulation which was recommended by the Administrative Law Judge and approved by the Commission in a Final Order on December 18, 1998.

The Commission found the agreement among the parties to be in the public interest, as various terms were protective of the interests of the Philadelphia Suburban and Consumers ratepayers. Petitioners agreed that for three years following consummation of the merger, no increases in expense amounts for management services would be claimed. The Companies also agreed to record merger costs as a deferred debit and to amortize them over a period no greater than ten years, and to request recovery of no more than one-tenth the amortized costs in future rate proceedings. All rate proceedings following the merger were agreed to be consolidated, thus resulting in greatly reduced litigation expense.
The Companies agreed that in future rate cases, all savings resulting from the merger will be flowed to customers. Philadelphia Suburban agreed further to file a customer assistance plan for the Consumers Companies with its next general rate filing.

With regard to residential applications for water service, the Companies also agreed to pursue a “least-cost” strategy in quantifying the dollar amount residential applicants for service must contribute to the costs of construction, by excluding from estimates the cost of plant intended to serve future customers and including revenues which will be generated by all other customers to be served by the project.

On April 21, 1999, United Waterworks, Inc. filed an application with the Commission to acquire Center Square Water Company and begin to offer water service to portions of Cumberland and York Counties. (Docket No. A-210390F2000) According to the application, the consideration for this acquisition was $1,200,000. The Joint Applicants made several other proposals in the Application, seeking Commission approval of an acquisition adjustment in a future rate proceeding and a finding that the expenses related to the transaction were reasonable and recoverable through rates. The Application also sought approval of a 68% increase in the rates to the residential Center Square customers over a two-year period, to bring those rates in line with those of the United Water residential customers.

On May 14, 1999, the OCA filed a Protest to the Application, asserting that the 68% increase in rates to the Center Square customers did not appear just and reasonable. Furthermore, the proposed transaction appeared to be improper due to the request for approval of the future acquisition adjustment and for the additional $10,000 in acquisition expenses in future rates. At the end of the fiscal year, the OCA’s investigation was ongoing.

**Water Utility Main Extension Cases**

The OCA continues to review all formal complaints filed with the Public Utility Commission against water utilities. Some of these complaints involve routine billing disputes, leaks or quality problems; on the other hand, many such complaints are filed because groups of citizens need public water service and have been unable to obtain it.

Some of these groups have experienced serious quality problems with existing supplies or have increasingly inadequate supply due to increased development. Some have only the option of purchasing water from local suppliers to fill cisterns for their home supply.

In some instances, even where the need for public water is clear, companies are able to charge applicants for service for a portion of construction costs. This occurs because water utilities’ tariff rules require the application of a mathematical formula to determine whether the additional revenues to be received from new customers will offset the increased expenses to the company resulting from the new main. If not, the companies may require applicants for water service to pay a portion of the cost of
construction and this sometimes makes water service unaffordable. OCA attorneys, with the help of an engineering consultant, were able to assist a number of groups of applicants for water service during the course of this fiscal year.

As a result of an October 1998 settlement of the case captioned Bellas v. Pennsylvania-American Water Co., Docket No. C-00970869, in which the OCA had formally intervened, seven families in Elizabeth, Allegheny County, PA in June 1999, received public water service and public fire hydrants as well, in part due to the efforts of their township officials. These families previously relied upon cisterns and trucked-in or bottled water, as their natural water source was contaminated by abandoned mine operations in the vicinity.

A group of fourteen families in McDonald, Washington County, PA had been attempting for four years to obtain public water service from Pennsylvania-American Water Co. Following the OCA’s intervention in the proceeding captioned Cowden v. PAWC, Docket No. C-00981948, an agreement was reached through mediation enabling all of the families to have public water. Many of these families had experienced substantial outages due to their wells running dry; one Complainant had been unable to obtain any water from her well for a period of nearly four years. All of these families relied on hauled or bottled water to meet all of their household needs.

Ten new customers, nine residential and one commercial, now have public water service in Burgettstown, Washington County, PA as a result of the OCA’s participation in an investigation into the costs and revenues related to the project required to extend service to them. In this case, no formal proceeding was filed and following several months of negotiation, PAWC agreed to provide service to these customers without customer contributions to the costs of construction.

Three complaints were filed by residents of Summit Township, Butler County, PA, Sasse, Stevenson and Karch v. PAWC, Docket Nos. C-00981517, C-009815189 and C-00981519, and were consolidated into a single proceeding. Two of these complainants were applicants for residential water service and one alleged persistent low pressure with existing service to his rental property. Altogether, twenty-two families and one business dependent on wells needed public water service because their wells persistently ran dry, sometimes for periods up to seven days. About ten existing customers expressed the need for improved water pressure in their homes.

