Maryland Office of People's Counsel

Fiscal Year 2002

Annual Report

Advocacy Education Referrals Training

Maryland Office of People's Counsel

Fiscal Year 2002
Annual Report

Our Services

Advocacy
The Office of People's Counsel is an independent state agency that represents the interests of residential consumers throughout the state in proceedings before the Public Service Commission, federal agencies and the courts.

Education
We keep residents informed of their rights as utility service customers. Through our consumer education programs and web site, we distribute information on current topics to consumers and community organizations throughout Maryland.

Referrals
We help limited-income consumers resolve problems with utility bills or services and obtain information about financial aid for utility bills.

Training
We offer resources to service providers so they can better aid their clients in obtaining energy, telephone and related household assistance.

6 St. Paul Street, Suite 2102, Baltimore, MD 21202
410-767-8150   1-800-207-4055   MD Relay Services: 711
www.opc.state.md.us

Contents

A Message from the People's Counsel

This has been a trying year for consumers. With one corporate scandal after another, the telecommunications and energy industries are reeling from federal and state fraud investigations and a loss of investor confidence. Revelations of corporate fraud and abuse have definitely had an impact on consumer well-being. Many energy and telecommunications companies in Maryland and around the country focused on their financial performance, raising rates and cutting costs. A number of companies went out of business, leaving customers without a clear understanding of who would provide deregulated energy and telecommunications services in the future.

What can consumers do to protect themselves? An important goal of the Office of People's Counsel is to be a voice for consumers. In this role, we spoke out often and clearly for consumers this year. We urged revisions to state consumer protection rules and opposed the closing of utility payment centers. We recommended changes to the Electric Choice program at the federal and state level to ensure that any benefits from deregulation will flow to residential consumers. We opposed an application by Verizon to enter the long distance business in Maryland before the local telephone market is sufficiently competitive. We asked for rate reductions and service improvements. We expanded outreach to limited-income consumers to ensure that they have access to state assistance programs.

The good news is that we were not alone. We frequently found common ground on many of these issues with energy and telecommunications companies, social service providers, consumer organizations, environmental groups, the Public Service Commission, the Office of Attorney General and members of the General Assembly.

We are proud of our accomplishments in FY 2002, and look forward to serving Maryland's residential consumers in the future.

Sincerely,

Michael J. Travieso
People's Counsel

About the Office of People's Counsel

The Office of People's Counsel (OPC) is an independent state agency that represents the interests of Maryland's residential consumers in energy, telecommunications, water and certain transportation matters pending before the Public Service Commission (PSC), federal regulatory agencies and the courts. Created in 1924, OPC is the oldest consumer advocacy office of its kind in the United States. In all, 40 states and the District of Columbia have consumer advocacy offices to represent residential and other utility customers.

Section 2-205(a)(1)(2) of the Maryland Public Utility Companies Article of the Maryland Annotated Code empowers the Office of People's Counsel to evaluate all matters pending before the PSC to determine if they affect the interests of residential users of electricity, gas, telephone, water, sewer and transportation. The Office may request that the PSC initiate proceedings necessary to protect consumers' interests. These investigations challenge the level of a utility's rates or request that the PSC review utility rules and practices. OPC also recommends legislation to the General Assembly.

OPC actively participates in proceedings before the Federal Energy Regulatory Commission (FERC), which regulates wholesale electric transactions and the interstate transportation of natural gas and electricity, the Federal Communications Commission (FCC), which regulates interstate telecommunications services, and the Federal Trade Commission (FTC). OPC is a member of the National Association of State Utility Consumer Advocates (NASUCA), with representatives on the Electric, Natural Gas, Telecommunications and Consumer Protection Committees.

The agency functions as a small law office, employing a staff of 19 (18 FTE) and retains consultants to provide technical assistance and expert testimony. Consultants are highly qualified accounting, engineering and economic experts who perform research, assist with the drafting of written comments and appear as expert witnesses in proceedings before the PSC, federal agencies and in the courts.

Operating Budget

In the Fiscal Year 2002, the Office of People's Counsel operated with a budget of $2,495,890. OPC's largest expenditure, which represents about 36 percent of the budget, is for technical consultants who provide expert testimony in cases before the PSC and in connection with People's Counsel filings at FERC, FCC and FTC.

OPC does not receive taxpayer dollars. OPC had received funding from the state's General Fund budget through an assessment on the gross operating revenues of Maryland's regulated utility companies and suppliers. In FY 2002, the General Assembly passed legislation (House Bill 135) that created a special fund that uses utility company and supplier assessments and fees to pay for the operations of the Office of People's Counsel and the Public Service Commission. While remaining subject to the state budget, House Bill 135 gives OPC the flexibility to allocate resources when and where they are needed to benefit Maryland consumers in today's rapidly changing energy and telecommunications markets.

Consumer Outreach

An important OPC activity is the education of consumers about changes to their utility services and rates under energy and telecommunications deregulation. During FY 2002, OPC worked with the PSC, the Office of Attorney General, the legislature, utilities, marketers and other stakeholders to inform consumers about their rights and responsibilities when purchasing regulated and unregulated services. OPC staff members have the necessary knowledge and resources to be effective educators and advocates for residential utility customers.

Keeping Consumers Informed

OPC issued a series of reports and alerts during FY 2002 to raise consumer awareness of current developments that could affect consumer financial or personal health.

In October 2001, People's Counsel Michael Travieso and OPC staff participated in a press event organized by Maryland Congressmen Benjamin L. Cardin and Elijah E. Cummings. The participants called on President Bush to increase funding for the Low Income Home Energy Assistance Program (LIHEAP), which provides funding for Maryland's Energy Assistance Program. Representatives Cardin and Cummings stressed that despite significant increases in energy costs, there had been no increase in LIHEAP funds in FY 2002. At the end of the difficult 2000/2001 winter, Maryland had distributed all of its federally-allocated assistance funds. Local Fuel Funds and private charities had distributed all of their resources as well. While the President did not release $300 million in emergency funds, the Administration did increase the basic LIHEAP budget from $1.4 billion in FY 2001 to $1.7 billion in FY 2002.

