Annual Report

of the

Pennsylvania
Office of Consumer Advocate

Fiscal Year 2003-2004

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INTRODUCTION

The Office of Consumer Advocate (OCA) has served Pennsylvania utility consumers since its establishment by the General Assembly in 1976. The OCA represents Pennsylvania utility consumers in matters before the Pennsylvania Public Utility Commission (PUC) and other state and federal agencies and courts. The OCA also represents the interests of Pennsylvania consumers in non-governmental organizations, such as the PJM Interconnection. The OCA also seeks to protect and educate consumers during the transition from a fully regulated to a more competitive utility industry. 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 2003-2004.

The OCA is a statutorily independent office, administratively included within the Office of Attorney General. On June 29, 1990, the Senate of Pennsylvania first confirmed the appointment of Sonny Popowsky as Consumer Advocate. On April 3, 2001, Mr. Popowsky was renominated as Pennsylvania’s Consumer Advocate by Attorney General Mike Fisher. After a hearing before the Senate Consumer Protection and Professional Licensure Committee, Mr. Popowsky was unanimously reconfirmed to his position on June 6, 2001.

The OCA’s present employee complement consists of 37 persons, including the Consumer Advocate, 15 attorneys, and 21 other professional, administrative and clerical personnel.

Change continues in the utility industry, but the needs of Pennsylvania utility consumers to be fully and professionally represented in both Harrisburg and Washington, D.C. have not diminished. Indeed as the structure of the partially regulated, partially competitive utility industry has become more complex, the needs of utility consumers for representation, as well as for consumer protection and education, have grown.

The OCA has continued to provide vigorous professional representation for Pennsylvania consumers before both state and federal regulatory agencies and courts. The OCA participates before the PUC in all major base rate cases, purchased gas cost cases, telephone rate rebalancing cases, and many non-rate proceedings that have a significant impact on consumers. OCA also participates in numerous matters before the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC) that have a substantial impact on Pennsylvania consumers. In the last several years, the OCA also has represented the interests of Pennsylvania consumers in bankruptcy court and insolvency proceedings in other states, in order to recover deposits and refunds that were owed to Pennsylvania consumers by competitive energy suppliers. The OCA also participates actively on policy-making committees of non-government organizations such as the PJM Interconnection, whose decisions have a critical impact on electric competition and service in Pennsylvania. As noted above, the OCA also seeks to ensure that consumers are protected and informed about changes in their utility service that can be either beneficial or harmful.
In the electric industry, the OCA continues to be involved in the implementation of the Pennsylvania electric restructuring program. The OCA’s primary focus has been to ensure that all Pennsylvania consumers are benefitted through the strict enforcement of rate caps and other protections that were included in Pennsylvania’s landmark 1996 Electric Choice Act. The OCA has also sought to ensure that customers continue to be protected even after rate caps expire through the development of stable, reasonably priced “provider of last resort” service. The OCA also has continued to support efforts to protect Pennsylvania consumers through its education activities and through various rulemaking and policy proceedings. Since much of the decision-making that affects Pennsylvania electric consumers now occurs at the federal and regional level, the OCA has greatly expanded its participation in key electric proceedings before the FERC and in the committees of the PJM Interconnection. In addition, the OCA has sought to protect consumers from any adverse consequences of electric restructuring, including intervening in bankruptcy proceedings of energy suppliers. The OCA also is committed to ensuring reliable electric service for Pennsylvania consumers.

In natural gas, the OCA was active in the negotiations that led to the enactment of Natural Gas Choice legislation, as well as the specific restructuring proceedings that followed from that Act. As one result of that Act, the OCA has been given the statutory authority to represent the customers of the Philadelphia Gas Works in proceedings regarding that municipal utility’s service and rates before the Pennsylvania Public Utility Commission. The OCA also continues to represent consumers across Pennsylvania in the annual PUC review of every natural gas distribution company’s purchased gas costs. As in the electric industry, the OCA seeks to ensure that consumers continue to have access to a reasonably priced “supplier of last resort” service from their regulated natural gas distribution company. The OCA also participates in proceedings at the FERC that involve the major interstate pipelines that serve Pennsylvania’s retail gas distributors.

In telecommunications, the OCA has participated in a number of major proceedings involving efforts to increase local competition in Pennsylvania. The OCA has focused on the goal of ensuring that Pennsylvania maintains and enhances the provision of universal telephone service throughout both urban and rural areas of the state. This has included efforts to expand Lifeline telephone discount programs to low-income consumers who might otherwise not be able to afford service as well as efforts to extend deployment of new advanced services to rural areas. The OCA also has been successful in a number of cases in helping communities in several parts of Pennsylvania to obtain larger toll-free calling areas that actually reflect their local community of interest. The OCA has been involved in the legislative review of Chapter 30 of the Public Utility Code. Chapter 30, by its terms, expired on December 31, 2003. During this fiscal year, the OCA participated in the continued legislative debate over the replacement for Chapter 30.

In the water industry, the OCA continues to represent consumers in base rate increase and acquisition proceedings involving both large and small utilities. In addition, the OCA supports efforts by consumers and communities to obtain extension of water service to their homes at reasonable cost. The OCA also has supported the development of programs that assist low-income consumers in paying their water bills.
In addition to its litigation activities, OCA participates on behalf of utility consumers in state and federal legislative and policy 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 responds to numerous individual utility consumer complaints and inquiries. The OCA received more than 12,800 consumer contacts in Fiscal Year 2003-2004. The establishment of a toll-free calling number (800-684-6560) which is staffed from 8 a.m. to 6 p.m. Monday through Friday, has resulted in a dramatic increase in the number of calls handled by the OCA. Many of these callers are seeking information, for example, about how to shop for electricity; many others are calling with complaints about their utility service that the OCA staff is often able to help them resolve to their satisfaction.

Again last year, the OCA devoted substantial resources to educating consumers about changes in the utility industry. The OCA remains convinced that 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 changes in prices and service that they do not understand. The OCA has a Consumer Education and Outreach Coordinator to direct its consumer education efforts. The Consumer Advocate and other members of OCA staff have helped plan and participate in consumer presentations, roundtables, and forums across the Commonwealth to help educate consumers about changes in the utility industry and to advise them about cases that affect them. The OCA also served on the Public Utility Commission’s Council on Utility Choice. In addition, the OCA tries to keep consumers and members of the General Assembly informed through regular letters and bulletins about upcoming cases and public hearings.

The OCA provides consumer information and education through its website at www.oca.state.pa.us. The OCA received over 75,000 visits and nearly 2 million hits on its website in the last fiscal year. Shopping guides and pricing charts are the most requested pages and downloaded files from the OCA website. The OCA’s most popular education tool remains its Residential Electric Shopping Guide. This guide provides a list of electric generation suppliers with “apples-to-apples” comparative price information for residential customers in each of the major electric distribution service territories and has been widely circulated both in print form and from the OCA’s website. In May, 2002, the OCA introduced a Natural Gas Shopping Guide to provide a list of natural gas suppliers with comparative price information for residential customers in each of the major natural gas distribution service territories.

The OCA looks forward to meeting its new challenges. The OCA believes that it has served Pennsylvania consumers well both with respect to its traditional regulatory responsibilities, as well as in its role in assisting consumers to obtain the benefits and avoid the pitfalls of more competitive utility service markets. The OCA recognizes the importance of its role in advocating for the interests of Pennsylvania consumers and keeping consumers informed with respect to their utility services. Through this Annual Report, the OCA will summarize its activities in fulfilling its role in Fiscal Year 2003-2004.
ELECTRIC

Pennsylvania

PECO Energy Company

PECO Market Share Threshold Assignment Process, Docket No. P-00021984. As reported in the last Annual Report, on October 2, 2002, PECO Energy filed a Petition seeking approval of a proposed Market Share Threshold (MST) Bidding and Assignment Process. Under PECO’s restructuring settlement, PECO was required to randomly assign customers to alternative electric generation suppliers (EGS) through a one-time, Commission-approved process if less than 50% of PECO’s residential and small commercial customers were obtaining generation from alternative suppliers on January 1, 2003. PECO proposed to conduct an auction to determine the EGSs that would be assigned customers and the price at which they would serve the customers. PECO proposed that each bid be at least 2% less than PECO’s price for provider of last resort service. PECO then proposed to assign customers through an opt-out process where customers would be assigned to the alternative supplier if they do not affirmatively request to be excluded from the process. The OCA filed Comments with the Commission generally opposing an opt-out assignment process and recommending numerous additional consumer protections that would need to accompany such process if the Commission determines to utilize PECO’s approach. In addition, the OCA proposed an alternative methodology for meeting the requirements of the restructuring settlement that would allow customers to make an affirmative choice of an alternative supplier. PECO convened a collaborative working group to attempt to resolve many of the issues in the proceeding. The OCA continued to actively participated in the collaborative working group meetings for the residential customer program. A Settlement of the Residential MST process was reached by a diverse group of stakeholders, including electric generation suppliers, the OCA, environmental groups, and PECO. The OCA supported the terms and conditions of the Residential MST program that resulted from the Settlement since the program contained vital consumer protections, provided some benefit to consumers and could possibly benefit the environment through increased use of renewable resources of the renewable auction was successful. The MST program called for the assignment of 400,000 PECO residential customers to alternative suppliers selected through a competitive price bid process and a renewable percentage bid process. The competitive price auction ensured customers at least a 1.5% discount off of their PECO price. For the renewable component, the bid process assured customers that the supply provided by the alternative supplier will be from at least 5% renewable, with half of that being from new renewable resources. Customers were provided the opportunity to opt out of the process, and protections regarding billing and renewal at the end of the term were added. Specifically, it was clarified that at the end of the MST program, if the alternate supplier wished to continue to serve the customer, the alternative supplier could not raise the customer’s price above the rate cap without the affirmative consent of the customer.
In May, 2003, the first phase of the MST program was initiated in accordance with the schedule approved by the Commission. In the first phase, PECO solicited bids from alternative suppliers interested in serving up to 100,000 residential customers at either a discounted rate or with greater renewable supply. No alternative suppliers submitted bids in the first phase.

Under the MST program design, a bid for 375,000 residential customers was conducted in the Fall of 2003. The bid procedure in the Fall resulted in two winning bidders in the competitive price segment of the auction for a total of 267,000 residential Rate R customers. No bids were received in the renewable energy portion of the auction. The winning bidders were Dominion Retail and It’s Electric & Gas. Each bidder provided the customer with a 1.5% discount off of PECO’s tariffed energy and capacity charges and transmission charges. Beginning October 7, 2003, the selected customers were notified and provided an opportunity to opt-out of the program through a postage pre-paid post card, telephone, or website. For those customers that did not opt-out, service from Dominion and It’s Electric began with the first meter read in December, 2003 and the first bill with the discounted charges arrived in January, 2004. At the end of June, 2004, there were 182,572 residential customers in the MST program.

Mary Frayne v. PECO Energy Company, Docket No. C-20029005. On September 10, 2003, the Commission entered an Opinion and Order in a consumer complaint case that sought to establish generic, statewide policy regarding the implementation of the Commission’s regulations at 52 Pa. Code §§ 56.1, et seq., the Standards and Billing Practices For Residential Utility Service (Chapter 56). In this case involving a pro se complainant and extreme facts, the Commission directed changes to the policies and procedures of its Bureau of Consumer Services in the negotiation of payment arrangements with customers and it offered guidance to utilities regarding payment arrangements, lump sum amounts required to restore service, and budget billing for customers on payment arrangements. In general, the Commission directed that customers be afforded only one payment arrangement unless there is a change in circumstances. The OCA filed a Notice of Intervention and a Petition for Reconsideration upon receipt and review of the Commission’s Order. The OCA did not question the Commission’s decision with respect to the particular complainant, in that the Commission had based its decision on a ten year history of multiple payment arrangements, non-payment, and the fact that the customer had moved from the location where the debt was unpaid. The OCA did object to the Commission using the vehicle of this case, with its extreme facts and a pro se complainant to establish generic, statewide policy. In its Petition for Reconsideration, the OCA requested that the Commission eliminate any direction or discussion of changes to Chapter 56 policies and procedures. In the alternative, the OCA asked that the Commission issue this policy directive for Comment as a Tentative Order or proposed Statement of Policy. On December 23, 2003, the Commission entered an Order denying the OCA’s Petition.

PECO Energy Company, Universal Services Fund Charge, R-00038535. On June 6, 2003, PECO Energy Company filed proposed changes that would affect the applicability and method of calculation of PECO’s Universal Services Fund Charge. The Company proposed that such changes would go into effect with the Company’s proposed September 1, 2003 filing in order to establish a USFC rate, effective January 1, 2004. The OCA filed a Complaint questioning: the class cost
allocation provided for in the Company’s proposal, PECO’s proposal to use an annualized year-end number of customers upon which to base its filing, and PECO’s proposal to reconcile historical USFC costs. After settlement discussion, the OCA and PECO reached agreement on the proper calculation of the rate. The charge was implemented on January 1, 2004.

PPL Electric Utilities, Inc.

Petition Of PPL Electric Utilities For Authority To Defer For Accounting And Financial Reporting Purposes Certain Losses From Extraordinary Storm Damage And To Amortize Such Losses, Docket No. P-00032069. On October 20, 2003, PPL filed a Petition with the PUC seeking authority to defer for accounting and financial reporting purposes the costs from Hurricane Isabel. PPL also sought authority to amortize such deferred costs commencing upon the effective date of changes in rates pursuant to the Commission’s final order in PPL’s next general base rate case proceeding pursuant to Section 1308(d) of the Public Utility Code. PPL proposed to address the applicable ratemaking issues in that general base rate proceeding. The OCA filed an Answer in Opposition to PPL’s request. The OCA argued that PPL is not entitled to recovery of costs associated with Hurricane Isabel in its next general base rate proceeding since these costs were incurred during the rate cap period. The OCA noted that both the Commission and the Commonwealth Court have found that deferral of costs during the rate cap period for future recovery is the same as granting an exception to the rate cap. For such deferral to be granted at all, an EDC must meet one of the exceptions to the rate cap found in 66 Pa.C.S. § 2804(4)(iii). There is no exception that would permit recovery of storm damage costs. The Commission’s Office of Trial Staff and the PPL Industrial Customers also filed Answers opposing this Petition on the same grounds as those stated by the OCA. In January 2004, the Commission issued a decision allowing the deferral but stating that there was no guarantee that there would be recovery of any deferred amounts. The Commission directed that the issue of whether the costs can be recovered from ratepayers be decided in PPL’s upcoming distribution rate case. As discussed below, at the end of the Fiscal Year, the base rate proceeding was pending before the Commission.

PPL Base Rate Case, R-00049255. On March 29, 2004, PPL Electric Utilities, Inc. (PPL) filed a base rate case, seeking to increase distribution operating revenues by $164.4 million. This case represents the first distribution-only base rate case filed by a major electric utility in Pennsylvania, and the first electric base rate case since the restructuring of the electric industry. In addition to the increase in distribution charges, PPL sought to increase its transmission service charges by $57.2 million. On April 12, 2004, the OCA filed a complaint against PPL’s proposed request averring that PPL’s requested rate increase, its proposed tariff changes, and its current tariff, are, or may be, unjust, unreasonable, unduly discriminatory and otherwise contrary to the law and sound ratemaking principles. The OCA retained a team of expert witnesses to evaluate the request. The OCA filed its Direct Testimony on June 29, 2004 challenging many aspects of the Company’s request. The OCA recommended a distribution rate increase of $115.1 million rather than the Company’s request of $164.4 million. The OCA’s recommendation was based on numerous adjustments to the Company’s claimed revenues, expenses and rate base, as well as a recommendation that the Company be awarded a 9.5% return on equity as opposed to the Company’s requested 11.5% return
on equity. The OCA also opposed the Company’s request to implement a Distribution System Improvement Charge (DSIC) that would allow the Company to increase rates in between base rate cases for distribution plant additions. Other aspects of the Company’s proposal that the OCA opposed include its proposal to increase its residential customer charge and to include the first 200 kwh of usage in that charge. The OCA also made recommendations for improvements in PPL’s universal service programs for low income customers. As of the end of the Fiscal Year, this case was pending before the Commission.

**Duquesne Light Company**

Duquesne Light Company Supplement Amending Supplier Tariff Rules, Docket No. R-00038092. In January of 2003, Duquesne Light Company filed tariff supplements seeking amendments to its Supplier Tariff that provides rules of operation for Electric Generation Suppliers serving in Duquesne’s service territory. Duquesne sought to change the rules of operation regarding reliability due to events that occurred on its system in the Summer of 2002 that resulted in the failure of EGSs to deliver energy to the system in sufficient amount to meet their customer’s needs. Due to the lack of delivery, and the high usage of the Summer period, Duquesne was required to interrupt its interruptible customers to maintain system integrity and reliability. Duquesne sought to implement new rules for operation to reduce the possibility of such non-delivery. Several EGS’s filed complaints against the tariff supplements. The OCA intervened and participated in hearings due to the important nature of these reliability requirements. In the proceeding, the OCA argued that the evidence of record demonstrated that Duquesne’s current rules were not sufficient to maintain reliability. The OCA argued that a change in Duquesne’s rules and procedures was necessary, and that the change proposed by Duquesne and supported by PJM was one reasonable approach. Although alternative approaches, such as less restrictive procedures or market-based solutions might exist, the OCA argued that no other alternative approaches were developed or supported on the record. The ALJ issued his Recommended Decision adopting the position of the OCA and approving Duquesne’s tariff supplement with modifications recommended by the OCA. On October 31, 2003, the Commission entered an Order rejecting the ALJ’s recommendation. The Commission concluded that the record did not establish that Duquesne’s proposal would serve the public as well as or better than a market-based solution. The Commission found that there was evidence that a market-based solution would better serve the public and the market. The Commission also expressed concern that Duquesne’s use of different approach with its Provider of Last Resort (POLR) supplier, Reliant, might violate the comparability requirements of the Act. The Commission remanded the matter to the ALJ for the development of a market-based solution that was modeled on the contract that Duquesne has with its POLR provider, the POLR II Agreement. Duquesne provided a tariff based on the POLR II Agreement but did not recommend this approach. Duquesne testified that such approach may not provide the right incentives to EGSs to provide reliable service. Two EGSs filed testimony suggesting modifications but generally supporting the approach. The OCA recommended that the Commission proceed cautiously in adopting any market-based solution in a service territory that does not have a fully developed wholesale market and is not part of a Regional Transmission Organization (RTO). The OCA recommended that if the Commission pursues this approach, the Commission must thoroughly and meaningfully review each EGS’s plans
for providing reliable service two times per year as Duquesne does with its POLR provider. The OCA also recommended that the Commission establish standards for this review and seek input from Duquesne and Duquesne’s Reliability Coordinator when reviewing the plans. The ALJ issued his Recommended Decision on remand approving the market based solution based on the POLR II Agreement. The ALJ adopted the OCA’s recommendation that the Commission establish standards for the review of an EGS’s plans for providing reliable service and made certain other modifications. At its Public Meeting of December 19, 2003, the Commission adopted the ALJ’s recommendations. The Commission also directed that Commission Staff initiate discussions to establish standards for review of an EGS’s plans for providing reliable service. The OCA participated in the discussions to establish standards for the review of the EGS plans for providing reliable service. By the end of the fiscal year, the Commission had issued the standards and was reviewing the EGS’s plans for providing reliable service.

Petition of Duquesne Light Company For Approval of Post-Transition POLR Service, P-00032071. On December 9, 2003, Duquesne Light Company filed a Petition for approval of its plan to meet its provider of last resort (POLR) obligation for the period of January 1, 2005 through December 31, 2010. Under the plan, Duquesne would meet its obligation to residential customers and small commercial customers at specified rates through a series of power purchase agreements and generation plant purchases that would be made by its affiliate, Duquesne Power. The rates for residential and small commercial customers represent an approximate 11.5% increase in the generation portion of the rate in 2005 and an additional 9.3% increase in the generation rate in 2008. For large customers, Duquesne offered a choice of a one year fixed price service or an hourly price service. To serve the residential and small commercial load, Duquesne Power is purchasing the 436 MW Sunbury Generating Station and will secure power purchase contracts of varying lengths for the remainder of the load. For the large industrial customers, Duquesne is proposing to conduct an auction for suppliers to serve this load. On December 23, 2003, the OCA filed an Answer to the Petition raising numerous issues that must be addressed regarding this proposal. The OCA generally supported a fixed price POLR service for residential customers and Duquesne’s general strategy for meeting its POLR obligation on an interim basis. The OCA’s analysis found that the rates Duquesne sought to charge may be somewhat overstated, and that the prices in the later years should be subject to a market test closer to the time that the rates will be implemented. The OCA and the Company conducted negotiations to resolve the modest differences between the Company’s position and the OCA’s position. Through these negotiations, the OCA and the Company were able to resolve their differences and enter into a Stipulation (OCA/Duquesne Stipulation). Under the Stipulation, the Company agreed to meet its provider of last resort obligation to residential customers for the period of 2005 through 2010 through the provision of stable, specified rates over two three-year terms. For the first term, from 2005 through 2007, Duquesne was to serve residential customers at an average residential generation price of 6.24¢/kwh. For the second three-year term, from 2008 through 2010, Duquesne was to serve residential customers at a generation price bounded by a floor price of 6.24¢/kwh and a ceiling price of 6.86¢/kwh. The Company agreed to include renewable and other environmentally beneficial resources as part of its portfolio and it agreed to include demand side response programs as part of its service. The Company also agreed to cap its distribution rates until January 1, 2008 and to narrow the circumstances where it could request any increase in these agreed
upon prices. On May 26, 2004, the ALJ issued his Recommended Decision. In his R.D., the ALJ recommended that the Commission adopt the POLR III Plan as set forth in the OCA/Duquesne Stipulation for residential customers. For commercial customers, the ALJ recommended adoption of the OSBA/Duquesne Stipulation and for industrial customers, the ALJ recommended adoption of the stipulation between the industrial customers and Duquesne. As of the end of the Fiscal Year, this case was pending before the Commission.

Metropolitan Edison Company and Pennsylvania Electric Company

Investigation Regarding the Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company’s Reliability Performance, Docket No. I-00040102. On January 16, 2004, the Commission initiated an investigation into the level of service reliability provided by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), and Pennsylvania Power Company (Penn Power) (collectively FirstEnergy or the Companies). Based on the Commission’s review of reliability data provided by the Companies, the Commission was concerned that the companies may not be meeting the relevant reliability standards regarding the frequency and duration of service outages. The Commission was concerned that one or more of the Companies service reliability performance has deteriorated to a point below the level of service reliability that existed prior to restructuring. The Commission’s investigation covered the following areas: underlying causes of the outages, adequacy of inspection and maintenance cycles, tree-trimming activities and contracts, changes to budgeted/actual capital and operating expenditures in prior years, emergency call out procedures and acceptance rates, hiring/contracting practices for line workers, and other factors, practices and policies that affect service reliability. The Commission also sought recommendations for corrective actions if service reliability has deteriorated below the level required by the Public Utility Code. The Commission specifically directed that the investigation not consider civil fines and penalties. The OCA has intervened in the matter and retained expert witnesses to assist the Office in the investigation. Public Input hearings were held in Dillsburg, York, Lebanon, Reading, Easton, Sharpsville, Erie, Dubois, and Altoona. On June 21, 2004, the OCA filed the testimony of two expert witnesses. In its testimony, the OCA reviewed the Companies’ reliability performance, its operations and maintenance practices related to reliability, its planning for reliability, vegetation management practices, its management incentive compensation, its storm planning, and many other aspects of the Companies’ operations related to reliability. The OCA demonstrated that the Companies’ performance had deteriorated and made several recommendations designed to begin to restore service quality. The OCA recommended that the Companies develop an action plan that comprehensively addresses needed reliability improvements, including improvements or changes in the areas of general planning criteria; capital spending; operation and maintenance spending; vegetation management; inspection of facilities; replacement criteria for facilities and equipment; staffing levels; service center locations; management compensation related to reliability; and interactions with customers through its automated outage management systems. This case was pending at the end of the Fiscal Year.
Joint Application of GPU Energy and FirstEnergy for Approval of Merger, Docket Nos. A-110300F.095 and A-110400F.040 and GPU Petition for Interim Rate Relief Pursuant To Section F.2 Of the Settlement, Docket Nos. P-001860 and P-001861. As reported in last year’s Annual Report, GPU Inc., the owner of two major Pennsylvania electric utilities (Met Ed and Penelec) announced that it will merge with FirstEnergy Corp., a major Ohio utility that also has a Pennsylvania subsidiary (Penn Power). On November 9, 2000, GPU Energy and FirstEnergy filed their Application for Approval of a Merger. The merger was to be accomplished by FirstEnergy’s acquisition of all of GPU’s outstanding shares of common stock and assumption of GPU’s outstanding indebtedness. The OCA filed a Notice of Intervention and Protest. In its Protest, the OCA argued that the Company’s filing and proposals had not demonstrated affirmative ratepayer benefit as required under Pennsylvania law. As discussed in last year’s report, GPU also filed a Petition requesting authority to defer for future recovery the costs it incurs to serve its obligation as provider of last resort that are in excess of the “shopping credits” allowed in the Settlement. The OCA argued that if granted, GPU would, in effect, be permitted to exceed the rate caps provided for under the Act and the settlement without meeting the standards for a rate cap exception provided by the Act. At its January 24, 2001 Public Meeting, the Commission ruled that GPU’s Petition should be treated as a request for a statutory rate cap exception and that the case should be consolidated with the pending merger.

The OCA took the position that the merger should only be approved if certain conditions were met. Specifically, the OCA tied approval to a commitment to meet the provider of last resort obligation and generation rate cap through 2010; an extension of the distribution rate cap for GPU and Penn Power through 2007; continuation of GPU in PJM and possible inclusion of First Energy in PJM West; improvements to the GPU distribution system; maintenance of universal service programs; and corporate structure protections for Pennsylvania ratepayers.

On April 24, 2001, the ALJ issued his Recommended Decision in the merger. The ALJ recommended that the merger be approved subject to certain conditions. The ALJ recommended adoption of many of the conditions proposed by the OCA including the OCA’s recommendation that the GPU transmission assets remain in PJM unless the Companies secure Pennsylvania PUC approval; that the T&D rate caps for Met-Ed, Penelec, and Penn Power be extended through 2007 and that the costs to achieve the merger be expensed or amortized during this period; that a Service Quality Index be established to ensure improved quality of service; that critical community support programs, including economic development programs, be continued; and that the Companies affirmatively recognize the Commission’s jurisdiction over the merged company. The ALJ, however, did not recommend adoption of the OCA’s recommendation that FirstEnergy be required to meet GPU’s POLR obligation within the agreed upon rate caps. Instead, the ALJ recommended a $316 million rate increase for the GPU companies in the companion case, as discussed above.
On May 24, 2001 the Commission approved the merger subject to certain conditions, but instituted a collaborative to address the issue of merger savings and GPU’s POLR obligation. The OCA participated in the collaborative but the collaborative did not result in a negotiated resolution.

After the conclusion of the collaborative, the OCA and several other parties continued discussions with FirstEnergy and GPU. Through these discussions, a Stipulation was reached with FirstEnergy and GPU. Under the Stipulation, FirstEnergy agreed to maintain the rate caps agreed to by GPU in its restructuring proceeding. FirstEnergy and GPU were permitted to defer the costs to meet GPU’s POLR obligation in excess of the rate cap through 2005. GPU was then provided an opportunity to recover these costs for the remainder of the rate cap period, but was required to write off any costs not collected at the expiration of the rate cap. FirstEnergy and GPU also agreed to adhere to the conditions set forth in the Commission’s Order with minor modifications. On June 14, 2001, the Commission voted to adopt the Stipulation, and entered an Order in this regard on June 20, 2001.

The Commission’s Order was appealed to the Commonwealth Court by ARIPPA (a coalition of non-utility generators), York County Solid Waste and Refuse Authority (a non-utility generator), Clean Air Council (an environmental group) and Citizen Power (an environmental/consumer group), and the Mid-Atlantic Power Supply Association (an association of retail marketers). The OCA intervened in each of these appeals and a brief in support of the Commission’s Order on October 17, 2001.

On February 21, 2002, the Commonwealth Court entered its Order in this matter. In its Order, the Commonwealth Court upheld the Commission’s Order approving the merger and setting various conditions. The Court, however, rejected the Commission’s treatment of the merger savings issue as part of a comprehensive settlement that resolved GPU’s request for relief under Section 2804(4)(iii)(D). The Court found that GPU did not qualify for relief under Section 2804(4)(iii)(D) and as a result, the issue of merger savings was remanded to the Commission for further consideration in the merger context. The Court also vacated the Commission Order approving the Settlement Stipulation.

A number of Petitions for Allowance of Appeal of the Commonwealth Court’s Order were filed with the Pennsylvania Supreme Court.

On January 16, 2003, the Supreme Court entered orders denying several of the requests for appeal and quashing the remaining requests. The Commission issued a Secretarial Letter initiating proceedings to address the remand by the Commonwealth Court. The Commission directed the FirstEnergy Companies to submit compliance tariffs to implement the Commonwealth Court Order and a position paper on the effect of the Court’s Order on the Settlement by May 2, 2003. The Commission also assigned the matter to the Office of Administrative Law Judge for hearings on the issue of merger savings and any issues of fact regarding Met-Ed and Penelec’s prior request for an exception to the rate cap to recover the costs of purchases power.
On October 2, 2003, the Commission issued an Implementation Order to rule on the compliance tariffs and implement the Commonwealth Court’s Order. In that Order, the Commission directed Met-Ed and Penelec to restate all stranded cost balances and POLR costs as if the Settlement Stipulation had not gone into effect. This entailed the reversal of numerous accounting entries made during the period of time that the settlement was in effect. Of particular concern, the Companies were directed to reverse the benefit received by ratepayers from the new methodology for calculating NUG stranded cost contained in the settlement, thus increasing the stranded cost that ratepayers would pay in the future. The Commission also directed the Companies to reverse the effect of the reduced stranded cost collection which had the effect of lowering the stranded cost balance. The Companies filed a Petition for Reconsideration and Clarification with the Commission seeking to retain the benefit of the change in rate elements while denying ratepayers the benefit of the NUG stranded cost calculation. The OCA filed a vigorous opposition to the Petition for Reconsideration and Clarification. On October 17, 2003, the Commission entered an Order denying the Petition for Reconsideration and Clarification. The Commission made clear that the Companies must restate the stranded cost balance to account for all changes implemented as part of the settlement. The Companies filed an immediate objection with the Commonwealth Court. The Court immediately dismissed the objection. The Companies then filed an Application for Clarification and an Application for Argument En Banc with the Commonwealth Court. Both were denied. Finally, the Companies filed a Post-Trial Motion with the Commonwealth Court which was denied. The Companies have now filed a Petition for Review of the Commission’s October 2, 2003 Order and the October 17, 2003 Reconsideration Order. The OCA has intervened in the appeal. At the end of the Fiscal Year, the parties continue with settlement negotiations in the remanded merger proceeding and the appeal of the Commission’s Implementation Order has been stayed pending the outcome of those discussions.