The company had initially estimated the cost of the project to which the customers would be required to contribute at approximately $200,000, as the cost of the booster pump needed was included in the cost of the main extension project. Following the OCA’s investigation and prior to hearings, the company determined to construct the mains and booster pump required both to provide new service and improve existing service, without a contribution from the group of applicants.

As a result of the OCA’s advocacy in this case, twenty-two families and a business have a much-needed public water supply and a number of PAWC customers have improved water pressure.
Because of the capacity of the booster pump, as many as 200 PAWC customers should have improved water pressure and fire flows to the hydrants in the area will also be substantially improved.

At the end of the fiscal year, several investigations were underway to assist groups of customers seeking water service in Washington and Allegheny Counties.

**Miscellaneous consumer cases**

In July 1998, the OCA intervened in a Formal Complaint proceeding captioned *Beaver v. United Water Pennsylvania*, Docket No. C-00981448. A group of United Water customers had experienced substantial plumbing damage following the start-up of a new pumping station in their service territory which produced extremely high water pressure at times. With the assistance of an expert engineer, the OCA investigated the matter, which proceeded to mediation. As a result of the mediation, the parties were able to reach an amicable resolution of the complaints for all concerned and no further litigation was required.
SMALL UTILITY PROJECT

Introduction

Since 1991, the OCA has annually reviewed the rate filings, applications, and monitored other activities of the Commonwealth’s more than 200 small utilities, as part of the OCA’s Small Utility Project. Through the Small Utility Project, the OCA seeks to assure that customers of small utilities benefit from the OCA’s expertise in matters of rates and other regulatory concerns the same as customers of larger utilities. Even so, small utility cases have their own unique dynamics. On one hand, the OCA typically has contact with a much greater percentage of customers of the utility, whether through informal meetings, correspondence or at public input hearings, than for larger utilities. On the other hand, small utility cases present the challenge of how to protect the consumers’ interests without overwhelming the utility’s often limited resources with litigation costs.

The OCA has met this challenge by developing specific expertise in matters related to small utilities, participating in alternative dispute resolution where appropriate, and participating in rulemakings and other regulatory programs which directly impact the regulation of small utilities. The achievements of the OCA Small Utility Project have been chronicled above with regard to the restructuring of the Commonwealth’s smaller electric utilities and the petitions of smaller telephone utilities for streamlined regulation and rate rebalancing. The following is a summary of the OCA’s activities in other proceedings for the 1998-1999 Fiscal Year involving the Commonwealth’s smaller water and sewer utilities.

Complaint Cases

As reported in last year’s annual report, the OCA intervened in a customer complaint against LP Water and Sewer Company, seeking refunds for amounts paid to LP by its customers prior to the time the Commission approved LP’s initial tariffs. (Docket No. C-00956966). On appeal, the OCA intervened in and briefed the issues in support of the PUC’s order. Commonwealth Court, on October 21, 1998, upheld the Commission’s order requiring LP to refund $598,535 to its customers. (3015 C.D. 1997) The Court rejected all of LP’s arguments against the PUC order. On November 20, 1998, LP petitioned the Supreme Court of Pennsylvania for allowance of appeal. On December 7, 1998, OCA filed a brief in opposition to LP’s Petition for Allowance of Appeal. As of the end of the Fiscal Year LP’s Petition is pending before the Pa. Supreme Court.

As discussed in last year’s report, the PUC’s Law Bureau and National Utilities, Inc. reached a settlement of Law Bureau’s complaint against NUI. (Docket No. C-00967814). The Settlement was eventually filed on December 4, 1998. The OCA did not take a position on the settlement. As of the end of the fiscal year, the case was pending before the PUC.
Applications

On July 10, 1998, the PUC approved Lemont Water Company’s application to transfer its stock to College Township. (Docket No. A-211690F200 and A-211690F5001). This application, as discussed in last year’s report, was filed in June, 1996. Some shareholders filed an appeal with Commonwealth Court. On May 14, 1999, the appellants withdrew their appeal.

As noted in last year’s report, Chesterdale Waste Treatment Company filed an application for initial certificate in June, 1994. (Docket No. A-00230042). As of the end of the 1998-1999 fiscal year, Chesterdale’s application was pending.