Report on Electric Choice. In January 2002, OPC issued the first report on the state's Electric Choice program. The report concluded that Maryland's residential electric unbundling program contained many consumer-friendly features but had not yet produced the expected results in terms of price competition and new services.

OPC suggested that the Maryland General Assembly consider actions that would revise the Electric Choice program to protect residential consumers. OPC suggested that the General Assembly consider legislation to require electric utilities to remain retail suppliers for all residential customers on their systems after the transition periods end. The report also proposed additional actions to improve the Electric Choice program. These recommendations included: allowing municipal aggregation; increasing the size and scope of the regional transmission organization that serves Maryland customers; and revising and adding new residential utility consumer protection rules to the Maryland Code of Regulations (COMAR).

After release of the OPC report, members of both the State Senate and House proposed legislation to establish a joint oversight task force to examine and evaluate the status of Electric Choice and competition in Maryland. While the legislation did not pass the 2002 session, legislators continue to discuss the future of the Electric Choice program. Also, as required under the

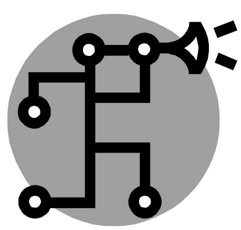
Electric Customer Choice and Competition Act of 1999, the Maryland Public Service Commission opened a proceeding to determine the extent of competition in the electric supply market and determine the appropriate role for utilities as suppliers of a regulated supply service (Case No. 8908).

Closing of Baltimore Gas and Electric Company's Public Payment Centers. In May 2002, Baltimore Gas and Electric Company notified the PSC that it would close its two remaining customer payment centers on July 1, 2002. BGE contracted with ACE Cash Express to handle the bill payment responsibilities. Concerned that elimination of company-run payment centers would reduce service quality for city residents, OPC asked the PSC to order BGE to delay the closing of the centers and institute a proceeding to determine if the closings were in the public interest.

After negotiations with PSC staff, OPC, the Maryland Consumer Rights Coalition, the Market Center Merchants and the All People's Congress, BGE changed its mind. On June 19, BGE announced they would close their Eastpoint Mall public payment center on July 1, 2002, but will keep the downtown teller operation in BGE's corporate headquarters open until July 1, 2003 with reduced hours.

On June 27, the PSC directed BGE to establish new procedures to protect consumers against inadvertent shutoffs and delayed service restoration resulting from miscommunications with the new payment vendor. BGE must also make periodic reports on the migration of customers from the company's public payment centers to the third party vendor, ACE. During the next year, the Commission and OPC will monitor the payment centers to make sure that the closings do not reduce service quality.

FY 2002 Consumer Alerts



- If you have complaints about BGE payment centers, the Public Service Commission wants to hear from you.
- Maryland consumers are paying too much for local telephone services.
- Utility safety message: Don't be "Like Mike."
- Opt out to protect your privacy. Read the special notice in your local telephone bill.
- Utility consumer protection rules need revision.
- Consumers can learn about energy bill management and conservation, and apply for energy assistance grants, at LifeStyle Expo 2002.
- Water conservation tips for summer.

Education and Training

OPC staff responds to hundreds of consumer complaints and requests for information about electricity, natural gas, telephone and water utility services each year. In January 2002, OPC implemented a new system to record consumer calls to the office. The Access-based system allows OPC staff to track trends in consumer complaints and improves staff efficiency in processing client cases.

OPC also developed a training information packet for its outreach and education efforts. The packet covers a range of consumer rights information, including applications for service, denial of service, payment arrangements, security deposits, landlord-tenant issues, termination procedures, billing issues, gas and electric suppliers, water companies and PSC dispute procedures.

In conjunction with Case No. 8896, the COMAR revision process, and the closing of BGE payment centers, OPC organized a concerted outreach program for service providers and consumers, sending letters, e-mails and fax alerts to over 30 legal and social service agencies. OPC developed screening and intake forms, as well as consumer information sheets, for use by the Public Justice Center in its efforts to assist customers with utility billing problems.

Consumer Brochures

OPC produced two new brochures during FY 2002 to help consumers manage their utility and telephone bills.

Are you paying too much for long distance telephone service? is designed to help consumers decide which long distance plan is right for them. *How to make a complaint about your local utility service* is a step-by-step guide to the Public Service Commission's complaint process, and tips for making a complaint.

OPC initiated new outreach programs throughout the state. OPC received an excellent response from a mailing of brochures and an order form to all county library systems. OPC also started a program to make its consumer brochures available in Spanish and contacted social service programs that serve the Hispanic Community in Maryland. Two publications are now available in Spanish: the complaint brochure and the *Electric Universal Service Program* brochure.

Resource Guides. OPC updated its popular Resource Guides series. The Resource Guides describe available state and local energy, housing and telephone assistance programs in each county and Baltimore City to help social workers, advocates, volunteers and consumers identify financial aid offices, contacts and programs. OPC distributes the guides as part of its training materials and to energy assistance providers who work with consumers.

OPC staff continued a successful outreach program during FY 2002, exhibiting at community fairs and conferences around the state and appearing on radio and television shows (see chart). OPC's web site, **www.opc.state.md.us**, received an average of 20,000 visitors each month, a 55 percent increase over FY 2001. In addition to consumer alerts, fact sheets and news releases, the site allows consumers to download OPC testimony and legislative summaries.

In recognition of the need for more training of social service providers on consumer rights, OPC conducted a series of educational sessions for non-profit and other agencies on PSC consumer regulations. The sessions covered consumer rights for bill payment and service, as well as energy assistance resources. Each of the 20 to 25 attendees per session received reference materials to take with them.