Petition of Met-Ed and Penelec to Amend Reliability Benchmarks, Docket No. M-00991220. On May 26, 2004, Met-Ed and Penelec filed a Petition with the Commission seeking to amend the service reliability benchmarks and standards for each Company established in a Commission Order of May 11, 2004. The service reliability benchmarks and standards were established for each electric distribution company in Pennsylvania based on the historic performance of the EDC prior to restructuring of the electric industry. The benchmarks and standards are utilized as a tool by the Commission to ensure that the statutory requirement that service quality be maintained at pre-restructuring levels of performance is met by each EDC. Met-Ed and Penelec argued that the service reliability benchmarks and standards established with the historic data are not fully representative of their historic performance due to data quality issues in the historic period. Met-Ed and Penelec sought to have the benchmarks and standards changed to a level that would lower reliability expectations. Met-Ed and Penelec requested that this matter be consolidated with the on-going reliability investigation. The OCA filed an Answer opposing consolidation due to the short time frame remaining in the on-going service reliability investigation. The OCA also requested that the Commission fully examine the Companies’ request. At the end of the Fiscal Year, the Commission had determined to hold the request in abeyance until after the conclusion of the reliability investigation.
UGI-Electric

Petition of the Office of Small Business Advocate Re: UGI-Electric POLR Service, Docket No. R-00017033. On February 10, 2004, the Office of Small Business Advocate (OSBA) filed a Petition seeking to establish the pricing mechanism for UGI’s provider of last resort (POLR) service for the post-2004 time period. UGI had an approved POLR plan through December 31, 2004. Without the enactment of the Commission regulations, it was unclear how UGI intended to meet its obligations after the expiration of its current plan. The OCA intervened in the OSBA action and supported the request that a more definitive pricing mechanism be established. On April 30, 2004, the OSBA, OCA and UGI entered into a Stipulation regarding POLR service for 2005 and 2006. Under the Stipulation, UGI will provide POLR service for a price that is no more than 4.5% above the total rates in effect on December 31, 2004. In 2006, UGI is permitted a further increase, but that level can be no more than 7.5% of the total rates in effect on December 31, 2004. UGI has also agreed to provide information to the OCA and OSBA regarding the market prices used to establish its rates. On May 28, 2004, the Commission entered a Tentative Order approving the Stipulation. The Commission made two changes to the Stipulation. First, the Commission included a caveat that if its regulations become effective before the end of the POLR plan period, UGI will be subject to those regulations unless it seeks and is granted a waiver. Second, the Commission included the Office of Trial Staff as a party that may request and receive the market price information. If no negative comments were filed to the Commission’s Tentative Order in 10 days, the Order becomes final. No negative comments were received and the Commission’s Order became final by the end of the Fiscal Year.

West Penn Power Company

Petition of West Penn Power Company For Issuance Of A Second Supplement To Its Previous Qualified Rate Order, R-00039022. West Penn Power Company filed a request for the issuance of a second supplemental Qualified Rate Order (QRO) to securitize the remaining portion of West Penn’s stranded cost and to securitize other costs. Under West Penn’s proposal, stranded cost recovery would be extended for up to four years without any rate cap protection for consumers. Additionally, the Company’s plan for the use of the proceeds was unclear. The OCA filed an Answer on December 15, 2003. The OCA argued that the Company’s request should be modified. Specifically, the OCA argued that a rate cap extension that matches the extended period of stranded cost recovery was necessary and that the proceeds must be used to benefit West Penn ratepayers and not other affiliates of West Penn. At the end of the Fiscal Year, the parties were in the process of attempting to settle this matter.

Petition of Allegheny Energy d/b/a West Penn Power Company for Amendment of Its Benchmarks and Standards, Docket No. M-00991220. Following the Commission’s Order in the generic rulemaking, West Penn Power filed a Petition seeking a further amendment to its reliability benchmarks and standards that would revise its reliability performance requirements. West Penn argued that the data that it provided to the Commission which formed the basis of the original benchmarks was incomplete and unreliable. West Penn argued that more recent data suggests that
reduction in its reliability performance expectations is necessary. The OCA filed an Answer and Notice of Intervention arguing against this proposal. At the end of the Fiscal Year, the Commission had determined to set the matter for hearings.

**Other Cases**

Provider of Last Resort (POLR) Roundtable, M-00041792. By Secretarial Letter dated March 5, 2004, the Commission convened a forum for the discussion of the provider of last resort service in Pennsylvania. Provider of Last Resort (POLR) service is provided under 66 Pa.C.S. §2807(e)(3) of the Public Utility Code. The POLR is required to serve all electric customers who do not chose to be served by an alternative electric generation supplier or whose alternative supplier defaults. Under Chapter 28, the Commission must establish regulations to govern this service. This issue presents one of the most critical policy decisions facing the Commission in the move to more competitive retail generation markets. The OCA participated in these Roundtable discussions and presented testimony to the Commission on June 2, 2004. The OCA also submitted written comments on May 26, 2004. In its testimony and comments, the OCA set forth its position that the goal of the POLR service should be to provide basic, reliable generation service at a reasonable price and on reasonable terms and conditions. The OCA urged the Commission to recognize that for residential customers, electricity is an essential service necessary for both health and safety. The OCA pointed out the need for stable pricing of this service for residential customers. The OCA recommended that the incumbent electric distribution companies be the POLR and that they acquire a portfolio of resources through a variety of procurement methods to meet this obligation at the lowest, reasonable cost. The OCA argued against a POLR service that includes "adders" to support new entrants or that relied on volatile pricing, spot prices or short-term prices. The OCA filed Reply Comments on June 17, 2004. As of the end of the Fiscal Year the participants were awaiting the Commission’s issuance of proposed regulations or guidelines.

*Interim Report: Causes Of The August 14th Blackout In The United States And Canada.* On November 18, 2003, the U.S.-Canada Power System Outage Task Force issued its Interim Report on the August 14, 2003 blackout that affected large portions of the MidWest and Northeast United States and Ontario, Canada. Although most of Pennsylvania did not experience a loss of electricity, a few regions of Pennsylvania were directly affected by the blackout. Specifically, all customers of Pike County Power and Light Company in Northeastern Pennsylvania lost electric supply and customers of Pennsylvania Electric Company in Northeastern Pennsylvania, primarily in the Erie region, lost electric supply as a result of the blackout. Pike County is not directly interconnected to PJM but is served through its affiliate, Consolidated Edison by supply from the New York Power Pool. Certain portions of Northwestern Pennsylvania, although served by PJM, were directly interconnected to transmission facilities of FirstEnergy in Ohio. The Interim Report finds that the blackout was caused by deficiencies in specific practices, equipment, and human decisions that coincided on August 14, 2003. Three groups of causes have been identified: inadequate situational awareness at FirstEnergy Corporation, failure of FirstEnergy to adequately manage tree growth in its transmission rights-of-way, and failure of the interconnected grid’s reliability organizations to provide effective diagnostic support. The Interim Report also initially identified 6 violations of the
NERC Reliability Standards. Of those 6 violations, FirstEnergy was in violation of 4 standards and the Midwest Independent System Operator (MISO) was in violation of two standards. FirstEnergy is the corporate parent of three electric distribution companies in Pennsylvania B Pennsylvania Power Company, Pennsylvania Electric Company and Metropolitan Edison Company. The Interim Report does not set forth recommendations. The Final Report of the Task Force was issued on April 5, 2004. The Report findings expand on the Interim Report to identify four major categories of causes for the blackout: 1) Inadequate system understanding - FirstEnergy Company, a major electric utility in Ohio and western Pennsylvania, and the East Central Area Reliability Council (ECAR) failed to understand the limits of the FirstEnergy system. FirstEnergy then failed to operate its system so as to limit the impacts of potential problems. 2) Inadequate situational awareness - FirstEnergy did not know what was happening in its system when trouble started. 3) Inadequate tree trimming - FirstEnergy did not keep trees trimmed a safe distance from high tension lines. Short circuits occurred between trees and FirstEnergy’s power lines and this caused the system to become unstable. 4) Inadequate real-time diagnostic support: When trouble started on FirstEnergy’s system, the Midwest Independent System Operator (MISO) did not have real-time data about the problems. This caused reliability models to be wrong and made it impossible for MISO to know what was happening in the system. As a result, MISO was unable to effectively coordinate reliability. Poor coordination and a lack of planning between MISO and the neighboring reliability coordinator, PJM, made it impossible to prevent the cascade of outages that ultimately enveloped much of the mid-west, eastern Canada and New York. The report recommends the following major steps in order to significantly reduce the risk of future blackouts: 1) Institutional Issues Related to Reliability - A series of fourteen recommendations address how reliability requirements can be made more effective. Principal among these is that requirements must be made mandatory and enforceable with penalties for non-compliance. 2) Support and Strengthen the Actions of the North American Electric Reliability Council (NERC) - Seventeen recommendations pointed to specific activities currently under way or planned, emphasizing the need to quickly act to fix the causes of the blackout and then to ensure that requirements, practices and plans are modified so that opportunities for error or omission are eliminated. 3) Physical and Cyber Security of North American Bulk Power Systems - An additional 13 recommendations detailed how computer and communications systems should be protected from both electronic and physical attack. 4) Canadian Nuclear Sector - The Report concluded with two recommendations related to training, procedures and backup generation at Canadian nuclear plants. OCA staff continues to work in both the NERC and PJM processes to advance implementation of the Report recommendations.

Rulemakings

Re: Regulations Regarding Annual Reliability Benchmarks, L-00030161 and Amended Reliability Benchmarks and Standards for Electric Distribution Companies, M-00991220. At its Public Meeting of June 26, 2003, the Commission approved two Orders intended to significantly modify its standards for performance reliability in the electric distribution industry. The Commission’s action followed a Report by the Legislative Budget and Finance Committee that was critical of the Commission’s standards and benchmarks. In the Report, the LB&FC found that the Commission’s regulations allowed for a significant reduction in reliability contrary to the requirements of the
Electric Choice Act. The OCA had made these same points in its Comments to the Commission when it proposed its regulations, but those Comments were not adopted by the Commission. Following the issuance of the LB&FC Report, the Commission convened a Staff Internal Working Group. This Working Group met with the EDCs to review the standards and benchmarks, data collection issues, and performance under the regulations. No other parties were asked to participate in this Working Group process. The result of the Working Group process was the issuance of revised standards and benchmarks, a change in the definition of what outages can be excluded from the statistics, a process for comparing performance on a three-year rolling average basis and a 12-month basis, and a process for EDCs to request the exclusion of particular outages from the statistics. The Commission states that its new requirements will tighten the reliability standards and better achieve the intent of the Act. The Order establishing new benchmarks was published and on October 10, 2003, the OCA filed Comments with the Commission. Comments were also filed by the Energy Association of Pennsylvania, the various EDCs, and the Unions. In its Comments, the OCA first pointed out its strong agreement with the conclusion of the LB&FC Report that the Commission’s existing regulations allowed the potential for significant deterioration in reliability and that the reliability performance of the EDCs had borne out this concern. Reliability has significantly deteriorated since the Act. The OCA then argued that the Commission’s current proposals do not correct this problem. In particular, the Commission has proposed a move to a two-tiered monitoring system. Under the new system, EDCs will report their performance under the key metrics for a three-year rolling average basis and a 12-month rolling average basis. Under the Commission’s proposal, though, both of these standards allow performance on a continual basis that is worse than the pre-restructuring performance. The OCA argued that at least one of these standards must be at or better than the pre-restructuring performance. The OCA also challenged the Commission’s proposal to recalculate the historic benchmarks for certain utilities in a manner that reduced reliability expectations. The OCA argued that reducing reliability expectations when reliability has already deteriorated is not appropriate. The Commission also allowed for Reply Comments to the numerous filings. The OCA responded to requests from the EDCs for changes to their individual benchmarks and standards that would further lower reliability expectations and to the argument that the Commission should not rely on its benchmarks and standards for any enforcement of the reliability provisions of the Act. The next step was the filing of Comments on the proposed regulations. On December 8, 2003, the OCA filed its Comments setting forth its recommended modifications to the regulations. Specifically, the OCA recommended that the Commission establish an EDC’s historic performance as a requirement that must be met over a three year period, and that the Commission establish an enforcement mechanism if an EDC does not meet these regulatory requirements. The OCA also recommended that the reporting requirements be further improved and that each EDC submit a Report on its reliability performance to customers on an annual basis. On December 22, 2003, the OCA filed Reply Comments responding to the Comments of the EDCs and the Energy Association of Pennsylvania. The OCA’s Reply Comments addressed several arguments, including the request by EAP and the EDCs that the reliability information be treated as confidential and shielded from public view. On May 11, 2004, the Commission entered its Order on Amended Reliability Benchmarks and Standards at Docket No. M-00991220. In its Order, the Commission made final its proposed benchmarks and standards, including its recalculation of the historic benchmarks for some companies. The Commission did not require the EDC to meet or exceed its
historic performance for any metric. On May 20, 2004, the Commission issued its Rulemaking Order on electric service reliability at Docket No. L-00030161. The Commission again did not establish a requirement that the electric distribution company meet its historic performance. The Commission did indicate that it would work with Companies whose performance consistently fell below historic levels of reliability. As one option for these companies, the Commission added the OCA’s recommendation for the development of formal improvement plans with enforceable targets and penalties for non-compliance. The Commission will not require such plans, however.

Other Energy Matters

Sustainable Energy Funds. The OCA serves on the statewide board that works with each EDC’s sustainable energy fund. On April 10, 2003, the Commission issued a Tentative Order seeking to further define the role of the statewide Sustainable Energy Board on which the OCA serves as a member. The Commission envisions the statewide board playing a role in the oversight of the regional boards, in providing an informational conduit between the regional boards and the Commission, and in promoting uniformity of business processes within each of the regional funds. The Commission seeks Comments on the Tentative Order after its publication in the Pennsylvania Bulletin. On May 27, 2003, the OCA filed Comments supporting the Commission’s Tentative Order further defining the role of the statewide Sustainable Energy Board and providing some additional suggestions for the operation of the Board. The Commission adopted a Final Order on August 12, 2003 giving further direction to the statewide board. The OCA is committed to serving on the Board to further development of renewable resources in Pennsylvania. The statewide Board hosted the first Annual Meeting of the Board, with a review of the activities and accomplishments of the local funds, on June 29, 2004.

Testimony Regarding Appliance Efficiency Standards Proposed Under SB 901 and HB 2035. Consumer Advocate Sonny Popowsky testified on proposed state appliance efficiency standards at the request of the Senate and House Committees on Environmental Resources and Energy. The Senate testimony on December 10, 2003 and the House testimony on December 17, 2003 expressed strong support for conservation generally and appliance efficiency standards specifically as measures that can help moderate electricity prices and enhance grid reliability. In response to concerns about the economic infeasibility of single state standards, the Consumer Advocate proposed that standards be established but that enforcement only begin when a sufficiently large portion of surrounding states had also adopted standards. With legislation that mirrors Pennsylvania’s pending in most Mid-Atlantic and New England states, this proposal would allow each regional state to move forward but without fragmenting markets.
Federal

*FERC Electric Rulemaking Proceedings*

RM01-12-000: Market Design Notice of Proposed Rulemaking: On July 31, 2002, FERC issued a Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR) setting forth proposed standards for electricity market design, calling for Independent Transmission Providers (ITPs) in lieu of RTOs, using the PJM model as the base for the standards. The OCA, along with several other consumer advocate offices in Mid-Atlantic and Midwestern states, submitted comments in this docket on the NOPR on November 15, 2002, relating to concerns over governance, market monitoring, Independent Transmission Companies (ITCs), transmission pricing and other issues. The OCA’s main concern with the SMD involves the generation adequacy issue. This issue is critical for ensuring reliability of electricity service to Pennsylvania and the OCA is currently drafting comments on these postponed issues. The OCA presented its proposal at the FERC Technical Conference on generation adequacy on November 19, 2002. The OCA also submitted supplemental comments on the reserved issues on January 10, 2003, including the resource adequacy and congestion revenue rights issues. On January 15, 2003, FERC announced its intent to delay initiation of a final rule in this proceeding pending further investigation of the issues and the development of a FERC Staff White Paper on these issues in April, 2003. FERC’s action seemed to be a response to significant opposition to the SMD NOPR from states in the western and southeastern regions of the nation.

FERC issued a White Paper on April 28, 2003. The White Paper retreated from the ITP construct, and instead required all utilities to join RTOs or ISOs, and further required certain basic market design elements for such RTOs or ISOs. That standard market design remains based on the PJM model, and requires regional, independent grid management; regional transmission planning; effective market monitoring and market power mitigation by the RTO or ISO; fair cost allocation for existing and new transmission; the development of spot energy markets; congestion management; firm transmission rights (FTRs); and a resource adequacy requirement. The White Paper proposes to provide substantial flexibility in the development of regional approaches to governance of the RTO or ISO and in the development of a resource adequacy requirement. FERC held a series of regional technical conferences on White Paper issues, including a conference held on August 28, 2003 in the Mid-Atlantic / PJM Interconnection, L.L.C. region. The OCA attended that meeting and made a joint presentation with other state consumer advocate offices and industrial customers generally supporting PJM as being in compliance with the White Paper requirements, but asking FERC to carefully review on-going proposals related to capacity market restructuring, revisions to market monitoring rules and revisions to economic transmission planning processes. FERC has yet to take final action in this docket. A recent statement in October, 2004 by FERC Commissioner Keliher indicates that the FERC commissioners may not be in agreement with the concept of mandatory participation in an RTO as proposed by the White Paper.
PL03-1-000: Transmission Incentives: On January 15, 2003, FERC issued a notice seeking comment on a proposed Policy Statement relating to regulatory incentives to be provided to owners of transmission facilities. The intent of this proposed Policy Statement is to provide increases to authorized rates of return on equity for transmission owners as incentives to undertake certain actions. The proposed Policy Statement would provide transmission owners with the following incentives: a) a 50 basis point increase on equity return for joining an RTO, or already having joined an RTO; b) a 150 basis point increase on equity return for joining an Independent Transmission Company (ITC); and c) a 100 basis point increase on equity return for undertaking new investment in transmission facilities. The OCA submitted comments on behalf of itself and NASUCA on March 13, 2003, vigorously opposing this proposed Policy Statement on the basis that the incentives are unreasonable, and may unnecessarily increase consumer rates since FERC is not proposing to first determine whether these utilities are already over-earning their authorized returns on equity. This matter remains pending at FERC.

Electric and Gas Price Indices, Docket No. PL03-3-000: In January, 2003, FERC announced its intent to initiate an investigation into the accuracy of the data reported by market participants to trade publications and to NYMEX related to forward prices for electricity. Investigations by FERC into manipulation of wholesale electricity markets in California in 2000 and 2001 led to the discovery that several market participants had manipulated prices in electricity markets by deliberately reporting higher prices for forward contracts than were actually paid. FERC held a public conference on April 24, 2003, to investigate the extent and geographic range of the reporting inaccuracies. The OCA assisted in the drafting of two NASUCA Gas Committee resolutions urging FERC and other appropriate federal and state agencies to investigate this matter and to determine the extent to which any inappropriate activities in reporting prices to these indices has resulted in excessive and unreasonable natural gas or electricity prices. The OCA and NASUCA filed comments on June 20, 2003, urging FERC to adopt mandatory reporting requirements for data providers, including requirements for mandatory provision of counter-party data. We also supported a central collection agency for this data, with FERC oversight. FERC issued it order approving a voluntary system of regulation of natural gas and electricity price indices on July 24, 2003. The OCA, on behalf of NASUCA, filed a request for clarification on August 22, 2003.

On September 17, 2003, the OCA submitted supplemental comments in this docket on behalf of itself and NASUCA, urging FERC to collect information related to market participant compliance with the reporting guidelines. Since we supported mandatory reporting requirements, but FERC elected to implement a voluntary reporting requirement in the expectation that more parties would voluntarily elect to comply, we argued that it is critical that FERC keep track of actual compliance to determine whether the voluntary system is achieving the desired goal of improving transparency, accuracy and liquidity in price indices reporting. On November 4, 2003, FERC held a technical conference in this proceeding to assess the status of industry compliance with the voluntary guidelines. Many natural gas producers reported significant improvements in reporting liquidity and transparency, while end use customers remained concerned about the accuracy of the prices. By order dated December 12, 2003, FERC rejected NASUCA’s request for rehearing. By order dated March 5 and March 11, 2004, FERC issued a notice and survey to market participants in an effort
to ascertain the extent of price reporting and compliance with the Policy Statement. FERC sought responses by March 26, 2004. FERC is monitoring compliance in an effort to ascertain whether it should require mandatory price reporting in order to ensure liquidity and accuracy of price indices. FERC scheduled a follow-up technical conference for June 25, 2004 to ascertain whether voluntary compliance with the Policy Statement has resulted in significant improvements in liquidity and transparency in gas and electric price indices, or whether mandated compliance is warranted. The OCA attended the June 25 conference where most parties expressed the belief that dramatic improvements in the transparency and liquidity of the price indices had occurred in response to FERC’s voluntary guidelines in this docket. While many also expressed increased confidence in the accuracies of the indices, they also urged that FERC remain vigilant in overseeing these matters.

PL04-2-000: Reliability Must Run Generation: FERC held a technical conference seeking public comments on the rules that should govern market power mitigation of Reliability Must Run (“RMR”) generating units. The units are located in load pockets and have market power because they must run when called to resolve reliability concerns within the load pocket. A load pocket is a region where transmission into the region is limited or constrained, thus limiting the amount of economic generation that can be transmitted into the area from competitive generating units. Generators have pressured FERC to investigate whether current methods of mitigating these units down to the marginal cost of the unit will send appropriate price signals to invest in the region. The OCA believes that some mechanism is necessary where supply scarcity exists to incent new investment in generation within the load pocket and supported the PJM Market Monitor’s local market auction process. However, the OCA opposed the efforts of the generators to allow very high prices when market power exists because the resulting price signals will not incent new investment. The OCA on February 20, 2004 jointly submitted comments on these issues to FERC along with other consumer advocate offices in the PJM region. On May 6, 2004, FERC issued an order in Docket No. EL03-236 setting forth generic policy for compensating RMR units in load pockets that may not be earning sufficient revenues to cover long-run costs and requiring PJM to develop a generation retirement compensation policy. The OCA filed for rehearing in this docket on June 7, 2004 on FERC’s presumption that all units cost capped more than 80% of their run hours should be considered units receiving inadequate compensation. PJM filed a compliance filing on November 2, 2004 related to PJM’s proposed generation retirement policy and proposed compensation for frequently mitigated units. The OCA has been actively involved in these issues in the PJM stakeholder process and plans to support PJM’s filing.

EL01-118-000: Revisions to Market Based Rate Authority Orders: On November 20, 2001, FERC issued a notice that it was proposing to revise the language in all market based rate authority orders for all jurisdictional entities to include language that such entities agree not to engage in anti-competitive behavior and to further include language that these entities agree by acceptance of the market based rate authority to accept any Commission ordered refunds or termination or limitations on market based rate authority in the event the Commission were to find that the entity had engaged in anti-competitive behavior. The OCA filed comments on behalf of itself and NASUCA on December 5, 2001 and February 5, 2002. In those comments, NASUCA and the OCA supported FERC’s efforts to address market power concerns and the potentially unjust and unreasonable rates
stemming from the exercise of such market power and urging FERC to balance investor and consumer interests in ensuring that competitive markets remain workably competitive by providing for the type of oversight, monitoring and refund remedies envisioned in the November 20 Order. Numerous parties, including most utilities and generator participants, sought rehearing of this order, challenging FERC’s authority to issue the order and questioning the wisdom and effectiveness of any proposed rule. FERC held a technical conference on March 11, 2002 to address the concerns raised by the parties in this proceeding. NASUCA had a spokesman on the panel presentation for this conference. The OCA filed additional comments on March 22, 2002 in this proceeding on behalf of several consumer advocate offices in the northeastern United States.

On June 26, 2003, FERC issued a proposed rulemaking in this docket, proposing to include language in every market based rate authorization order that requires the seller to comply with standards that prohibit anti-competitive or manipulative behavior, and provides for disgorgement of any profits related to such behavior. On August 18, 2003, the OCA, on behalf of NASUCA, filed comments supporting FERC’s proposed rule in this docket. On November 17, 2003, FERC issued its Final Order in this proceeding essentially adopting the proposed tariff provisions that would condition market based rate orders and provide for disgorgement of ill-gained profits as recommended by NASUCA and the OCA. The OCA, on behalf of NASUCA, filed a request for rehearing in this docket on several specific issues, including FERC’s failure to adopt monetary remedies in addition to disgorgement, FERC’s failure to extend the definition of wash trade to include de minimis price transactions, and FERC’s inclusion of an intent standard in the market manipulation rule. FERC issued its order on rehearing in this docket on May 19, 2004, denying all requests for rehearing. The OCA and NASUCA decided not to appeal this order, but have intervened in appeals filed by other parties.

RM04-7: Initiation of Rulemaking Proceeding on Market Based Rates and Notice of Technical Conference Re Market Based Rates for Public Utilities: On April 14, 2004, FERC issued a notice that it was initiating a new rulemaking proceeding to analyze the adequacy of its current four prong test to assess market power in market based rate application proceedings, including the adequacy of the interim generation market power screens. FERC held an additional technical conference in this docket seeking comment on a more permanent final rule relating to generator market power screens. The OCA and NASUCA filed supplemental comments in these dockets on June 30, 2004, urging FERC to adopt a supply curve analysis as part of a pivotal supplier screen for generation market power, and urging FERC to reject requests by generators to mandate competitive supply procurement guidelines for all utility purchases, including utility purchases to serve retail consumers. NASUCA and OCA submit that these retail consumer issues are beyond FERC’s jurisdiction and properly lay within state jurisdiction. As of the end of the Fiscal Year this rulemaking remains pending before FERC.

RM01-10-000: Standards of Conduct for Transmission Providers: On September 27, 2001, FERC issued a Notice of Proposed Rulemaking proposing to revise its Standards of Conduct governing affiliated relations for interstate pipelines and electric transmission providers. FERC sought comment on whether it should merge its currently separate standards for gas pipelines and electric
transmission providers considering the convergence of such entities through mergers. In addition, FERC sought comment on whether to expand the scope of affiliates covered under the comments to ensure that all energy affiliates of gas pipelines and electric transmission providers are affected. Finally, FERC sought comment as to how these standards should apply to electric transmission providers that are RTOs or are subject to the operational control of an RTO, as well as to how the standards should apply to electric transmission providers who have not unbundled their vertically integrated operations. The OCA assisted NASUCA in developing comments that we submitted in this proceeding on December 20, 2001.

On May 21, 2002, FERC held a technical conference in this docket on a Staff proposal to narrow the definition of energy affiliate in the NOPR. The OCA participated in this conference, along with the West Virginia Consumer Advocate Division, on behalf of NASUCA, urging FERC to retain a broad definition of energy affiliate, but to establish rules which would allow employees of vertically integrated electric utilities to continue to undertake integrated resource planning without violating the proposed ban on all communications between transmission and merchant function employees. On June 28, 2002, the OCA and the West Virginia Consumer Advocate submitted Supplemental Comments on behalf of NASUCA continuing to urge FERC to apply a broad brush to the definition of energy affiliate as many stakeholders at the May 21, 2002 conference argued for exemptions. After passage of the Sarbanes-Oxley Act in 2002 reforming accountability and reporting requirements for corporations, many interstate pipelines and electric utilities filed supplemental comments in this docket arguing that FERC’s proposed standards of conduct would conflict with the new statutory requirements. The OCA, along with NASUCA, filed comments on June 13, 2003, recommending that there is no conflict between the proposed rule and the Sarbanes-Oxley Act, and urging FERC to continue with its proposed course of action to expeditiously issue strong affiliate standards rules in this docket.

On November 25, 2003, FERC issued a Final Rule in this docket strengthening its affiliate standards of conduct rules and adopting most of the recommendations suggested by NASUCA and the OCA. On December 29, 2003, the OCA filed one request for rehearing on its own behalf and a second rehearing request on behalf of NASUCA seeking clarification of the definition of Energy Affiliate. On February 20, 2004, the OCA on behalf of NASUCA joined in a letter filed by a number of industry participants urging FERC to stay the course with the Final Rule. On April 16, 2004, FERC issued its order on rehearing essentially affirming its Final Rule in this proceeding, but requiring certain modification. The OCA decided not to seek rehearing of this order as FERC upheld the strong policies it initially put in place to govern affiliated relationships, and granted the clarifications sought by the OCA and NASUCA, further strengthening the final rule. However, the OCA and NASUCA intervened in appeals filed by other parties so as to support FERC in defending the Final Rule.

PL02-8-000: Supply Margin Assessment Screen: On August 23, 2002, FERC requested comment on the SMA Screen analysis first proposed in AEP Power Marketing, et al., at Docket No. ER96-2495-015 et al. On October 23, 2002, the OCA, on behalf of itself, the Maryland Office of Peoples Counsel and the Office of Peoples Counsel for the District of Columbia, filed comments encouraging
FERC to apply the SMA in regions operated by an ISO or RTO. FERC had proposed to exempt such regions from the rigors of the SMA. However, the OCA pointed out in comments that market power can occur even in regions operated by ISOs and RTOs that actively monitor markets, as demonstrated in both California and in the PJM Interconnection, L.L.C. which operates the wholesale markets in Pennsylvania. The use of the SMA screen to assess whether market based rate authority is appropriate would provide the Market Monitors in ISO / RTO regions to identify entities with the potential to exercise market power in specific markets, alert the Market Monitors to the need for greater scrutiny and provide the opportunity for early mitigation of such potential market power. On December 19, 2003, FERC issued a Notice of Technical Conference in this docket to explore several alternatives and modifications to the SMA screen. The OCA submitted written comments on January 6, 2004 recommending several modifications to FERC’s proposed screen in order to ensure that the critical issue of the nature of the generator’s units and where those units fall in serving load on the demand curve is considered as part of the screen. FERC held this Tech Conference on January 13 and 14, 2004. The OCA presented testimony at that conference to the effect that FERC’s proposed screen was too simplistic and would allow entities with market power to slip through the net. The OCA also urged FERC to extend the application of the screen to RTO regions as market power can occur in these regions as well as in non-RTO regions. On April 14, 2004, the Commission issued an Order replacing the SMA test with interim two indicative screens for assessing generation market power and modified the mitigation announced in the SMA Order. Concurrently with the issuance of the April 14 Order, the Commission issued a notice establishing a generic rulemaking docket at Docket No. RM04-7-000 discussed above to initiate a comprehensive generic review of the appropriate analysis for granting market-based rate authority. On July 8, 2004, The Commission issued an Order on Rehearing essentially denying all requests for rehearing. The OCA remains active in the new rulemaking proceeding.

FERC RTO Proceedings

RT01-2-000: PJM Order No. 2000 RTO Compliance Filing: On October 11, 2000, PJM filed its Order No. 2000 compliance filing to transform the ISO’s operations into an RTO structure. The OCA intervened and filed joint comments with other state consumer advocate offices on November 20, 2000. The consumer advocates sought greater voting rights in the new PJM structure and also opposed a plan proposed by the PJM transmission owners for incentive ratemaking that was designed to allow the companies to evade the requirements of their state rate caps. On December 20, 2002, FERC issued an order granting RTO status to PJM, citing the expansion of PJM West to incorporate several former Alliance RTO participants as providing PJM sufficient scope and size to operate as an RTO.

On March 20, 2003, PJM filed its compliance filing setting forth its plan to implement Economic Transmission Planning on its system. The OCA, on April 21, 2003, intervened in support of the Economic Transmission Planning process, however we protested the process providing for surcharge recovery for investment in transmission undertaken for both reliability and economic reasons. FERC issued its order in this proceeding on July 23, 2003, rejecting the Transmission Owner’s proposed surcharge, and generally approving of PJM’s proposal with some modifications. On August 25,
2003, the OCA, along with several other state consumer advocate offices, sought clarification and rehearing of this order based on concerns about a rate of return incentive which FERC granted to transmission owners and about FERC’s interpretation of process timing. On September 24, 2003 the OCA joined with the Maryland Office of People’s Counsel in filing comments regarding PJM’s August 25 filing which clarified the procedures which will be used in determining where expansion of the transmission system should be constructed to resolve congestion. This filing requested that FERC direct PJM to include existing congestion problems in its analysis of expansion needs. FERC issued its order on rehearing on October 24, 2003, essentially rejecting the modifications sought by Maryland People’s Counsel (“MPC”) and the OCA. On November 24, 2003, the OCA and MPC sought further rehearing and/or clarification of this order. FERC issued an order on rehearing on October 18, 2004, rejecting all requests for rehearing.

RT01-13-000: Duquesne Light Company Order No. 2000 RTO Compliance Filing: Duquesne Light Company initially filed an alternative to participation in an RTO. On November 20, 2000, the OCA intervened and filed comments, encouraging Duquesne’s efforts to work within the PJM ISO construct. Since then, Duquesne has worked with PJM to join PJM West. Duquesne’s participation in PJM West was delayed due to state-related issues involving its Supplier of Last Resort service. The PUC adopted the OCA’s request in state proceedings to delay Duquesne’s participation in PJM until after those supplier contracts expire in December 2004. PJM currently plans to integrate Duquesne on January 1, 2005.

FERC Miscellaneous Electric Cases

EL02-65-000: Alliance Companies, et al.: The Alliance Companies made individual filings noting their intent to join either the Midwest RTO or the PJM ISO. AEP, Dayton and Commonwealth Edison, an Exelon affiliate, have joined PJM. This outcome creates a jagged seam through the Midwest and isolates FirstEnergy and its Pennsylvania affiliate, both MISO members, as well as utilities in Michigan and Wisconsin that are MISO members, from other MISO utilities. The OCA filed comments on June 18, 2002 noting its concern over this configuration and expressing its view that it makes more sense for FirstEnergy to join PJM.