As explained in last year’s report, Shawnee Water Supply Company filed an application to abandon service in April, 1995. (Docket No. A-212740). On August 10, 1998, the PUC approved the application because the customers were either being served by another utility or had drilled their own wells.

In response to requests for assistance by the customers of Superior Water Company and the large number of protests filed by both individual customers, adjacent homeowners and Douglass Township itself, the OCA intervened in Superior’s application to expand its territory into Douglas Township. (Docket No. A-212955F0008).

The customers asserted that in 1997, Superior had on numerous occasions failed to provide adequate service in that outages had occurred in some communities and instances of low pressure were recurring. Concerns had arisen among the customers that expansion of the Company’s service territory would tend to compromise service to the existing customers.

The OCA investigated the customers’ concerns by reviewing Department of Environmental Protection (DEP) records, inspecting the Company’s facilities and conversing with Company management, with the assistance of an engineering consultant. Following its investigation, the OCA was able to advise the customers that granting the Application to expand into Douglas Township was reasonable and would not tend to compromise service quality, in light of the actions taken by Superior in response to DEP initiatives to improve system reliability. By stipulation with the OCA acting on behalf of the group of residential protestants, Superior agreed to provide personal notice of any future applications and any reports filed by Superior with the DEP to eight of the customer protestants.

This stipulation was approved by the PUC on February 23, 1999.

Base Rate Increase Proceedings

As reported in last year’s report, CS Water And Sewer Associates filed a request to increase its revenues by $51,861 (21%). (Docket Nos. R-00974196 and R-00974192). A settlement
was reached by all active parties and submitted to the Commission. On August 28, 1998, the PUC approved the settlement, allowing no more than $5,000 in annual water revenue and no more than $5,000 in annual wastewater revenues.

On July 1, 1998, Glenburn Services Company filed a request to increase its revenues by $37,440, or 200%. (Docket No. R-00984396). The OCA filed a formal complaint and analyzed the Company’s rate request. Subsequently, the active parties reached a settlement agreement and forwarded it to the ALJ on January 4, 1999. On March 31, 1999, the PUC entered an order approving the Settlement and allowing the Company to increase its rates by $35,550 in two phases along with a stay-out until January 1, 2000.

On June 30, 1998, the Borough of Schuylkill Haven-Water Department filed a general rate increase seeking to increase its revenues by $649,930 (39%). (Docket No. R-00984392). The OCA filed a formal complaint on October 1, 1998. On December 22, 1998, the active parties filed a settlement that proposed an increase of $265,135 in two phases. The first phase resulted in an increase of $148,086. The second phase, after certain plant additions are completed, will result in a $17,048 increase. On February 12, 1999, the PUC approved the settlement as filed.


The City of Bethlehem filed for a general rate increase on June 30, 1998, applicable to its customers who reside outside the City limits. (Docket No. R-00984375). The City requested an increase in its annual revenues of $1,716,150, or an increase of 39.3%. The City’s request was substantially related to its Penn Forest Dam reconstruction project, which will increase plant in service by approximately $66.7 million, nearly doubling the City’s rate base. The Commission subsequently issued an order instituting a formal investigation of the requested rate increase.

The parties entered into informal settlement negotiations and were able to reach a settlement. The parties filed a Joint Petition for Settlement on September 25, 1998. The Settlement provides for a base rate increase to customers outside the City limits of $1.4 million annually, or approximately 32%, to become effective on or after the Penn Forest Dam is in service (which was estimated to occur November 30, 1998). The timing of the rate increase eliminates the City’s need to collect “early window” costs associated with this dam project. Also, under the Settlement, the City allowed the other parties to retain the right to oppose any claims made by the City in a future proceeding to recover
costs associated with the Beltzville Emergency Interconnection Project, which is associated with the Penn Forest Dam project.

Other issues resolved by this Settlement include the City’s agreement (1) to refrain from filing another base rate increase request until one year after the effective date of rates resulting from this Settlement, which would be about December 1999, and (2) to modify its rate structure to use a single-block rate design rather than the two-block rate structure it had been using. The change in the rate design promotes water conservation and is in compliance with regulations of the Delaware River Basin Commission.

An important nonrevenue provision of the Settlement is the City’s agreement to contract for leak detection services in certain parts of its service territory and to report back to the Commission and the parties on those efforts. The City agreed to take other measures designed to reduce unaccounted-for water as well. The City’s agreement to undertake these measures is in response to concerns raised by the parties regarding the level of unaccounted-for water in the City’s system.

The Commission held a hearing and ultimately determined that the Settlement was in the public interest.