OPC also continued publication of its popular newsletter, *On Your Side*. This quarterly publication delivers news and information to more than 1,300 legislators, consumers, advocates and service providers in Maryland and around the country.

Consumer Education Advisory Board

The Consumer Education Advisory Board (CEAB) is an outgrowth of the Commission's electric restructuring proceedings in Case No. 8738. The CEAB assists the PSC with the development of a statewide consumer education plan on electric restructuring. The Commission appointed OPC to the Board in April 1999 and OPC has served as recording secretary since the Board's inception. As secretary, the OPC representative is responsible for drafting minutes, memos and reports for the CEAB.

OPC provided materials to the PSC and its consultants specific to consumer education, reviewed draft educational material and offered suggestions and revisions to the state consumer education campaign. OPC continues to monitor the development of the electric market and advise the PSC of residential utility consumer concerns through its membership on the Board.

Speaking Up Speaking Out

FY 2002 Presentations and Exhibits

- Marc Steiner Show, 88.1 WYPR National Public Radio
- Fast Forward, Montgomery Cable Television
- Fox Channel 45 Newsmakers
- Cardin on Congress Cable TV Show, with Congressman Ben Cardin
- Maryland Public Television
- 88.9 WEAA Morgan State University Radio
- Maryland Association of Counties Annual Convention
- St. Vincent DePaul Care and Share
- New Southwest Mt. Clare Fall Fair
- FORVM for Rural Maryland Summit
- Emily Price Head Start Training Day
- St. Jerome's Head Start Training Day
- YMCA Baltimore Head Start
- Baltimore County OHEP Energy Assistance Training
- Radio One Lifestyle Expo
- Chestertown OHEP Energy Assistance Fair
- Montgomery County OHEP Energy Assistance Training
- Baltimore Senior Law Day
- Cambridge Senior Celebration
- Economics of Poverty Conference, Coppin State College
- Maryland Municipal League Convention
- National Association of State Utility Consumer Advocates Convention
- Harford County Energy Expo
- Kent County Energy Expo

Energy Advocates

OPC is an active member of Energy Advocates, a statewide coalition of low-income energy customer advocates, and has served as a conduit for information about statewide consumer education activities targeted at low-income consumers at monthly Energy Advocates meetings. OPC encourages members to attend CEAB meetings as interested parties and make recommendations on ways to integrate the Electric Universal Service Program (EUSP) into the PSC's statewide education campaign. OPC advises the group about PSC actions and decisions affecting consumers, particularly limited-income utility customers.

In FY 2002, OPC worked with members of Energy Advocates to target mailings to the estimated 30,000 low-income households in federally subsidized, or Section 8, housing properties to alert management and consumers of the availability of the new Electric Universal Service Program (EUSP). Energy Advocates disseminated flyers and brochures about the EUSP program and offered on-site training to consumers.

OPC provides administrative support to Energy Advocates by developing and maintaining the Energy Advocates database. In addition, in the past year, OPC took primary responsibility for mailing notices, alerts and meeting agendas to members of this coalition.

DHR EUSP Advisory Board and MEAP Policy Planning Committee

OPC is an active member of Department of Human Resources EUSP Advisory Board, which addresses program design issues for the Electric Universal Service Program.

OPC uses information from formal case filings to provide input to the Board about customer access to the EUSP program.

OPC has also been involved in making recommendations to improve the Maryland Energy Assistance Program (MEAP), run by the Office of Home Energy Programs (OHEP) in the Department of Human Resources. OPC conveys information from PSC proceedings dealing with collections and payments. This information provided the basis for new MEAP program provisions that offer greater access and coverage for limited-income customers.

OPC also participated on the Governor's Task Force on Energy Efficiency and the DHR Task Force on Outreach and Access.

Investigative Services

OPC began operating its own investigative office in November 2000 to ensure that consumers are not misled or confused about contract requirements or services. The staff investigator works with attorneys to review license status and license applications, responds to consumer complaints and monitors the advertising, marketing and solicitation activities of retail natural gas, electricity and telecommunications providers in the state. The investigator uses the Internet to conduct a substantial portion of these investigations. If OPC determines that a company is soliciting or selling such services in Maryland without a license, OPC will take appropriate action to have the company apply for a license or cease operating in the state.

The office investigated 55 cases from July 2001 to July 2002. OPC was able to assist in resolving several complaints of fraudulent energy marketing practices. Approximately $600 in charges were written off customer bills as a result of the OPC investigation.

At the request of the PSC's Office of External Relations, OPC investigated a series of forgery complaints. The three-month investigation revealed that someone had forged the names of three customers of Baltimore Gas and Electric Company (BGE) on an electric supplier's enrollment forms. Once the investigator confirmed the forgeries, the customers did not have to pay $525.00 in fraudulently assessed fees. The PSC Staff Counsel is expected to refer this case to the Maryland Office of Attorney General's for prosecution.

In May 2002, the OPC investigator began a program to verify the license status of all companies licensed by the PSC. In many cases, companies licensed by the PSC had either forfeited their charter filing with the Maryland. Dept. of Assessment and Taxation or their filing was not in good standing. This is an on-going investigation. However, OPC has identified 11 companies with defects in their official documents on file with the State of Maryland.

OPC was successful in getting companies who were marketing in the state without the proper licenses to withdraw from doing business in Maryland. Maryland regulations clearly require all electricity and natural gas suppliers to have a license from the PSC, whether they do business in person, by mail, by telephone or over the Internet. However, "dot.com" companies offering energy broker/aggregator services via the Internet from locations outside the state may not have a proper license for each state.

OPC also found several unlicensed telecommunications providers doing business in Maryland. After OPC advised them of the license requirements, the companies withdrew from that portion of the business.

Legislation

The 416th session of the Maryland General Assembly adjourned April 8, 2002. OPC proposed and supported a number of bills that provided benefits to residential consumers.