FERC required the parties to work out solutions for the adverse impacts of the seams issues on Michigan and Wisconsin customers. FERC also initiated a new proceeding at Docket No. EL02-111-000 discussed below to investigate whether PJM’s and MISO’s Through and Out Rates should be eliminated in order to eliminate rate pancaking between these two regions. On August 1, 2003, ComEd and AEP each appealed these orders. The OCA intervened in those appellate proceedings on September 2, 2003. The issues in these two proceedings became more controversial in 2003 due to the delay in integrating AEP into PJM, and the blackout events of August 14, 2003 across the Midwestern and Northeastern regions of the nation. PJM and MISO filed their Market Monitors’ reports assessing the seams issues between these two RTOs in related Docket No. EL03-35. FERC held a conference inquiring into the status of seams issues and RTO choices of the former Alliance Companies on September 29 - 30, 2003. On November 17, 2003, FERC issued its order denying requests for rehearing related to the hold harmless clause for Michigan and Wisconsin customers,
and directing PJM and MISO to file protocols for how long such hold harmless provisions should remain in place at the time they file for a joint and common market across the PJM and MISO region. On November 25, 2003, FERC issued a show cause order against AEP requiring AEP to show cause why FERC shouldn’t preempt the decisions of the Virginia state legislature and the Kentucky Public Service Commission delaying or rejecting AEP’s request to join PJM. FERC held hearings during the last week in January and the first week in February, 2004. By order dated March 12, 2004, the ALJ found cause to preempt the Virginia legislation and the Kentucky Commission orders and directed AEP to join PJM. The parties filed settlements attempting to resolve some of these issues, but rehearing requests remain pending at FERC on these settlements.

**EL02-111-000: Midwest ISO and PJM Interconnection, L.L.C.**  FERC initiated this docket as an offshoot from Docket EL02-65-000 discussed above to resolve rate pancaking concerns for energy transactions between the Midwest ISO markets and PJM markets. The purpose of this docket is to investigate the elimination of Regional Through and Out Rates (“RTOR”) for transactions that cross the seam between these two regional entities. Currently, transactions that cross this border must pay transmission rates in both the Midwest ISO and in PJM. The OCA intervened on October 8, 2002 and filed testimony on December 10, 2002 recommending that FERC not eliminate the Through and Out rates at this time. Hearings were held between December 16 and 20, 2002. Additional hearings were held in this proceeding on January 13 and 14, 2003. The OCA, along with the Maryland Office of People’s Counsel, filed an Initial Brief in this docket on February 7, 2003 and filed a Reply Brief on February 24, 2003. The OCA supported retention of the existing Through and Out rates because none of the proposed alternatives provide just and reasonable rates for Pennsylvania consumers. On March 31, 2003, the Presiding Judge issued his Initial Decision in this docket essentially adopting the position advocated by the OCA that the Through and Out rates should not be eliminated at this time. The parties met on April 8, 2003 to discuss settlement. Settlement discussions during the spring and summer were not productive. On July 24, 2003, FERC issued an order in this proceeding overturning the Presiding Judge’s ruling relating to the elimination of through and out rates between PJM and MISO and allowing a Seams Elimination Cost Adjustment (“SECA”) charge to recover revenues previously recovered by the through and out rates. The Commission also initiated a new proceeding, Docket No. ER03-212, to investigate the through and out rates of former Alliance Companies that had not yet joined an RTO, i.e. AEP, ComEd, etc. The OCA intervened in that proceeding on August 13, 2003. FERC extended its investigation of seams issues between MISO and PJM as a result of the Alliance Companies RTO elections to the Alliance Companies.

On November 17, 2003, FERC issued its order on rehearing affirming its decision to eliminate Regional Through and Out Rates, but extended the effective date to April 1, 2004 and provided further guidance on the development of a SECA replacement charge for transactions that cross the PJM / MISO border. The OCA, jointly with the Maryland Office of People’s Counsel, filed a request for rehearing on SECA issues on December 17, 2003 challenging the justness and reasonableness of the SECA charges. On January 16, 2004, FERC set this matter before a Settlement Judge in an attempt to encourage the parties to settle this case. The OCA actively participated in those proceedings. By order dated March 19, 2004, FERC approved a procedural settlement in EL02-111 and EL03-212 that would leave the RTOR charges in place through
December 1, 2004 while the parties attempted to negotiate a permanent rate solution.

The parties initially proposed four alternative solutions to regional transmission rates. The OCA joined with a group of other stakeholders in PJM and MISO to support a plan that would provide for regionalization of new facilities and license plate rate treatment of existing facilities within the combined super-region. To ease the transition to license plate rates for existing facilities, the proposal provides for payments totaling $108 million over 3.5 years. Payments from PJM Companies would be made from expiring charges, thus avoiding the necessity of implementing any increases in transmission rates in PJM zones. The parties filed this proposal with the Commission on October 1, 2004. AEP and Commonwealth Edison, along with several other utilities including Allegheny Power, filed a competing proposal on that same date seeking to regionalize the costs of their large transmission lines. FERC added two new docket numbers to this case, Docket No. ER05-6-000 and EL04-135-000. The OCA filed comments supporting the license plate rate approach and opposing the regionalization of existing facilities proposed by AEP, Commonwealth Edison, Allegheny Power and others. These two proposals are pending before FERC.

American Electric Power, et al., EL03-212-000: FERC initiated this proceeding as an offshoot of Docket Nos. EL02-65 and EL02-111 to extend the investigation into the reasonableness of RTOR charges to the Midwestern utilities seeking to join PJM, i.e. American Electric Power (“AEP”), Commonwealth Edison (“ComEd”) and Dayton Power & Light (“Dayton”), collectively known as the New PJM Companies. The prior discussion covers this docket as well.

EL04-135-000 and ER05-6-000: MISO / PJM: The Commission initiated these proceedings in the context of the Regional Through and Out Rate proposals filed in Docket Nos. EL02-111 and EL03-212 discussed above. The Commission established December 1, 2004 as the refund effective date for purposes of providing consumers protection from potentially unjust and unreasonable rates once the Commission adopts a new rate design to replace the existing regional through and out rates which will expire on that same date. The OCA joined with a group of other stakeholders in PJM and MISO to support a plan that would provide for regionalization of new facilities and license plate rate treatment of existing facilities within the combined super-region. To ease the transition to license plate rates for the New PJM Companies for existing facilities, that proposal would provide for payments totaling $108 million over 3.5 years. Payments from PJM Companies would be made from expiring charges, thus avoiding the necessity of implementing any increases in transmission rates in PJM zones. The parties filed this proposal with the Commission on October 1, 2004. The OCA filed comments supporting the license plate rate approach and opposing the regionalization of existing facilities proposed by AEP, Commonwealth Edison, Allegheny Power and others. This case remains pending before FERC.

ER03-404-000: PJM Interconnection, L.L.C.: As discussed in last year’s Annual Report, PJM filed on January 10, 2003 to adopt Attachment U to its tariff providing a process for the creation of ITCs under its RTO umbrella and for delegating some of its RTO functions and responsibilities to such ITCs. This is issue has been very controversial within the PJM stakeholder process, as many
stakeholders, including the OCA, believe that PJM has attempted to delegate inappropriate functions to such ITCs. The OCA intervened in these proceedings on January 31, 2003 protesting the outstanding issues. On March 14, 2003, FERC issued an order approving the ITC tariff, subject to PJM undertaking certain modifications, including several of the modifications recommended by the OCA. Several parties filed requests for rehearing. On August 17, 2003, FERC staff requested additional information relating to the issues raised in this proceeding. On March 30, 2004, FERC issued its order on rehearing largely upholding its initial approval of the ITC process. In that order, FERC maintained PJM priority over the scheduling of outages within the ITC, but declined to provide PJM priority pending dispute resolution in several other areas.

**ER03-406-000: PJM Interconnection, L.L.C.:** As discussed in last year’s Annual Report, PJM filed on January 10, 2003 a revised tariff to reflect the adoption of a new process for auctioning Financial Transmission Rights (FTRs). The OCA participated in the PJM stakeholder process that led to the development of this process. The OCA has outstanding concerns with a process for auctioning FTRs in lieu of the current procedure of allocating FTRs. FTRs provided competitive suppliers of electricity with an opportunity to hedge themselves financially against the cost of congestion on the transmission system operated by PJM. Without such FTRs, such competitive suppliers in congested areas of PJM may not be willing to continue to participate in retail choice programs as they will have no means of hedging themselves against potential and significant cost increases due to congestion. Some market participants argue that auctioning FTRs will better promote access for these competitive suppliers to valuable FTRs, however the OCA remains concerned that the manner in which the auction will proceed will allow speculators to purchase the more valuable FTRs, leaving competitive suppliers who really need those FTRs with less valuable FTRs. On March 12, 2003, FERC entered an order generally approving the FTR auction, but requiring PJM to provide more details and clarity with respect to several matters, including several concerns raised by the OCA. The first auction under this revised process was completed in May 2003. PJM filed its details for implementation of the Auction Revenue Rights (“ARRs”) auction in late September, 2003. The OCA supported the stakeholder consensus position that PJM filed. On January 28, 2004, FERC issued its order on rehearing in this docket essentially upholding its earlier orders approving PJM’s new FTR auction process.

**ER98-4608-005: PPL EnergyPlus, Inc.:** On December 17, 2001, PPL EnergyPlus Inc. filed with FERC to renew its market based rate authority. The OCA intervened in this proceeding on January 7, 2002, requesting that FERC require PPL EnergyPlus to undertake a Supply Margin Assessment screen analysis of its potential to exert market power. This matter remains pending before FERC.

**Reliant Energy Mid-Atlantic Power Holdings, LLC vs. PJM Interconnection, LLC Docket No. EL03-116-000:** On April 2, 2003, Reliant Energy filed a complaint with FERC against PJM. The complaint asserted that PJM uses an unfair method for compensating generators which are cost capped because they are in a position to exercise market power in load pockets. OCA, joining with consumer advocate offices from Maryland, Ohio and the District of Columbia, filed a protest on April 22, 2003 pointing out that Reliant’s proposal will produce unfair levels of revenues and that this complaint circumvents an existing PJM stakeholder process which has produced a reasonable
compromise as discussed below. On July 9, 2003, FERC issued an order rejecting Reliant’s Complaint, and ordering PJM to either file a justification for its existing rules, or a revised proposal for revising those rules, related to mitigating market power in load pockets in PJM by September 30, 2003. The OCA supported the PJM Market Monitor’s proposal and joined with Consumer Advocate offices from Delaware, the District of Columbia, Maryland and Ohio in meeting with FERC staff on September 23, 2003, to discuss some of the critical concepts involved in the Market Monitor’s proposal. PJM made its compliance filing as noted in Docket No. EL03-236 below. FERC issued an order on May 6, 2004, essentially approving the Market Monitor’s proposal to continue to mitigate units in load pockets using the existing methodology, but requiring PJM to develop new rules to govern retiring units and units that are mitigated more than 80% of their run hours that are receiving inadequate compensation to cover their going forward operating costs. The OCA filed for rehearing in Docket No. EL03-236 discussed below on June 7, 2004 on FERC’s presumption that all unit cost capped more than 80% of their run hours should be considered units receiving inadequate compensation. This matter remains pending before FERC.

PJM Interconnection, L.L.C., Docket No. EL03-236-000: As noted above, PJM filed on September 30, 2003 proposed modifications to its Market Monitoring Plan to retain its marginal cost plus 10% cost capping methodology for generating units in constrained, load pocket regions; to extend those rules to new units built after June 30, 1996; and to implement an auction for new capacity in load pockets when PJM projects generation scarcity conditions to exist in the near future. On October 30, 2003, the OCA filed comments in support of this filing on behalf of itself and several other state consumer advocate offices in the region. On December 19, 2003, FERC issued an order in this docket initiating a new generic proceeding in Docket No. PL04-2-000 and setting these issues relating to local market power mitigation for technical conference. FERC expressed concern that the auction proposal will not produce sufficient price signals to allow for new investment. There is no scarcity in PJM currently and mitigating prices at a level that assumes that such scarcity always exists will only require consumers to pay rates above a just and reasonable level. FERC held a technical conference in this docket on February 5, 2004. The OCA joined with several other consumer advocate offices in sponsoring the testimony of the Maryland Office of Peoples Counsel at that technical conference and in submitting post technical conference comments on February 20, 2004. On May 6, 2004, FERC issued an order in Docket No. EL03-236 setting forth generic policy for RMR units in load pockets, requiring compensation for units seeking to retire that must remain open for reliability and requiring special rules for compensating RMR units in load pockets that may not be earning sufficient revenues to cover long-run costs. FERC found that PJM’s method of compensating RMR units is reasonable for most units, but fails to adequately compensate units that run more than 80% of the time cost capped or that seek to retire. FERC required PJM to develop clear rules for compensating such units, and to use a Local Market Auction only on a last resort basis. The OCA filed for rehearing in this docket on June 7, 2004 on FERC’s presumption that all unit cost capped more than 80% of their run hours should be considered units receiving inadequate compensation. This matter remains pending before FERC.

Allegheny Power Systems, et al., Docket No. ER04-156-000: On November 4, 2003, the PJM Transmission Owners filed to implement carrying charges through a formula surcharge to recover
the costs of investment directed to be constructed by PJM to relieve reliability or congestion concerns pursuant to the new tariff provisions approved in RT01-2-006. The PJM Transmission Owners sought to recover a return on equity of 14.1% on these projects, with the exception of Allegheny Power who sought an 18% return on equity on these projects. These requested charges included several incentive adders to return on equity as initially proposed by FERC in the proposed policy statement discussed above in Docket No. PL03-1-000. The OCA led the effort among seven state consumer advocate offices to protest in this docket on November 25, 2003. On January 2, 2004, FERC issued an order setting this case for hearing, but summarily disposing of the return on equity incentive issues and the accelerated depreciation issue. The OCA, along with other state consumer advocate offices, requested rehearing on the return on equity incentive issues. The OCA’s testimony was due May 12, 2004 and hearings were scheduled for early September, 2004. By order dated March 10, 2004, the Presiding Judge suspended the procedural schedule in this docket pending the filing of a procedural settlement that would resolved all issues and terminate this docket. The OCA helped negotiate the agreement in principle. The parties filed that settlement on May 28, 2004, providing for the withdrawal of this proceeding without prejudice to refiling by January 31, 2005 of a rate design that would address harmonization issues.

Allegheny Power Systems, et al. Docket No. ER02-738: As discussed in last year’s Annual Report, the PJM Transmission Owners filed on April 1, 2003, to implement a formula surcharge to recover investment in any new transmission construction ordered by PJM for either economic or reliability reasons. The OCA, along with consumer advocate offices in Maryland, the District of Columbia and Ohio, protested this filing on the basis that the formula was premature considering the fact that numerous protests were pending against the filing that would provide PJM the authority to order such construction, and on the basis that the formula contains inappropriate additional incentives and an excessive return on capital. By order dated June 10, 2003, FERC suspended the effectiveness of this rate proposal for five months, set these issues for hearing, and indicated that it would issue another order in this docket setting forth how this matter would be handled procedurally. On July 23, 2003, FERC issued a joint order in this proceeding and in PJM’s economic transmission plan proceeding, generally approving of PJM’s proposed planning process, but rejecting the Transmission Owners’ proposed formula surcharge in this docket. OCA requested rehearing of FERC’s decision to allow the Transmission Owners a 50 basis point equity return adder. By order dated November 17, 2003, FERC rejected requests for rehearing on this filing.

Significant PJM Activities

PJM Market Power Issues: PJM filed revised rules with FERC in the fall of 2003 governing payments to utilities in load pockets whose energy bids are cost capped due to market power concerns in order to provide incentives to ensure that these units continue to operate. That filing reflected consensus on an interim solution that would provide generators operating Reliability Must Run (“RMR”) units that are cost capped more than 80% of the time the opportunity to request additional payments of $40 above the current cost capping method of marginal cost plus 10%. The interim solution also allows RMR units cost capped 50% of the time, but less than 80% of the time to seek additional payments of $20 above the current capped price. Several of the plants eligible for
these payments are in Pennsylvania. The OCA endorsed the proposal because the data available to the OCA indicated that these plants were not realizing sufficient revenues under current market conditions to maintain the plants and the units were required for reliability purposes. The OCA intervened in this proceeding and supported the retention of marginal cost plus 10% mitigation ceilings where non-scarcity conditions exist and the implementation of a local market auction for load pockets where scarcity conditions exist or are forecasted to exist within the near future. This proposal properly provided appropriate price signals for new investment where scarcity exists while protecting consumers from market power where non-scarcity conditions exist. FERC approved this proposal in May, 2004, but required PJM to file a long-term solution for mitigating frequently capped units and to revise its proposed generation retirement policy to develop a method for compensating units that seek to retire but are needed for reliability.

PJM filed in early November, 2004 a proposal to convert the interim solution for frequently mitigated units into a longer term solution, as well as to propose a method for compensating units that seek to retire but are needed for reliability. The OCA actively participated in that process and plans to support PJM’s filing. Several parties will oppose the filing because they believe that PJM’s proposed compensation rules fail to send a price signal that reflects scarcity. Those concerns have no merit as PJM does not forecast scarcity conditions prior to 2011. The OCA continues to support broadening rather than weakening PJM’s existing cost capping rules, including broadening the rules so that they apply to all generation units, not just those built prior to July 1, 1996 as provided for in the existing rules.

The OCA strongly supports the efforts of the MMU, and along with other state consumer advocate offices in the PJM region, undertook a study of the structure and authority of the Market Monitoring Unit (“MMU”) in PJM in an effort to propose revisions to PJM’s current market monitoring plan that will make the plan a more effective protection program for consumers. That report was published in final form and the OCA has used some of these recommendations in various RTO formation proceedings and market power proceedings pending before FERC, especially the proceedings in Docket No. RM01-12. This report proved useful in assisting the OCA in developing positions on the market power mitigation issues discussed above.

**Redesign of PJM Capacity Market:** PJM on June 21, 2004 posted on its website a comprehensive proposal to redesign PJM’s capacity markets in an effort to address several issues, including local market power and scarcity issues. The OCA is attempting to develop an alternative proposal for consideration by the PJM stakeholders. The OCA is concerned that PJM’s proposal may not be the least cost solution to these problems.

**PJM Board Governance Review Proposal:** The PJM Board of Managers in the spring of 2004 implemented a policy relating to the role of the MMU in PJM’s market redesign efforts. The Board voted to limit the MMU’s authority to reporting of abuses and suggesting design flaw remedies. The OCA and other PJM members representing end use consumers had expressed concern at the November 20, 2003 Members Committee meeting with respect to the limitations on the MMU’s ability to take expeditious actions to remedy market design flaws. The OCA remains concerned
about the efforts of market participants to isolate the role of the MMU in important PJM market design decisions. The PJM Board initiated a Members Advisory Committee to assist in working out the details for the restructuring of the Market Monitor’s functions. The OCA actively participates on this advisory committee.

PJM West: PJM West became operational on April 1, 2002. Negotiations are on-going to bring Duquesne into PJM West by January 1, 2005. On May 1, 2004, PJM integrated Commonwealth Edison into PJM West, and on October 1, 2004, PJM integrated AEP and Dayton Power & Light into PJM West, thus expanding PJM’s markets significantly. On March 18, 2004, FERC issued a series of orders in Docket Nos. ER04-367, ER04-364, ER04-375 and ER04-521 conditionally approving the Joint Operating Agreement filed by PJM and MISO to address seams issues resulting from this integration.

MISO - PJM - SPP Single Market Forum: On April 11, 2002, the OCA attended a meeting of stakeholders in PJM, MISO and Southwest Power Pool (SPP) to develop a single market design or a single market that would encompass the regions covered by SPP, the Midwest RTO and PJM and PJM West. The OCA supports this effort to resolve seams at the western edge of PJM’s and PJM West’s borders. Recent integration of AEP and Commonwealth Edison into PJM West have increased the importance of successfully completing this process. Thus the OCA has actively participated in the process to help obtain seamless energy trading across the mid-western states and into the mid-Atlantic states. The OCA continues to monitor the development of goals, time lines and rules for the proposed market. Initially, PJM and MISO anticipated that a common energy market will begin operations in late 2004. However, the common market may be delayed into 2005. MISO and PJM filed a Joint Operating Agreement in January, 2004. FERC approved this filing by Order dated March 18, 2004, moving one step closer to realizing the MISO / PJM goal of implementing a common market across this region by Spring 2005.

**PJM Committee Proceedings**

In addition to participating in FERC proceedings related to electricity matters, the OCA also participates in numerous committees and working groups in PJM. With the development of competitive wholesale electric markets managed by RTOs like PJM, many policies affecting the prices retail consumers pay are developed at the RTO committee level. By the time these policies are filed with FERC for approval, much of the detailed work is already accomplished. Consequently, the OCA participates in the RTO committee proceedings in order to ensure that these policies do not adversely affect retail consumers in Pennsylvania. The competitiveness of retail energy markets in Pennsylvania directly depends on the competitiveness of the wholesale markets in this region. Each of these committees or groups address issues of primary importance to the prices retail consumers ultimately pay for electricity in Pennsylvania. The OCA actively participates in the following PJM committees and working groups: Members Committee, Resource Adequacy Model Stakeholder Group, Demand Side Response Working Group, Reliability Committee, Electricity Markets Committee, Market Implementation Committee(MIC), Generation Retirement Work Group, Local Market Power Mitigation Work Group, Tariff Advisory Committee, Planning Committee, Credit

**Federal Electric Appellate Cases**

*Cinergy Services, Inc. v. Federal Energy Regulatory Commission, Case No. 04-1170 (D.C. Circuit Court of Appeals):* On May 28, 2004, Cinergy Services appealed FERC’s Final Rule in Docket No. EL01-118-000 establishing market behavior rules for electric utilities and marketers. The OCA intervened in this appeal on behalf of NASUCA on July 9, 2004 in support of FERC’s Final Rule. The D.C. Circuit Court of Appeals has not yet established a briefing schedule in this case.
NATURAL GAS

Pennsylvania

Base Rate Proceedings

Pa. P.U.C. v. National Fuel Gas Distribution Company, Docket No. R-00038168, and P-00032027. On April 18, 2003, National Fuel Gas Distribution Company filed for permission to increase its base annual revenues by $16,515,719, or 5.56%. The OCA filed a formal complaint. NFGD also filed, on March 28, 2003, a petition seeking deferral of increased pension costs and recovery of those amounts. On April 23, 2003 NFGD filed a motion to consolidate the petition with its base rate increase request. The parties agreed to defer Answers to the Petition since the matter was consolidated with the base rate proceeding. Public Input hearings were held in Erie and Dubois on July 14 and 15, 2003.

Shortly before the scheduled evidentiary hearings, the parties reached an agreement in principle that resolved all of the contested issues. The Settlement allowed NFGD to increase its rates by $3.5 million out of the originally requested $16.5 million. The Settlement also permitted the Company to implement a pension tracker mechanism that allows pension expense to be tracked and reconciled to actual pension obligations incurred, during NFGD’s next base rate case. The Settlement was submitted to the ALJ on October 16, 2003. On November 17, 2003, the ALJ issued a recommended decision that recommended approval of the Settlement in its entirety. On December 23, 2003, the Commission entered an Order approving the Settlement.

City of Philadelphia and Philadelphia Gas Works v. Pa.P.U.C., No. 19 C.D. 2002 and No. 20 C.D. 2002. Following its 2001 base rate case at Docket No. R-00006042, PGW filed an appeal with the Commonwealth Court challenging numerous aspects of the Commission’s decision. As part of the settlement of PGW’s 2002 base rate case at Docket No. R-00017034, the Company agreed to withdraw the appeal as to all issues except one. The remaining issue was whether the Commission had the authority to direct PGW to increase rates under the rate schedule serving the City of Philadelphia’s facilities (Rate MUN/MS) without the prior approval of the Philadelphia City Council. PGW filed its brief arguing that Section 2212 and the Philadelphia Home Rule Charter precluded the Commission from increasing rates to city facilities without the approval of the City Council. On December 18, 2002, the OCA filed a brief, as intervenor, in support of the Commission’s Order to assign a portion of the 2002 base rate increase to the Rate MUN/MS under which many of the city facilities are served. The OCA argued that Section 2212 does not limit the Commission’s authority to allocate the rate increase to the various customer classes so that rates for all customers are just and reasonable. In addition, the OCA argued that the Philadelphia Home Rule Charter does not limit the Commission’s authority, granted by an Act of the General Assembly. Oral argument was held on June 4, 2003. On August 13, 2003, the Commonwealth Court entered an Order affirming the PUC’s decision. Subsequently, PGW filed a tariff supplement that complied with the PUC’s Order.
Pa. P.U.C. v. Philadelphia Gas Works, Docket No. M-00021612. As discussed in last year’s Annual Report, on July 1, 2002, Philadelphia Gas Works (PGW) filed its Restructuring Plan pursuant to Section 2212(h) of the Natural Gas Choice and Competition Act (Gas Choice Act). The Gas Choice Act provides for the restructuring of Natural Gas Distribution Company (NGDC) services so as to give Pennsylvania’s natural gas customers choice in the provider of their natural gas supply services. Pursuant to the Gas Choice Act, the PUC was required to review the restructuring plans filed by all Pennsylvania NGDCs and hold open evidentiary hearings before entering an order that accepts, modifies or rejects each of the proposed plans.

In addition, through this Restructuring Proceeding, PGW was required to convert its existing information technology, accounting, billing, collection, gas purchasing and other operating systems and procedures to comply with the requirements of the Public Utility Code and Commission Rules and Regulations. In addition to examining the issues concerning the unbundling of PGW’s rates and customer choice program design, the OCA also examined whether PGW’s proposed tariff and practices were in compliance with the Commissions Regulations at Chapter 56 (Standards and Billing Practices for Residential Utility Service) and Chapter 59 (Gas Service). During this proceeding, the OCA also examined the Company’s revisions to its low-income programs, senior citizen discount and consumer education plan.

Prior to filing Main Briefs, the parties were able to enter into a series of stipulations that settled many of the contested issues in the proceeding. These included stipulations on PGW’s compliance with Chapter 59, universal service program design issues, restructuring cost recovery, and customer choice program design issues. The agreement on Chapter 59 compliance issues addressed compliance with the Commission’s regulations on meter testing and change-out, leak surveys and AMR meter reading. This settlement was submitted to the Commission for approval as a Petition for Interlocutory Review and Answer to a Material Question filed by PGW on December 13, 2002.

On January 27, 2003, the Commission entered an Order approving the Settlement. The remaining stipulations on the universal service program design, restructuring cost recovery and customer choice program design issues were submitted with the Main Briefs. On February 18, 2003, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of ALJ Turner. The ALJ’s R.D. adopted many of the OCA’s arguments in this proceeding and recommended approval of the remaining stipulations. On February 25, 2003, the parties filed exceptions to the ALJ’s R.D.

On March 21, 2003, the Commission adopted an Order that adopted many of the OCA’s recommendations. Specifically, the Commission rejected PGW’s claim to recover $35 million in Preprogram Arrearages from its CRP Program. The Commission also adopted the OCA’s recommendation that universal service costs be allocated to all customer classes. With respect to universal service program design issues, the Commission approved the Company’s request to temporary eliminate its excess usage charge and LIHEAP make-up charges. The Commission also adopted many of the OCA’s recommendations on unbundling. With respect to tariff issues and Chapter 56 compliance, the Commission agreed with the OCA position that PGW’s proposed tariff was not compliant with Chapter 56 and the requirements of the Act. The Commission specifically
stated that any tariff provisions that were not compliant with Chapter 56 on September 30, 2003 will be void. The Commission also recommended approval of the OCA’s position on consumer education and miscellaneous consumer protection issues. The Commission also approved, without modification, the various stipulations that the parties submitted. On April 15, 2003, the OCA filed a Petition for Reconsideration and Clarifications. Specifically, the OCA’s Petition sought clarification of the Company’s proposed unbundling of its Gas Cost Rate (GCR).

Subsequently, as part of a comprehensive settlement of issues in the Company’s annual 1307(f) proceeding, the parties reached an agreement on the storage and balancing costs issue that was presented in the OCA’s Petition for Reconsideration. That agreement was approved by the Commission in an Order entered August 27, 2003. On June 30, 2003, the Commission entered an Order denying the OCA’s Petition for Reconsideration on the Chapter 56 issue and the universal service cost offset issue.

CEPA appealed the Commission’s March 31 Restructuring Order and the June 30 Order on Reconsideration regarding the Commission’s decision on the Chapter 56 issues and maintenance of existing consumer protections in accordance with the Gas Choice Act. The OCA filed an amicus brief in support of CEPA’s appeal. On April 26, 2004, the Commonwealth Court entered an Order that quashed the appeal on the ground that the Commission’s Order was not final since these issues could again be considered in the compliance phase of the Restructuring Proceeding.

As to the compliance phase, on May 15, 2003, PGW submitted its compliance tariff and associated compliance materials. On June 16, 2003, the OCA filed its comments and exceptions to PGW’s compliance filing. Those exceptions raised issues primarily directed at specific language in PGW’s tariff that was not in conformance with Chapter 56 or the Commission’s March 31 Order. On July 2, 2003, PGW filed its reply to the OCA’s exceptions. In its reply, PGW accepted many of the proposals raised by the OCA in its exceptions. On October 10, 2003, the Commission entered an Order finding that several provisions or PGW’s compliance tariff did not comply with Chapter 56 and directed PGW to make tariff modifications consistent with the March 31 Restructuring Order and the October 10 Compliance Order.

On October 27, 2003, PGW filed a Petition for Reconsideration claiming that the October 10 Compliance Order violated the Company’s due process rights and sought additional reconsideration of several tariff provisions. On November 6, 2003, the OCA filed an Answer to PGW’s Petition for Reconsideration. In its Answer, the OCA supported the Commission’s findings in the October 10 Compliance Order and submitted that PGW’s due process rights were not violated. The Petition for Reconsideration remains pending before the Commission. PGW and CEPA also appealed the Commission’s October 10 Compliance Order to the Commonwealth Court. PGW, CEPA and the Commission entered into a stipulation to remand this matter to the Commission for further consideration of the issues raised in the appeal. The two remaining outstanding issues involved PGW’s proposal to impose a residential field visit charge and the Company’s proposed requirement that customers pay civil judgments relating to PGW balances as a condition of service restoration. These issues were consolidated into the Investigation into Financial and Collections
Issues regarding the Philadelphia Gas Works that the Commission instituted in an Order entered on June 2, 2004. At the end of the fiscal year, the Commission’s Investigation was ongoing.

**Purchased Gas Cost Cases**

The OCA continued its assessment of gas utilities’ gas purchasing practices during the year pursuant to Section 1307(f) of the Public Utility Code. The OCA continues to remain concerned about hardships imposed upon consumers due to fluctuating gas cost rates caused by instability in the wholesale natural gas markets. As a result of continued price volatility in the wholesale gas markets, the OCA’s focus in this year’s purchased gas cost cases continued to be whether Natural Gas Distribution Company (NGDCs) are taking the necessary steps to manage the risk associated with price volatility.

It is the OCA’s position that NGDCs must reduce their reliance on index-based purchases of natural gas supply. Reliance on index-based purchases may have worked well in the past when prices were low and price volatility was relatively low, but in today’s more volatile gas markets it leaves consumers exposed to wild fluctuations in the prices that they pay for natural gas service. The risk associated with price volatility can be addressed if the NGDC implements an appropriate price risk management program. Elements of such a program include both physical hedging tools and financial hedging tools.

The OCA reviewed the gas purchasing practices of all the Pennsylvania NGDCs to ensure that they have an adequate risk management plan in place with a goal of reducing price volatility while still purchasing gas for its customers at the lowest possible prices. The OCA made various recommendations to the NGDCs about the amount of their gas supplies that should be hedged and the timing of those purchases. In particular, the OCA stressed the importance of hedging the purchases of natural gas supplies for injection into storage. With increased volatility in gas prices during the injection season, it is essential that NGDCs apply risk management strategies to injection season purchases in order to reduce price volatility. By adopting the OCA’s recommendations, the NGDCs will be able to significantly reduce the dramatic fluctuation in purchased gas cost rates that consumers have experienced in the past.

