

**Office of Consumer Advocate  
Report for 2005-2008 OAG Year in Review**

**Overview of OCA and its Activities During 2005-2008**

The Office of Consumer Advocate (OCA) has served Pennsylvania utility consumers since its establishment by the General Assembly in 1976. The OCA represents 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 is a statutorily independent office, administratively included within the Office of Attorney General, Public Protection Division.

During the last four years, the OCA has continued to provide vigorous professional representation for Pennsylvania utility consumers. The OCA participates before the PUC in all major rate cases, many small rate cases, and many non-rate proceedings that have a significant impact on consumers. The OCA 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. 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 rates and service in Pennsylvania.

In the electric industry, OCA has 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 addressing, among other issues, customer assistance programs, energy efficiency activities and demand side response programs. Since much of the decision-making that affects Pennsylvania electric consumers now occurs at the federal and regional level, the OCA continued its expanded participation in key electric proceedings before the FERC and in the committees of the PJM Interconnection. The OCA also is committed to ensuring reliable electric service for Pennsylvania consumers.

In natural gas, the OCA has participated in a number of base rate cases as well as merger cases involving natural gas utilities. 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 distribution companies.

In telecommunications, the OCA has participated in cases involving telephone competition and basic service quality in Pennsylvania. The OCA has focused on the goal of ensuring that Pennsylvania maintains and enhances the provision of reliable and affordable universal telephone service throughout the Commonwealth. 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 implement the Bona Fide Retail Request program, which seeks to extend deployment of new advanced services to rural areas. The OCA also

participated in a number of service quality cases to ensure customers are receiving reliable service. At the federal level, the OCA works with the National Association of State Utility Consumer Advocates to provide the consumers' perspective in numerous proceedings before the Federal Communications Commission.

In the water and wastewater industries, the OCA continues to represent consumers in base rate increase and acquisition proceedings involving both large and small utilities. In addition, the OCA has participated in a number of service quality cases to ensure consumers are receiving safe and adequate water and wastewater service, including asking the PUC to order the takeover of a small water and wastewater utility to ensure that customers of that utility receive adequate service. The OCA also has supported the development of programs that assist low-income consumers in paying their water bills.

In addition to its litigation and regulatory activities, the OCA provides education and assistance to individuals and groups of consumers regarding matters involving their utility service. The OCA maintains a toll-free call number for Pennsylvania consumers – **800-684-6560** – and has its own Website – [www.oca.state.pa.us](http://www.oca.state.pa.us). The Consumer Advocate, Consumer Liaison and other members of the OCA staff participate in numerous presentations, roundtables, and consumer forums across Pennsylvania. The OCA also serves a legislative role by testifying before Committees of the Pennsylvania General Assembly and the United States Congress on proposed legislation that may affect Pennsylvania utility consumers.

## **Case Highlights in 2005-2008**

### **Met Ed and Penelec Rate Cap Exception Proceedings**

On November 7, 2008, the Commonwealth Court of Pennsylvania upheld the January 11, 2007, decision of the Pennsylvania Public Utility Commission (PUC) that denied rate cap exceptions for two electric utilities, Metropolitan Edison Company (Met Ed) and Pennsylvania Electric Company (Penelec). In upholding the PUC decision, the Court specifically relied on the expert testimony that had been presented by the OCA in opposition to the requested rate cap exceptions. The OCA had estimated that granting the rate cap exceptions would have cost Pennsylvania consumers **\$2.25 billion** in additional charges. The PUC agreed with the OCA's position that the additional charges were a violation of the Public Utility Code and the Restructuring Settlements that had been entered into by the Companies at the time electric generation competition was implemented. The OCA witnesses demonstrated that the rate cap exceptions were unjustified and inconsistent with the Commission's prior Orders and the statute. As a result of the Commission and Commonwealth Court Orders, the generation rates charged to Met Ed and Penelec customers will remain capped at their current levels until the end of 2010.