Telecommunications

Passed: Public Service Commission Standards and Procedures - House Bill 1164

This bill sets a 180-day limit for the PSC to resolve complaints between two telecommunications service companies, and clarifies that any rules the PSC adopts must comply with federal telecommunications laws.

OPC originally supported this bill as a tool to promote competition among local telecommunications providers. After amendments weakened the bill, OPC became silent on its position. The bill passed the General Assembly, and was signed into law.

Ban on Telemarketer's Use of Automessages - Senate Bill 66

This bill would have prohibited telemarketers from using recorded messages for solicitation purposes. Telemarketers opposed this bill, arguing that it would cause them to lose business and lay off workers. The bill received an unfavorable report by the Senate Finance Committee.

Wireless Telephone Service Consumer Protections - Senate Bill 449, Senate Bill 768, House Bill 727

This legislation would have added new provisions to the Maryland Code to regulate wireless telephone service. Senate Bill 768 and House Bill 727 included service quality, price disclosure, number portability and enhanced 911 service. The legislation would have given the PSC the power to investigate complaints and violations of its regulations. The bill would also have given OPC the same powers and responsibilities for wireless companies that it has for utilities presently regulated by Maryland law. The wireless telephone industry opposed this bill. The bill received an unfavorable report by the Senate Finance Committee.

Regulation of Telephone Solicitation by Public Service Commission - Senate Bill 674

OPC supported this bill, which would require the PSC to establish and maintain a database of residential telephone subscribers who choose not to receive telephone solicitations, and would prohibit a telephone solicitor from calling a residential telephone subscriber on the list. OPC receives numerous calls from consumers asking why Maryland does not have a "Do Not Call" list for telemarketers. This bill received an unfavorable report by the Senate Finance Committee.

Wireless Contract Cancellation - House Bill 13

This bill proposed to allow customers to cancel their contracts for wireless telephones within thirty days if customers found that service coverage and quality were not as advertised by the wireless provider. OPC testified in support of this bill. Wireless

2002 General Assembly
Important Legislation for Residential Consumers

Telecommunications

House Bill 1164 — Passed
Public Service
Commission Standards and
Procedures

Senate Bill 66
Ban on Telemarketer's Use of Auto
Messages

Senate Bills 449 and 768; House
Bill 727
Wireless Telephone Service
Consumer Protection

Senate Bill 674
Regulation of Telephone Solicitation
by Public Service Commission

House Bill 13
Wireless Contract Cancellation

House Bill 61
Interexchange Telecommunications
Carriers - Customer Rights

House Bill 63
Basic Local Exchange Quality for
Telephone Service

House Bill 62
Telephone Lifeline Service
Enhanced Enrollment

Energy

House Bill 135 — Passed
PSC and OPC Special
Funding

House Bill 1148 — Passed
PSC Authorization to
Issue Cease and Desist Orders

Senate Bill 653 — Passed
Task Force to Study
Moving Overhead
Utility Lines Underground

House Bill 1130 — Passed
Universal Service
Program Fund Retention

Senate Bill 2 and House Bill 345
Aggregation by Municipal
Corporations

Senate Bill 894 and House Bill 1440
Joint Oversight Committee on
Electric Customer Choice and
Competition

Senate Bill 509 and House Bill 680
Separation of Regulated and
Nonregulated Business Units of
Electric Companies

Senate Bill 783 and House Bill 1280
Use of Trade Names and
Trademarks by Electric and Gas
Companies

Senate Bill 541 and House Bill 1332
Energy Efficiency Investment Fund

House Bill 1215
Clean Energy Portfolio Standard

Senate Bills 348 and 681; House
Bills 268, 402 and 1375 -
Assistance for Limited Income
Energy Customers

telephone providers opposed the bill, arguing that it is unnecessary because wireless providers already allow consumers to "test" their service and cancel their contract within a certain period. The bill received an unfavorable report by the House Environmental Matters Committee.

Interexchange Telecommunications Carriers/Customer Rights - House Bill 61

This bill would have permitted customers to sue their interexchange telephone carriers, notwithstanding provisions in their service contracts that required binding arbitration of disputes between the customer and the telephone carrier. OPC supported this bill. Interexchange carriers opposed this bill, arguing it could expose them to numerous lawsuits and somehow lead to the loss of jobs in Maryland. The bill received an unfavorable report by the House Environmental Matters Committee.

Basic Local Exchange Quality for Telephone Service - House Bill 63

This legislation would have established basic local telephone exchange service quality standards. OPC supported this bill. Verizon Maryland, Inc., the incumbent local telephone exchange carrier, opposed this bill, arguing that compliance would be too costly. The bill received an unfavorable report by the House Environmental Matters Committee.

Telephone Lifeline Service Enhanced Enrollment - House Bill 62

This bill proposed to expand telephone lifeline service, which is subsidized telephone service for low-income consumers. OPC supported this bill as a means to provide more people with the opportunity to qualify for this service. The bill received an unfavorable report by the House Environmental Matters Committee.

Energy

Passed: PSC and OPC Special Funding - House Bill 135

This bill establishes a special fund for the PSC and OPC, allows the PSC to collect fees for filings, and provides the PSC with an exception from the Administrative Procedures Act. OPC supported this bill. The bill passed the General Assembly and was signed into law. House Bill 135 will help ensure that OPC and the PSC have the financial resources to protect consumers and the public interest. House Bill 135 may also help ensure that OPC's and PSC's funding is less vulnerable to political pressures, which in turn, may help protect OPC's and PSC's independent judgment.

One portion of this bill revived a Commission order in Case No. 8820 that a Maryland Court of Appeals had struck down. The regulated utilities affected by that order challenged House Bill 135 as an unconstitutional encroachment on the power of the Court of Appeals, among other arguments. OPC, the PSC and other parties representing energy suppliers argued that the bill was constitutional and could be applied to a pending case, specifically, the appeal of Case No. 8820.