Additionally, the 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, the OCA continued to analyze the gas supply planning practices of gas utilities and NGDC decisions to renew capacity entitlement or acquire new capacity, especially in light of the Natural Gas Choice and Competition Act and the changing regulatory environment in the industry. The OCA also continued to assess the use of the capacity release and off-system sales markets by gas utilities to maximize offsets of costs to PGC customers. The OCA also continued to analyze subsidization between retail sales customers and transportation customers.
The OCA also 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’ gas purchases are compared to published 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, the 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.

The OCA participated in the following purchased gas cost cases during Fiscal Year 2003-04:

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<tr>
<th>Gas Company</th>
<th>2003 PGC Docket</th>
<th>2004 PGC Docket</th>
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<tr>
<td>Columbia Gas</td>
<td>R-00038245</td>
<td>R-00049234</td>
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<tr>
<td>Dominion Peoples</td>
<td>R-00038170</td>
<td>R-00049153</td>
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<tr>
<td>Equitable</td>
<td>R-00038166</td>
<td>R-00049154</td>
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<tr>
<td>National Fuel Gas Distribution Corp.</td>
<td>R-00038101</td>
<td>R-00049108</td>
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<tr>
<td>PECO Energy Co. - Gas</td>
<td>R-00038409</td>
<td>R-00049423</td>
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<td>PPL Utilities, Inc.</td>
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<td>T.W. Phillips</td>
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<td>UGI Corp-Gas Division</td>
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The Peoples Natural Gas Co. d/b/a Dominion Peoples, Docket No. R-00038170. During Peoples’ 2003 PGC case, the ALJ consolidated two other pending matters: (1) Peoples’ Request for Affirmative Relief Seeking a Declaratory Order that the Company is entitled to recover $16.5 million of alleged undercollected gas costs dating back to 1995, and (2) Peoples’ Application for Approval to Sell The Colvin Storage Facilities. The OCA had already been a party to these proceedings before consolidation. A settlement of the traditional 1307(f) issues was submitted while the issue of the recovery of the $16.5 million in historic under-recovered gas costs and the issue about the sale of Colvin were litigated. On July 30, 2003, the ALJ issued a Recommended Decision that recommended that the Company should not be allowed to recover the $16.5 million of prior-period gas costs. In addition, the ALJ recommended that the Company’s request for approval to sell...
the facilities be denied at this time. On September 19, 2003, the Commission entered an Order approving the settlement of the traditional 1307(f) issues. The Commission’s Order also permitted Peoples to recover the $16.5 million historic under-collection over a 10 year period. In addition, Peoples’ Application for approval of the sale of the Colvin Storage facility was dismissed without prejudice when the Commission refused to grant pre-approval of such a sale.

On October 14, 2003, the OCA filed a Petition for Review in the Commonwealth Court, (Popowsky v. Pa.P.U.C., Docket No. 2248 C.D. 2003) seeking review of the Commission’s September 19, 2003 Order in the Peoples 2003 PGC case. The OCA sought review of the Commission’s determination to allow Dominion Peoples to recover the $16.5 million in prior-period gas costs. During the course of the appeal, the parties continued to engage in settlement discussions that ultimately resulted in a settlement of the contested issue. The parties obtained a stay of the Commonwealth Court proceeding in order to submit a proposed settlement to the Commission for approval. Under the terms of the proposed settlement, Dominion Peoples would be permitted to recover the prior-period gas costs. However, recovery of this amount would be recovered over a 15-year period, without interest. The Company also agreed to a general base rate stay-out through the end of 2008. At the end of the fiscal year the proposed settlement was pending before the Commission.

**Miscellaneous Gas Cases and Issues**

Petition of Columbia Gas of Pennsylvania Requesting Approval Of Consensus Agreement To Establish Ongoing Funding Mechanism For The Customer Assistance Program, Docket No. P-00032057. In conjunction with Columbia’s restructuring proceeding, Columbia expanded its customer assistance program (CAP) to meet the needs of low income customers in its service territory. The CAP assists low income customers who are having trouble paying their gas bills by providing the customer an affordable, monthly bill. The CAP allows the customer to retain gas service, thus lowering the costs of termination and collection, and it requires the customer to make an affordable payment, thus reducing uncollectible expense for the NGDC. Columbia expanded its program to serve 22,000 customers as required by the restructuring settlement, but as gas prices continued to increase, the need for the program grew. Columbia proposed to further expand the program to meet the growing need if it could recover a portion of the costs through an adjustment to rates that reflected the changes in the cost to the program from the changes in gas prices.

The Company, the OCA, the Office of Trial Staff, the Office of Small Business Advocate and the industrial customers’ representative met on several occasions and reached an agreement for a new CAP Rider. Under the Agreement, Columbia was permitted to further expand its program and establish a rider to recover the difference between the current residential rate and the CAP customer payments. The Company was permitted to adjust the rate on a quarterly basis to reflect changes in the cost of gas, the primary source of the billing difference. The Company agreed to recover other program costs within its existing distribution rates and to extend its distribution rate cap through July 1, 2005.

The Consensus Agreement was submitted to the Commission and a notice was sent to customers
explaining the rate change. The Commission has now referred the matter to the Office of Administrative Law Judge for hearing. At the end of the fiscal year, this matter was still pending before the Commission.

Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause, Docket No. P-00042090. On March 1, 2004, PGW filed a Petition to Establish a Cash Receipts Reconciliation Clause (CRRC). In its Petition, PGW sought to implement a first of its kind mechanism to reconcile actual uncollectible expense to the allowance for uncollectible expense that the Company claims that it recovers through base rates. Initially, PGW proposed that the CRRC recover $47 million in additional revenues. The $47 million was made up of two components: (1) $35.2 million for a projected shortfall in cash receipts for FY2005 and (2) $11.4 million representing a three-year amortization of a $34.3 million claimed shortfall in cash receipts for FY2004. The total of these two components equaled an initial proposed CRRC of $46.7 million. The initial CRRC surcharge level would be $0.7947/Mcf.

The OCA filed an Answer to PGW’s Petition on March 22, 2004, opposing implementation of such a surcharge mechanism. The OCA filed its Direct Testimony in the consolidated proceedings on April 15, 2004. The OCA’s testimony opposed implementation of a CRRC surcharge. The testimony also raised several issues regarding PGW’s gas procurement activities, including the need to do additional hedging to reduce gas cost volatility and the operation of PGW’s LNG facilities. Public Input hearings were held in Philadelphia on May 5 and 6. An additional public input hearing had to be scheduled due to the overwhelming turnout. That hearing was held on May 17, 2004. At these hearings, the public expressed overwhelming opposition to the imposition of the CRRC. In addition to the Public Input hearings, technical hearings in these two consolidated matters were held May 11, 2004 in Philadelphia.

In an Order entered June 2, 2004, the Commission opened an investigation into PGW’s financial condition, its collection practices, its universal service programs, and its means-tested senior discount program. The Commission directed that the record on the CRRC be certified to the Commission without a recommended decision for a decision by the Commission by July 8, 2004. On July 8, 2004, the Commission entered an Order rejecting PGW’s proposal to implement a CRRC.

Petition for Rescission and Amendment of Philadelphia Gas Works (Senior Citizens Discount Program) Docket Nos. M-00021612 and P-00032061. On July 7, 2003, PGW filed a Petition for Rescission and Amendment of the Commission’s March 31, 2003 Restructuring Order in Docket No. M-00021612, specifically regarding the Senior Citizen Discount (SCD). In the March 31 Order, the Commission approved a proposal by PGW to close the SCD program to new applicants. Those customers currently receiving the SCD would be grandfathered and continue to receive the discount. In its Petition for Rescission and Amendment, PGW sought to continue the SCD on a needs-tested basis, with senior citizens at or below 250% of poverty eligible for the discount.

The OCA filed an Answer to PGW’s Petition on July 21, 2003. On December 1, 2003, CEPA filed a Petition to Allow PGW to Enroll Additional Income Eligible Senior Citizens in the SCD Program,
which called for the creation of an interim means tested SCD in order to provide immediate relief
to senior citizen customers during the pendency of this proceeding. On December 12, 2003, the ALJ
issued her Second Prehearing Order, granting CEPA’s Petition and authorizing PGW to file tariff
pages implementing an interim means tested SCD on one day’s notice.

On December 19, 2003, PGW filed a Tariff Supplement, which became effective on one day’s
notice, putting the means tested SCD in effect on an interim basis, pending final decision by the
Commission. However, on January 7, 2004, the Commission issued a Secretarial Letter rejecting
the proposed tariff supplement.

On January 8, 2004, PGW, OSBA and CEPA filed a Stipulation and Settlement in the SCD Petition
proceeding. The proposed settlement provided for an implementation of a means-tested SCD.
Under the terms of the proposed settlement, a 20% discount SCD will be available to new applicants,
65 years of age or older, whose household income is at or below 250% of the federal poverty level.
The OCA filed a statement supporting approval of the proposed settlement.

On January 13, 2004, a hearing was held in Philadelphia where testimony was taken from interested
parties on the proposed settlement. The ALJ issued her Recommended Decision on February 24,
2004, recommending approval of the proposed settlement. At the Public Meeting of April 15, 2004,
the Commission passed the Motion of Chairman Terrance J. Fitzpatrick. That Motion held in
abeyance the proposed settlement, pending a development of issues set forth by the Commissioner’s
Motion. The vote was 4-1 with Commissioner Thomas dissenting. The Motion set forth eight (8)
issues that the Commission wanted to have developed on the record in this proceeding before
determining whether it will approve the proposed settlement. Those issues included, whether any
other Pennsylvania NGDCs have SCDs, and the cost of providing low-income assistance to
customers that are above 150% of FPL, and the burden on other customers of having to fund such
a program. In an Order entered June 2, 2004, the Commission consolidated the further investigation
of the SCD with the investigations of PGW’s financial condition and collection activities. At the
end of the fiscal year, this investigation was ongoing.

Petition of Equitable Gas Co. For Approval of a Universal Service Funding Mechanism, Docket No.
contained two Phases. In Phase I, the Company proposed to make various program design
modifications to its Energy Assistance Program (EAP) in order to make customer payments more
affordable in conformance with the directives of the Commission’s Bureau of Consumer Services
(BCS). Phase II of the plan proposed a ramp-up of the existing EAP program from its current level
of 10,000 participants to as many as 19,000 participants, if additional funding was obtained.

On October 30, 2003, the Commission entered an Order approving the Plan 2004-2006 Phase I and
Phase II proposals and directed the Company to meet with interested stakeholders to discuss funding
mechanisms. Over the next several months, the Company held various meetings with the OCA and
other stakeholders to develop a funding mechanism to implement Phase I and Phase II of the plan.
On November 21, 2003, Equitable filed a Petition seeking approval of a funding mechanism through a proposed surcharge rider. The initial level of the rider proposed by Equitable was $0.48/Mcf with quarterly reconciliations to actual universal service costs. Subsequently, on December 31, 2003, the Company also filed a Petition for implementation of an interim surcharge of $0.30/Mcf, to go into effect immediately, pending resolution of the Petition for permanent funding mechanism. The OCA filed answers in opposition to both petitions.

The parties continued to negotiate a resolution to the universal service funding mechanism and on February 23, 2004, the Company and OTS filed a Joint Settlement Agreement with the Commission. The proposed settlement calls for implementation of a $0.30/Mcf rider surcharge to recover costs associated with Phase I program design changes and a Phase II ramp-up of the EAP program to 15,000 participants. The surcharge rider will remain fixed at $0.30/Mcf through January 1, 2006. The proposed settlement also provides for a general base rate moratorium through January 1, 2006. On February 23, 2004, the OCA filed a letter with the Commission indicating that it does not oppose the proposed settlement between Equitable and OTS. On April 1, 2004, the Commission entered an Order approving the Settlement.

In Re NFG Distribution Co.’s Temporary Operational Takeover of Nido’s Ltd, t/d/b/a Kaylor Gas Distribution, Docket No. M-00031781 and Application for Approval of Abandonment of Service by Kaylor Gas, Docket No. A-120007-F2001. On November 26, 2003, the Commission issued an Emergency Order in the above-captioned proceeding, ratified at Public Meeting of December 4, 2003, directing National Fuel Gas Distribution Company (NFGD) to temporarily take over the operation of Nido’s Ltd., Inc. t/d/b/a Kaylor Gas Distribution (Kaylor) for the purpose of remedying documented safety problems on Kaylor’s system. NFGD filed a request for an emergency hearing, and a hearing was scheduled for December 17, 2003.

At the hearing, NFGD, Kaylor and the Commission’s Law Bureau Prosecutory Staff submitted a Stipulation and Settlement. Under the Stipulation and Settlement, operational control of the Kaylor system is to be returned to Kaylor, thus relieving NFGD of temporary operational control. Kaylor agreed, among other things, to operate the system consistent with PUC requirements, perform all billing and collection functions, deposit all revenue received in an escrow account, pay all bills rendered by NFGD and T.W. Phillips, cooperate with NFGD on all issues, and provide 24/7 phone contact for the Commission, NFGD and customers. NFGD agreed to enter into an arrangement to provide continuing assistance, and to complete numerous activities designed to restore safe operations. NFGD also is permitted authority to recover any unpaid costs for natural gas from NFGD ratepayers through NFGD’s Section 1307(f) mechanism. NFGD is also permitted to request recovery of other unpaid costs through a tariff rider. The Stipulation and Settlement were approved by the Administrative Law Judge.

The OCA filed a Notice of Intervention in this proceeding, and in the pending Application for Abandonment of Service at Docket No. A-120007F2001 on December 23, 2003. The OCA received the ALJ’s Recommended Decision approving the Settlement on December 29, 2003. On December 31, 2003, the OCA filed Exceptions to the Recommended Decision. In its Exceptions, the OCA
raised the following issues: (1) whether proposed provisions of the settlement that place the costs of serving Kaylor Gas customers on NFGD may not provide adequate compensation to NFGD and its customers for these costs; (2) whether it is possible to determine whether all safety issues have been resolved, without the detailed arrangements between the companies for the provision of continued assistance; and (3) that the Commission should ensure that all parties expeditiously begin work on alternative proposals to address the Kaylor Gas situation. On January 6, 2004, NFGD filed Replies to OCA’s Exceptions. The Exceptions are currently pending before the Commission.

Petition of Philadelphia Gas Works For Declaratory Order Regarding Outsourcing Of Collections Calls and Complaint of the Service Employees International Union, Local 686 Against the Outsourcing of Collections Calls, Docket Nos. P-00032018 and C-20039160. As discussed in last year’s Annual Report, on January 7, 2003, the Philadelphia Gas Works filed a Petition for Declaratory Order or, in the alternative, a waiver of certain Commission regulations regarding the handling of collections calls. PGW was seeking a specific declaration or waiver regarding Section 56.97(a) which specified that an "authorized utility employee" was required to handle collection calls after the issuance of an initial termination notice. In its Petition, PGW noted that it had retained a contractor, NCO Financial Systems, Inc. to handle these inbound collection calls since it had been unable to handle the call volumes to its call center in the time frames required by the Commission. PGW averred that it expects to realize a savings of $53,000 as a result of the outsourcing contract and that if it handled the calls internally, it would cost approximately $122,000. The same day, the Service Employees International Union, Local 686 filed a complaint and a request for an emergency order concerning this contract. SEIU argued that outsourcing of these collection calls was a direct violation of Section 56.97(a) and that only utility employees could handle these collection calls following the issuance of a termination notice to the customer. The Commission held a hearing on the request for interim emergency order on January 21, 2003.

On January 27, 2003, the OCA filed an Answer to PGW’s Petition for Declaratory Order and Waiver. The OCA did not take a position on the legal interpretation of the regulation, but did recommend that if outsourcing to contractors was permitted, specific safeguards and customer protections had to be put in place. The OCA also requested that the Commission clearly inform PGW that PGW remains responsible for its contractor and the contractor’s compliance with all Commission regulations if the Commission determines to allow this outsourcing of collection calls. SEIU also filed an Answer to PGW’s Petition. Subsequently, on July 14, 2003, after consultation with the parties, PGW withdrew its Petition. On August 28, 2003, the Commission issued a Secretarial Letter granting PGW permission to withdraw the Petition.

Philadelphia Gas Works, Docket No. R-00027857. As discussed in last year’s Annual Report, on October 11, 2002, Philadelphia Gas Works filed a Petition with the Commission requesting that Tariff Supplement No. 30 be allowed to go into effect without a sixty day notice as required in 52 Pa. Code § 53.31. This Tariff modifies PGW’s procedures for negotiating payment arrangements with customers who have had gas service terminated for non-payment and are seeking restoration of their gas service. The OCA filed an Answer to PGW’s Petition and the Commission entered an order suspending the Tariff Supplement until May 8, 2003. The Consumer Advocate filed a
complaint to ensure that the Commission fully and fairly adjudicates issues pertaining to whether Tariff Supplement No. 30 is in the public interest and is in compliance with the Commission’s Chapter 56 regulations. Subsequently, PGW withdrew its Petition.

Complaint Of Service Employees International Union, Local 69, AFL-CIO Against Peoples Natural Gas Company, Docket No. C-20028539. As discussed in last year’s Annual Report, on September 20, 2002, the Service Employees International Union, Local 69 (SEIU, Local 69) filed a complaint against Peoples Natural Gas Company (Peoples) alleging that Peoples’ use of an outside contractor employee on a temporary basis to read meters in the Altoona area was a violation of the Company’s tariff, Commission’s regulations regarding meter reading at 52 Pa. Code §56.12 and the Natural Gas Choice and Competition Act at 66 Pa.C.S. §2206(a). SEIU, Local 69 argued that the Commission regulations and the Act require that only employees of the utility perform this meter reading function.

At the prehearing conference, the ALJ determined that there were no factual issues, and converted the proceeding to a Petition for Declaratory Order on the legal question. The ALJ directed that the pleadings be provided to the OCA as required by the regulations on declaratory orders and that the OCA be given 20 days to respond. The OCA’s Answer was filed on February 26, 2003. The OCA filed an Answer consistent with its position in the PGW case addressing a similar question about the use of contractor employees to perform certain customer care functions. The OCA sought to ensure that appropriate safeguards are in place if contractor employees are permitted to perform these functions. On March 31, 2003, Peoples filed a Reply to the OCA’s Answer.

On June 5, 2003, the ALJ issued an Initial Decision that determined that only the Company’s employees could provide the meter reading function under the terms of Peoples’ tariff. On December 19, 2003, the Commission entered an Order that found that Dominion Peoples’ could utilize outside contractors to perform meter reading services, however, the Commission agreed with OCA that use of outside contractors does not relieve the utility from the responsibility that the service is provided consistent with the utility’s obligations under the Public Utility Code and Commission regulations.

Vineyard Oil & Gas Co. v. NFG Distribution Corp., Docket No. C-20039935. As discussed in last year’s Annual Report, Vineyard Oil & Gas Co. (VOG) filed a complaint against NFG Distribution Corp. (NFGD) alleging that certain tariff provisions relating to imbalance charges for monthly-metered transportation customers that were imposed upon VOG and its customers in February 2003. The result of this case could have an impact on the level of credits that PGC customers receive for transportation customers’ imbalances. The OCA filed a notice of intervention in this case and monitored the developments. On January 29, 2004, a Joint Petition for Settlement was submitted to the ALJ. The OCA was a signatory to the proposed settlement. Under the terms of the proposed settlement, imbalance charges to VOG and other marketers on NFGD’s system were reduced for the month of February 2003 in recognition of certain anomalies that existed in the index utilized to calculate the imbalance charges. On April 21, 2004, the ALJ’s Recommended Decision was issued. In her R.D., the ALJ recommended approval of the revised settlement. At the end of the fiscal year, the revised settlement was still pending before the Commission.
Federal

FERC Gas Rulemaking Proceedings

RM98-10-000 & RM98-12-000, Gas Final Rule (Order No. 637): On April 5, 2002, the D.C. Circuit Court issued its Opinion on appeals of this Final Rule, essentially upholding most of FERC’s requirements in Order No. 637, but remanding two issues, one of which is important to the OCA: the requirements related to the elimination of the five year contract matching term cap for exercising rights of first refusal to retain long term firm capacity. On May 31, 2002, the Commission issued a notice requesting comment on these remanded issues. The OCA, on behalf of itself and NASUCA, prepared and filed comments on July 30, 2002, on these two issues, continuing to advocate for a 5 year term matching cap on the Right of First Refusal and requesting elimination of the competitive bidding requirement for capacity released by local gas distribution companies pursuant to state mandatory capacity assignment programs in retail choice states like Pennsylvania, or modification of the waiver conditions. On October 31, 2002, FERC issued an Order on Remand on the ROFR rights issue, eliminating the term cap, thus exposing LDCs to the risk of either losing their historic pipeline capacity or paying effective rates for that capacity that may exceed the pipelines’ maximum tariff rates. On December 2, 2002, the OCA, along with NASUCA and several other parties, filed a request for rehearing advocating continued application of the 5 year term cap in order to protect consumers from the pipelines’ ability to exert market power in negotiating contract renewals. On January 29, 2004, FERC rejected our request for rehearing. The OCA, on behalf of NASUCA, filed an appeal of this order on March 24, 2004. Several other parties also appealed, including the National Association of Regulatory Utility Commissioners and the American Gas Association. These matters are pending before the DC Circuit Court of Appeals. The Case is docketed as Case No. 04-1094, AGA v. FERC. Briefs are due December 7, 2004 and the case is scheduled for oral argument in the spring of 2005.

Electric and Gas Price Indices, Docket No. PL03-3-000: In January, 2003, FERC announced its intent to initiate an investigation into the accuracy of the data reported by market participants to trade publications and to NYMEX related to forward prices for natural gas. Investigations by FERC into manipulation of wholesale electricity markets in California in 2000 and 2001 led to the discovery that several market participants had also manipulated prices in natural gas markets by deliberately reporting higher prices for forward contracts than were actually paid. FERC held a public conference on April 24, 2003, to investigate the extent and geographic range of the reporting inaccuracies. The OCA assisted in the drafting of two NASUCA Gas Committee resolutions urging FERC and other appropriate federal and state agencies to investigate this matter and to determine the extent to which any inappropriate activities in reporting prices to these indices has resulted in excessive and unreasonable natural gas or electricity prices.

The OCA is also investigating supporting potential efforts to obtain federal legislation that would provide FERC authority to require gas producers and marketers to file quarterly reports on contract prices that is similar to the authority FERC exercises under the Federal Power Act with respect to
market based rates for electric generators. The OCA and NASUCA filed comments on June 20, 2003, urging FERC to adopt mandatory reporting requirements for data providers, including requirements for mandatory provision of counter-party data. We also supported a central collection agency for this data, with FERC oversight. FERC issued it order approving a voluntary system of regulation of natural gas and electricity price indices on July 24, 2003. The OCA, on behalf of NASUCA, filed a request for clarification on August 22, 2003. The OCA, on behalf of itself and NASUCA, also filed supplemental comments on September 17, 2003 supporting efforts by FERC to collect information relating to market participant compliance with the voluntary reporting requirements. Since NASUCA and the OCA had supported mandatory reporting requirements, and since FERC elected to implement voluntary reporting requirements under the assumption that a voluntary approach would encourage more entities to comply, NASUCA and the OCA believe it is imperative that FERC monitor whether the voluntary system is achieving FERC’s goal of transparency, accuracy and liquidity in price indices reporting.

On November 4, 2003, FERC held a technical conference to inquire into the status of compliance with the voluntary guidelines. Several large gas producers testified that the liquidity and transparency of price reporting had improved substantially since the issuance of the guidelines, however end use consumer representatives remained concern with the accuracy of reported prices. On December 12, 2003, FERC issued an order on rehearing rejecting NASUCA’s and the OCA’s request. The OCA and NASUCA decided not to seek further rehearing or appeal. As noted in the electric section above, FERC Staff continues to monitor compliance with the standards and the extent of reporting and liquidity in the price indices by requesting comment on these issues through a survey sent out to market participants. Comments were due March 26, 2004. FERC may implement mandatory reporting requirements if liquidity and confidence in these reporting indices does not improve over the next few months. FERC held a second technical conference in this proceeding on June 25, 2004 to assess whether voluntary compliance with the policy statement has resulted in sufficient improvements in the liquidity and transparency of the price indices, or whether mandatory compliance is warranted. Most parties expressed dramatic improvement in the transparency and liquidity of the price indices and in their confidence in the accuracy of the reported prices as a result of the Commission’s actions in this proceeding. While the parties did not recommend that FERC mandate reporting by all entities, they did suggest that FERC continue to vigilantly monitor these matters.

RM03-10-000: Amendments to Blanket Sales Certificates: On June 26, 2003, FERC sought comments on proposed revisions to its regulations governing pipeline and natural gas marketer sales for resale of natural gas in order to prohibit anti-competitive and manipulative practices and to provide for disgorgement of any profits earned through such illegal behavior. On August 8, 2003, the OCA submitted comments in this proceeding on behalf of itself and NASUCA essentially supporting the proposed regulations. On November 17, 2003, FERC issued an order essentially adopting the proposed regulations and some of the OCA’s and NASUCA’s positions. However, NASUCA and the OCA filed a request for rehearing on December 17, 2003, of several provisions, including FERC’s failure to adopt monetary remedies in addition to disgorgement, FERC’s definition of wash trades and FERC’s decision to adopt an intent standard in the rule prohibiting
market manipulation. FERC issued its order on rehearing rejecting all requests on May 19, 2004. The OCA and NASUCA decided not to appeal this order, but intervened in appeals filed by other pipelines so as to support the Final Rule issued by FERC.

PL04-3-000: Gas Interchangeability Technical Conference: On February 18, 2004, FERC held a technical conference seeking public comment on the interchangeability of natural gas and Liquified Natural Gas (“LNG”). These two gas streams have different composite constituents, including heating value and inert materials. If these constituents vary outside of a specified range, customer appliances must be adjusted to accommodate the different gas stream. The American Gas Association testified at this conference that such adjustment to consumer appliances would cost consumers in excess of $100 million. The OCA monitored this conference and plans to continue to carefully monitor this issue. This issue is important as the industry anticipates greater reliance on LNG in the future to supply the nation’s need for natural gas. This matter remains pending at FERC.

PL03-6-000: FERC initiated a public conference scheduled for October 14, 2003, to analyze the results of a report prepared by the National Petroleum Council (NPC) relating to natural gas supply availability and price volatility. The OCA attended this conference on behalf of itself and NASUCA. The National Petroleum Council reported its assessment that natural gas supplies and pipeline infrastructure would be sufficient through 2010. Thereafter, the U.S. would require additional sources of natural gas supply, including significant quantities of LNG. Additionally, the NPC reported that demand for supply had become more inelastic as a result of increased reliance by industrial consumers and electric generators on single fuel natural gas equipment.

PL02-6-000: Negotiated Rates Notice of Request for Comments: On July 17, 2002, FERC issued a Notice of Request for Comments seeking input from various stakeholders in the industry on FERC’s Negotiated Rates Policy Statement. That Policy Statement was initially adopted in 1996, authorizing pipelines to individually negotiate rates with shippers. The OCA opposed that policy then and continues to oppose the policy as it discriminates among types of shippers, allowing those with competitive leverage such as large shippers, to obtain better rate deals than are provided for in pipeline tariffs. In the Notice, FERC noted that in some recent cases pipelines have used that authority in a discriminatory manner to withhold capacity under otherwise applicable recourse rates in an effort to force shippers into negotiated rate contracts at prices significantly in excess of maximum pipeline tariff recourse rates. FERC sought comment on whether to abandon the policy, or impose limits on pipeline actions to obtain rates above maximum tariff rates. On September 23, 2002, the OCA filed comments on behalf of itself, the West Virginia Consumer Advocate Division and Maryland Office of Peoples Counsel urging FERC to abandon the negotiated rates policy, or to limit the types of negotiated rate transactions that can be accomplished thereunder. We also urged FERC to adopt an absolute ban on cross-subsidies between negotiated rates and recourse rates. On July 24, 2003, FERC issued an order in this proceeding modifying its negotiated rate policy by prohibiting negotiated rate transactions based on pricing differentials. Several parties have sought rehearing of this issue and the matter remains pending before FERC.
FERC Gas Restructuring Cases

RP00-326-000 and RP00-327-000: Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation: As discussed in last year’s Annual Report, the Columbia interstate pipeline companies filed their Compliance Filings pursuant to Order No. 637. These filings sought approval to implement new balancing services, to provide greater flexibility on receipt and delivery point rights; to provide for crediting of penalty revenues; and to clarify criteria for implementing Operational Flow Orders. Columbia Gas Transmission sought a waiver of the Order No. 637 requirement to provide segmentation rights. The OCA intervened in these proceedings on June 29, 2000 and filed comments on these compliance filings on July 17, 2000. The Columbia Companies filed revised tariffs on July 12, 2001 in an attempt to resolve some of these issues in this proceeding. That filing resolved some, but not all of the issues raised by the OCA, consequently the OCA filed comments in these cases on August 30, 2001 seeking Commission resolution of outstanding issues. On July 19, 2002 and September 26, 2002 respectively, FERC issued orders on Columbia Gas’ and Columbia Gulf’s compliance filings, generally finding that Columbia and Columbia satisfied the requirements of Order No. 637. FERC did require the Companies to make several modifications. The Commission’s order satisfactorily resolved most of the OCA’s concerns with these filings, consequently the OCA decided not to seek rehearing of these orders. However, several other parties filed requests for rehearing. FERC issued its order on rehearing essentially affirming its initial rulings in this proceeding on July 3, 2003. On October 27, 2003, FERC issued a further order on rehearing clarifying its rulings related to segmentation, secondary point priority, penalties and penalty revenues.

RP00-473-000: Carnegie Interstate Pipeline Company: Carnegie Interstate Pipeline Company (CIPCO) filed its Compliance Filing pursuant to Order No. 637. This filing addressed Order No. 637’s requirements related to new balancing services, flexibility on receipt and delivery point rights; segmentation of capacity for release transactions, penalty provisions, crediting of penalty revenues; Operational Flow Orders, lifting of price caps on short-term capacity release transactions and right of first refusal. The OCA intervened in this proceeding on September 7, 2000 and filed comments on this compliance filing on September 14, 2000. Carnegie and Equitrans subsequently merged their systems. As a result, on September 10, 2003, FERC issued an order dismissing this proceeding and finding that Carnegie’s filing in this docket is moot and has been superseded by the Equitrans’ restructuring filing.

RP00-477-000: Tennessee Gas Pipeline Company: As discussed in last year’s Annual Report, Tennessee Gas Pipeline Company (Tennessee) filed its Compliance Filing pursuant to Order No. 637. This filing sought approval to implement new balancing services, to provide greater flexibility on receipt and delivery point rights; to provide for segmentation rights, for crediting of penalty revenues; and to clarify criteria for implementing Operational Flow Orders. The OCA intervened in this proceeding on August 24, 2000 and filed comments on this compliance filing on September 14, 2000. On April 2, 2001, Tennessee made a revised filing with FERC which resolves some of the concerns raised by the OCA and other parties. The OCA filed comments supporting approval of the portions of the revised filing resolving the OCA’s concerns and requesting further
modifications of those portions of the filing that remain problematic for Pennsylvania consumers. On April 3, 2002, FERC issued an order in this proceeding approving some of the provisions of Tennessee’s compliance filing and requiring Tennessee to make further changes to its filing to comply with Order No. 637. Several parties filed requests for rehearing. FERC issued its order on rehearing essentially affirming its initial rulings in this proceeding on July 11, 2003.

RP00-468-000: Texas Eastern Transmission Corporation: As discussed in last year’s Annual Report, Texas Eastern Transmission Corporation (Texas Eastern) filed its Compliance Filing pursuant to Order No. 637. This filing addressed Order No. 637’s requirements related to new balancing services, flexibility on receipt and delivery point rights; segmentation of capacity for release transactions, penalty provisions, crediting of penalty revenues; Operational Flow Orders, lifting of price caps on short-term capacity release transactions and right of first refusal. The OCA intervened in this proceeding on September 5, 2000 and filed comments on this compliance filing on September 14, 2000. Texas Eastern filed revised tariffs on July 12, 2001 in an attempt to resolve some of these issues in this proceeding. That filing resolved some, but not all of the issues raised by the OCA, consequently the OCA filed comments in these cases on August 30, 2001 seeking Commission resolution of outstanding issues. On February 27, 2002, FERC issued an order generally accepting Texas Eastern’s filing, but requiring certain modifications, including many of the modifications sought by the OCA. Importantly, FERC eliminated restrictions on customer flexibility to use and segment its capacity within a zone and upheld the right of firm customers to exercise partial day recall of released capacity, an issue important to Pennsylvania’s retail gas choice program. The order placed significant limitations on hourly flexibility rights under no-notice service tariffs, and the OCA, along with several other parties, sought rehearing. Several parties filed appeals of these orders to the D.C. Circuit Court of Appeals. The OCA intervened in these appellate dockets in June, 2003. On October 7, 2003, FERC issued its final order on rehearing rejecting all requests.