**National Utilities, Inc.** filed for a base rate increase in the amount of $477,026 or a 57% increase on October 30, 1998. (Docket No. R-00984334). Along with fifteen NUI ratepayers, the OCA filed a formal complaint against the increase. Several petitions were submitted by other NUI ratepayers, one of which called for a takeover by a neighboring water authority. In addition to its customary rate inquiry, the OCA engaged the services of an engineering consultant to assist in exploring a variety of water quality complaints presented by the NUI customers. Following the Company’s agreement to participate in the PUC’s Alternative Dispute Resolution, the tariff supplement was suspended until November 1999. During the next several months, the parties to the case were able to negotiate a settlement which provided for an increase of $230,000 with twelve additional provisions for improved water and service quality.

In response to the testimony admitted at the public input hearings by NUI’s customers, the Company agreed to respond to low pressure complaints, flush mains more frequently except in drought conditions, provide more detail on customer bills, advise customers of its toll-free number, provide prompt good faith communications with customers when outages occur, among other conditions. At the conclusion of the fiscal year, the Administrative Law Judge had recommended approval of the settlement and it was before the Commission for consideration.

Another base rate increase request that was resolved through settlement was the request of **Audubon Water Company** to increase its annual operating revenues by $364,312 or 34.8%. (Docket No. R-00984425). This increase request was filed on July 29, 1998 and proceeded to mediation at the request of the Company.
Through mediation, the parties were able to reach a settlement on all aspects of the case and a Settlement Petition was filed with the Commission on January 6, 1999. The settlement provides for a base rate increase of $211,539 in two steps, which together represents a 19% increase, as opposed to the initially-sought 34.8%. The second step is to take effect upon completion of specific projects intended to improve the system and to ameliorate some of the quality concerns expressed at the public input hearing. The Company agreed to refrain from filing another base rate increase prior to January 1, 2000.

**Riviera Utilities Sewer Company** serves approximately 5,240 customers in Clearfield County. (Docket No. R-0098444). In September 1998, Riviera sought a $629,699 or 94.8% increase in its annual revenues. The case proceeded to mediation by agreement of the Company and all of the parties, including the OCA. The Commission approved the settlement resulting from the mediation, which provided for an increase of $308,000 or 49%. The settlement calls for a change from quarterly to monthly billing to enable customers to more easily budget for the change. The settlement also approved a reduction of the consumption allowance from 3,000 to 2,000 gallons, enabling customers’ bills to more accurately affect their actual costs.

The Company also agreed to “stay-out” until the earlier of July 1, 2000 or nine months before the in-service date of its new sewage treatment plant. The PUC approved this settlement on April 29, 1999.
CONSUMER EDUCATION AND OUTREACH

Consumer Education

The Office substantially expanded its consumer education efforts in October 1998 by hiring its first Consumer Education and Outreach Coordinator. This has enabled the Office to produce additional brochures, newsletter articles and consumer bulletins to inform the public on the functions and responsibilities of the Office, and to help consumers understand their choices in an increasingly competitive utility industry.

During the last fiscal year the Office’s education program:

- developed the structure and plans for a statewide shopping guide for residential electric customers. The guide explains how to shop for a new generation supplier and gives consumers the tools necessary to shop and make a decision on the supplier that will provide them with the service they want or need. It includes charts of information, specific to each electric distribution company, with a price to compare for their local distribution company and the prices to compare for each generation supplier serving that area. It provides total generation billing information for three levels of electric usage, 500, 1000 and 2000 kWh for each supplier listed and identifies marketers that are certified by the “Green-e” program. This shopping guide has proven to be an excellent complement to the PUC’s Electric Choice Program. Thousands of copies have been distributed throughout the state. The guide is presently on the OCA website and receives thousands of hits. It has been reproduced and distributed by the PUC and other organizations as a very useful educational tool. A Spanish language version of the Guide is also being developed.

- produced six newsletter articles including ones for the National Association of State Utility Consumer Advocates (NASUCA), American Association of Retired Persons (AARP), the Pennsylvania Chamber of Business and Industry and the Pennsylvania Office of Attorney General.

- published a new brochure on the Office of Consumer Advocate, and one on Extended Area Service for telephone customers. We also provided the research and initial draft of a brochure for low income customers regarding electric choice issues, ultimately published by the state’s Electric Choice Program.

- issued seven Consumer Bulletins alerting consumers to utility mergers, proposed rate increases and scheduled public input hearings in their areas.