[On October 11, 2002, the Court of Appeals reversed the judgement of the Circuit Court and struck down sections of House Bill 135 that relate to the Administrative Procedures Act because the sections violate the "single subject" requirements in Article III, Section 29 of the Maryland Constitution. The Court found no connection between the provisions relating to the Public Utility Regulation Fund and the PSC's compliance with the APA. The parts of the Act that relate to OPC and PSC funding remain unaffected by the ruling.]

Passed: PSC Authorization to Issue Cease and Desist Orders - House Bill 1148

This bill provides the PSC with the power to issue cease and desist orders. OPC supported this bill, arguing that the PSC needed more power to act quickly and resolutely in certain instances where the public safety is endangered. This bill was passed by the General Assembly and signed into law.

Passed: Task Force to Study Moving Overhead Utility Lines Underground - Senate Bill 653

Governor Glendening recommended the task force after an investigation found distribution system failures and significant power outages along the Eastern Shore of Maryland. One of the recommendations of the investigation was a study of the possibility of moving overhead wires underground to make the wires less vulnerable to breakage during inclement weather. The bill was passed by the General Assembly and signed into law. OPC supported the bill and has a representative on the task force.

Passed: Universal Service Program Fund Retention - House Bill 1130

For a second year, the General Assembly passed a one-year amendment to the Electric Universal Service Program law. The *Electric Customer Choice and Competition Act of 1999* set up the Electric Universal Service Program to help limited-income consumers pay their electric bills. Because of low participation, there have been unexpended funds at the end of the program year. The bill allows the PSC to retain any unexpended Universal Service funds at the end of the fiscal year (June 30, 2002) and make those funds available for disbursement through the following year. The funds will go to electric customers who qualified for assistance during fiscal year 2001 and who applied for assistance from the fund before July 1, 2002.

Aggregation by Municipal Corporations - Senate Bill 2 and House Bill 345

This bill would have repealed the provision in the *Electric Customer Choice and Competition Act of 1999* that prohibits a county or municipal corporation from acting as a purchasing agent for electricity for customers in the municipality. Counties and municipal corporations would be permitted to act as aggregators for the purchase of electricity or gas for customers located within their boundaries. OPC supported this legislation as a tool to increase competitive options for residential customers by creating a large buyer pool that would attract marketers and increase enrollment. The General Assembly did not pass this bill.

Joint Oversight Committee on Electric Customer Choice and Competition - Senate Bill 894 and House Bill 1440

This legislation would have established a committee to examine and evaluate the status of electric choice and competition in

Maryland. The committee idea resulted from a series of recommendations OPC provided to the General Assembly in its Report on Electric Choice in January 2002. Concerned about the lack of competitive options for residential consumers, OPC recommended that the General Assembly keep retail customer choice but revise the law to require electric utilities to continue to provide a regulated retail electric service for customers on their systems. The committee would have evaluated these and other legislative changes needed to smooth the transition to a restructured electric industry. The General Assembly did not pass this bill.

Separation of Regulated and Nonregulated Business Units of Electric Companies - Senate Bill 509 and House Bill 680

These bills, which were identical, proposed to separate the regulated business interests of electric public utility companies from the unregulated interests. The electric utilities opposed these bills, saying that that such restrictions were extreme. OPC supported these bills and argued that unregulated affiliates could confuse consumers and possess an unfair competitive advantage because of their relationship with their parent companies and other affiliates. The General Assembly did not pass either bill.

Use of Trade Names and Trademarks by Electric and Gas Companies - Senate Bill 783 and House Bill 1280

These bills proposed to prohibit the use of an electric or gas company's trade name or logo by an affiliate of the electric or gas company. OPC argued that an unregulated affiliate's use of a regulated utility's name or logo was confusing to customers and harmful to competition. The regulated utilities were opposed to this bill, saying that it unlawfully regulated the use of their name, logo, and conduct of the affiliate. The bill did not pass.

Energy Efficiency Investment Fund - Senate Bill 541 and House Bill 1332

This is the third year that members of the General Assembly introduced bills to support funding for statewide energy efficiency programs. OPC has supported such funding since the implementation of electric restructuring in 1999. This year, the energy efficiency bills were crafted to reflect the recommendations of the Governor's Energy Efficiency Task Force Report issued in December 2001.

The bills would have created an investment fund administered by the Maryland Energy Administration and funded through a surcharge based on the electricity usage of business and residential customers. OPC testified that this program is important to residential consumers because it could reduce peak energy demand, and therefore reduce energy costs during peak periods. The bills received unfavorable reports by the respective House and Senate Committees.

Clean Energy Portfolio Standard - House Bill 1215

This bill would have allowed the PSC to establish a clean energy portfolio standard for electricity products and a Clean Energy Fund. Starting in 2006, all electricity products would have to meet a minimum standard for clean energy. The money in the fund would come from compliance payments from companies that failed to meet the Clean Energy Portfolio Standard.

OPC has supported the establishment of a clean energy portfolio standard since the implementation of electricity restructuring. Such a standard can benefit residential customers by promoting the development of diverse energy sources that do not rely on fossil fuels (coal, natural gas and oil) and have fewer negative environmental impacts. The bill received an unfavorable report from the House Committee.

Assistance for Limited Income Energy Customers - Senate Bill 681, Senate Bill 348, House Bill 268, House Bill 1375 and House Bill 402

Members of the General Assembly introduced several bills during the 2002 legislative session to provide various types of assistance to limited-income energy customers. House Bill 268 would have established a Natural Gas Universal Service Program, similar to the Electric Universal Service Program. House Bill 1375/Senate Bill 681 would have allowed unclaimed public utility funds, such as unclaimed customer deposits, to be used for crisis energy assistance. These bills received unfavorable reports from committees.

House Bill 402 and Senate Bill 348 would have required the state Department of Human Resources (DHR) to develop and implement strategies to increase service coordination and outreach regarding several programs administered by DHR. The strategies were intended to increase the participation rates in these programs, including the Maryland Energy Assistance Program (MEAP) and the Electric Universal Service Program (EUSP) administered by DHR's Office of Home Energy Programs. OPC supported these bills.