### **Collection System Improvement Charge Appeal**

In 2005, the Commonwealth Court ruled in favor of OCA's appeal of a PUC decision that had allowed Pennsylvania American Water Company's Wastewater Division to impose a Collection System Improvement Charge (CSIC) on its customers. The OCA had argued that the PUC lacked statutory authority to approve the collection of this charge, which would have allowed the company to receive automatic rate increases to recover the costs of certain plant investments that were made by the company between base rate cases. The OCA argued, and the Court agreed, that, without specific statutory authority, it was improper for the PUC to increase rates for this one component of costs without considering other countervailing cost decreases or revenue increases. The PUC and the utility filed Petitions for Allowance of Appeal with the Supreme Court. The OCA filed Briefs in Opposition. The Pennsylvania Supreme Court denied the PAWC and the PUC Petitions. During the fall of 2006, Pennsylvania American Water Company Wastewater division refunded to affected customers approximately \$85,000, the full amount collected from PAWC wastewater customers while the surcharge was in effect.

### **Pennsylvania-American Water Company Corporate Reorganization and Line Extension Settlement**

In May 2006, Pennsylvania American Water Company (PAWC) asked the PUC for approval of the corporate spin-off of its parent company American Water Works (AWW), through an initial public offering (IPO) of AWW's common stock. The proposed transaction was designed to reverse a transaction approved in 2002, in which RWE, a multinational holding company headquartered in Germany, had acquired all of the common stock of AWW. The OCA filed a protest against the new Application, asking that the PUC approve the Application only if certain conditions were imposed. A number of the active parties to the proceeding, including the OCA and the Company, were able to reach an agreement to resolve all issues. Most importantly for OCA, the settlement provided for PAWC to extend badly-needed public water service to three small communities in Washington and Allegheny Counties in Western Pennsylvania. The OCA had been working to bring public water service to those three communities since 2001, and as

part of the settlement of this proceeding, PAWC agreed to extend service to those communities without demanding large upfront contributions from individual customers who were seeking the service. In September 2007, the PUC approved the Joint Petition for Settlement in its entirety, and PAWC has now either begun or completed the extensions of service to all three communities.

### **PPL Rate Case Appeal**

The OCA filed an appeal with Commonwealth Court of PPL's 2004 rate case in which the Commission had allowed the Company to increase its base rates by \$137 million. In the underlying order, the PUC had explicitly adopted \$12.2 million in downward rate adjustments that had been proposed by OCA's expert witnesses. The Commission, however, overruled the OCA's objection to the Company's request for retroactive recovery of \$15 million in storm expense that had been incurred during the period in which PPL had agreed to a long-term rate cap. The OCA argued that the retroactive recovery of those charges was inconsistent with the rate cap and with the Pennsylvania electric restructuring law. On August 4, 2006, the Commonwealth Court issued an Opinion granting the OCA's appeal of this issue. The Court agreed with the OCA and found the recovery of those expenses from PPL customers to be unlawful. The Company filed a Petition for Allowance of Appeal of that decision with the Pennsylvania Supreme Court, which the OCA opposed. The Petition for Allowance of Appeal was denied by the Supreme Court and the money collected from consumers was credited back to PPL customers.

### **Federal Complaint Regarding Independence of the PJM Market Monitoring Unit**

The OCA, along with a coalition of state consumer advocates and other customer representatives filed a Complaint with the Federal Energy Regulatory Commission (FERC) asking for an investigation into the independence of the PJM Market Monitoring Unit (MMU). An independent Market Monitor is critical to assure market participants and consumers that the markets are operating competitively and without the exercise of improper market power. In testimony before FERC, the head of the PJM Market Monitoring Unit had stated that his independence had been called into question as a result of actions by members of PJM management. In December 2007, a settlement was achieved that was supported or not opposed by almost all active participants. Under the settlement, the Market Monitoring Unit became an external independent entity that is a separate corporation from PJM. PJM and the new corporate entity will enter into a six year agreement for market monitoring services. Included within the agreement is assurance that the MMU entity will have full access to PJM data, facilities, and personnel so that it can perform its functions. The Settlement was approved by FERC in 2008.