- participated in sessions organized by the Public Utility Commission to train the leaders of community based organizations on how to properly use the information available and participate in the Electric Choice Program.
• participated in consumer fairs sponsored by the Office of Attorney General and by members of the General Assembly.

• appeared in several media events, including radio, TV and Cable TV. Participated in numerous interviews for radio and newspapers.

• served and actively participated on the Council for Electricity Choice, responsible for input and implementation of the statewide education program on electricity choice including TV, radio and print advertising, brochures and other educational materials.

• reviewed and provided input on all materials that the state’s local electric distribution companies sent to their customers regarding the price to compare and electric supplier shopping information.

• prepared charts in English and Spanish explaining the change customers would see in their bills from the old “bundled” services and rates to the new “unbundled” services and rates, and the parts of the new bill that customers would actually be shopping for with their restructured utility service. This information became a useful tool in OCA and PUC educational presentations.

• prepared charts disclosing the numbers and percentages of customers and their respective total electric “load” in megawatts that have actually switched from their local electric distribution company to another generation supplier. This information is updated quarterly and is available on the OCA website. It receives thousands of hits and is used in presentations all over the country by many different sources.

• actively participated as a consortium member in the program planning for the Pennsylvania Energy, Utilities, and Aging Consortium biennial conference on “Changes and Choices: Utilities in the New Millennium”.

• began monitoring, supplying information and materials and participating as requested in the PUC’s Consumer Advisory Council meetings.

• began development of a toll free number for the office. This will aid consumers who have questions about or problems with their utility service. With more exposure through our consumer education program and advertising in phone and service directories, we expect our call volume to dramatically increase and have developed plans for office space, telecommunications systems and staff to accommodate that volume.

• worked with utility representatives and other office staff to prepare plain language consumer informational letters to explain difficult to understand concepts such as consumer polling for extended area telephone service and impacts of changing rate structures.
- served as a presenter at state and national conferences, forums, organization and group meetings and delegations covering topics concentrating on Pennsylvania’s electric restructuring benefits and consumer protections, natural gas competition, and evolving telecommunications issues.

**Office of Consumer Advocate Outreach**

Consumer Advocate Sonny Popowsky and other members of the OCA Staff participated in the following public forums during the last fiscal year:

<table>
<thead>
<tr>
<th>Date</th>
<th>Purpose</th>
<th>Place</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 16, 1998</td>
<td>Green-E Program Kickoff</td>
<td>Philadelphia, PA</td>
<td>Choices with Electric Competition</td>
</tr>
<tr>
<td>Sept 2, 1998</td>
<td>WSBA-AM Radio</td>
<td>York, PA</td>
<td>Electricity Choice and Gas Competition</td>
</tr>
<tr>
<td>Oct 1, 1998</td>
<td>Consumer Federation of America Conference</td>
<td>Washington, D.C.</td>
<td>Electric Competition in Pennsylvania - PA Case Study</td>
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<tr>
<td>Oct 16, 1998</td>
<td>PUC Train the Trainer session</td>
<td>Uniontown, PA</td>
<td>Electric Choice</td>
</tr>
<tr>
<td>Nov 12, 1998</td>
<td>Radio Call-in Show at WEEU</td>
<td>Reading, PA</td>
<td>Electric Choice for GPU customers</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
<td>Location</td>
<td>Topic</td>
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<tr>
<td>Nov 12, 1998</td>
<td>Town Meeting taped by Berks Community Television</td>
<td>Berks County Senior Citizens Center Reading, PA</td>
<td>Electric Choice for GPU customers/How to Shop</td>
</tr>
<tr>
<td>Nov 14, 1998</td>
<td>GasHouse Organization</td>
<td>Munhall, PA</td>
<td>Electric Choice &amp; How to Shop</td>
</tr>
<tr>
<td>Nov 18, 1998</td>
<td>WIOV Radio Call-in Show GPU territory</td>
<td>Sinking Springs, PA</td>
<td>Electric Choice and How to Shop</td>
</tr>
<tr>
<td>Dec 8, 1998</td>
<td>Blue Ridge Cable TV Channel 11</td>
<td>Ephrata, PA</td>
<td>Shopping for Electric Choice in PP&amp;L territory</td>
</tr>
<tr>
<td>Dec 16, 1998</td>
<td>Briefing to Texas Legislative Delegation</td>
<td>PUC Harrisburg, PA</td>
<td>Electric Choice</td>
</tr>
<tr>
<td>Feb 5, 1999</td>
<td>Consumer Help Fair</td>
<td>Harrisburg, PA</td>
<td>Exhibitor</td>
</tr>
<tr>
<td>Feb. 22, 1999</td>
<td>NARUC Gas Committee</td>
<td>Washington, D.C.</td>
<td>Pipeline Certification Process</td>
</tr>
<tr>
<td>Feb 22, 1999</td>
<td>NARUC Committee on Energy Resources and the Environment</td>
<td>Washington, D.C.</td>
<td>Default Service</td>
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<tr>
<td>March 8, 1999</td>
<td>New Members of the PA House of Representatives</td>
<td>Harrisburg, PA</td>
<td>OCA Office Overview</td>
</tr>
<tr>
<td>April 14, 1999</td>
<td>Industrial Energy Consumers of PA</td>
<td>Harrisburg, PA</td>
<td>Status of Electric Competition</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Location</td>
<td>Topic</td>
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<tr>
<td>April 19, 1999</td>
<td>State Energy Program Mid-Atlantic Regional Conference</td>
<td>Baltimore, MD</td>
<td>Utility Restructuring</td>
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<tr>
<td>April 22, 1999</td>
<td>News 13 TV Interview</td>
<td>Hazelton, PA</td>
<td>Electric Competition</td>
</tr>
<tr>
<td>April 27, 1999</td>
<td>Consumer Advisory Council of the PUC</td>
<td>Harrisburg, PA</td>
<td>OCA Consumer Education Program</td>
</tr>
<tr>
<td>May 3, 1999</td>
<td>PA Foundrymen’s Association/State Governmental Affairs Conference</td>
<td>Harrisburg, PA</td>
<td>Status of Electric Competition</td>
</tr>
<tr>
<td>May 14, 1999</td>
<td>Senior Expo</td>
<td>Chester County, PA</td>
<td>Exhibitor</td>
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<tr>
<td>June 3, 1999</td>
<td>Senior Citizen Expo</td>
<td>Ft. Washington, PA</td>
<td>Exhibitor</td>
</tr>
<tr>
<td>June 3, 1999</td>
<td>National Governors Association Conference on State Electric Industry Restructuring</td>
<td>Hershey, PA</td>
<td>Building Consensus and Mobilizing Support: A Pennsylvania Case Study</td>
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<tr>
<td>June 10, 1999</td>
<td>National Low Income Energy Consortium Conference</td>
<td>Pittsburgh, PA</td>
<td>Gas Deregulation</td>
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<tr>
<td>June 18, 1999</td>
<td>Electric Choice Summit</td>
<td>Harrisburg, PA</td>
<td>Electric Choice</td>
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</tbody>
</table>
### SERVICE TO PENNSYLVANIA AND THE NATION

**Legislative Testimony And Assistance**

The OCA responds to numerous requests for assistance from legislators regarding constituent concerns as well as legislative analysis. In addition, Consumer Advocate Sonny Popowsky testified before committees of the General Assembly and the United States Congress on matters relating to Pennsylvania utility consumers. Notably, Mr. Popowsky provided testimony on the following matters:

<table>
<thead>
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<th>Date</th>
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</thead>
<tbody>
<tr>
<td>July 1, 1998</td>
<td>Testimony before the PA Senate Consumer Protection and Professional Licensure Committee</td>
<td>Harrisburg, PA</td>
<td>Competition in the local telephone market</td>
</tr>
<tr>
<td>July 15, 1998</td>
<td>Testimony before the PA Senate Consumer Protection and Professional Licensure Committee</td>
<td>Harrisburg, PA</td>
<td>Update on Natural Gas Deregulation</td>
</tr>
<tr>
<td>March 23, 1999</td>
<td>Testimony before the PA Senate Consumer Protection and Professional Licensure Committee</td>
<td>Harrisburg, PA</td>
<td>Deregulation of the Natural Gas Industry</td>
</tr>
<tr>
<td>April 6, 1999</td>
<td>Testimony before the PA House Consumer Affairs Committee</td>
<td>Harrisburg, PA</td>
<td>H.B. 200 and 229 Slamming</td>
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<tr>
<td>April 27, 1999</td>
<td>Testimony before the PA House Consumer Affairs Committee</td>
<td>Harrisburg, PA</td>
<td>Gas Issues</td>
</tr>
<tr>
<td>April 28, 1999</td>
<td>Testimony before the PA Senate Consumer Protection and Professional Licensure Committee</td>
<td>Harrisburg, PA</td>
<td>Global Telecommunications Issues</td>
</tr>
<tr>
<td>May 25, 1999</td>
<td>Testimony before the U.S. Senate Committee on Energy and Commerce</td>
<td>Washington, D.C.</td>
<td>Electric Competition</td>
</tr>
</tbody>
</table>
Participation in NASUCA and in Other Consumer Interest Organizations