The bills received an unfavorable report from the House and Senate Committees, apparently in response to fiscal concerns. However, DHR subsequently did establish a Task Force on Outreach and Access, and invited OPC to participate, along with nonprofit agencies, legal services providers, and government agencies. The Task Force will submit a report to the General Assembly in December 2002.

Electricity

Case No. 8919 - Investigation into Changes in Certain Commission Regulations on Service Terminations, Payment Plans, Residential Customer Deposits and Certain Emergency Regulations

The PSC issued a Notice of Rulemaking Proceeding on April 2, 2002 to review the Commission's existing regulations regarding service terminations, payment plans and customer deposits. This notice followed OPC's November 21, 2000 filing of a petition requesting such a rulemaking proceeding. The PSC had also imposed, at OPC's request, an emergency moratorium on service terminations in the winter of 2001-2001. The PSC delegated the proceedings to a hearing examiner and directed interested parties to meet and submit proposals to the hearing examiner. OPC was an active participant in those meetings and submitted comprehensive proposals for revisions to the existing regulations. The hearing examiner submitted a report to the PSC on May 14, 2002. OPC filed further comments. The matter was pending before the Commission at the end of the fiscal year.

Case No. 8908 - Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service

Under Maryland's Electric Choice program, residential consumers can purchase electricity supply either from a licensed electricity supplier or their electric utility. Electricity supply purchased from a customer's electric company is known as Standard Offer Service (SOS).

PUC Section 7-510(c)(3) obligates an electric company to provide standard offer service for a transition period through July 1, 2003. Following the electric restructuring agreements in Cases No. 8794-8797, a different transition period was negotiated for each utility. Electric utility supply rates are capped or frozen for residential consumers during the transition period, at least until at least July 2004.

The PSC can extend the obligation to provide Standard Offer Service to residential and small commercial customers if they find that the electricity supply market is not competitive or that acceptable competitive options are not available to customers who purchase electricity supply through Standard Offer Service. SOS would then be provided at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return. The PSC must also adopt regulations or issue orders to establish procedures for the competitive selection of electricity suppliers to provide standard offer service.

In December 2001, the PSC started proceedings to determine the extent of competition in the electric supply market in Maryland and to determine how electric utilities will fulfill the SOS requirement in the future. OPC filed comments in March 2002 requesting that the PSC continue SOS. OPC further requested that the Commission docket a proceeding to establish whether the market was competitive under PUC Section 7-510(c)(3)(ii).

The PSC issued an Order on May 30, 2002 that identified many of the legal and policy issues.

OPC has consistently maintained that there is not enough competition in the electric market today to permit the utility to exit the supply function, and recommended that the PSC extend the utilities' obligation to provide SOS to residential customers. OPC's goal is to make sure that residential customers receive least cost, stable and reliable electric supply service for at least five additional years after their supply rates are no longer frozen or capped.

The Commission asked for additional comments concerning the competitive status of electricity markets. OPC is participating in the hearings before the Commission concerning SOS. The proceedings were to conclude in early 2003.

Case No. 8903 - Universal Service Program

OPC continues to actively participate in PSC proceedings regarding the design and operation of the Electric Universal Service Program (EUSP), an assistance program for low-income electricity customers. OPC reviewed and evaluated all program reports provided by the Department of Human Resources, Office of Home Energy Programs (DHR/OHEP), and provided training and assistance to local agency representatives regarding the program. During FY 2002, OPC focused attention on the low participation numbers with the goal of increasing outreach and access to the program. In October 2001, the PSC decided to separately docket a proceeding for the EUSP. Until that time, EUSP had been considered in the context of Case No. 8738, the electric restructuring docket.

As part of its ongoing oversight of EUSP, the PSC solicited comments and conducted hearings regarding DHR/OHEP's proposals for (1) the second year of program operation, and (2) the distribution of unspent funds from the first year of the program. On March 1, 2002, the Commission issued a Notice of Inquiry regarding the EUSP. OPC filed comments concerning several DHR/OHEP reports and participated in a hearings.

The Commission also directed the Universal Service Working Group to reconvene and consider several issues related to the continuation of the EUSP after June 30, 2003, including proposals for program budgets, funding mechanisms and program design. OPC participated on the Working Group. The Commission must submit a report to the General Assembly in December 2002 concerning continuation of the EUSP for a fourth year.

Case No. 8900 - Potomac Electric Power Company's Complaint and Request for Investigation and Issuance of Cease and Desist Order Against Washington Gas Energy Services

On August 1, 2001 the Potomac Electric Power Company filed a Complaint and Request for Investigation against Washington Gas Energy Services (WGES) alleging that WGES had engaged in unfair and deceptive marketing practices through its door-to-door sales agents and telemarketers. OPC intervened in the proceeding. The parties entered a Settlement Agreement dated February 28, 2002, which was approved by the PSC.

As part of the agreement, WGES agreed to: conform its training, marketing and solicitation materials and activities to the requirements of existing Consumer Protection laws and Commission orders; monitor its telemarketing and door-to-door marketing activities; establish appropriate management and oversight procedures for marketing contractors; require the use of an "anti-slamming pledge" and code of conduct as part of the training of sales agents; and revise its marketing and contract materials. WGES also agreed to submit quarterly reports to the parties for one year.

OPC believes that this settlement was a reasonable and beneficial resolution of the issues raised by the complaint.