### **OCA, Pennsylvania Utility Law Project, and AARP Pennsylvania "Lifeline" Complaint against Verizon**

On July 10, 2007, the OCA filed a formal complaint jointly with the Pennsylvania Utility Law Project (PULP) and the Pennsylvania Chapter of AARP against restrictions imposed by Verizon PA and Verizon North on how low income consumers who receive a federal Lifeline discount may purchase local, long distance, and optional services. Lifeline is a rate discount that is funded through the federal Universal Service Fund in order to assist low-income customers to afford telephone service. The OCA, PULP and AARP argued that Verizon was obligated under state and federal regulations to provide the Lifeline discount to all eligible low income consumers regardless of whether they purchase their telephone services on a stand-alone "ala

carte” basis or as part of a low-cost package of services at a bundled price. Verizon, however, refused to provide the discount to customers who purchased service packages at a bundled price. The Commission entered an Order in favor of the OCA and other Joint Complainants on December 22, 2008. The Commission agreed with the OCA that Verizon’s refusal to extend Lifeline discounts to those customers purchasing basic service as part of a package of services was a violation of the Public Utility Code. The Commission ordered Verizon to revise its tariffs to permit low-income customers to receive Lifeline discounts on the purchase of the Company’s three most economical packages of local, long-distance, and optional services.

### **Modem Hijacking Refunds**

In March, 2005, the OCA entered into a first-of-its-kind settlement with Verizon to remove from Pennsylvania customers’ bills disputed unauthorized international calling charges that had resulted from a scam known as “modem hijacking.” The OCA had intervened in a number of complaint cases in which customers alleged that Verizon had billed for and was attempting to collect on behalf of its affiliate, Verizon Long Distance, disputed international toll charges. The charges related to calls to little-known foreign locations such as Tuvalu, Sao Tome and the Cook Islands, and the rates charged were as much as \$8.00 per minute. The charges appeared to result from the download of an automatic dialer from certain internet sites. Unbeknownst to the customer, the dialer caused the modem to place calls to obscure locations at very high rates and the customer only became aware of this occurrence when the next phone bill was received. Under the settlement, Verizon agreed to remove these charges from the bills of Pennsylvania Verizon Long Distance customers and to give credits or refunds to customers who already had been required to pay those bills. As a result of this Settlement, approximately \$700,000 in refunds and credits were received by more than 8,500 Pennsylvania consumers.

### **Philadelphia Gas Works**

On December 22, 2006, the Philadelphia Gas Works (PGW), the largest natural gas distribution company in Pennsylvania with 486,000 customers, asked for an annual increase in its base rates of \$100 million. After reviewing the Company’s request, the OCA presented expert testimony contending that the Company should receive an increase of no more than \$22.5 million per year. The PUC Administrative Law Judges issued a Recommended Decision providing for a \$25 million increase in rates. The ALJs adopted many of the OCA’s positions on expense claims and the overall revenue requirement. In September 2007, the Public Utility Commission issued its Final Order, concluding that PGW was entitled to a rate increase of no more than \$25 million, and adopting many of the OCA’s positions on the Company’s claims. The Company appealed the Commission decision to Commonwealth Court and the OCA intervened in the appeal in support of the Commission Order. Commonwealth Court affirmed the PUC’s Order, relying in part on the substantial evidence presented by OCA’s expert witnesses.

### **Verizon Forbearance Petition**

On September 6, 2006, Verizon filed Petitions asking the Federal Communications Commission (FCC) to “forbear” from the enforcement of a number of FCC regulations and other current obligations in Philadelphia, Pittsburgh and several other areas of its service territory. Verizon contended that the application of these regulations was no longer necessary in light of increased competition in those telecommunications markets. The OCA, along with a number of state consumer advocate offices and the National Association of State Utility Consumer

Advocates (NASUCA), filed Comments and Reply Comments in March and April 2007 opposing Verizon's request. Subsequently, in November 2007, the OCA led a delegation of consumer advocates from the affected states in meetings with FCC staff to present the advocates' concerns. On December 5, 2007, the FCC released its Memorandum Opinion and Order denying, in their entirety, Verizon's Petitions. The FCC found that the forbearance requirements in the federal Telecommunications Act were not satisfied by the Company in this case. Verizon has appealed this decision to the D.C. Circuit Court of Appeals and oral argument was held in November 2008.