FERC Gas Rate and Miscellaneous Proceedings

RP01-245-000: Transcontinental Gas Pipe Line Corporation: As discussed in last year’s Annual Report, on March 1, 2001, Transco filed to increase base rates by $228 million annually. The OCA intervened in this proceeding on March 12, 2001 protesting this rate increase. The OCA filed testimony on November 15, 2001 in this docket challenging most of Transco’s requested rate increase. On January 22, 2002, the OCA filed cross-answering testimony reflecting additional adjustments and further lowering the amount of the rate increase sought by Transco. Transco filed a cost of service settlement on April 12, 2002. The OCA supported the settlement of all cost of service issues as that settlement provided for substantial savings in the amount of approximately $152 million annually from the filed-for rates for retail ratepayers across the system, and approximately $18.5 million annually for Pennsylvania ratepayers served off Transco’s pipelines. FERC approved this Settlement by order dated July 23, 2002.

Cost allocation and rate design issues were tried during July, 2002. The OCA submitted its Initial Brief on August 28, 2002, and its Reply Brief on September 17, 2002, on the rolled-in v. incremental pricing issues associated with the Mobile Bay, Pocono and Cherokee expansion projects. The OCA
opposed rolled-in pricing for these projects as such rate treatment distorts price signals related to the
cost of expanding pipeline capacity. On December 3, 2002, the Presiding Administrative Law Judge
issued his Initial Decision rejecting roll-in of the Pocono, Cherokee and Mobile Bay expansion
facilities as recommended by the OCA. Several parties filed exceptions on January 21, 2003. The
OCA filed its Brief Opposing Exceptions on February 12, 2003, urging FERC to affirm the Presiding
Administrative Law Judge’s decision. On March 26, 2004, FERC issued its order on exceptions,
upholding the ALJ’s order relating to the Pocono and Cherokee facilities, but overturning the ALJ’s
decision relating to the Mobile Bay facilities. On April 26, 2004, the OCA filed a Request for
Rehearing on the Mobile Bay issue. This matter remains pending before FERC.

Equitrans, L.P. and Carnegie Interstate Pipeline Company, Docket No. CP02-233-000: Equitrans
and Carnegie filed an application on May 20, 2002 seeking FERC approval of a transfer of
Carnegie’s assets to Equitrans. This proposed merger had already been approved by the
Pennsylvania Public Utility Commission for the retail operations and facilities. This application
would obtain approval for merger of the interstate pipeline operations and facilities. The OCA
intervened in this proceeding on June 14, 2002, generally supporting this filing, but requesting that
FERC specifically defer ruling on the rate implications of the filing until Equitrans’ next rate case.
Equitrans filed a settlement on March 25, 2003. The OCA filed comments generally supporting the
settlement, but requesting modification to eliminate language that would restrict the rights of the
OCA to protest a future filing relating to the spin down of the gathering facilities being acquired
from CIPCO. Equitrans agreed to eliminate this language. By order dated July 1, 2003, FERC
rejected the settlement, but approved the merger. FERC noted that IOGA opposed the settlement
 provision that would have terminated an earlier settlement in Equitrans’ last rate case that would
have required Equitrans to file a new rate case by August, 2003. Equitrans sought rehearing of this
order. FERC consolidated this case with Equitrans’ rate case filing discussed below and rejected
requests for rehearing in its December 31, 2003 order in that case.

Equitrans, Inc., Docket No. RP04-97-000: On December 1, 2003, Equitrans filed a request to
increase rates and revenues by $25 million, or more than 56% annually. Equitable Gas Company,
a Pennsylvania company, comprises over 80% of the load on Equitrans’ system and would see
increased rates of $21 million or more annually. The OCA intervened in this proceeding on
December 11, 2003 protesting this rate increase. By order dated December 31, 2003, FERC rejected
the rate filing, and suspended the tariff issues until June 1, 2004. Equitable filed a new rate case
addressing FERC’s concerns on March 1, 2004. FERC held a technical conference in this case on
February 2, 2004. The OCA actively participated in the settlement discussions relating to the tariff
issues. Several parties filed requests for rehearing of the December 31 order. On June 29, 2004,
FERC issued an order in this docket rejecting the settlement and setting the storage and security
tracker issues for hearing in Equitrans’ pending rate case at Docket No. RP04-203 discussed below.

seeking to increase rates by $17 million, or 50%, annually. On March 12, 2004, the OCA intervened
in this proceeding protesting this rate increase. On March 31, 2004, the Commission issued an order
suspending the rate increase for the full statutory five month period and set this matter for hearing.
The procedural schedule in this proceeding has been held in abeyance pending the issuance of a Commission order in a certificate proceeding in which Equitrans seeks to refunctionalize certain transmission facilities as gathering facilities. FERC has not yet acted on that filing. The OCA plans to actively participate in this proceeding.

RP04-378-000: Gas Technology Institute: On July 1, 2004, GTI filed with FERC for approval of a new pipeline surcharge recovery mechanism to recover R&D costs. The OCA filed comments on behalf of itself and NASUCA protesting this filing as a violation of the settlement in GTI’s 1997 docket which required a termination of a federally mandated surcharge for recovery of gas research costs by December, 2004. This matter is pending before FERC.

**Federal Gas Appellate Cases**

**American Gas Association v. FERC, Case No. 04-1094 (D.C. Circuit Court of Appeals):** On March 24, 2004, the OCA filed an appeal on behalf of the National Association of State Utility Consumer Advocates of the Federal Energy Regulatory Commission’s Order on Remand of the Right of First Refusal (“ROFR”) issue in Order No. 637. The OCA seeks in the appeal to preserve the five-year matching term caps initially imposed by FERC under Order No. 637 on the exercise of ROFR rights in order to protect consumers from having to pay stranded costs associated with interstate pipeline capacity. This appeal has been consolidated with appeals filed by other parties on this same issue under the lead docket, *American Gas Association v. FERC*. The OCA and NASUCA’s brief is scheduled to be filed on December 7, 2004 and oral argument is expected to be held in the spring of 2005.

**American Gas Association v. FERC, Case No. 04-1178 (D.C. Circuit Court of Appeals):** On June 9, 2004, the American Gas Association appealed FERC’s Final Rule in docket No. RM01-10-000 revising its Standards of Conduct for affiliated transactions. The OCA intervened in this appeal on behalf of NASUCA on July 12, 2004 in support of FERC’s Final Rule. The D.C. Circuit Court of Appeals has not yet established a briefing schedule in this case.

**Cinergy Marketing & Trading, L.P. v. FERC, Case No. 04-1168 (D.C. Circuit Court of Appeals):** On May 28, 2004, Cinergy Marketing & Trading appealed FERC’s Final Rule in Docket No. RM03-10-000 establishing market behavior rules for natural gas marketers. The OCA intervened in this appeal on behalf of NASUCA on July 12, 2004 in support of FERC’s Final Rule. The D.C. Circuit Court of Appeals has not yet established a briefing schedule in this case.
TELECOMMUNICATIONS

Pennsylvania

Chapter 30 Review. As reported in last year’s Annual Report, during the last two Fiscal Years, the Pennsylvania General Assembly reviewed the Pennsylvania telecommunications law, Chapter 30 of the Public Utility Code, which expired by its own terms on December 31, 2003. The Senate Committee on Communications and High Technology and the House Committee on Consumer Affairs, held hearings concerning Chapter 30 at which the Consumer Advocate, Sonny Popowsky, testified on several occasions. In his testimony, Mr. Popowsky urged that Chapter 30 should be continued, but with modifications to make it more responsive to the needs of Pennsylvania consumers. The OCA’s twin goals during the debate were to ensure the protection of basic universal telephone service at affordable prices for every Pennsylvanian, while at the same time accelerating the availability of advanced high-speed telecommunications services throughout every urban, suburban, and rural community in the Commonwealth.

Mr. Popowsky proposed five modifications that he said were necessary to improve upon the current legislative framework contained in Chapter 30. Specifically, he urged that new telecommunications legislation should contain 1) strict protections against large basic service rate increases, 2) expansion of enrollment in the federally funded Lifeline program that provides rate discounts of up to $100 per year to low-income Pennsylvania telephone customers, 3) improvements in telephone service quality, 4) a statewide inventory of high speed telecommunications service, and 5) more rapid and focused deployment of high speed broadband service to underserved communities throughout all areas of Pennsylvania.

Despite some action in both the House and Senate, both houses did not agree upon any legislative revision to Chapter 30 in 2003. As a result, Chapter 30 sunseted on December 31, 2003. As of the end of the fiscal year, legislation to reinstate or expand upon the provisions of Chapter 30 was still under consideration. The OCA continued its efforts to ensure that any legislation would protect basic service while also providing greater access to broadband service throughout the Commonwealth.

Joint Petition of Verizon Pennsylvania and Verizon North Regarding Access Rate Reform, Docket No. A-310200F0002. As discussed in last year’s Annual Report, on December 30, 2002, Verizon PA and Verizon North filed an access reform petition. Under the Petition, Verizon North would reduce the access charges that are paid by long distance companies, but increase the rates charged to Verizon PA and Verizon North basic service customers. This is modeled after a settlement filed by Sprint and a coalition of smaller companies titled the Rural Telephone Company Coalition.

The RTCC settlement allowed for the RTCC to raise their local rates up to an $18.00 cap, and continued to require needed revenues above that level to come from a Universal Service Fund.

OCA argued that Verizon’s costs did not support such substantial rate rebalancing. Hearings were
held before Administrative Law Judge Cynthia Fordham on August 25 and 26, 2003. The OCA was actively involved in these hearings presenting a witness and conducting cross examination of witnesses presented by other parties.

Verizon and OCA presented a settlement proposal in this case. The settlement would reduce Verizon North’s high access rates to Verizon Pa. levels and increase residential and business rates by less than $1.00 per line per month. On November 18, 2003, ALJ Fordham released a Recommended Decision that generally accepted the Verizon/OCA proposed settlement. OCA and Verizon were also able to reach a further settlement with OSBA on this issue. On February 26, 2004 OCA filed a revised settlement in this case. The general effect is to reduce the amount of rate increases necessary to fund the access reductions by approximately $15 million. On July 28, 2004, the PUC approved the Settlement, but ordered a remand to the ALJ to consider further potential access reductions.

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements, Docket No. I-00030099. On August 30, 2003, the FCC released its Triennial Review Order (TRO) that required all states to consider the continued availability of unbundled local switching to competitors. This may have the effect of removing an important Unbundled Network Element (UNE) such that competitors will find it more difficult to offer competitive alternatives. Particularly, the OCA is concerned that residential mass market customers may lose much of the local competition that they now enjoy. Under the FCC’s TRO, if the PUC finds a number of CLEC switches that are used to offer service to mass market (or residential) customers, then it may find that Verizon switching need no longer be offered to CLECs as a UNE within each market.

Under the TRO, the PUC would have to define and analyze each market in Pennsylvania in order to determine whether the requisite number of CLEC switches serving mass market customers exist in order to find such impairment. On October 3, 2003, the PUC released its order in the above captioned proceeding that initiated a Pennsylvania proceeding under the requirements of the TRO. On October 24, 2003, Verizon filed its Petition to the PUC proposing to remove UNE switching from the mass market customer. The OCA reviewed all network information in order to determine the existence of CLEC switches so as to find whether the FCC defined switching triggers have been met. The OCA defined the requisite market in which such trigger analyses need take place. The OCA reviewed Pennsylvania geography and the necessary information about telecommunications services offered and requisite prices in order to accomplish such an analysis.

The Commission also considered the use of a “hot cut” process by which the Verizon loop is disconnected from the Verizon switch and reconnected to a CLEC switch. The FCC has required the state commissions to find a way to improve the hot cut process before finding that switching impairment no longer exists. This hot cut process has been difficult to accomplish in the past and has resulted in the FCC finding that the use of UNE switching elements by CLECs is necessary in order to avoid CLEC impairment in the offering of local service. The OCA is concerned that the hot cut process has resulted in the loss of service to CLEC customers in the past. OCA is concerned that the hot cut process needs to be substantially improved before the loss of UNE switching can take
place without the resulting impairment.

On January 7, 2004, the OCA filed its responsive testimony. OCA argued that Verizon has not met the requirement to demonstrate that UNE switching should be removed from the residential mass market competitors in any area in Pennsylvania for the reasons noted above. The OCA presented its witnesses and testimony in this proceeding. OCA contended that Verizon had not met the requirements of the TRO so as to terminate the UNE switching and UNE Platform elements anywhere in Pennsylvania. OCA contested Verizon’s definition of the mass market whereby Verizon classified thousands of telephone lines as mass market customers. The OCA filed its Main Brief February 17, 2004 and Reply Brief on March 1, 2004.

Most importantly, on March 2, 2004, the D.C. Circuit Court of Appeals overturned most of the FCC TRO order that the parties had sought to apply in the PUC litigation. In particular, the Court rejected the FCC determination to allow state PUCs the opportunity to make determinations concerning UNE impairment and ruled that such decisions may only be made by the FCC. The Order vacating the FCC determination was stayed for 60 days.

Further, on May 28, 2004 in this proceeding, the PUC issued another order in response to Verizon’s petition for reconsideration. The PUC had earlier ruled that, even if Verizon was not required to unbundle loops to large business customers under the terms of the TRO, it may continue to have a requirement to unbundle under other federal and state law. The OCA had supported such a position in another proceeding. The PUC reaffirmed that position and refused to allow Verizon to withdraw its interconnection rates for large business customers. This ruling may result in further litigation at the state or federal level on this point.

Petitions for Exogenous Event Rate Increase, Docket No. P-00032020, and R-00027695. As discussed in last year’s Annual Report, on February 3, 2003, the Commonwealth Telephone Company filed a Petition to recover $3.3 million in unpaid access charges from MCI Worldcom and Global Crossing. Commonwealth wanted to use this debt to offset a permanent reduction in Commonwealth Telephone rates that should also have been distributed to consumers. The OCA opposed this rate increase as excessive and not properly to be considered as a part of any exogenous event.

OCA also contended that Commonwealth had not appropriately reduced its State Tax Adjustment Surcharge and this would amount to a counterclaim to the rate increase proposed by Commonwealth.

The OCA reached a settlement with Commonwealth, OTS, and OSBA that was approved by the ALJ. On July 21, 2003, the PUC entered a Tentative Order adopting the recommendation of the ALJ to approve the settlement. No comments were filed and the Tentative Order became final on August 19, 2003.

Subsequent to the Commonwealth filing, similar requests have been filed by several other small telephone companies, including Buffalo Valley, Conestoga, D&E, and North Pittsburgh (Docket
Nos. P-00032032, P-00032033, P-00032034, and P-00032038, respectively). The OCA has filed formal complaints challenging these filings. The OCA has also engaged in settlement negotiations with these companies.

**Voice Over Internet Protocol Investigation, I-00031707.** As discussed in last year’s Annual Report, on May 5, 2003, the PUC initiated an investigation concerning Voice Over Internet Protocol (VOIP) telephone services. These are services that transmit voice communications over the public Internet. The OCA participated in this investigation and filed comments on July 1, 2003.

VOIP services raise many regulatory issues. Chiefly the question is whether this should be regulated like other voice telephone services or whether it should not be regulated as an Internet service. One of the major concerns relates to the extent to which VOIP services should be required to offer 911 service. The OCA is concerned that people who use VOIP should receive the same 911 service, and contribute to the payment for such services, as do other people who purchase telephone service.

On May 24, 2004, the PUC issued its order in this proceeding. The Commission declined to take any further action in this case at this time. The PUC considered the activity of the FCC on these matters and declined to assert jurisdiction over these services under state law.

**Petition of Frontier Companies for Modification of Offset, Docket No. P-00951005.** On May 29, 2003, the Frontier companies filed at the PUC to reduce their inflation offset from 2.8% to 2.0% arguing that it should be set at the same level as other companies. The OCA filed an Answer on June 23, 2003 and opposed this request. OCA argued that there was no evidence to support this request and that creating such a benefit for the company should be considered with other obligations that Frontier had incurred in the prior filing.

On December 23, 2003, the OCA entered into a settlement with Frontier that would completely resolve this proceeding. The OCA settlement built upon an earlier settlement reached with OSBA and OTS that offered that Frontier would now allow some rate reductions from their price cap plan and would reduce increases proposed by a price cap plan set at a 2.0% offset by setting such increases against prior deferred decreases. OCA was also able to have the Frontier companies allow consumers to qualify for Lifeline service based solely upon having incomes at 150% of the Federal Poverty Level. This would allow poor families to qualify for benefits even if they are not participating in government assistance programs.

**Generic Investigation Regarding Virtual NXX Codes, Docket No. I-00020093.** As discussed in last year’s Annual Report, on October 8, 2002, the PUC had initiated an investigation of assigning telephone numbers to a customer in an area where the customer is not physically located, i.e. virtual NXX codes. The OCA filed Comments on November 18, 2002. The OCA explained in those Comments that it was concerned with the proliferation of NXX codes in Pennsylvania and the effect that this may have on the addition of further area codes in Pennsylvania. However, the OCA cautioned that the best way to meet this concern was not to prohibit the use of virtual NXX codes. OCA explained that prohibiting virtual NXX codes may inhibit competitors’ opportunity to expand
local calling areas to the benefit of consumers. The use of virtual NXX codes also appears quite similar to the incumbents’ offering of foreign exchange service, which has been an accepted telephone service for many years. Further, such a prohibition may be difficult to enforce.

OCA participated in a presentation to the Commission staff on February 26, 2003 summarizing these points. OCA filed similar Reply Comments on March 13, 2003. On February 9, 2004, ALJ Debra Paist filed her Investigation Report. ALJ Paist cited with approval many of the arguments made by the OCA in this proceeding. On May 19, 2004, the PUC issued an Order in this case. In that Order the PUC indicated that it would receive further recommendations from the Law Bureau on this issue and would later issue an order concerning other policy changes that it might require.

Verizon Pa. Network Modernization Plan, Docket No. P-00930715. As discussed in last year’s Annual Report, on May 15, 2002, the PUC issued a report reviewing Verizon’s Network Modernization Plan (NMP) Update filed in 2000. The PUC found that Verizon had revised its original plans to offer 45 Mbps bidirectional in 1994 when the original order was entered. The 2000 NMP Update now offered a 1.5 Mbps service, such as DSL. The PUC ruled that Verizon could not alter the NMP without authorization and must revise the filed NMP.

Verizon filed a Petition for Reconsideration arguing that it had not changed its NMP, it was authorized to make the filing, and that the PUC should reconsider its determination as to what service satisfied the Ch. 30 requirements. On June 11, 2002, the OCA filed an Answer to the Verizon Petition. The OCA argued that Verizon had no authority to change its original network modernization proposal and the PUC should reaffirm its Order. On August 29, 2002, the PUC refrained from ruling on the Verizon NMP and encouraged Verizon to file a Petition for a revised NMP.

Verizon filed a new proposed NMP. This NMP was modeled closely after the prior plans but offered more deployment of DSL services in rural areas. The OCA responded and filed its proposal that would seek input from throughout Pennsylvania concerning current broadband needs, would require an inventory of Verizon PA current and planned networks, and suggested that a development fund would be a better way of encouraging network deployment. Pursuant to the established schedule, the OCA filed comments and testimony on January 10, 2003 that set forth our position on the Verizon PA NMP. This involved economic and technical testimony. We also used the testimony of two staff members from SEDA COG and the Northwest Planning Commission that supported the OCA on these issues and explained how broadband in under served areas is important for economic and community development in their areas. OCA supported a rapid roll out of DSL and the creation of a supplemental fund where Verizon will offer grants to communities in order to purchase network services and facilities from Verizon. Further testimony was filed on February 19 and hearings were held on February 25 and 26. Briefs were filed in March.

The Recommended Decision was filed on March 26, 2003. The ALJ recommended that Verizon should be required to offer DSL service to all lines by December 31, 2010.
On July 17, 2003, the Commission voted 4-1 rejecting in part the ALJ’s recommendation and approving Verizon’s Petition to Amend its Network Modernization Plan with certain conditions.

Classification of Small Business Services as Competitive, P-00021973. As discussed in last year’s Annual Report, Verizon PA requested on July 1, 2002 that the PUC determine that services to small business customers would be considered to be competitive and no longer subject to price regulation. This involved the smallest business customers that have total billed revenue of less than $10,000 per year. OCA opposed this proposal and asserted that there was little evidence of competition in the small business market. OCA was also concerned that in the most rural areas of Pennsylvania there appeared to be the least amount of competition and the OCA was concerned as to prices in those locations that might rise if the Petition was granted. OCA also suggested that if competitive classification was allowed that such customers should be guaranteed no price increases to protect these customers for a number of years.

On January 30, 2003, a Recommended Decision was issued that denied the Verizon PA Petition. The OCA argued that the ALJ was correct in denying the Petition. Verizon failed to file substantial evidence concerning the competitive nature of the small business market. Much of the information obtained in the case also demonstrated a great lack of competition in much of rural Pennsylvania. The PUC issued an Order on August 13, 2003 in this proceeding that essentially supported the OCA’s position. The Commission rejected any competitive designation for small business service. The PUC decided that Verizon had not proven its case and needed to offer more information concerning the state of competition in various geographic localities. Verizon filed a Petition for Reconsideration or Modification on August 28, 2003. In its Petition, Verizon argued that the Commission overlooked substantial record evidence in making its decision and should reconsider its decision. In the alternative, Verizon argued that the Commission should grant the original Petition as it pertains to those portions of Verizon’s territory where the Commission recognized there is adequate competition. The OCA filed an Answer to the Petition for Reconsideration or Modification on September 8, 2003 arguing that this Petition should be denied and the Commission decision should stand. On March 12, 2004, the PUC rejected the Verizon Petition for Reconsideration.

Generic Investigation in Re: Impact on Local Carrier Compensation if a Competitive Local Exchange Carrier Defines Local Calling Areas Differently, Docket No. I-00030096. On April 17, 2003, the Commission opened an investigation into CLEC local calling areas. Recognizing that CLECs might offer larger or different calling areas to attract customers, the Commission asked for comments on compensation and implementation issues. The OCA filed Comments on August 11, 2003 recommending that compensation between carriers be based on ILECs local calling areas and that the Commission protect consumers against call completion problems. The PUC has taken no further action in this case.

Frontier Companies’ Petition for Determination that Directory Assistance is a Competitive Service, Docket No. P-00032052. On June 11, 2003, the five Frontier local exchange companies requested reclassification of directory assistance as a competitive service under Chapter 30. OCA filed a notice
of intervention and public statement on June 19, 2003. On July 24, 2003, the Companies, OCA and Office of Trial Staff entered into a stipulation regarding the factual basis and conditions for approval of the petition. On August 21, 2003, the PUC approved the petition, based on the facts and conditions in the stipulation.

Generic Investigation Re: Verizon Pennsylvania, Inc.’s Unbundled Network Element Rates, Docket No. R-00016683. As discussed in last year’s Annual Report, this is a case in which the PUC will redetermine Unbundled Network Element rates for Verizon Pa. This presents an opportunity to review the Verizon and AT&T cost models.

On May 3, 2002, ALJ Schnierle made a recommendation in this case. ALJ Schnierle accepted the Verizon cost model, but then recommended many changes to its calculations.

On October 30, 2002 the PUC polled on this issue and requested Verizon to rerun its cost model with different inputs.

OCA filed comments on December 30, 2002 concerning Verizon PA’s UNE rates in this proceeding. OCA proposed UNE loop rates in three zones, metropolitan Pittsburgh, Philadelphia and other areas. This was designed to avoid the very high UNE loop rates that were otherwise scheduled to go into effect in rural Pennsylvania.

A further prehearing conference on remand was held on January 15, 2003 before ALJ Schnierle wherein it was determined that no further hearings or pleadings were necessary. On March 17, 2003, ALJ Schnierle issued a Supplemental Recommended Decision on Remand concerning the appropriate UNE rates. The ALJ did not definitively rule on the issues that the OCA raised but generally proposed that they might be considered at further length by the Commission. OCA filed exceptions to the ALJ’s not adopting the OCA 3 zone approach and not adopting an appropriate forward looking cost adjustment. Exceptions and Reply Exceptions were filed by several other parties as well.

On December 11, 2003, the PUC issued an Order in this case. The OCA had argued that Verizon’s Forward Looking Cost factor erroneously inflated Verizon’s expenses and that the PUC should direct Verizon to use a Current Cost to Book Cost factor instead. The PUC directed Verizon to eliminate the FLC factor but did not adopt the CC to BC adjustment. The PUC directed Verizon to rerun its cost model with this change.

As noted above, the OCA had also proposed a new way to divide the geographic zones by which UNE rates were set in the Verizon territory. The PUC made no decision on this point, but directed the parties to engage in a collaborative on these issues. The PUC made other changes - particularly a large increase in the cost of capital that would likely increase UNE rates.

On March 8, 2004, Verizon produced its proposed rates under the PUC Order. While the rates in the more urban cells 1-3 have been reduced, the rural Cell 4 rates have increased and the overall
average rates have increased. The PUC approved the rates filed by Verizon on July 16, 2004.

Robert Leib v. Verizon North, Inc., Docket No. C-20039666; Office of Consumer Advocate v. Verizon North, Inc., Docket No. C-20030681; Nancy Makay v. Verizon North, Inc., Docket No. C-20042544. In the 2003-04 fiscal year, the OCA continued its efforts to pursue Lifeline reform by participating in three separate complaint proceedings before the PUC. In particular, the OCA participated in a Formal Complaint filed by Mr. Robert Leib against Verizon North in which Mr. Leib alleged that his Lifeline discount “was taken away from him even though [he meets] the financial requirements.” Upon further investigation into the matter, it was determined that Verizon North discontinued Mr. Leib’s Lifeline discount because he also purchased more than one vertical (or optional) service. Verizon North’s tariff limits customers who receive the Lifeline discount to purchasing only one vertical service.

On July 7, 2003, the OCA filed its own Formal Complaint against Verizon North alleging that the Company’s Lifeline tariffs are in violation of state and federal law due to the restrictions on the ability of all Verizon North customers who receive the Lifeline discount to purchase more than one vertical service. In particular, the OCA averred that the tariffs violate the Americans with Disabilities Act and the Equal Protection Clause. At the same time, the OCA moved to consolidate its Formal Complaint with Mr. Leib’s Formal Complaint. On August 13, 2003, Verizon North filed a number of pleadings, including an Opposition to the OCA’s Motion to Consolidate and a Motion to Dismiss the OCA Complaint.

On January 28, 2004, the Administrative Law Judge issued an Initial Decision that granted the Verizon North Motion to Dismiss the OCA Complaint. In particular, the ALJ noted that the subject of the OCA’s Formal Complaint was raised, debated and resolved in the PUC’s 1999 Global Order, thus the doctrine of *res judicata* precluded the issue from further PUC review. The OCA filed Exceptions to this Initial Decision on February 17, 2004 contending that the ALJ erred in dismissing the OCA Complaint because all of the elements of *res judicata* were not met and because *res judicata* does not bar this public policy matter from forever being addressed. In particular, the OCA argued that public policy issues and issues which are not immutable or unchanging are not barred from further litigation by the doctrine of *res judicata*.

In Mr. Leib’s case the ALJ issued Prehearing Order 2 on February 17, 2004, that determined that written testimony was neither necessary nor desirable in this proceeding and, therefore, not permitted. Likewise, the ALJ limited Mr. Leib’s proceeding to the service dispute alleged in his Formal Complaint against Verizon North, effectively precluding the OCA from raising additional issues as an intervenor in the proceeding.

A formal telephonic hearing was held in the matter of Mr. Leib’s Formal Complaint on May 12, 2004 in which the OCA participated but did not raise any issues as per the ALJ’s February 17, 2004 Prehearing Order 2. During that hearing, Mr. Leib testified on his own behalf explaining why he believed Verizon North’s lifeline tariff was unjust and unreasonable and should be modified.
Similarly, on February 27, 2004, the Community Justice Project, on behalf of Verizon North customer Nancy Makay, filed its own Formal Complaint against Verizon North challenging the same Lifeline tariff provision that restricts a person’s ability to purchase more than one vertical service when they also receive the Lifeline discount. Ms. Makay is a disabled person who spends 90% of her waking hours in a wheelchair and requires more than one vertical service as a result of her disability. Ms. Makay is low-income and financially eligible to receive the Lifeline discount. Ms. Makay had previously intervened into the proceeding arising from Mr. Leib’s Formal Complaint but her issues were precluded based on the ALJ’s Prehearing Order 2 in that proceeding. Ms. Makay had also intervened into the proceeding arising from the OCA’s Formal Complaint but her intervention was denied for mootness when the ALJ issued his Initial Decision dismissing the OCA’s Formal Complaint.

As a result of these three formal proceedings at the PUC, the OCA continued its efforts to reform Lifeline service in Pennsylvania to allow those customers who receive the Lifeline discount to also purchase more than one vertical service. The OCA believes, among other things, that this restriction acts as a barrier to low-income customers’ receipt of the Lifeline discount and should be removed. This would be consistent with a recent decision of the Federal Communications Commission that allows Lifeline customers to purchase all vertical services under the same terms and conditions as those customers who do not receive the Lifeline discount. As of the end of the fiscal year, all three Formal Complaints were still active before the PUC.
Federal

FCC Review of Unbundling Obligations, CC Docket No. 01-338. The FCC is reviewing the extent to which Incumbent Local Exchange Carriers, such as Verizon Pennsylvania, Inc., will be required to unbundle portions of its network for use by other competitive telephone companies. OCA prepared comments and filed in this proceeding on April 5, 2002. Other consumer advocate offices joined in those comments. The OCA argued that the FCC should not further limit the Unbundled Network Elements (UNEs) that companies must offer to competitors. Limiting those options will likely reduce the amount of local competition in Pennsylvania, particularly for residential customers. We also advocated that the FCC should continue to allow the PUC to make its own determinations as to what UNEs are required in Pennsylvania. The PUC is in a much better position to consider these issues and the amount of unbundling necessary in Pennsylvania.

Universal Service Joint Board, CC Docket No. 96-45 concerning USF contributions. On April 22, 2002, NASUCA filed Comments on contributions and the OCA assisted in the preparation of those comments. The FCC has proposed to change the way in which consumers are charged for the cost of the carrier's contribution to universal service. In the past, carriers have charged their customers as much as 10% of their interstate services for contribution to universal service. As these percentage charges have increased, some in the industry have proposed that this contribution should move toward a flat fee. NASUCA filed comments disputing that this is an appropriate way to charge for universal service. NASUCA is concerned that this fee will be particularly hard on consumers who make very few long distance calls. We have also offered, as another alternative, that a flat rate surcharge could be acceptable if it were guaranteed that the level of surcharge would not change for residential lines for a certain period of time.

The Joint Board has also issued a Recommended Decision concerning reasonably comparable local rates. On October 16, 2002, the Joint Board recommended that the universal service support mechanism for nonrural companies, i.e. large Bell companies such as Verizon, should not be changed. It appeared that support was sufficient as local rates in rural and high cost areas were generally equal to urban rates. However, the Joint Board also recommended that states, such as Pennsylvania, should report to the FCC what its nonrural level of local rates are so that the FCC could determine if those rural rates are reasonably comparable to the urban rates. The Joint Board also recommended that rates which are no higher than 135% of urban rates would be acceptable. This suggests a rural comparability standard of slightly more than $18. This may be important in terms of keeping rural rates down in terms of access reform.

NASUCA filed comments supporting the JB RD and requesting further action in order to make certain that the local rates were not too high in rural areas.