Case No. 8899 - MAPDA's and MAPGA's Request for Investigation and Petition for Declaratory Order Regarding Unlawful and Unfair Trade Practices of SMECO, Choptank Electric Cooperative and Choptank Home and Business Services

On July 10, 2001, two associations, the Mid-Atlantic Petroleum Distributors Association (MAPDA) and the Mid-Atlantic Propane Gas Association ((MAPGA), filed a complaint against two electric cooperatives. The complaint alleged numerous violations of the Public Utility Companies law, and various laws governing corporations and cooperatives resulting from the operation of for-profit, multi-fuel distribution businesses by the cooperatives. OPC intervened in the case because of the numerous affiliate activity issues raised in the proceedings. In April 2001, the Hearing Examiner suspended further proceedings in this case pending his ruling on a Motion to Dismiss filed by the cooperatives. The matter is pending.

Case No. 8896 - Petition of the Office of People's Counsel for an Investigation into the Alternate Payment Plan and Termination Practices of the Baltimore Gas and Electric Company

During FY 2001, residential consumers saw very high heating bills due to colder than normal weather in the early winter and a precipitous rise in natural gas prices. The substantial delays in the processing of energy assistance grants further disadvantaged low-income customers during the heating season. OPC became concerned about the increased risk of service terminations. In January 2001, OPC filed a Petition for an Emergency Moratorium on Service Terminations, which the Commission granted for low-income customers. OPC subsequently filed a request that the Commission require gas and electric companies to arrange payment plans with customers to avoid service terminations at the end of the moratorium period. The Commission declined to issue such an order, although it did order the companies to file service termination reports with the Commission.

OPC continued to hear complaints from customers and service agencies that customers were not able to arrange payment plans with Baltimore Gas and Electric Company (BGE). After a review of Commission complaint records and BGE's service termination reports, OPC filed a Petition asking the Commission to establish an investigation and conduct public hearings. OPC specifically asked the Commission to review BGE's (1) internal standards for offering alternate payment plans, and (2) guidelines, policies and practices used to establish the terms and conditions of payment plans. The PSC then docketed a proceeding.

BGE filed a Motion to Dismiss the Petition without further hearing. The PSC Hearing Examiner declined to dismiss the Petition, but severely restricted the scope of the proceeding. At the time, OPC stated that the Hearing Examiner's decision was "tantamount to a dismissal of our petition" without investigating BGE's practices. Given the nature of the ruling, OPC made a decision to dismiss the specific investigation of BGE's practices. OPC then filed a new Petition on November 21, 2001 requesting that the Commission institute a rulemaking proceeding to consider revisions to the PSC's residential consumer regulations for all utilities.

On April 2, 2002, the Commission opened a rulemaking and established expedited proceedings to consider proposals for revised regulations. The PSC docketed the proceeding as Case No. 8919. A Hearing Examiner issued a Report on May 14, 2002. OPC filed comments regarding proposals for revised regulations. The matter is pending before the Commission.

Case No. 8890 - Proposed Merger Involving the Potomac Electric Power Company and Delmarva Power and Light Company

The Potomac Electric Power Company (Pepco) and the Delmarva Power and Light Company (Delmarva) jointly filed an application with the PSC regarding a proposed merger involving the two companies. OPC relies on a consumer benefit standard for utility merger cases: the PSC should not authorize a merger unless consumers realize a net benefit from the merged company. After hearings in October 2001, the parties negotiated a settlement of the key issues. The Settlement Agreement was signed by the Office of People's Counsel, along with the PSC staff, the International Brotherhood of Electrical Workers Local 1900, EAS New Energy, Inc., the Maryland Energy Administration, the Maryland Energy Users Group, and Wicomico County. Specific provisions of the Settlement Agreement include:

- Extension of distribution rate caps until 2006. Electric rates are currently either capped or frozen for both companies through June 2004. The Settlement Agreement caps the distribution portion of the rates for an additional thirty months. The companies must also file cost information with the PSC by December 2003 to determine whether a rate decrease is warranted.
- The merged companies will provide $1 million to the Maryland Energy Administration to fund energy efficiency programs for residential customers in Maryland.
- Working groups will address transmission congestion issues. The agreement also established service reliability standards and guarantees

The PSC accepted the Settlement Agreement. After approvals from the other affected jurisdictions and the Securities and Exchange Commission, the merger closed in the summer of 2002.

Case Nos. 8866-8875 - Investigation into Certain Affiliated Transactions of BGE, DPL, PE, Pepco, WGL, Columbia Gas, Chesapeake Utilities, NUI Corporation, Choptank Electric Cooperative, and Southern Maryland Electric Cooperative

Cases 8866-8875 are an offshoot of Case No. 8820 concerning affiliated transactions. The Commission delegated these cases to the Hearing Examiner division in June 2001. The cases concern employee sharing between parent and affiliate companies, and possible payment of royalties for an affiliate's use of the parent's name, logo or other intangible assets.

The Commission postponed BGE's Case No. 8866 due to the pending separation of BGE and Constellation Energy (called off in October 2001). The Commission delayed Case Nos. 8867 and 8869 because of the pending merger of Pepco and Delmarva. Many of the other utilities requested blanket waivers alleging that because of specific factual issues, corporate configurations, or cooperative status, the specific issues of these cases did not apply to their companies. The Hearing Examiners did not issue blanket waivers, but allowed other parties an opportunity to obtain further information regarding the facts that pertain to each utility. Because Case No. 8820 was still before the Maryland Court of Appeals (see Legislation, House Bill 135) many of the Hearing Examiners agreed to delay the affiliate cases pending the outcome of the appeal of Case No. 8820.

Case No. 8820 - Investigation into Affiliated Activities, Promotional Practices and Codes of Conduct of Regulated Gas and Electric Companies.

The PSC docketed Case No. 8820 to promulgate rules under the *Electric Customer Choice and Competition Act of 1999* and the *Natural Gas Supplier Licensing and Consumer Protection Act of 2000*. The Commission issued Order No. 76292 on July 1, 2000, which imposed limitations on the relationships between regulated public utility companies and their unregulated affiliates. Most of the utility companies affected by the order were displeased with these rules and challenged the order in the Circuit Court for Wicomico County. The utilities argued that the rules were arbitrary, capricious and beyond the Commission's jurisdiction. Delmarva also argued that parts of the order were invalid because the PSC had failed to comply with certain requirements of the Maryland Administrative Procedures Act (APA). The Court generally affirmed the PSC.