On the national level, members of the OCA staff continued to serve in leadership positions with the National Association of State Utility Consumer Advocates (NASUCA). NASUCA has members from 40 states throughout the United States and provides valuable input on consumer utility issues. Sonny Popowsky is the immediate Past President of NASUCA. Senior Assistant Consumer Advocate Denise Goulet serves on the gas committee. Senior Assistant Consumer Advocate Philip McClelland serves on the Telecommunications Committee. Senior Assistant Consumer Advocate Christine Hoover is the Chair of the Water Committee, and Senior Regulatory Analyst Marilyn Kraus serves on the Tax and Accounting Committee. OCA Consumer Liaison Susan Henry serves on the recently established Consumer Protection Committee.

Additionally, OCA staff members serve in an advisory role on committees at the federal level. Mr. Popowsky was elected to serve as the first representative of small consumers on the Board of Trustees of the North American Electric Reliability Council (NERC), the national organization that was created to promote the reliability of the electric supply system in North America. Senior Assistant Consumer Advocate Philip F. McClelland is a member of the staff of the State/Federal Universal Service Joint Board, which presents policy recommendations to the Federal Communications Commission. Mr. McClelland also serves as NASUCA’s representative on the Number Resources Optimization Working Group before the FCC. Similarly, Senior Assistant Consumer Advocate Christine M. Hoover is the NASUCA representative to the American Water Works Association Public Advisory Forum. Ms. Hoover also represents NASUCA on two U.S. Environmental Protection Agency groups, the Stage 2 M/DBP regulatory negotiation and National Drinking Water Advisory Council’s Small Systems Working Group. In 1999, Ms. Hoover was appointed to American Waterworks Research Foundation’s Public Council on Drinking Water Research. Senior Assistant Consumer Advocates Tanya J. McCloskey and Denise Goulet, and Assistant Consumer Advocate Denise R. Foster participated on several committees devoted to the development of the PJM Interconnection as an Independent System Operator under the jurisdiction of FERC. Ms. Goulet was selected to chair the PJM Public Interest and Environmental Users Group. Senior Assistant Consumer Advocate Dianne Dusman is a member of the American Water Works Association’s Subcommittee on Rates and Accounting.

In Pennsylvania, the OCA represents the interests of ratepayers on a number of different Boards and projects. Notably, Mr. Popowsky was appointed by the Public Utility Commission to the Council on Electricity Choice created to oversee the education of consumers regarding electric choice. Ms. McCloskey continued her membership on the Board of Directors of the Pennsylvania Energy Development Authority (PEDA). Ms. Hoover continued to represent consumer interests in issues related to water systems. She served as a member of the PUC’s Problem Water Task Force, which meets regularly to address existing and emerging problems of small water and sewer systems. Ms. Hoover also continued to serve on the Technical Assistance Center (TAC) for small water systems. TAC’s role is to provide
advice to the Department of Environmental Protection (DEP) on small water system issues and to help coordinate activities among various agencies and organizations affecting small water systems.

The OCA staff has also shared its expertise with other state agencies, consumers, and industry representatives at conferences and training programs.

**Service to Pennsylvania Consumers**

Each day, the OCA strives to fulfill its mandate to represent the interests of Pennsylvania utility consumers. As discussed above in the section on the electric industry, the OCA reached out to both help shape the consumer education program and help deliver to consumers information on how to shop for electricity to get the most benefit possible from the developing competitive market for generation. As discussed above in the section on gas restructuring, the OCA also is taking an active role in attempting to ensure that consumer protection and education are an integral part of natural gas restructuring.

As in past years, the OCA worked with the Commission to schedule public input hearings to provide a forum for interested consumers to express their views on major rate cases, the electric restructuring cases, and many other on-the-record proceedings before the Commission. During the 1998-1999 Fiscal Year, OCA attorneys participated in public input hearing sessions throughout the Commonwealth as well as in numerous informal meetings with consumer groups.

The OCA handled close to 2,000 consumer complaints and information requests over the past year, which included phone calls, letters and e-mail. Many of these complaints were forwarded to the OCA by members of the General Assembly on behalf of their constituents. Nearly 1,350 of the complaints and inquiries involved telephone service; approximately 300 involved electric service and choice issues; with 182 and 145 contacts involving gas and water service respectively.