In the matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33. On May 3, 2002, the OCA filed comments concerning the FCC's proposal to redefine high speed Internet access over the telecommunications network as an
information service, rather than a telecommunications service. Redefining the nature of this service will likely reduce the amount of competition in the telecommunications area for this service. Presently, the ILECs must offer their equipment to competitors in order to offer competitive services in this area. Redefining this service as an information service would likely eliminate this competitive opportunity.

The OCA filed Comments along with 7 other NASUCA offices from Maine, Maryland, Ohio, California, Connecticut and New Hampshire. In these Comments, the OCA advocated that wireline broadband Internet access services should not be declared an information service like cable modem access because such a determination would rewrite TA-96 and would limit the FCC’s ability to achieve important Congressional and FCC goals. The OCA also argued that such a classification would inhibit the unbundling of network elements thus making competition more difficult and also remove basic public protections and state commission authority. The OCA also submitted an alternative method of allocating the cost of wireline broadband Internet access services between intrastate and interstate services. Finally, the OCA cautioned that a recategorization of wireline broadband Internet access services would jeopardize existing universal service funding obligations and thus jeopardize the universal service system.

The OCA filed similar Reply Comments. The FCC has proposed that it will take up many of these issues in a general Notice of Proposed Rulemaking regarding various Voice Over Internet Protocol issues.

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338. On August 21, 2003, the FCC released a 576 page order known as the Triennial Review Order. In it, the FCC revisited policy and regulatory decisions concerning implementation of the local competition provisions of the 1996 Telecom Act. The Triennial Review Order established a new policy framework for addressing the question of what portions of the incumbent’s network must be made available for purchase at wholesale rates by competitors and new entrants. The FCC delegated certain fact finding duties to the states.

In particular, the Order determined that switching to mass market customers would still be impaired if the Incumbents switching was not offered as an Unbundled Network Element. However, if it could be demonstrated in state proceedings that CLECs offer service to mass market customers through their own switching, then switching to mass market customers need no longer be offered as a UNE. The OCA is concerned that terminating switching UNEs could result in a significant loss of competition in the residential markets.

IP-Enabled Services, WC Docket No. 04-36. The OCA, as part of NASUCA, filed extensive comments with the FCC concerning IP enabled services or Voice Over Internet Protocol (VOIP) services on May 28, 2003. NASUCA did not advocate that such VOIP services should be subject to economic regulation by the FCC. However, NASUCA advocated that many other consumer protections should be offered for VOIP services. Such services can be considered as telecommunications services and in many cases are sold as such. VOIP should offer 911 as do other
services. Privacy protections should also be maintained - including Caller ID blocking. It is particularly important that, as established incumbents, such as Verizon, convert their existing services to Internet Protocol, that those services not be deregulated as a result.
WATER

Base Rate Increase Proceedings

Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-00038304. As discussed in last year’s Annual Report, the Company filed its general base rate increase request on April 30, 2003. The OCA filed its Formal Complaint against the approximate $65 million increase in early May 2003. The salient issues included a request for an acquisition adjustment in the amount of $46 million in rate base, due to the acquisition of the Citizens Utilities of Pennsylvania Water Division that was consummated on January 15, 2003. The OCA opposed this adjustment, contending that it would be contrary to Section 1327 of the Public Utility Code. That section permits an acquisition adjustment, that is, the amount in excess of the depreciated original cost of the plant assets used to provide service, only where the acquired company was nonviable or was not providing safe and adequate service at the time of the acquisition. The statute also provides for such adjustment if the purchase price is shown to be reasonable and if the increase to the customers would not be unreasonable because of the acquisition. The OCA presented the testimony of four different witnesses in opposition to this adjustment to show that the acquired company was viable and was providing safe and adequate service at the time of the acquisition; that the purchase price was unreasonably high; that the customers would experience an unreasonably high rate increase if the adjustment was permitted, and that the modest amount of savings experienced by the Company did not justify the annual $6 million in revenue requirement that would result from the rate base addition.

Another important claim was that related to the increased security costs subsequent to the terrorist attacks of Sept. 11, 2001. While the PUC denied the Company’s claim for a surcharge to recover these costs in another docket, it also afforded PAWC another opportunity in the general base rate proceeding to demonstrate the costs incurred to be prudent, just and reasonable. PAWC showed that it was able to reduce its costs by engaging in competitive bidding and by using technological methods such as surveillance cameras and motion detectors in lieu of constant security guard services at all facilities.

The parties submitted Main Briefs on October 20 and Reply Briefs on October 27. The OCA argued that PAWC’s request for an acquisition adjustment related to the purchase of the Citizens’ Utilities system in the amount of $43 million should be denied and that the cost of equity should be no more than 8.4%. All of the parties to the proceeding were able to stipulate to an appropriate rate structure and design recommendation, which has been submitted to the ALJ for approval. In summary, the OCA argued that its recommendation that the rate increase be denied and that revenues be permitted to increase by no more than $2.5 million should be accepted by the Commission.

On November 26, 2003, ALJ Weismandel issued his Recommended Decision, concluding that PAWC should receive no more than $26.1 million of the $65 million it initially sought. The ALJ recommended that PAWC’s request for an acquisition adjustment in the amount of $43 million be denied as it had not met its burden of proof. The ALJ also recommended rejection of the Company’s
claim for retroactive increased security costs in the amount of $3,357,870 per year for five years, a total of $16,789,349. The ALJ concluded that this claim constituted impermissible retroactive ratemaking, as it was not a “nonrecurring” expense.

The PUC entered an Order on January 29, 2004 and awarded an increase in revenues of approximately $34 million in lieu of the $26 million recommended by the ALJ. The PUC declined to accept the ALJ’s recommendation concerning the market-to-book ratio and raised the cost of common equity to 10.6%. The PUC also declined to accept the ALJ’s recommendation concerning the retroactive security costs in part, finding that the claimed expense fell within the exception to the prohibition on retroactive ratemaking. On February 13, 2004, the OCA filed a Petition for Review of this Order with the Commonwealth Court, which was consolidated with the appeal from the Order permitting the deferral of the expense in Docket No. R-00027983. The OCA filed its Brief and Reproduced Record on June 18, 2004, and the case was pending as of the end of the fiscal year.

Petition of Pennsylvania-American Water Co. For Approval to Implement, On Less Than Sixty Days’ Notice, A Tariff Supplement Establishing A Facility Protection Charge and To Defer Certain Security-Related Costs, Docket No. R-00027983. As discussed in last year’s Annual Report, through this Petition, filed Nov. 26, 2003, PAWC sought authority to impose a surcharge effective Jan. 1, 2003 on all of its customers (except those in the Coatesville area) which would increase bills by 2.53% in order to recover costs attributable to its “intensified efforts to ensure the security of its facilities against terrorist activities and related threats.” The Company also sought permission for special accounting treatment for the same type of costs retroactive to September 11, 2001, so that an amortization of the retroactive costs along with the claim for ongoing costs collected through the surcharge could later be included in customers’ base rates.

The OCA filed a Formal Complaint against this proposed tariff and answered the Petition requesting that it be denied. The OCA maintained that PAWC’s request would constitute “single-issue ratemaking” which is not authorized for water utilities and that it violates the prohibition on retroactive ratemaking. The Company wanted the Commission to permit it to collect this one increased expense and ignore all other elements of the ratemaking formula, some of which changed in such a way that a reduction would have resulted if rates were set anew.

Main Briefs and Reply Briefs were filed by the active parties and a Recommended Decision was issued by ALJ Paist on May 23, 2003. The ALJ recommended that PAWC be permitted to use deferred accounting treatment for the claimed incremental security costs incurred between September 11, 2001 and either the date of the implementation of the requested surcharge, if approved, or the conclusion of the Company’s next general rate case. This recommendation was made subject to several conditions. On the issue of the requested monthly surcharge to recover the ongoing increased security costs, the ALJ’s recommendation was to deny it, on multiple grounds set forth and supported by the OCA.

On June 26, 2003, the Commission voted 5-0 to deny the surcharge request and to approve deferred accounting for the increased security costs. A Final Order was issued on July 24, 2003.
Commission thus rejected the FPC and adopted the ALJ’s recommendation that the petition for deferred accounting treatment for the claimed incremental security costs incurred between September 11, 2003 and the resolution of the pending base rate case be granted. The Company was allowed to try to demonstrate its right to rate recovery of the claimed incremental security costs or portions thereof in the then-pending general base rate case. On August 21, 2003, the OCA filed a Petition for Review of this Final Order, contending that it was legal error for the Commission to find that the same costs that had been determined not to have been prudently incurred could still be proved to be prudently incurred in the pending general rate case. Under Section 316 of the Public Utility Code, findings of fact are to remain conclusive on all parties unless and until overturned or modified on appeal. The OCA also requested that the appeal be stayed pending the outcome of the rate case, because if recovery of the deferred claim is denied in that case, the ratepayers will not be harmed and there would be no reason to pursue the appeal. A cross-appeal was filed by PAWC and the Pennsylvania-American Large Users Group submitted an intervention. The cases were stayed pending the resolution of the general base rate proceeding, which was finally decided on January 25, 2004 and also appealed. The stay was lifted, and the cases consolidated.

Pa. P.U.C. v. Pennsylvania Suburban Water Co., Docket No. R-00038805. As discussed in last year’s Annual Report, the OCA filed a Formal Complaint against PSWC’s requested rate increase of $25.3 million which would result in bill increases in the Main Division of approximately 8.6%. As of January 2004, the Company changed its name to “Aqua Pennsylvania” and is an operating subsidiary of its parent company, Aqua America. Following the testimony of numerous witnesses concerning quality of service issues in White Rock Acres, Cumberland County, on February 23, 2004, the OCA, the White Rock Complainants and the Company engaged in settlement discussions relating to those issues. An agreement in principle resulted which was reduced to writing and submitted to the Presiding Officer for review and approval. Through that agreement, Aqua PA has agreed to implement numerous measures in order to improve the service and water quality to that area, which was acquired in 2003. Public Input Hearings were also convened in Delaware, Montgomery and Luzerne Counties on February 25-26, 2004. Negotiations resulted in a stipulation as to the concerns of the White Rock Acres Formal Complainants which resulted in phased-in rate increases contingent on completion of various water quality and service improvement measures. The stipulation was submitted to the ALJ for approval on April 15, 2004.

All active parties submitted Main and Reply Briefs on April 20 and May 11, respectively. The OCA’s final position was that Aqua PA should receive no revenue increase. The ALJ issued the Recommended Decision on June 11, 2004, which adopted the OCA’s position that the pension tracker mechanism and the retroactive increased pension payments should be rejected. Also, the ALJ recommended a 10.00% return on equity in contrast to the 11.75% that Aqua PA had sought. If the ALJ’s recommendations were adopted, the resulting revenue requirement increase would be approximately $8.8 million of the $25.3 million that the Company originally sought.

On July 23, 2004, the PUC entered its Final Opinion and Order resolving the issues raised by the rate filing. In contrast to the ALJ’s recommendation that Aqua PA be permitted to raise its rates by no more than $8,335,773, the PUC ordered an increase of $13,794,205 or 54.5% of the original request
and an increase of about 5.6%. The PUC denied the claim for retroactive recovery of increased pension expense, concluding that Aqua PA’s claim did not constitute an exception to the rule against retroactive ratemaking because fluctuations in the stock market are not an “extraordinary and nonrecurring” event. The PUC also denied the Company’s request for a pension tracker mechanism, concluding that the proposal violated the rules against single issue and retroactive ratemaking. The PUC also denied Aqua PA’s claim for a “General Price Level Adjustment” (inflation) in part. As for the cost of common equity, the recommendations of the parties ranged from 9.25% (OCA) to 11.75% (Aqua PA). The PUC rejected the ALJ’s recommended 10.0% result, stating that 10.0% did not fully reflect consideration of a number of other factors on the record. The PUC accepted a “financial risk” adjustment and good management performance in the areas of water quality, customer service, low income assistance and regionalization efforts. Its final recommendation was thus 10.6%.

Pa. P.U.C. v. York Water Company, Docket No. R-00049165. On April 28, 2004, York Water submitted a general base rate filing to seek an increase in revenues of $4,870,000. The OCA filed a formal complaint. A Joint Petition for Settlement was submitted for the ALJ’s consideration on August 12, 2004. The Settlement proposed an increase in total annual operating revenues in the amount of $3.50 million, instead of the $4.87 million increase that the Company initially proposed. Additionally, the increase in rates to the average Residential Gravity customer consuming 5,057 gallons per month would be $3.46 per month, or approximately 16.5%. For the average Residential Repump customer consuming 4,344 gallons per month, the rates under the Settlement Petition would produce an increase of $4.24 per month, or approximately 16.5%. In contrast, under the Company’s initially proposed rate increase, rates would have increased approximately 23% for each these residential customer classes. Under the settlement, the various customer classes would experience rate increases of approximately the same percentage, because the major factor supporting much of the Company’s rate increase is York’s construction of the Susquehanna interconnection. The Susquehanna River Project, when completed, will operate to the benefit of all customer classes by enhancing the reliability of water supply throughout York’s system. Furthermore, under the terms of settlement, the Company has agreed that it will not file another general rate increase earlier than one year following the Commission’s Order approving this settlement. This agreed stay-out provision will provide York customers with a degree of rate stability. The PUC approved the settlement.

Columbia Water Company, R-00049409. On April 29, 2004, Columbia Water filed a request to increase its base rates by $466,376 (16.67%). The impact on a residential customer using 4,000 gallons per month would be an increase from $25.62 to $29.02 per month. Columbia Water serves 8,073 customers in Lancaster County. The OCA filed a formal complaint on May 26, 2004. This case was pending before the ALJ at the end of the Fiscal Year.

Utilities, Inc. - Westgate, Docket No. R-00038472. As discussed in last year’s Annual Report, on May 29, 2003, Westgate filed for an increase in annual revenues of $67,926, or 39.31%. The OCA attempted to resolve the case with the Company during the notice period. However, the OCA filed a formal complaint on September 17, 2003 and will continue to try to resolve the case with the
Company. On February 24, 2004, the parties signed a proposed settlement. The settlement provided for a revenue increase of no more than $56,000 and a 2 year stay out. In addition, the Company agreed that there is no acquisition adjustment included in rates in this proceeding or any future proceeding. On March 17, the ALJ recommended that the Settlement be approved. On April 30, 2004, the PUC entered an order approving the settlement as filed by the parties.

Emporium Water Company, Docket No. R-00005050. As discussed in last year’s Annual Report, Emporium filed for a base rate increase of $259,937 (40.2%). OCA filed a complaint, conducted discovery and a site visit. The Company also filed a Petition with the Commission for permission to recover their PURTA taxes separately through a tax adjustment surcharge. The OCA opposed the Petition, but the Commission approved a Motion on October 13, 2000, allowing the request. Other issues in the case remained under litigation, including the Company’s request to earn returns in excess of the low cost loans they were receiving through PennVest. On December 29, 2000, the ALJ issued a Recommended Decision granting the Company only $21,856 of its proposed increased request. Most significantly, the ALJ agreed with the OCA and OTS that the Company could only charge customers the actual 1% cost of its taxpayer-subsidized PennVest debt, rather than use a hypothetical capital structure that would allow the Company to earn an equity return of 9 to 12 percent on those funds. On March 9, 2001, the PUC entered an order granting Emporium an increase of only $33,371 (5.16%). Emporium filed an appeal with Commonwealth Court. Emporium’s appeal contends that the overall rate of return is inadequate and that the level of rate case expense is inadequate. OCA intervened. Emporium and the Commission Law Bureau entered into a proposed settlement of the appeal that would give the company an additional $24,000 per year and rule in the company’s favor regarding certain capital structure issues. The OCA filed comments in opposition to the Settlement, as did the PUC’s OTS. The PUC approved the Settlement of the Appeal in an order entered on June 21, 2001.

The OCA filed a Petition for Review in Commonwealth Court. On July 17, 2002, Commonwealth Court reversed the PUC’s June 2001 order finding that when the Commission seeks to exercise its authority pursuant to Section 703(g), 66 Pa.C.S. § 703(g) and amend or rescind a prior order, that the PUC is essentially embarking on a new adjudication. So, according to the Court, the appropriate "opportunity to be heard" required by Section 703(g) must be a hearing not the paper comment process which the PUC afforded the OCA and other parties in this case. On October 21, 2002, the PUC and Emporium filed separate Petitions for Allowance of Appeal with the Pennsylvania Supreme Court. The OCA filed briefs in opposition on November 4, 2002. On April 1, the Pennsylvania Supreme Court denied the PUC’s Petition for Allowance of Appeal.

On July 1, 2003, Emporium filed a Petition for Relief with the PUC. The Company asked the Commission to find that the rates currently in effect, which are the result of the illegal and vacated June 2001 PUC Order, be deemed in compliance with the March 2001 Order, which Commonwealth Court ruled should be reinstated. The OCA filed an Answer in Opposition on August 4, 2003. On September 8, 2003, the PUC denied the Company’s petition for relief and instructed the Company to file tariff supplements containing the rates approved in the March, 2001 order. The PUC also instructed the Company to file a refund plan within 30 days of its order. Emporium subsequently
filed a Petition for Review of the PUC’s order. The OCA intervened. On March 4, 2004, the Pennsylvania Supreme Court denied Emporium’s Petition for Allowance of Appeal. On March 26, 2004, Emporium filed its refund plan with the PUC and refunds are being made to the customers.

**Robin Hood Lakes Water Company**, Docket No. R-00038590. As discussed in last year’s Annual Report, on June 27, 2003, Robin Hood Lakes filed for an increase in annual revenues of $25,018, or 42%. Robin Hood Lakes serves approximately 188 residential customers in Polk Township, Monroe County. The OCA intervened on September 29, 2003. The active parties were able to reach an agreement at the mediation session in November, 2003, and settlement was filed by the active parties. On February 23, 2004, the ALJ recommended approval of the settlement. The settlement provides for an increase of $18,600 and a one year stayout until the filing of another case. On April 1, 2004 the Commissioners voted to approve the settlement.

**Penn Estates Utilities, Inc.**, R-00038429(Water), and R-00038498(Sewer). As discussed in last year’s Annual Report, on May 29, 2003, Penn Estates Utilities, Inc. filed general rate increase requests of $88,361, or 27.5% for water and $106,082, or 18.3% for sewer. The Company serves approximately 1,545 water and sewer usage customers and 235 availability customers in Pocono and Stroud Townships, Monroe County. The OCA filed a formal complaint in July, 2003. Hearings were held in October, 2003 at which time 16 customers testified in opposition to the rate increase. Some customers raised service issues too. The active parties were able to reach an agreement in principle in November, 2003. Settlement petitions were filed with the ALJ. The ALJ recommended approval of both settlements on January 12, 2004. On February 12, 2004, the PUC entered orders approving the settlements.

**Nittany Water Company**, Docket No. R-00038519. As discussed in last year’s Annual Report, on June 12, 2003, Nittany Water filed a general rate increase request. Nittany proposed an increase in base rate revenues of $72,000, or 68%. Nittany serves approximately 520 customers in Walker Township, Centre County and Porter Township, Clinton County. The OCA intervened in August, 2003. The active parties were able to reach a settlement of all issues. The settlement was filed with the mediator in November, 2003. On December 10, 2003, the ALJ recommended approval of the settlement. On February 2, 2004, the Commission approved the settlement.

**Little Washington Wastewater Company-Willistown Woods Division, and Peddlers View Division**, Docket Nos. R-00027907 and R-00027906. As discussed in last year’s Annual Report, on December 9, 2002, Little Washington Wastewater Company filed general rate increase requests for two of its divisions. Willistown Woods Division proposed an increase of $91,106(35%) and Peddlers View proposed an increase of $31,177(30%). Willistown Woods serves approximately 495 customers and an 80 unit apartment building in portions of Westtown Township, Chester County. Peddlers View serves approximately 214 customers in portions of Bucks County. On February 4, 2003, the OCA filed formal complaints and served discovery. On June 29, 2003, the parties submitted two settlement petitions to the ALJ. The first, for the Willistown Woods Division, provided for the revenue requirement proposed by the Company, with a reduced customer charge compared to what was originally proposed by the Company. In addition, the Company agreed to stay out for filing of
the next case, for at least one year. The Company also agreed to flush its sewer lines two times per year, if it received complaints from customers on certain identified streets. That provision would stay in place for two years. The settlement was sent to all customer complainants. A number of those complainants filed comments opposing the settlement and a number joined the settlement. Based on the comments opposing the settlement, the signatories modified the settlement to provide for a four year period for the provision related to flushing of the sewer lines. In addition, the Company agreed to use reasonable efforts to acquire a parcel of land adjoining the wastewater plant which would provide direct access to the plant, rather than using the streets in the development. The parties also submitted a settlement in the Peddlers View docket. The settlement provided for the revenue requirement proposed by the Company, with a reduced customer charge compared to what was originally proposed by the Company. In addition, the Company agreed to stay out for filing of the next case, for at least one year. On August 4, 2003, the ALJ issued Recommended Decisions, recommending adoption of the proposed settlements. On September 9, 2003, the PUC entered orders adopting the recommendations of the ALJ.

CS Water & Sewer Associates, Docket No. R-00027525, R-00027523. As discussed in last year’s Annual Report, CS Water & Sewer - Water Division filed a request for an increase in base rates of $85,613, or 34%. CS serves 1,746 customers including 925 availability customers, in portions of Lackawaxen Township, Pike County. Under the Company’s proposal, flat rates would increase from $18.42 to $33.29 per month plus a Pennvest surcharge of $6.10 per month. CS also proposed to eliminate the availability rate and spread those costs among the usage customers.

CS Water & Sewer - Sewer Division filed a request for an increase in base rates of $68,746 or 27.5%. CS serves 1,739 customers including 925 availability customers, in portions of Lackawaxen Township, Pike County. Under the Company’s proposal, flat rates would increase from $55.25 to $94.82 per quarter. CS also proposed to eliminate the availability rate and spread those costs among the usage customers. The OCA filed formal complaints on October 23, 2002. A public input hearing was held in Lackawaxen on January 30, 2003. A Joint Petition for Settlement was filed with the ALJ on May 13, 2003. The Settlement proposed an annual increase of no more than $27,914 (water) and $22,794 (sewer), a date by which the Company must file to convert from flat rate to metered rates, a stay out for filing of the next general rate increase to June 1, 2005, and a number of service provisions. On June 30, 2003, the ALJ issued a Recommended Decision recommending adoption of the settlement as filed. On August 12, 2003, the PUC entered an order adopting the settlement as filed.

Clean Treatment Sewage Company, Docket No. R-00038688. As discussed in last year’s Annual Report, on August 28, 2003, Clean Treatment Sewage Company filed for an increase in annual revenues of $65,754, or 15.65%. The Company serves 1,141 customers, comprised of 352 usage and 789 availability, in Pike County. The Company proposed to increase usage rates from $58.47 to $73.47 per month, or 25.6%. It proposed to increase availability rates from $23.25 to $38.25 per month, or 64.5%. The Company also proposed to eliminate 444 availability lots. The OCA filed a formal complaint. Public input hearings were held on February 25, 2004. The parties continued negotiations and on March 16 reached an agreement in principle. On May 6, 2004, the active parties
submitted a Joint Petition for Settlement. The petition proposed an increase of no more than $15,500 in Step 1 and $15,500 in Step 2. The Company agreed to study its infiltration and inflow problems as well as other operational issues. Under the agreement the Company agreed not to file for another rate increase for 18 months from the date of Commission approval of the agreement. The settlement is pending before the ALJ.

Palmer Water Company, Docket No. R-00028044. As discussed in last year’s Annual Report, on January 28, 2003, Palmer Water Company filed a general rate increase request. Palmer proposed an increase in base rate revenues of $184,644, or 35%. Palmer serves approximately 2,129 customers in Palmerton Borough and a portion of Lower Towamensing Township, Carbon County. On March 18, 2003, the OCA filed a formal complaint. Palmer subsequently filed a petition to withdraw the rate filing. The OCA did not oppose it. On August 27, 2003, the PUC approved the withdrawal of the rate filing.

**Miscellaneous Rate Proceedings**

Petition of Pennsylvania-American Water Company For Approval To Implement A Tariff Supplement Establishing A Collection System Improvement Charge (CSIC), Docket No. R-00027982. As discussed in last year’s Annual Report, on November 26, 2002, PAWC filed a Petition to implement a surcharge of up to 5% to apply only to its wastewater customers. The purpose of the surcharge was to enable the Company to collect the costs of infrastructure improvements from their customers between rate cases, much as they are able to do for water customers since the “Distribution System Improvement Charge” was approved in 1996. On December 10, the OCA filed a Formal Complaint against this proposed tariff change, asserting that there is no statutory authority for this CSIC. In contrast, the General Assembly amended the Public Utility Code in 1996 specifically to permit such a charge for water companies. The OCA also filed an Answer to the Petition asserting that the proposal should be denied because it would constitute impermissible single-issue ratemaking and would also violate the rule against retroactive ratemaking. The OCA argued further that the Company had not shown that the increase it proposed was “just and reasonable” nor that accelerated wastewater infrastructure improvements are needed. The PUC suspended the filing on January 15, 2003. Technical evidentiary hearings and public hearings were convened in May 2003. The active parties submitted Main Briefs on May 20, 2003 and Reply Briefs on May 29, 2003. The OCA argued in brief that the General Assembly has only permitted water utilities, not wastewater utilities, to apply surcharges to recover return and depreciation on replacement plant placed into service between rate cases. The Pennsylvania Industrial Energy Coalition (PIEC) case decided by the Commonwealth Court and affirmed by the Supreme Court specified that capital costs associated with new plant should not be collected through surcharges and that Section 1307 of the Code should not be used to “disassemble the traditional ratemaking process.” PAWC had not proven that investment in wastewater plant needed to be done on an accelerated basis, nor that any regulatory requirements had changed. Two of the systems acquired by PAWC are not aged and the third was acquired in 2001. The PUC affirmed that acquisition in part based upon PAWC’s statements that it had the financial strength and expertise to raise the capital necessary to fund the acquisition of the [CCA] water and wastewater assets, and make system
improvements as required on an ongoing basis. In a Recommended Decision issued July 2, 2003, the ALJ disagreed with the idea that the PUC had insufficient statutory authority to permit the requested surcharge for wastewater systems. The ALJ also disagreed that the holding of the PIEC case would be contravened by an order approving the recovery of capital costs through a surcharge. The OCA submitted exceptions to the Recommended Decision on July 22, 2003. On September 5, 2003, the PUC voted to deny the OCA’s Exceptions. A Final Order was issued on November 7, 2003 accepting the ALJ’s recommendation to permit the surcharge. The OCA filed a Petition for Review with the Commonwealth Court on November 13, 2003. The OCA submitted its Brief to the Commonwealth Court on February 2, 2004. On April 7, 2004, the PUC and the Company filed briefs. On April 21, 2004, the OCA filed its Reply Brief. Oral argument before the Commonwealth Court was held on June 9, 2004. The Court scheduled reargument for November 3, 2004, before the Court en banc.

Petition of Pennsylvania-American Water Company for a Waiver of 52 Pa. Code §§ 56.13, Docket No. P-00042089. PAWC has requested a waiver of certain PUC regulations requiring separate billing for charges related to services other than basic service. PAWC has requested that the Commission allow the Company to include on the PAWC customer bill that contains basic service charges, charges associated with the optional “Sewer Line Protection Program” (SLPP) of PAWC’s affiliate, American Water Resources. The Petition creates concerns over the potential for customer confusion under PAWC’s proposed customer bill format. In the event that waiver of Section 56.13 requirements is granted as requested in PAWC’s Petition, important consumer information would be inadequately conveyed to customers, such as the fact that: SLPP service continues to be optional; the customer can discontinue SLPP services at any time; no late penalty charge will be imposed for late payment of SLPP charges; and becoming delinquent on SLPP charges or canceling SLPP service will in no way affect the customer’s continuation of basic water and wastewater service from PAWC. The OCA filed a Notice of Intervention, Public Statement and Answer on March 15, 2004. By intervening in this Petition proceeding, the OCA sought to ensure that PAWC’s customers and all other customers will be protected by the Commission’s regulations as intended by 52 Pa. Code § 56.13. PAWC filed a Reply to Answer and New Matter, asserting that it would include disclosures to consumers in its advance notice, i.e., that consumers cannot be terminated for nonpayment of the SLPP fee, nor can they be subject to a late fee. The Commission approved the Petition with this condition.

Pa. P.U.C. v. Pennsylvania-Suburban Water Co., Docket No. R-00027986. As discussed in last year’s Annual Report, the Company filed Tariffs to become effective Jan. 30, 2003, to reflect contractual rates for service anticipated to begin in the first quarter of 2003. By Order of Jan. 23, 2003, the Commission suspended these tariffs and referred the matter to the Office of the Administrative Law Judge. The Order was entered in response to the OCA’s Formal Complaint alleging that the contractual rates are or may be unduly discriminatory and otherwise violative of sound ratemaking principles and public policy. The Company served direct testimony in support of that contract. After analyzing the new facts presented, the OCA made a settlement offer which was accepted. The Company has agreed to charge its customer the greater of the tariff rate or the contract
rate, and to provide a schedule in each base rate filing to demonstrate the results of the agreement year to year. The PUC approved the Settlement by Final Order on October 7, 2003.

**Applications & Related Proceedings**

Hidden Valley Utility Services, Docket Nos. A-210117 and A-230101. On February 17, 2004, Hidden Valley Utility Services filed applications seeking initial certificates of public convenience to provide water and wastewater service in a portion of Jefferson Township, Somerset County. Hidden Valley currently serves 1,068 residential and 18 commercial customers. The proposed rates, for a residential customer using 5,000 gallons per month, were $42.15 for water and $96 for sewer. On March 19, 2004, the OCA filed protests, as did OTS. Two customers have also filed protests. This case was in the discovery and mediation phase as of the end of the Fiscal Year.

Application of D’s Water Company, Docket No. A-210103. As discussed in last year’s Annual Report, on August 10, 2001, D's Water Company filed an Application seeking a Certificate of Public Convenience authorizing DWC to provide water service, as a public utility, to the existing apartment building and residential customers. Also on August 10, 2001, DWC filed a tariff seeking Commission approval of "initial" rates that would increase the Company's annual revenues by $38,097, or 400%, over revenues at present rates. D's Water Company serves six apartment buildings and eighteen single family residences in the Borough of Palmerton, Carbon County. The current owners purchased D's Water Company in 1976 and have operated the system since that time.

The OCA filed a Protest against the Application and a Formal Complaint in the rate case proceeding on September 17, 2001. The rate case was not assigned a separate docket number and was incorporated into the Application docket. Twelve customers filed Formal Complaints against the proposed rate increase. On October 1, 2001, DWC served revised schedules to its rate filing, which raised the proposed rate increase to $39,357. In rebuttal testimony, DWC reduced its proposed rate increase to $36,224. On February 21, 2002, DWC filed a tariff supplement, which extended the effective date of the proposed rate increase to September 10, 2002.

The OCA participated in a public input hearing in the service territory on April 15, 2002 and filed its Direct testimony on May 1, 2002 and presented oral Surrubtal at the Evidentiary Hearing on May 15, 2002. Main and Reply Briefs were filed on June 14, 2002 and June 18, 2002, respectively.

The OCA recommended that, if the PUC grants a Certificate to provide service, the Company’s claims for rate base, rate of return, revenues at present rates and expenses must be adjusted to reflect a rate increase of only $10,730. Further, the OCA recommended that DWC refund the rates collected for the past four years, in which customers have paid untariffed, unlawful rates.

On December 6, 2002, ALJ Lovenwirth issued a Recommended Decision approving DWC's application for a certificate of public convenience and recommending additional operating revenues of $30,981, exclusive of STAS revenues. The OCA filed Exceptions to the ALJ's findings. The PUC issued an Opinion and Order on March 3, 2003 approving DWC's application for a certificate
and approving rates designed to produce revenues of $30,981. The Commission directed DWC to file all affiliated transactions and contracts and remanded the matter of refunds to the OALJ. DWC and OCA participated in Alternate Dispute Resolutions, which resulted in a Settlement, which provided for total refunds of $7,173 to DWC's residential customers and the tenants of its commercial customer, the D-Estates Apartment Complex. Those refunds were to be paid within 30 days of issuance of the Commission's Order approving the settlement. On October 27, 2003, ALJ Fordham issued a Supplemental R.D. approving the Settlement. On December 5, 2003, the PUC accepted the recommendation of the ALJ and approved the refunds set forth in the settlement.
CONSUMER COMPLAINT PROCEEDINGS

Introduction

In addition to litigation in which the OCA responds to utility filings, the OCA also intervenes in numerous proceedings in support of individual consumers or groups of consumers or initiates its own formal complaint proceedings on behalf of groups of customers. Summaries of some of these cases follow.