### **UGI/PG Energy Merger Proceeding**

On February 16, 2006, UGI Utilities filed a Petition seeking to acquire PG Energy. UGI and PG Energy operate natural gas utilities in the central and northeastern portions of Pennsylvania. The OCA filed a Protest and submitted expert testimony arguing that the merger as filed did not provide substantial affirmative benefits to Pennsylvania consumers, as required by Pennsylvania law. After subsequent negotiations, the OCA entered into a settlement with the Companies. Under the Settlement, PG Energy agreed to reduce its annual expense claims in its ongoing base rate case by approximately \$9 million. As part of that agreement, PG Energy's former owner, Southern Union Company, agreed to fully fund its employee pension expense upon transfer of the company to UGI. The Companies also agreed to implement a service quality plan and improvements to their low-income usage reduction programs and further agreed not to seek any further increase in base rates for at least two years. The PUC approved the merger settlement with certain modifications sought by other parties, and the agreement was completed in 2006.

### **Cashpoint Bankruptcy Proceedings**

In 2005, the OCA intervened on behalf of Pennsylvania consumers in the New York State Bankruptcy Court proceeding of a bill payment company called Cashpoint that had collected monthly utility charges from thousands of Pennsylvania consumers, but had gone bankrupt before some of those payments had been turned over to the utilities. As a result, many of those customers were being asked by their utilities to pay twice for the same service and were threatened with termination if they did not make payments on bills that they believed they had already paid. The OCA urged the Bankruptcy Court to issue an Order requiring Pennsylvania utilities to refrain from taking any collection or termination action against customers who had made payments to Cashpoint. While the Judge concluded that he could not issue such an order because some of the utilities were not parties to the proceeding, he did direct all the utilities to inform the court whether they would voluntarily refrain from taking any collection or termination actions against those customers. The affected Pennsylvania utilities responded immediately that they would not take such actions against their customers, and ultimately all Pennsylvania utilities agreed not to threaten termination or to impose any additional charges on those customers. Thus, all Pennsylvania utilities honored nearly \$40,000 in customer payments to Cashpoint, as OCA had advocated.

### **Utility.com Refunds**

In December, 2005, the OCA mailed checks totaling approximately \$200,000 to about 20,000 Pennsylvania consumers who had received electric generation service from Utility.com, an Internet-based electric generation supplier. Utility.com was a California-based company that sold power to Pennsylvania consumers for 20% less than the utility's generation rate. When the

Company abandoned service in 2001, it did not provide the 90-day advance notice to customers required by Pennsylvania regulations. The OCA filed claims in a California proceeding seeking restitution for Utility.com's Pennsylvania customers who had to buy higher-priced generation during that 90-day period. The OCA obtained approximately \$200,000 as a result of those claims and distributed those funds to about 20,000 former Utility.com customers. This amount was in addition to \$125,000 in refunds that the OCA had obtained in 2001 for about 1000 former Utility.com "budget billing" customers in Pennsylvania who had paid Utility.com in advance for generation they never received.

### **Redstone Water Company Service Quality Proceeding**

During the last several years, the OCA continued its advocacy for the customers of Redstone Water Company in Washington County, PA. This work began with the OCA's intervention in a consumer complaint case against Redstone in early 2000. After full hearings and briefing, the Commission agreed with the OCA that Redstone had failed to provide adequate and reasonable service because of its poor water quality. The Company appealed that decision to the Commonwealth Court, but the appeal was subsequently withdrawn. Ultimately, the Commission required the Company either to correct the water quality problems or divest its assets for sale to another more viable water company. In 2006, the Commission approved the sale of the Redstone system to Pennsylvania American Water Company. In 2007, an interconnection between the PAWC system and the Redstone system required for the provision of safe and adequate utility service was completed. The sale and transfer of the Redstone system to PAWC was completed in 2007.

### **Sprint and ALLTEL Spinoff Proceedings**

In 2006, the PUC approved two applications involving "spinoffs" of local telephone company operations from larger telecommunications firms. The two Pennsylvania companies involved in these cases were Sprint (United) and Alltel. In both cases, the OCA filed Protests, expressing concern that the financial terms of the transaction might be harmful to the local companies and to their Pennsylvania customers. The OCA was able to reach a settlement in both proceedings. In the case of Sprint, the Company agreed to a series of financial conditions that would protect the local company from being encumbered by additional debt. The Company also agreed to a freeze on its basic local service rates until June 30, 2009. In the Alltel case, the Company agreed to cap its basic rates through June 1, 2009, accelerate its deployment of broadband services, and adopt certain service quality protections. Alltel also agreed to a number of financial conditions that will help protect the local company from potential exposure to parent company liens and debts. The PUC approved both settlements in 2006.

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