During the 1998-1999 fiscal year the OCA continued to provide assistance to numerous telephone consumers who had concerns about the adequacy of their local calling areas, as well as to state legislators and local officials who raised concerns on behalf of their constituents. In some instances, the OCA intervened to assist consumers who have filed formal complaints with the Commission seeking to improve their local telephone service through changes in the boundaries between exchanges or the expansion of their toll-free local calling area. Under other scenarios, the OCA has informally assisted the consumers in communicating their concerns to the company, assisted consumers in the litigation without formal intervention and advised consumers of optional rate plans or other alternatives that would have the effect of reducing their toll charges without litigation.

The OCA took a number of actions concerning the practice of long distance “slamming.” As noted in the section on Telecommunications issues in this Report, the OCA has assisted numerous slamming complainants to return their accounts to the consumers’ chosen carriers at no charge and by pursuing formal complaints where informal remedies did not prove satisfactory.
Also, as noted in the Water Section of this Report, the OCA continues to review all formal complaints filed with the PUC related to line extensions for water service. Many individuals and groups of citizens need public water service and have been unable to obtain it because of utility requirements for high customer contributions as a condition to receive service. OCA attorneys, with the help of an engineering consultant, were able to assist a number of groups of applicants receive water service at reasonable costs during the course of this fiscal year.

The OCA also has acted as a liaison between consumers and the utility companies regarding the gas choice pilot programs in Western Pennsylvania, particularly with respect to door-to-door sales. A large part of our assistance was in talking to the consumers and helping them to understand what portion of their service is subject to competition and how to compare prices. In some cases, the problem lies with a lack of communication among the distribution company, the supplier, and the customer. In these instances, we can act as liaison among the parties and in many cases, help resolve the problem.

We also served as a liaison in the electric utility area between consumers and their new electric suppliers. Some customers were due refund checks for a free month of electric supply during the Electric Choice Pilot Programs, but the checks were somehow delayed or lost in the process. We were able to contact the suppliers with pertinent information and ensure that refunds were sent to the customers.

An example of our assistance to individual consumers involved a woman who received a notice from a collection company saying that she owed $368 for gas service for the past year at an address which the woman had not lived in for two years. Following an investigation, we were able to determine that her name had been improperly placed back on an old account, without her knowledge or permission. The company was able to go after the proper party for the overdue balance and notified the collection company to withdraw the collection efforts against the consumer who had contacted the OCA.

Another example of OCA’s assistance involved numerous customers who had become very frustrated in attempting to reach a utility company that had recently installed a new computer system. We were able to serve as a liaison between the company and several of its customers during that period.

An example of assistance in the telephone area occurred when we were contacted by a consumer who had signed up for direct debit to pay his bills electronically from his account to the company. He realized that the company was debiting his account at least three to ten days before the due date. This appeared to be a violation of PUC regulations. We contacted staff at the Public Utility Commission, who agreed that the company was debiting the money before the due date, which was not fair to the consumers. The company has agreed to change its programming and only debit the amount due on the due date. This new practice will benefit many customers.
OCA STAFF

The current OCA staff is listed below:

Irwin A. Popowsky
Consumer Advocate

Edmund J. Berger
Dianne E. Dusman
Denise C. Goulet
Christine M. Hoover
Philip F. McClelland
Tanya J. McCloskey
Senior Assistant Consumer Advocates

Joel H. Cheskis
Denise R. Foster
Erin L. Horting
Stephen J. Keene
Edward G. Lanza
James A. Mullins
Barrett C. Sheridan
Assistant Consumer Advocates

Edmund J. Berger
Dianne E. Dusman
Denise C. Goulet
Christine M. Hoover
Philip F. McClelland
Tanya J. McCloskey
Senior Assistant Consumer Advocates

Edmund J. Berger
Dianne E. Dusman
Denise C. Goulet
Christine M. Hoover
Philip F. McClelland
Tanya J. McCloskey
Senior Assistant Consumer Advocates

Mary M. Gillette
Director of Administration

Susan J. Henry
Consumer Liaison

Grace Cunningham
Consumer Education Coordinator

Jane K. Long
Information Officer

Pamela R. Carroll
Leslie B. Chatman
Jayne M. Hontz
Kathleen A. O'Handly

Administrative Staff

Zachary Rubinich
Law Clerk

Marilyn J. Kraus
Senior Regulatory Analyst

Judith P. Edgett
Judy A. Miller
Susan M. Noble
Margaret Shelley
Cammie A. Shoen
Sheri R. Steigleman

Clerical Staff