Telephone - Service Quality and Extended Area Service Cases
(Local Calling)

Thomas v. Verizon, Docket No. C-00004254. As discussed in last year’s Annual Report, the OCA intervention was filed on November 21, 2000. Complainant seeks Extended Area Service from Bath to Easton exchanges. An evidentiary hearing was held on 3/13/01 in the service territory. An Initial Decision in favor of the Company was issued on February 15, 2002. On August 29, 2002, the Commission voted to remand the matter to the ALJ for the purpose of directing interexchange carriers to provide additional traffic data. The Remand Order issued on September 25, 2002. The parties received the Initial Decision on Remand by ALJ Nguyen on September 16, 2003. OCA submitted Exceptions to that Initial Decision, which recommended denial of Extended Area Service from Bath to Easton, on October 20, 2003. The Commission’s Final Order was entered on March 10, 2004, granting the relief sought by the Complaint in all respects. Verizon had 120 days from the entry of the Order (until August 9, 2004) to implement Extended Area Service from Bath to Easton. Verizon submitted a tariff filing indicating that the Bath local calling area would be expanded to include Easton as of June 28, 2004.

Irwin A. Popowsky v. Verizon North, Inc., Docket No. C-20026687. As discussed in last year’s Annual Report, after investigation into calling traffic data, and communication with co-complainant Dona G. Dennis, the Consumer Advocate filed this complaint on January 7, 2002, seeking extended area service from the Wesley, Pa. exchange to Franklin, Pa. exchange. Both exchanges are located in Venango County. Ms. Dennis, of Wesley, Pa. filed a similar Complaint on 12/10/01 after corresponding with Senator Mary Jo White and the Consumer Advocate. A Joint Petition For Settlement was filed. The Initial Decision of the ALJ issued on May 17, 2002 recommending approval of the settlement, which calls for a polling of the Wesley exchange customers to determine whether a majority are in favor of toll-free calling to the Franklin exchange. Verizon filed a new tariff effective July 2002, which modifies the rate bands and charges to its customers. The immediate effect on Wesley is that the residential monthly rate will decrease by about 33 cents; however, that change that would result from the addition of the Franklin exchange will be higher than that agreed to in the settlement. The settlement was amended to postpone the polling in order to allow time for Verizon to notify customers of the rate change so that unnecessary customer confusion might be avoided. Verizon conducted the poll of the Wesley customers, despite the fact that the PUC had not approved the amended settlement petition. The Secretarial letter issued and
reported that the poll had failed by twenty-six votes. On December 2, 2002, the OCA submitted a Petition to Declare the EAS Poll Invalid and For An Order Requiring A Poll of the Wesley Exchange in Compliance with PUC Regulations and Practices. The Petition set forth various inconsistencies in the transmittal letter which accompanies the ballots and the fact that the PUC had not had the ability to review the materials in accord with EAS regulations. The parties, while awaiting a decision on the Petition entered into settlement negotiations. These negotiations resulted in an agreement with Verizon to repoll the Wesley customers in March 2004. A Secretarial letter approving the agreement with Verizon North was issued in October 2003. Verizon mailed new ballots to the customers of the Wesley exchange on March 1, 2004. The PUC issued a Secretarial Letter on May 14, 2004 reporting that 60.66% of the Wesley customers returned ballots. Of those votes, 11 were voided, 499 or 47.93% were in favor of EAS and 542 or 52.07% were against EAS. As a result, EAS from Wesley to Franklin will not be implemented.

Popowsky v. Verizon Pennsylvania, Inc., Docket No. C-20028373. As discussed in last year’s Annual Report, the OCA filed its complaint on August 23, 2002. The Consumer Advocate seeks Extended Area Service for the 1100 residents of the Smock exchange, in Fayette County, to the exchanges of Connellsville, New Salem, Republic and Belle Vernon. Hearings were held in Smock, Pa, on March 25, 2003, and approximately 100 consumers attended, twenty of them offering testimony. An amicable resolution of the quality of service issues presented has been reached, as all issues have been dealt with by Verizon. The EAS issues remained and the parties agreed on a procedural schedule inclusive of evidentiary hearings in late October.

Mary Harvey, et al. v. Commonwealth Telephone Company, Docket No. C-20026959. As discussed in last year’s Annual Report, in February 2002, Ms. Harvey filed a Formal Complaint seeking Extended Area Service for her exchange, Warren Center, to the Towanda, Sayre and Little Meadows exchanges. Her Formal Complaint attached a petition bearing the signatures of 165 other Commonwealth customers in support of a larger local calling area. The OCA intervened in the case and is engaging in discovery to develop the facts necessary to support the Formal Complaint. The OCA’s motion to join MCI, Sprint, AT&T, Qwest, and Commonwealth Long Distance has been granted.

William Botti, et al. v. Verizon PA and Verizon North, Docket No. C-20030153 and C-20030263. Mr. Botti and seven other Verizon PA customers, including the Township of Saint Clair in Westmoreland County, filed a Formal Complaint seeking Extended Area Service from the New Florence exchange to the Seward exchange, also in Westmoreland County, but in the adjacent LATA. The Formal Complaints were consolidated and the OCA intervened and proceeded with discovery to seek the facts needed to assist the Complainants in meeting the burden of proof. In order to procure the necessary traffic data, the OCA has moved to join AT&T, MCI, Sprint and Global Crossing who serve the New Florence exchange. Hearings in New Florence were held on March 17, 2003 for the purpose of receiving testimony from the Complainants and other witnesses in support of the existence of a “community of interest” between the residents of New Florence and Seward and of the economic effects of the small local calling area on the New Florence community.
Thomas Goode v. United Telephone Co. of PA., Docket No. C-00004250. As discussed in last year’s Annual Report, the OCA filed a Notice of Intervention in this Formal Complaint case, through which Mr. Goode is requesting a modification of the boundary between the United Fort Loudon and St. Thomas exchanges. Two public hearings were convened on October 3, 2001 in Peters Township where approximately sixteen of the 88 Tuscarora Heights/Cowans Village customers offered testimony in support of the boundary change. Testimony was filed by the OCA and the Company concerning the boundary change. An agreement in principle was reached between the OCA, the Consumer Complainants and the Company. The Initial Decision was issued by the ALJ on November 5, 2002 and the parties received the Commission Order approving the settlement on January 10, 2003. The poll was conducted, however, it was discovered through customer contacts that several of those receiving ballots were ineligible to vote and the ballots had to be disqualified. After a recount of the ballots received from eligible voters, the poll was declared successful. The delay necessitated several modifications to the initial settlement and on May 28, 2003, a modified Petition for Settlement was submitted to the Commission for approval, in conjunction with a request for modification of the January 10, 2003 Commission Order. The Commission approved the settlement on August 28, 2003 and United proceeded to move the boundary such that Tuscarora Heights and Cowans Gap received new phone numbers with toll-free calling to their communities of interest. The implementation of the boundary change was completed in December 2003.

Chilewski, et al. v. The Northeastern Pennsylvania Telephone Co.; Spangenberg, et al. v. Commonwealth Telephone Co., Docket Nos. C-20027263, et al. As discussed in last year’s Annual Report, a total of approximately fifty customers in Lackawanna County filed Formal Complaints against the two telephone companies, which have adjacent service territories. The NEPTCO customers, residing in the Benton Township portion of the Clifford exchange, and the Commonwealth customers, residing in CTCo’s Factoryville exchange want to be able to call each other toll-free. This could be accomplished two ways, either by providing EAS or changing the boundary between Clifford and Factoryville. The OCA intervened to assist the customers in seeking an improvement to their local telephone service at the lowest reasonable cost. Public hearings were convened on October 17, 2002 in Benton Township. Approximately 100 persons attended the two hearings in Fleetville, PA, on October 17, 2002. Thirty-four residents testified. Following the hearings, the Companies and the OCA were able to negotiate a settlement in principle, to which all but one customer complainant agreed. The ALJ later recommended granting a motion to dismiss his complaint for lack of participation. The Commission approved the settlement petition proposed by the parties and the two-way EAS between Clifford and Factoryville and the expanded Optional Calling Plans were implemented by December 19, 2003.
Electric Consumer Complaint Cases

Robert Lawrence v. Met-Ed (First Energy), Docket No. C-20028394. As discussed in last year’s Annual Report, Mr. Lawrence filed a Formal Complaint on August 28, 2002 with the PUC alleging frequent lengthy electric outages, apparently unrelated to weather conditions. The OCA reviewed Mr. Lawrence’s complaints and submitted a notice of intervention on November 6, 2002. A settlement of this case requiring quality of service measures to avoid repetitive future outages was executed and submitted to the PUC. The Law Bureau of the PUC submitted Exceptions to the Initial Decision of ALJ Nguyen approving the settlement. The Law Bureau argues that the settlement may violate Section 1502 of the Public Utility Code, because it calls for an “unreasonable advantage” in favor of Complainant Lawrence and, concomitantly, “undue prejudice” to other customers who do not have the benefit of the settlement terms. Both the OCA and FirstEnergy submitted Reply Exceptions arguing that Section 1502 was inapplicable to settlements of quality of service cases, because the settlement provisions are intended only to bring Mr. Lawrence’s service quality up to the “safe, adequate and reasonable” level that is required by Section 1501 of the Code – not to enhance his service to the disadvantage of other FirstEnergy customers.

Leaman v. Met-Ed, Docket No. C-20032218. Mr. John Leaman of Wrightsville, PA, filed a Formal Complaint with a petition attached bearing the signatures of nearly thirty of his neighbors. The Complaint alleged a ten-year long history of recurrent and lengthy outages and Met-Ed’s repeated failures to effectively address his reliability concerns. The Complaint alleged that the outages put families in jeopardy by rendering water, sewer, heat, telephone and security systems inoperable and cause food to be lost through spoilage. The OCA intervened in December, 2003. The Company moved to dismiss, as a prior Formal Complaint with similar allegations from a previous time period was still pending. The OCA answered the motion, asserting that it should be denied. Settlement discussions among the Complainant, the Company and the OCA ensued. The Company has added to its previous efforts to resolve the Leaman group’s reliability concerns and believes that they are now resolved as a result. The OCA and the Complainant have agreed to stay the case while monitoring the results of the Company’s efforts. The group has not experienced an outage since mid-January 2004.

Colton v. Penelec, Docket No. C-20016363. As discussed in last year’s Annual Report, Mr. Colton and his neighbors have experienced a poor level of reliability in 2000 and 2001. The history includes nineteen sustained outages, all but one longer than one hour, plus an unknown number of momentary outages. The suspected cause is the aged distribution system; however, the OCA is looking into the complaint further with the assistance of an electrical engineering expert. An initial mediation session was held, during which settlement proposals and additional information and document requests were exchanged. The settlement has been finalized.

Hovemeyer v. GPU Energy, Informal Complaint No. 1060664. As discussed in last year’s Annual Report, Mr. Hovemeyer and twenty-six of his Tioga County neighbors (both homeowners and landowners) had been trying to get electric service to their area for several years. Mr. Hovemeyer’s informal complaint to the Bureau of Consumer Services was unsuccessful. GPU has requested
contributions in aid of construction of $71,009, even though fourteen other property owners would become permanent residents if electric service were available. (Mr. Hovemeyer currently resides part-time in the unserved area and has a generator.) The OCA investigated the situation and assisted the Hovemeyer group in obtaining electric service at the lowest reasonable cost. Settlement negotiations resulted in an offer from Penelec and a majority of the property owners voted in favor of accepting it. A settlement was reached. The residents of Carpenters Run, Tioga County have had electric service since February 2004.

Water Consumer Complaint Cases

Balla v. Redstone Water Co., Docket No. C-00992270. As discussed in last year’s Annual Report, on November 8, 2000, the ALJ issued an Initial Decision recommending sustaining complaints of inadequate service in favor of the Complainants and OCA. The ALJ recommended adopting OCA’s recommendation to require an engineering feasibility study to determine the most cost effective method for bringing the water into compliance with federal and state drinking water standards and to assure that its system provides that water pressures that comply with applicable regulatory standards. Upon completion of the study, Redstone had to submit the study and an implementation plan to the Commission for review and approval. The Commission entered an order adopting many of the ALJ’s recommendations and most important ordered the Company to perform a feasibility study within one year, with quarterly reports to the Commission and OCA.

Redstone filed an appeal with the Commonwealth Court and the OCA intervened in the appeal on March 15, 2001. The OCA submitted its brief to the court on June 28, 2001. Oral argument before the Commonwealth Court was held on September 12, 2001. A three-judge panel of the Commonwealth Court issued an opinion on October 30, 2001, which vacated in part and reversed in part the PUC Order sustaining the Complaints. The Court’s Order states that the PUC has no jurisdiction over issues of water quality for regulated public utilities, because jurisdiction is vested exclusively with the DEP. On November 13, 2001, the OCA filed an Application for Reargument of the case, as did the Public Utility Commission. The Pennsylvania Department of Environmental Protection submitted an amicus brief supporting the positions of the OCA and the PUC that the case should be reargued in light of a very recent case decided by the Commonwealth Court en banc which, if applied, would have led to the conclusion that The PUC’s Order should be affirmed. The case, Harrisburg Taxicab v. Pa. P.U.C., 2252 C.D. 2000, was decided on October 25, 2001, only five days before the panel’s decision in the Redstone case. The case holds that when two agencies have jurisdiction over the same entity, their regulations should be read in harmony, rather than as vesting exclusive jurisdiction in one over the other. On January 9, 2002, the Commonwealth Court entered an Order granting the Applications for Reargument and withdrawing the October 30, 2001 opinion and Order. The OCA and PUC filed briefs in support of The PUC’s Order on January 29, 2002. The Pennsylvania DEP and the Pennsylvania Chapter of the National Association of Water Companies filed amicus briefs in support. The case was listed for argument before the Court en banc on April 10, 2002. In advance of the scheduled argument, the parties commenced settlement discussions and the oral argument was postponed. The Court required a status report by June 1, 2002. The parties submitted status reports to the Court reporting that the DEP had agreed to fund the study required
by the PUC; however, they had been unable to reach a settlement. The Commonwealth Court scheduled oral argument on June 13, 2002 for the purpose of determining whether a further continuance should be granted. At the request of the PUC and the OCA, the Court remanded the Order for the limited purpose of modifying the dates in the Order within thirty days, while retaining jurisdiction. Upon modification, the appeal was recertified to the Court and the stay lifted. The case was scheduled for argument on September 11, 2002; however, Redstone withdrew its appeal and the argument was cancelled. The OCA continued to monitor the progress of the engineering feasibility study which was due to be completed in November 2002. On December 5, 2002 the PUC voted in favor of granting an extension of time to complete the study. The engineering feasibility study has now been submitted to the PUC, the DEP and the OCA. The OCA filed Comments with the PUC on the study contending that the study is not in compliance with the PUC Order. The Company has submitted Reply Comments to the Commission. The Company has submitted additional materials to attempt to show that it has complied with the PUC Order and the terms of the grant agreement with PaDEP. The OCA submitted supplemental comments on the additional materials and has submitted petitions to both PUC and DEP requesting that action be taken to require compliance with the PUC Order and the Safe Drinking Water Acts. As of this date, the PUC has not yet taken action to enforce its Order.

Cindy Parks v. Pennsylvania-American Water Co., Docket No. C-00015377. As discussed in last year’s Annual Report, the OCA intervened in this main extension case on June 14, 2001. Approximately thirteen hundred Hickory Pa, Washington County residents are in need of water service. The residents currently obtain water for household purposes from wells, cisterns or springs. Public Hearings were convened in Mount Pleasant Township on September 9, 2002 during which a total of sixty-two witnesses testified. The hearings were attended by over three hundred people. Main Briefs were filed on February 10, and Reply Briefs were filed on February 19, 2003. On April 30, 2003, the ALJ filed an Initial Decision rejecting the OCA position and the consumer complaints. The OCA filed Exceptions to that Initial Decision on May 20, 2003. On August 7, 2003, the Commission issued its Opinion and Order on the matter denying the OCA’s Exceptions and adopting the ALJ’s Initial Decision effectively dismissing the three Complaints filed in the matter. Among other things, the Commission held that the public need argument raised by the OCA does not invalidate the Commission’s main extension regulations which govern this case. The Commission also rejected the OCA’s customer numbers as too speculative. On September 5, 2003, the OCA filed a Petition for Review with the Commonwealth Court in response to the Commission’s August 7, 2003 Order. Consistent with the briefing schedule issued by the Commonwealth Court, the OCA submitted the Brief of Petitioner on November 26, 2003. The OCA argued that the Parks Order is inconsistent with well-established appellate law requiring main extensions for ordinary utility service without mandatory capital contributions by service applicants; that the failure to require service without service applicant contributions was an error of law in light of the overwhelming evidence of public need; that the regulations are unlawful as applied in the case, as they do not require consideration of public need nor of the overall effect on the utility’s operation of providing the service without service applicant contributions, and that the Order is unsupported by substantial evidence. Oral argument was heard on March 31, 2004.
The Court issued a 5-2 decision in favor of the PUC and PAWC on July 11, 2004. The Court majority determined that the PUC’s regulations were reasonable and that the PUC’s opinion and order should be affirmed. A minority of two, President Judge Colins and Judge Smith-Ribner, accepted the OCA’s position that the regulation was unreasonable in application because it worked to deprive an entire community of a potable source of water. The minority would have reversed and remanded the Order for this reason.

On August 12, 2004, the OCA filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. The OCA urged the Court to grant the Petition and to hear the appeal (1) because the issue of whether the PUC’s regulation was properly applied consistent with Section 1501 of the Public Utility Code is a question of first impression in Pennsylvania and (2) because access to a supply of water that meets the standards set forth in the federal and state Safe Drinking Water Acts is an issue of public importance and essential to the public safety and welfare.

Morra v. PAWC, - Docket No. C-00014733. As discussed in last year’s Annual Report, the OCA filed a Notice of Intervention in this Formal Complaint case in order to assist the Complainants in obtaining public water service from Pennsylvania-American to their neighborhood in Hanover Township, Washington County for residential and fire protection purposes. The OCA has requested that PAWC be required to provide service to the McCracken Hill community to alleviate the health and safety problems associated with the inadequate and contaminated water supplies. The Initial Decision issued on October 14, 2003; the OCA submitted exceptions on November 3, 2003. The PUC entered an Order denying the exceptions. The OCA filed a Petition for Review of the Order with the Commonwealth Court on February 13, 2004. A stay of this appeal has been granted pending a decision on the Parks v. PUC appeal, 1995 C.D. 2003.

Collier Township v. PAWC, Docket No. C-20016207. As discussed in last year’s Annual Report, Collier Township filed a Formal Complaint against Pennsylvania-American Water Co. on September 4, 2001, seeking service to approximately forty families within its municipal boundaries. While the majority of the Township currently receives service from PAWC, several areas have an inadequate natural supply and various types of contamination in that supply. Families are dependent on cisterns and hauled water, which is extremely expensive in comparison to utility service. The OCA intervened on October 31, 2001. Public Hearings were convened on August 27 and thirty witnesses testified in support of the public need for water utility service. ALJ Porterfield issued his Initial Decision recommending dismissal of the Township’s Formal Complaint. The PUC denied the Exceptions and adopted The ALJ’s Initial Decision. The OCA filed a Petition for Review with the Commonwealth Court on May 28, 2004. A stay of this appeal has been granted pending a decision on the Parks v. PUC appeal, 1995 C.D. 2003.

Ford v. PAWC, Docket No. C-20027587. As discussed in last year’s Annual Report, Cheryl Ford filed a Formal Complaint seeking water service from PAWC. The OCA filed a Notice of Intervention on August 2, 2002 in order to assist Ms. Ford and eight other families in Burgettstown, Washington County, PA to obtain water service at the lowest reasonable cost. An initial mediation session on April 28, 2003 resulted in an agreement in principle, pursuant to which PAWC will
provide service to the Complainants and seven other households, without requiring customer contributions, by the end of 2003. The Company has now received approval for an amendment to its PennVest loan to enable it to provide service to the Ford group and will go forward with the revised project.

Spinnenweber v. PAWC, Docket No. C-20027575. As discussed in last year’s Annual Report, Louis and Margaret Spinnenweber filed a Formal Complaint seeking water service from PAWC for themselves and twenty-one other families in Eighty-Four, Washington County, Pennsylvania. The OCA filed a notice of intervention on August 2 in order to assist the families in obtaining service at the lowest reasonable cost. Responses to the OCA’s consumer surveys have confirmed a compelling need for water service in the area. An initial mediation session was held on June 28, 2003. While an agreement was not reached by the parties, facts were exchanged and all agreed that additional fact-finding was necessary. The parties agreed to seek additional information and provide a status report to the mediator by June 20, 2003. At a second mediation session, the parties were able to reach an amicable agreement and reduce it to writing. The OCA assisted the Complainants in obtaining the services to which the parties agreed and the settlement agreement has now been finalized. The customers have proceeded to install service lines and the Company will contract for the construction required to provide service without contributions in aid of construction by the applicants for service. The Formal Complaint has been discontinued as a result of the implementation of the settlement.

Gas and Electric Consumer/Marketer Issues

Harris v. UGI Utilities, Inc. - Gas Division, Docket No. C-20032233. A group of Harrisburg residents sought assistance from the OCA relating to the termination of their service by UGI. Late last summer, UGI informed some of the residents that it would no longer be providing natural gas service to the 600 block of Dauphin Street, but would provide appliance conversions and new furnaces where necessary at its expense so that the residents could use propane gas as their fuel rather than natural gas. The initial provider of propane tanks and fuel was UGI’s affiliate, Amerigas. While initially, some residents were told that they would be billed on a budget basis rather than pay-as-you-go, budget billing is now unavailable. Some had difficulty purchasing sufficient amounts of fuel to heat their homes and ran out of fuel, leaving them without heat in the winter months. In addition, the residents received a letter from the Fire Chief of the City of Harrisburg, informing them that the propane tanks were installed against the advice of the Fire Department and the Mayor’s Office. The letter further advised the residents of the need to comply with a City Ordinance and National Fire Code requiring a ten-foot perimeter surrounding the tanks to be free of any combustible debris and of the potential for immediate citation in cases of violations. The letter described the introduction of propane as a fuel source in the urban residential environment as a “high risk.” The OCA assisted the residents in filing a Formal Complaint setting forth these facts with the Public Utility Commission and intervened. In addition, on January 2, 2004, the OCA along with Deborah Harris and several other individual consumers filed a Joint Petition for Emergency Relief with the Commission. The Joint Petition seeks the following emergency relief from the Commission: (1) restoration of the customers to natural gas service; (2) interim relief by providing the customers the
same services that are available to all customers of a regulated public utility, including budget billing, universal service, payment arrangements and all other Chapter 56 rights; (3) UGI to hold customers harmless for any injuries or losses due to the installation, use and maintenance of propane facilities on the customers’ property; (4) UGI will assume responsibility for repairs to the propane facilities until natural gas service is restored; and (5) UGI will take any additional measures necessary to reduce the risk of injury, death and property damage that the City of Harrisburg Fire Chief and Department of Building and Housing Development recommends. An emergency hearing was held on January 9, 2004. The ALJ issued an Emergency Order granting the relief sought by the Joint Petitioners, with the exception of requiring replacement of the natural gas main. The PUC ratified this Emergency Order. Subsequent to that Order the Company informed the customers that it would replace the gas main and restore the customers’ natural gas service. A hearing for the purpose of receiving testimony from the Complainants and others in support of the Harris complaint was convened on March 31, 2004. Following that hearing, the parties began to negotiate and the discussions proved productive. A written settlement document, was submitted to the ALJ and the Commission for approval. The ALJ recommended approval of the Settlement without modification and the Commission so ordered on September 16, 2004. A summary of the settlement terms follows.

UGI acknowledged that it failed to provide reasonable service to its customers on the 600 block of Dauphin Street when it converted the customers' heating systems to propane or other energy sources in lieu of replacing the gas main; that its notice to tenants regarding abandonment of the 600 block of Dauphin Street failed to comply with the Public Utility Code or PUC regulations; that it failed to comply with the Commission's residential service regulations in Chapter 56 with regard to UGI's customers on the 600 block of Dauphin Street and that, unless the customer of record initiates a contact with UGI requesting service be discontinued, or UGI is discontinuing service for non-payment or reasons allowed for by the Commission's regulations, UGI will treat the cessation of service as an abandonment that falls within 66 Pa.C.S. § 1102, and will follow the procedures set forth in Paragraphs 55 and 56 of the Settlement.

UGI further agreed that it will not abandon service to customers without first obtaining from the Commission a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(2) and notifying all affected customer-tenants, along with property owners, of a proposed abandonment. UGI also agreed that its customer notice of proposed abandonment or service cessation will be in plain language and will advise customers of their rights in a proposed abandonment or service cessation situation, including the right to challenge the abandonment. Such notice will also include the OCA's toll-free number, and the OCA will work with UGI to develop these consumer education materials, letters, notices, and sample agreement.

Any agreement UGI reaches with a customer concerning a proposed abandonment will be filed with the Commission and copied to the OCA and OTS contemporaneously with UGI's application for abandonment.
UGI has restored natural gas service to the 600 block of Dauphin Street, removed the propane storage tanks, converted or replaced appliances as necessary, and restored the properties to a condition at least as good as their condition before the propane installations.

UGI will not directly or indirectly recover from UGI ratepayers any costs associated with the termination and subsequent restoration of natural gas service to the 600 block of Dauphin Street, other than the cost that would have been incurred by UGI's replacing the natural gas main in 2003.

UGI has not used and will not use its Operation Share funding for costs associated with the termination or restoration of natural gas service to the 600 block of Dauphin Street; will provide sensitivity and diversity training and education to its employees, to be funded solely by shareholder-supplied funds; will meet quarterly with BCS at the Commission's Harrisburg offices for one year to discuss compliance with this Settlement; UGI will file reports with the Commission regarding its customer services, including the number of consumer disputes not responded to within 30 days.

Finally, UGI agreed to pay a civil penalty of $750,000 made payable to the Commonwealth of Pennsylvania, within 60 days of a final Commission Order approving the Settlement.

The OCA urged the ALJ and the Commission to approve the settlement as in the interest of the public and in the interest of the ratepayers, who will be shielded from any and all of the expenses associated with the settlement.

Petition of Utility.com, Inc. for Waiver of the Regulations of the Commission Related to Ninety (90)-Day Notice Requirement for Abandonment of Service, 52 Pa. Code Section 54.14(b). As discussed in last year’s Annual Report, OCA filed an Answer to this Petition opposing any shortening of the regulatory notice period to three days, as this affords insufficient time to select a new generation provider and thus does not promote customer choice. The OCA also opposed release of the marketer’s $250,000 bond until the PUC has evaluated all of the circumstances of Utility.com’s abandonment of service and withdrawal from the market. The OCA also filed a Petition for Order to Restrict the Release of Bond and to Provide Other Appropriate Relief on January 31, 2001. Subsequent to the filing of its Petition for Waiver, Utility.com dropped many of its customers, contrary to the regulations governing the orderly withdrawal of a supplier from the generation market, terms of the Supplier Tariff and contrary to its Terms of Service with its customers. The Petition alleged that customers were deprived of savings that they would have experienced had Utility.com complied with these obligations. As such, the OCA requested an Order that the bond not be returned and that all payments received from Pennsylvania customers be placed into an escrow account until an accounting is made. The PUC granted the OCA’s Motions and Ordered that the bond not be released unless and until all complaints surrounding the departure from the generation market are resolved. Utility.com filed a motion to require PECO to disclose usage data so that final bills can be issued. The ALJ recommended that the Motion be granted and certified the issue to the Commission. The OCA filed a brief in support of that recommendation on April 2, 2001. The Commission ordered hearings on the OCA’s complaint, and several utilities intervened and filed formal complaints which were joined with the OCA’s. In addition, OCA participated in the
Utility.com creditors’ committee in order to represent Pennsylvania consumers’ interests. The PUC Ordered customer usage data to be provided by PECO. The ALJ required briefs on the proper disposition of the bond proceeds. The OCA served discovery on all of the utilities in order to obtain sufficient information to substantiate the residential customers’ lost savings claims. The procedural schedule called for the submission of affidavits in support of these claims by May 16, 2001. In addition, Utility.com established a $200,000 escrow account for the purpose of repaying customer refunds and other claims. Utility.com has now refunded approximately $70,000 that had been paid in advance (such as through budget billing) by Pennsylvania consumers. The first round of refunds went primarily to customers served by Duquesne Light Co. and Allegheny Power. An additional $55,000 was set aside for refunds to customers of the remaining distribution utilities, thus bringing the total refunds recovered by the OCA on behalf of Pennsylvania Utility.com customers to $125,000. In addition, the OCA filed four Affidavits and two Memoranda of Law in support of the former Utility.com customers’ lost savings claims. Final billing was accomplished for all customers by June 2001. The OCA contended that customers should also be reimbursed for savings they lost due to the departure of Utility.com without adequate notice. The calculation of the Pennsylvania customers lost savings claims was approximately $650,000. This information was submitted to the PUC through affidavit. The ALJ rendered an Initial Decision to which the OCA took Exception and the Commission subsequently sustained the Exception and ordered that first priority to the bond proceeds should be afforded the Department of Revenue. The OCA submitted a Proof of Claim with substantiation of lost savings in the amount of $668,371 to the insolvent’s estate manager through the California General Assignment process on August 14, 2001. Final Proofs of Claim totaling an additional $4,499.34 were submitted for all known additional refund claimants by the September 6, 2001 deadline for submission of claims against the estate. These additional claims were resolved in the customers’ favor and the final refund checks were sent by the OCA directly to the former customers. The OCA continues to participate on behalf of the former Utility.com customers as a member of the Creditors Committee. A status report was circulated by the trustee stating that another payment was expected in July 2003, as the litigation involving the University of California has been resolved. In August 2003, the OCA received an additional “dividend” check from the general assignee in the amount of $80,204.60 toward the former Utility.com customers “lost savings” claim, filed by the OCA on their behalf. This brings the total lost savings payments thus far to $181,107.99. Together with the refunds of $125,081.03, the total amount recovered for Pennsylvania customers to date is $306,189.02. Due to ongoing litigation, final settlement of the matter is not expected until 2005.

Marconi v. Gasco, Inc., Docket No. C-20016646 and Gasco, Inc. v. Pa. PUC, Docket Nos. C-20016215 and C-20016552 and OCA v. Gasco, Distribution Systems, Inc., Docket No. C-20039507, et al. As discussed in last year’s Annual Report, Gasco, Inc. has filed complaints with the PUC challenging the PUC’s modifications to Gasco’s 2001 GCR filings. The OCA intervened in the Company’s complaint proceedings. In addition, more than 150 formal complaints have been filed by customers in the Kane division. The complaints allege high rates and service and billing issues. On June 20, 2002, 22 customers testified in support of their complaints, addressing issues such as billing, service, and rates. A PUC audit, issued in late July, requires the Company to refund nearly $800,000 in overcharges to its customers. The parties were able to reach a settlement, which was
recommended for approval by the ALJ, on January 14, 2003. The settlement included many terms addressing the Company’s billing issues, as well as many other consumer issues. The Company has already revised its billing format to address the requirements in the settlement.

On February 14, 2003, the OCA filed a formal complaint against Gasco’s interim gas cost rate filing made on January 15. The OCA’s complaint was assigned Docket No. C-20039507. The interim filing proposed to increase the GCR by $1.4923 per Mcf. The Commission approved the proposed interim GCR on February 20, 2003, subject to the resolution of the OCA’s Formal Complaint. On August 1, 2003, Gasco filed its final 2003 gas cost rate filing, which was approved to become effective for service on and after September 1, 2003. On August 14, 2003, the OCA filed a formal complaint (Docket No. C-20031083) against this proposed rate, which further increased the GCR by $4.1186 per Mcf. Beginning on February 14, 2003, ninety-four Gasco customers filed complaints against the level of rates proposed by the GCR filings. At a status conference on June 29, 2004, the parties agreed to consolidate complaints against Gasco’s upcoming final 2004 gas cost rate filing, continue discovery, explore settlement and set a schedule for litigation of the consolidated GCR cases. Pursuant to the approved settlement of this case, the OCA has continued to monitor the Company’s compliance through quarterly reports submitted by the Company.

On February 14, 2003, the OCA filed a formal complaint against Gasco’s interim gas cost rate filing made on January 15. The interim filing proposed to increase the GCR by $1.4923 per Mcf. The Commission approved the proposed interim GCR on February 20, 2003. The OCA’s complaint was assigned Docket No. C-20039507. The interim filing proposed to increase the GCR by $1.4923 per Mcf. The Commission approved the proposed interim GCR on February 20, 2003, subject to the resolution of the OCA’s Formal Complaint. On August 1, 2003, Gasco filed its final 2003 gas cost rate filing, which was approved to become effective for service on and after September 1, 2003. On August 14, 2003, the OCA filed a formal complaint (Docket No. C-20031083) against this proposed rate, which further increased the GCR by $4.1186 per Mcf. Beginning on February 14, 2003, ninety-four Gasco customers filed complaints against the level of rates proposed by the GCR filings. On February 19, 2004, the Company filed a Motion to Consolidate the complaints. On February 24, 2004, the OCA filed an Answer generally supporting the Motion. On March 3, 2004, the presiding ALJ issued a First Interim Order approving the Motion, consolidating all complaints and clarifying that the Company has the burden of proof in showing that the GCR rates are just and reasonable. The OCA served and received responses to discovery and participated in further informal discovery. The OCA and Gasco continued to participate in extensive discussions to explore the possibility of settlement.

**Bankruptcy Proceedings**

CASHPOINT NETWORK SERVICES, Inc., United States Bankruptcy Court, SDNY, Docket No. 04-REG-12771. CashPoint was a licensed money transmitted in Pennsylvania, among other states. On April 22, 2004, Consolidated Edison of New York and four other major creditors filed an involuntary bankruptcy petition against CashPoint. Two Pennsylvania utilities, PPL and UGI, had written agreements with CashPoint to operate as the money transmitted for utility bill payment
locations in supermarkets and other retail establishments; FirstEnergy, Columbia Gas, PECO, National Fuel did not have written agreements, but accepted payments from locations utilizing CashPoint as an intermediary. On April 23, 2004, the Department of Banking suspended CashPoint license to operate in Pennsylvania and notified all known agents to discontinue accepting payments from customers on its behalf. Soon thereafter, utility customers began to receive utility bills which did not reflect payments for the prior month that they had paid at a CashPoint location. The Trustee in Bankruptcy appointed for CashPoint filed a Motion to Require CashPoint Agents and Others To Act, essentially requesting a directive from U.S. Bankruptcy Judge Robert E. Gerber to the Agents to (1) turn over the checks and other funds in their possession to the named or designated creditors or (2) if cash or checks had been deposited into an account and commingled, to turn those funds, along with records of customer payments over to the Trustee for disposition. The OCA filed a Limited Objection to the Motion, arguing that some Pennsylvania utility Payees were threatening termination against customers whose payments had been made at a CashPoint location and not received by the utility. The OCA argued that it would be inequitable for utility Payees to receive the benefit of the turnover order when, in fact, some customers were being held responsible for the untransmitted payments. The OCA requested that, as a condition of receiving the benefit of the Order, the Payees be required to cease or refrain from collection or termination action against their customers. At the conclusion of a hearing on May 11, 2004, Judge Gerber stated that, while he could not grant the specific relief requested because many who would be subject to such a condition were not parties to the proceeding, he could exercise his general supervisory powers to request that all potential Payees submit statements advising whether they would voluntarily refrain from collection or termination actions against customers whose payments were not transmitted to the utility as intended. Several Pennsylvania utilities submitted statements in response to Judge Gerber’s Order advising that they would not hold customers responsible for untransmitted payments so long as the customer had a receipt showing that the payment had been made. To date, the PUC has received a total of 275 informal complaints from customers who used CashPoint payment locations and whose payments have not been received by the different utility companies named above. The OCA received 29 contacts in May regarding Cashpoint. All of these callers also were referred to the PUC.

**CashPoint PUC Investigation, Docket No. M-00041805.** By Order of June 4, 2004, the PUC initiated an investigation to examine the facts and circumstances surrounding the bankruptcy of CashPoint Network Services, Inc. and its impact on Pennsylvania consumers. The Order requires utilities whose customers used CashPoint payment agents to provide answers to six requests for information. First, the utility is to provide a detailed description of the nature of the utility’s relationship with CashPoint; second, a notice whether the utility has filed a letter consistent with the order of the bankruptcy court judge; third, a list of all other entities used by the utilities customers to make payments; fourth, an estimate of the number of customers affected and the dollar amounts lost as a result of untransmitted payments; fifth, a description of how the payments are processed; sixth, a description of the company efforts to educate and notify customers about payment vendors authorized to accept payments. The OCA has received and reviewed submissions of fifteen utilities.
CONSUMER EDUCATION AND OUTREACH

Consumer Education

The Office of Consumer Advocate continues to expand its consumer education efforts. The Office has produced new brochures, newsletter articles, consumer bulletins and presentations to inform the public on the functions and responsibilities of the Office, and to help consumers understand their choices in an increasingly complex utility industry.

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

- Prepared quarterly 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 available on the OCA website. It receives thousands of hits and is used in presentations all over the country by many different sources. It has become a valuable, national tool in monitoring the electric choice program in Pennsylvania.

- Prepared quarterly charts disclosing the numbers and percentages of residential customers that have switched from their local natural gas distribution company to another supplier. This information is available on the OCA website.

- Produced a monthly 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, including each electric distribution company’s price to compare and the prices 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 product offerings 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 updated monthly and receives thousands of hits on the OCA website. It has been reproduced and distributed by the PUC, the Dollar Energy Fund, the Pennsylvania Utility Law Project and other organizations as a very useful tool.
Produced a monthly statewide shopping guide for residential natural gas customers. It is similar to the electric shopping guide in that it explains how to shop for a gas supplier. It also includes charts with pricing information for both the natural gas distribution company and for any competitive suppliers serving in their territory. To date, five natural gas distribution companies have competitive suppliers. The gas guide available on our website and is distributed widely throughout the state.

Actively participated as a Consortium Board Member in the planning and implementation of the Pennsylvania Energy, Utilities, and Aging Consortium’s educational roundtable events around the state. In the last fiscal year, the Consortium held a statewide conference and three roundtable workshops, in Lancaster, New Castle and Uniontown educating over 600 consumers, government agency representatives, and community leaders on utility and aging issues. A statewide conference was planned for Grantville, near Harrisburg, PA.

Appeared in several media events, including TV. Participated in numerous interviews for radio and newspapers. Participated in two educational events, sponsored by WGAL Lancaster, one at a large mall, and one at the York Fair, both in York, PA. At both events, we reviewed consumers’ telephone bills and we gave tips on how to reduce long distance and local telephone charges. We also worked with the Council for Utility Choice and WHTM TV at a large shopping mall in Camp Hill where customers brought their phone bills and were given advice on ways to save money.

Issued Consumer Bulletins and informational letters alerting consumers to utility mergers, extended area service, main extensions, and proposed rate increases. We also issued Consumer Bulletins to announce and promote consumer attendance at locally scheduled public input hearings. At some public hearings, OCA ran prepared Power Point presentations to inform participants before the hearing, of issues to highlight and hints on presenting their testimony.

Served and actively participated as a Board Member on the PUC Council for Utility Choice, responsible for input and implementation of the statewide education programs on telecommunications choice,
electricity choice, and natural gas choice including TV, radio and print advertising, brochures and other educational materials.

- Served on the Consumer Protection Committee and the newly formed Public Relations Committee of the National Association of State Utility Consumer Advocates.

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

- 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, consumer education and protections, natural gas competition and evolving telecommunications and water issues.

- 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 Pennsylvania’s Utility Choice Program.

- Worked with utility representatives and OCA staff to prepare plain language consumer informational letters and bill messages to explain difficult to understand concepts such as telephone boundary line changes, polling and rate change issues associated with telephone’s extended area service process and changes in energy suppliers’ services.

- Monitored and supplied information and materials and participated as requested in the PUC’s Consumer Advisory Council meetings.

- Participated in many consumer fairs sponsored by the Office of Attorney General and by individual members of the General Assembly.
• Coordinated an educational program called Safeguards for Seniors with the PA Department of Aging in Philadelphia and Jefferson Counties.
## Consumer Outreach

### Presentations And Speaking Engagements

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>Event Description</th>
<th>Location</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-1-03</td>
<td>MACRUC Conference Mid Atlantic Conference of Regulatory Utility Commissioners</td>
<td>Homestead, VA</td>
<td>Electric Default Service</td>
</tr>
<tr>
<td>7-10-03</td>
<td>Senator Don White’s Senior Expo</td>
<td>Murraysville, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>7-11-03</td>
<td>PA Senate Committee on Communications and Technology</td>
<td>State College, PA</td>
<td>Gave testimony at a public hearing on Chapter 30</td>
</tr>
<tr>
<td>8-14-03</td>
<td>Senator Jake Corman’s Senior Expo</td>
<td>Mifflintown, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>8-19-03</td>
<td>Representative Mario Scavello’s Senior Expo</td>
<td>Tannersville, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>8-21-03</td>
<td>PA House Consumer Affairs Committee</td>
<td>Bethlehem, PA</td>
<td>Presented testimony on Chapter 30</td>
</tr>
<tr>
<td>8-27-03</td>
<td>Capital City Mall Event on Review of Telephone Bills</td>
<td>Camp Hill, PA</td>
<td>Interactive educational Phone Bill Review Session with consumers</td>
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<tr>
<td>9-3-03</td>
<td>US House of Representatives Energy &amp; Commerce Committee Hearing on Electric Blackout</td>
<td>Washington, D.C.</td>
<td>Presented testimony</td>
</tr>
<tr>
<td>9-11-03</td>
<td>WGAL sponsored York Fair Event</td>
<td>York, PA</td>
<td>Interactive Educational Phone Bill Session with Consumers</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Location</td>
<td>Description</td>
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<tr>
<td>9-12-03</td>
<td>Representative David Levdansky’s Senior Expo</td>
<td>South Park, PA</td>
<td>Give a presentation on saving on telephone bills and staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>9-18-03</td>
<td>PUC en banc hearing on high gas prices</td>
<td>Harrisburg, PA</td>
<td>Presented testimony</td>
</tr>
<tr>
<td>9-18-03</td>
<td>Senator Don White’s Senior Expo</td>
<td>Indiana, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>9-26-03</td>
<td>Senator John Pippy’s Senior Expo</td>
<td>South Park, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>9-26-03</td>
<td>National Fuel Gas CARES Reps</td>
<td>Erie, PA</td>
<td>Presentation on spiraling gas prices and how to communicate that issue to consumers</td>
</tr>
<tr>
<td>9-30-03</td>
<td>Energy, Utilities and Aging Consortium Roundtable event</td>
<td>Bradford, PA</td>
<td>Presented at a roundtable on How to Save on Your Telephone Bills, and reviewed consumers’ bills on site.</td>
</tr>
<tr>
<td>10-2-03</td>
<td>Senator Tomlinson’s Senior Expo</td>
<td>Bristol, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-2-03</td>
<td>Tri-County Area Chamber of Commerce Senior Expo</td>
<td>Pottstown, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-9-03</td>
<td>PA House Consumer Affairs Committee Hearing</td>
<td>Harrisburg, PA</td>
<td>Presented testimony concerning natural gas</td>
</tr>
<tr>
<td>10-08-03</td>
<td>Consortium of Economic Agencies/Companies The Path to Stronger Communities Conference</td>
<td>Erie, PA</td>
<td>Presented on Expanding Community and Digital Infrastructure</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
<td>Location</td>
<td>Description</td>
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<tr>
<td>10-10-03</td>
<td>Representative Tom Stevenson’s Senior Fair</td>
<td>Scott Township, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-14-03</td>
<td>Representative Elinor Taylor’s Senior Expo</td>
<td>West Chester, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-16-03</td>
<td>Representative Gene DiGirolamo’s Expo</td>
<td>Bensalem, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-17-03</td>
<td>Representative Mary Jo White’s Student Government Seminar</td>
<td>Clarion University Oil City, PA</td>
<td>Presentation on the state legislative process &amp; telecommunications legislation</td>
</tr>
<tr>
<td>10-17-03</td>
<td>Be Utilitywise event</td>
<td>Grantville, PA</td>
<td>Presented at a roundtable on How to Save on Your Telephone Bills, staff an information booth</td>
</tr>
<tr>
<td>10-20-03</td>
<td>PASenate Communications and Technology Committee Hearings</td>
<td>Harrisburg, PA</td>
<td>Presentation on Chapter 30</td>
</tr>
<tr>
<td>10-23-03</td>
<td>Representative Mark Mustio’s Expo</td>
<td>Moon Township, PA</td>
<td>Reviewed consumer telephone bills, staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>10-24-03</td>
<td>Energy, Utilities and Aging Consortium Roundtable event</td>
<td>Johnstown, PA</td>
<td>Presented at a roundtable on How to Save on Your Telephone Bills and reviewed consumers’ telephone bills on site.</td>
</tr>
<tr>
<td>10-28-03</td>
<td>PA Economic Development Association Meeting</td>
<td>Harrisburg, PA</td>
<td>Presentation on Chapter 30</td>
</tr>
<tr>
<td>10-30-03</td>
<td>Energy Cooperative Agency Conference</td>
<td>Philadelphia, PA</td>
<td>Presentation on Gas Choice</td>
</tr>
<tr>
<td>10-30-03</td>
<td>Senator Robert Thompson’s Senior Expo</td>
<td>Malvern, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
<td>Location</td>
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<tr>
<td>11-6-03</td>
<td>Senator Robert Jubelirer’s Senior Expo</td>
<td>Altoona, PA</td>
<td>Staff an exhibitor’s booth, answer question, reviewed consumer’s telephone bills and distribute materials</td>
</tr>
<tr>
<td>11-12-03</td>
<td>e-Pennsylvania Alliance</td>
<td>Harrisburg, PA</td>
<td>Presentation on Chapter 30</td>
</tr>
<tr>
<td>11-13-03</td>
<td>Energy, Utilities and Aging Consortium Roundtable event</td>
<td>Northumberland, PA</td>
<td>Presented at a roundtable on How to Save on Your Telephone Bill, and reviewed consumer’s bills on site.</td>
</tr>
<tr>
<td>11-18-03</td>
<td>ABC-TV Home Energy Expo</td>
<td>Harrisburg, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>12-10-03</td>
<td>Testimony Before the Senate Environmental Resources and Energy Committee Regarding SB 901</td>
<td>Harrisburg, PA</td>
<td>Proposed Energy Efficiency Standards Act</td>
</tr>
<tr>
<td>12-17-03</td>
<td>Testimony Before the House Environmental Resources and Energy Committee Regarding HB 2035</td>
<td>Harrisburg, PA</td>
<td>Proposed Energy Efficiency Standards Act</td>
</tr>
<tr>
<td>1- 15-04</td>
<td>PennFuture Conference</td>
<td>Hershey, PA</td>
<td>Pennsylvania’s Electric Restructuring at its midpoint: Is it on the Right Track?</td>
</tr>
<tr>
<td>3-4-04</td>
<td>Testimony before the PA House Consumer Affairs Committee</td>
<td>Harrisburg, PA</td>
<td>Status of Electric Restructuring in PA and HB 1841</td>
</tr>
<tr>
<td>3-16-04</td>
<td>Three Workshops on the Rising Costs of Natural Gas</td>
<td>Johnstown, PA</td>
<td>Presentations given to consumers to explain gas price issues</td>
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<td>Ebensburg, PA</td>
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<td>Cresson, PA</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
<td>Location</td>
<td>Details</td>
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<tr>
<td>3-17-04</td>
<td>Two Workshops on the Rising Costs of Natural Gas</td>
<td>Altoona Senior Service Center, Altoona, PA</td>
<td>Presentations given to consumers to explain gas price issues</td>
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<tr>
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<td>Pleasant Valley Elementary, Altoona, PA</td>
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<tr>
<td>3-25-04</td>
<td>Consortium Roundtable</td>
<td>Northumberland, PA</td>
<td>Presented at a roundtable on How to Save on Your Telephone Bill, and reviewed consumer’s bills on site.</td>
</tr>
<tr>
<td>4-8-04</td>
<td>Radio Show for Mercer Community Action Program</td>
<td>Harrisburg/Mercer</td>
<td>Explained the purpose of the electric reliability investigation and how the public can participate</td>
</tr>
<tr>
<td>4-20-04</td>
<td>State Representative Jewell Williams’ Senior Expo</td>
<td>Philadelphia, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>4-28-04</td>
<td>PA Energy, Utilities and Aging Consortium Roundtable Event for Northumberland and Schuylkill Counties</td>
<td>Mt. Carmel, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>5-6-04</td>
<td>Senator Joe Conti’s Senior Expo</td>
<td>Fairless Hills, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>5-20-04</td>
<td>Testimony before the PA House Consumer Affairs Committee</td>
<td>Philadelphia, PA</td>
<td>PGW Cash Receipts Reconciliation Clause</td>
</tr>
<tr>
<td>5-27-04</td>
<td>Senator Stewart J. Greenleaf &amp; Senator Rob Wonderling 11th Annual Senior Citizen Expo</td>
<td>Fort Washington, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>6-1-04</td>
<td>Testimony before PA House Consumer Affairs Committee</td>
<td>Harrisburg, PA</td>
<td>Status of Natural Gas Restructuring</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
<td>Location</td>
<td>Activities</td>
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<tr>
<td>6-3-04</td>
<td>Senator Pileggi’s Senior Expo</td>
<td>Aston, PA</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
</tr>
<tr>
<td>6-10-04</td>
<td>Senator John Pippy’s Senior Expo</td>
<td>Moon Township</td>
<td>Staff an exhibitor’s booth, answer questions and distribute materials</td>
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</table>
OCA CALL CENTER

The OCA’s toll free number- **800-684-6560** - was implemented about two and a half years ago to aid consumers who have questions about or problems with their utility service. The OCA’s consumer service representatives staff the toll free number from 8 AM to 6 PM, Monday through Friday. Many benefits for consumers have already been realized, but there will be long-term benefits as well. The addition of the toll free number and consumer service representatives is another step in expanding our outreach to all Pennsylvania utility consumers in the rapidly changing world of utility regulation.

During Fiscal Year 2003-2004, we had a total of more than 12,800 consumer contacts in the Call Center, including requests for shopping guides, phone calls, letters and e-mail.

Summarized here are some examples of our assistance to individual consumers:

- The OCA was contacted by another state agency with a request to assist residents of a newly constructed, low income apartment complex. The residents, many of whom are in wheelchairs, had just moved in but did not yet have their telephone service connected. They contacted the phone company and found out that there was a problem which would delay the new service for at least six weeks. The residents were very upset because they needed phones to call their doctors, families, etc.

  We contacted the phone company and discovered that there was no reportable reason for the delay other than some construction issues. When we told them that we would like all of the residents to receive temporary cell phones to use until they had service, the phone company decided to do the work immediately. They added crews to the job and worked overtime throughout the weekend. Service was established three days later and the residents were delighted. We also sent them information on the Lifeline/Link-up programs in case the residents qualified for that assistance.

- We also assisted a man who was trying to qualify for Linkup assistance. When he requested the necessary paperwork from the telephone company he did not receive it and was charged for his new service connection. We intervened on his behalf and requested a direct contact who could take his information and assist him. He qualified for the program and received his connection reimbursement from UTAP. He was grateful for our assistance.

- A man contacted us because he had been without phone service for one month and could not get through to the telephone company. He had contacted them one month prior to advise them that he was moving and to set up new service. It turns out that the order was rejected because someone had input the incorrect address into his account. We were able to get the problem corrected immediately and get him a credit on his account for the entire re-connection fee.
We assisted a senior citizen who had been contacted by her gas company asking her to prove that she still qualified for the senior citizen rate status. She was very upset because she was housebound and could not go to the utility office as they had advised. We contacted the company on her behalf and made arrangements for the woman’s son to fax the information to them, which they agreed would be acceptable.

OCA was contacted by an internet service provider (ISP) who, for the last few years, was paying a local exchange company for the use of a toll free number for his customers. Recently, the customers began to be charged $1.75 per call to the ISP. The ISP had tried to resolve this with the local exchange company, but was unable to and then called our office, as did many of his customers. After working with the phone company it was determined that an unrelated change to its billing system inadvertently caused these customers to be charged for the toll free calls. Approximately 2,800 customers were affected. Their bills were adjusted to correct for this error.

We assisted a consumer referred to our office by her State Representative. Her natural gas company had advised this consumer that her senior discount would be cancelled if she could not visit their office and verify her standing. Unfortunately, she is disabled and not able to travel to the office. Her gas company refused to allow her to provide any other verification of her standing. We contacted the company who agreed to arrange a home visit to verify her information. We contacted both the consumer and the State Representative’s office to inform them that the gas company would call to arrange a home visit. In addition, we fielded a follow up call from this consumer’s son and answered his questions. All parties involved were very grateful for our intervention in this matter.

We assisted a man who was upset that he had been billed by a long distance telephone company for service he cancelled nine months ago. He contacted the company and they told him that he was responsible for the bill. We contacted the company and found out that the service had not been disconnected properly. Even after we obtained the credit, he was billed minimum usage charges, which we were able to stop. A full credit was issued for over $200 and the account has been closed. The consumer was very grateful.

OCA assisted another consumer who had an International Calling Plan with one company but when she moved within another local telephone carrier’s territory her plan was cancelled without her knowledge or permission. She began receiving bills for international calls where she was charged the highest basic rate. The carrier was unwilling to negotiate with the consumer. We contacted the carrier to have the calls re-rated and to have the consumer put on their International Plan. After prolonged negotiations the Company re-rated all international calls and found a more economical local plan for the consumer. Our efforts saved the consumer around $300 and she was very grateful for our intervention.

The OCA received a large number of calls over a few months from consumers who had, at one time, been customers of a particular long distance company. They received bills for
taxes and surcharges on a service they no longer had. We contacted the FCC and have been advised that the company sent these bills out in error. They cancelled the bills to all who contacted them.

- OCA received a letter from a woman who was requesting assistance for her elderly mother who had been undergoing cancer treatments. She awoke one day and realized that she had no heat and no gas for her stove. She immediately contacted the gas company, who sent a technician to her home late that day. The technician told her that she needed a part which he did not have on hand. He told her that he would be back the next morning to make the repairs. He did not show up until the end of the next day, so she had been without heat for 2 full days. He replaced the part, but the furnace would still not work, so he did some more checking and found out that her service had been turned off at the main valve. The customer had been shut off in error, as the company had mixed her up with another customer on the other side of town. We contacted the daughter and advised her of her rights in this matter. The company compensated her mother for all expenses involved, and forgave her most recent gas bill. We also advised her to contact our office right away if something like this happens in the future.

- We were contacted by a man who had switched long distance carriers in July 2003. When his bill arrived, it was in excess of $1,200, and he was billed at a much higher rate than promised by the company he selected. The company admitted that they billed him in error, but he has spent the last 7 months trying to resolve the problem and obtain a corrected bill. His account had been sent to collections and he was very upset. We contacted the company and got him the proper credit adjustment. We also got them to pull his account from collections and restore his service to the proper status.

- A State Representative’s office contacted us to request that we assist one of his constituents who had no heat and was in a life threatening situation. The temperature outside was near zero and he was being told by the gas company that he needed $200 to have his service restored. He did not have the money at that time and his social security check had not yet arrived. We thought that he might qualify for the company’s Customer Assistance Program, so we contacted them to request assistance on his behalf. The customer could not get to their office, so they sent a representative to his home to obtain the necessary information. The man had his service restored quickly and he was very happy that we were able to have the company respond so quickly.

- We assisted a consumer who could not resolve a billing issue with her long distance company. She switched her long distance service from one company to another about 5 months prior to her contact with our office. When she made the switch, she did as she was told and called both her local and long distance companies. The billing from the old long distance company never stopped and the consumer was getting very frustrated. We contacted the companies and found out that there was a miscommunication between the companies,
which resulted in the ongoing billing. The long distance carrier agreed to credit her account and zero it out, which resolved the matter.

- We assisted a consumer with a problem with his gas company. He moved into a home that had a gas meter on the inside of the house. He contacted the company about having the meter moved to the outside, because he knew that it would allow better access for the company and he would not have to be inconvenienced when they needed to read the meter. He was informed that the company had to do the work and that he would have to pay for the removal and replacement of the meter to the outside. He did not feel that it was fair, and felt that the company should either allow him to have a plumber do the work at a cheaper rate, or the company should incur the expense. We contacted the company and they suggested that he may want to have a remote meter installed which was a much cheaper installation fee. He told us that the company had never given him that option.

- OCA assisted a man with a problem he could not work out with his gas company. His home had been repossessed by the bank, and his keys were taken away. When he contacted the gas company to have service turned on at a new rental property he was advised that the gas had never been turned off at the previous house. The company insisted that he let them in to turn the service off, but he did not have the keys and therefore could not let them in to the house. They told him that they could turn the service off on the outside, but he will be responsible for paying the bill until the service is terminated. We contacted the company and the bank in an attempt to have someone be responsible for shutting off the service. It took many calls and to many bank locations in other states, until we finally were able to get a resolution with the bank and the gas company. He was not held responsible for the two months it took to turn off the service.

- A customer received a letter from his electric company telling him that he owed $235 from a previous past due account. He advised them that the account had been paid in full and he even sent them proof of his payment. He was advised that they had the payment, however each month, the charge kept appearing on his bill. We contacted the company and they agreed that they had made a billing error and would fix the problem immediately. They cleared the account and sent him a letter of apology.

- A customer contacted us who had switched his gas suppliers in July 2003. As of November, 2003, the switch had just taken place, however the rate was higher than the rate he was offered. The distribution company and the supplier were blaming each other for the error, meanwhile the problem was not being corrected. We contacted both companies and had them resolve the error, giving him the original rate he was offered when he signed up.

- We assisted a consumer who moved into an apartment at the end of August. Her roommate called to switch his account over to obtain service at the apartment, but he could not do this since his name was not on the lease. He then transferred his service to her name and she applied for service. When she applied for service, she found out there was an address block
because the previous tenant owed a very high balance. She was told that she would have to fax the telephone company a copy of her license, social security card and lease. She faxed all of this information to them and signed it. She called the company again and was told they needed to talk to her landlord. They spoke with her landlord several times and were told their service would be turned on in a few days. When the service still was not on a few days later, she called them again and was told the order was kicked out of the system, however, a representative re-entered the information. When her service was still not on, she called the company again, she was told they had not received any of the requested information. We contacted the telephone company and they assured us that they would take care of the problem immediately. They released the number and the customer had service the next day.

- Another consumer called to request that we intervene in her complaint with a gas company. She made an online payment to them, for almost $300, in January. In error, the payment was deducted from her account twice. She had been trying to get a credit put back on her account since that time. In contacting the company, she found that they blamed the bank and the bank blamed the company, leaving her caught in the middle. We contacted the company and they agreed to credit her account for the double payment.

- A woman moved into a new rental property and was trying to establish gas service. When she called the gas company, they informed her that they would come out to turn on the gas but they would not light the pilots on her appliances. The company told her to either hire a plumber or have someone who knows how to light the pilots be there when they turn on the gas. Her landlord lives far away and her husband was not able to take off work to wait for the company to show up at their home. She was very frustrated and could not understand why the company could not do it for her while they were there. When we contacted the company on her behalf, we were told that this is the company’s new policy and they rarely make exceptions. The consumer decided to call the fire department to tell them about her situation because she thought it created a dangerous situation. The fire company advised her to call 911 when the company turns on the gas, and the fire company would have someone come out to light the pilots. When we called the company back to tell them that this is what she intends to do they agreed to have their serviceman light the pilots.

- A consumer had received a notice from their phone company saying they had overpaid by $300. The company informed the consumer that they would be sending out a refund check, which she cashed. Soon after that, she received another letter saying she was behind on her bill by $300. When she contacted the company, she was told that she did not owe the money and the charges would be removed from her bill. The charges were not removed and her long distance service was suspended. We contacted the telephone company and found out that the consumer had sent in a payment $300 more than she owed. The overpayment was not processed properly, thus causing the company to erroneously suspend her long distance service. The company cleared up the error and gave the customer a credit for her trouble.
SERVICE TO PENNSYLVANIA AND THE NATION

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 a Past President and Chairman of the Electric Committee of NASUCA. He currently serves on the NASUCA Executive Committee.
- Senior Assistant Consumer Advocates Denise Goulet and Stephen Keene serve 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.
- Senior Regulatory Analyst Marilyn Kraus serves on the Tax and Accounting Committee.
- Senior Assistant Consumer Advocate Dianne Dusman serves on the Consumer Protection Committee.
- OCA Consumer Education and Outreach Coordinator Grace Cunningham serves on the Public Relations 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. He now serves as a consumer representative on the NERC Stakeholders’ Committee.
- Mr. Popowsky also represents small consumers on the Board of Directors of the North American Energy Standards Board. He also serves on the Keystone Energy Board and is a member of the Harvard Electric Policy Group at the Kennedy School of Government at Harvard University.
- Senior Assistant Consumer Advocate Philip F. McClelland is Chair of the state staff of the Federal/State Universal Service Joint Board, which presents policy recommendations to the Federal Communications Commission. Mr. McClelland also serves as a NASUCA representative to the North American Numbering Council. Assistant Consumer Advocate Joel Cheskis serves as NASUCA’s alternate.
- Senior Assistant Consumer Advocate Christine M. Hoover is the NASUCA representative to the American Water Works Association Public Interest Advisory Forum and serves as its
Chair. Ms. Hoover also serves on the American Water Works Research Foundation’s Public Council on Drinking Water Research.

- Senior Public Policy Research Analyst Dan Griffiths as a consumer representative on the NERC Planning Committee and Standards of Evaluation Subcommittee.
- Senior Assistant Consumer Advocate Denise Goulet and Mr. Griffiths participate on the following PJM groups: Members Committee, Electricity Markets Committee, Credit Users Groups, Information Task Force, Demand Response Task Force, Local Market Power Mitigation Work Group, Resource Adequacy Model Work Group, PJM Public Interest and Environmental Users Group, and Distributed Generation Users Group. These committees are devoted to the development of the PJM Interconnection as a Regional Transmission Organization under the jurisdiction of FERC.

In Pennsylvania, the OCA represents the interests of consumers on a number of different boards and projects.

- Mr. Popowsky was appointed by the Public Utility Commission to the Council on Utility Choice created to oversee the education of consumers regarding utility choice.
- Senior Assistant Consumer Advocate Tanya McCloskey serves on the Board of the Pennsylvania Sustainable Energy Fund, co-chairs the Gas Universal Service Task Force and represents the OCA on the Department of Public Welfare LIHEAP Advisory Committee.
- Ms. Hoover continues to represent consumer interests in issues related to water systems. She serves as a member of the PUC’s Small Water Company Task Force, which meets regularly to address existing and emerging problems of small water and sewer systems. Ms. Hoover also continues 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.
- Mr. Griffiths and Assistant Consumer Advocate Christy Appleby participate in the PUC’s Demand Side Working Group.

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

- Grace Cunningham serves on the Board of Directors of the Energy, Utilities and Aging Consortium. The Consortium plans, promotes and sponsors educational events statewide. Ms. Cunningham also works with the Department of Aging to arrange Safeguards for Seniors educational events.
# OCA STAFF

Sonny Popowsky  
*Consumer Advocate*

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
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<tbody>
<tr>
<td>Dianne E. Dusman</td>
<td>Mary M. Gillette</td>
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<tr>
<td>Denise C. Goulet</td>
<td>Director of Administration</td>
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<tr>
<td>Christine Maloni Hoover</td>
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<tr>
<td>Marilyn J. Kraus</td>
<td>Heather S. Yoder</td>
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<tr>
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<td>Daniel W. Griffiths</td>
<td>Bonnie Hoffner</td>
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<tr>
<td><em>Senior Public Policy Research Analyst</em></td>
<td>Sheri R. Steigleman</td>
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<tr>
<td>Grace C. Cunningham</td>
<td>Kevin R. Yiengst</td>
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<tr>
<td><em>Consumer Education Coordinator</em></td>
<td>Consumer Service Representatives</td>
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