The utilities appealed the decision to the Court of Special Appeals. On April 8, 2002, the Court of Appeals ruled that the order for Case No. 8820 was invalid because it did not comply with APA. Also on April 8, the last day of the 2002 session, the General Assembly amended House Bill 135, which dealt with funding for OPC and the PSC, to provide that the PSC could promulgate orders notwithstanding the APA.

While House Bill 135 was pending the Governor's review, the PSC, OPC and the utility companies all filed Motions for Reconsideration of the Court of Appeal's decision. OPC and the PSC argued that the under the Electric Act and the Gas Act, the PSC clearly has authority to issue orders following generic proceedings rather than the requirements of the APA. The utilities argued that the court did not address their substantive complaints about the affiliate rules. On May 16, 2002, the Governor signed House Bill 135 into law. By order dated June 11, 2002, the Court of Appeals denied the PSC and OPC Motion for Reconsideration, but granted the public utilities' Motion for Reconsideration.

[On October 11, 2002, the Court of Appeals reversed the judgement of the Circuit Court and struck down sections of House Bill 135 that relate to the APA because they violate the "single subject" requirements in Article III, Section 29 of the Maryland Constitution. The Court found no connection between the provisions relating to the Public Utility Regulation Fund and the PSC's compliance with the APA. The parts of the Act that relate to OPC and PSC funding remain unaffected by the ruling].

Case No. 8800 - Establishment of Service Areas of Electric Utilities Within the State of Maryland.

The Town of Easton filed a petition with the PSC to take certain electricity service territory away from the Choptank Electric Cooperative, Inc. The territory in question is being developed into single family homes. The Town of Easton had already annexed the development and argued that the public interest was better served if Easton, rather than Choptank Electric Cooperative, provided electricity to the future residents of this development. Choptank Electric Cooperative responded that the Town of Easton could not prove, as a matter of law, that it could do a better job than Choptank of serving the new development and consequently take the territory away from Choptank. At issue were hundreds of thousands of dollars of future revenues.

OPC considered the case important because this was the first test of a new statute that addresses electricity territory disputes involving an area annexed by a town. The statute provides that a municipal corporation that annexes an area may not transfer the electricity franchise unless the PSC determines that the transfer is in the public interest.

After reviewing the facts, both OPC and the PSC staff argued that the Town of Easton did not provide clear and convincing evidence that the transfer of the electricity service franchise was in the "public interest." Choptank, OPC, and the PSC staff argued that the Town of Easton did not prove that residential consumers of electricity would be better off with the Town of Easton than with Choptank. The considerations included service reliability, customer service, billing issues, and electricity supply issues. The PSC agreed with Choptank, OPC, and the PSC staff and determined that the Town of Easton could not transfer the franchise. Easton appealed the Commission's decision to the Circuit Court for Talbot County. The case is pending.

Case Nos. 8797 and 8746/8783 - Investigation into the Stranded Cost Quantification Mechanism, Price Protection Mechanism and Unbundled Rates of Potomac Edison Company

OPC has actively participated in Potomac Edison's (PE, now known as Allegheny Energy) stranded cost and subsequent

Warrior Run proceedings. During FY 2002, OPC responded to an application by Potomac Edison to implement a revised Cogeneration PURPA Project Surcharge. OPC recommended approval of the new surcharge amount, contingent upon a final review, with any discrepancies rectified at the next surcharge review period. OPC subsequently told the Commission that PE had failed to credit transmission and ancillary revenues to ratepayers. After arguments and briefs, the PSC issued Order No. 77262, which denied OPC's request that the revenues from transmission and ancillary services be reflected in PE's Warrior Run Surcharge for the period ending December 31, 2001.

Case No. 8796 - Pepco v. Panda Brandywine

Case No. 8796 involved the restructuring proceeding for Potomac Electric Power Company (Pepco). As part of the settlement, Pepco sold its generation assets to Mirant. Shortly before the divestiture was completed, Panda/Brandywine, an energy supplier, asked the PSC to order Pepco to negotiate for consent to assign the power purchase agreement Panda had with Pepco. Pepco had proposed to use a "back-to-back" transaction with Mirant to convey the Panda contract. The PSC approved the back-to-back sale of the generation assets. Panda appealed the decision to the Circuit Court for Montgomery County. The Circuit Court reversed the Commission's decision. OPC, along with the PSC and Pepco, appealed to the Court of Special Appeals. OPC argued that the Commission correctly interpreted the previous contract between Pepco and Panda that would allow Mirant to act as Pepco, and the Circuit Court erred in reversing the Commission's decision. The Court of Special Appeals upheld the Montgomery County decision but seemed to affirm that the PSC could still order any treatment of dollars at issue that it wished. OPC recently joined with Pepco and the PSC in a petition for a writ of certiorari to the Court of Appeals.

Case Nos. 8794-8804 - Baltimore Gas and Electric Company's Proposed: (a) Stranded Cost Quantification Mechanism; (b) Price Protection Mechanism; and (c) Unbundled Rates

The Baltimore Gas and Electric Company (BGE) filed a Stipulation and Settlement Agreement with the PSC on June 29, l999 settling not only the stranded cost, price protections and unbundling aspects of the case, but also an OPC petition that requested a reduction in the rates and charges for BGE. The parties signing the settlement represented all customer classes, environmental interests and the public interest at large. The PSC accepted the Settlement.

Three end users, MAPSA, Trigen Energy and Bethlehem Steel, opposed the settlement. In FY 2000, MAPSA received a court-ordered stay of the PSC order, which prevented the rate reduction from taking effect and denied BGE customers the ability to choose suppliers. After discussion with OPC, BGE agreed to refund to customers the amount that they should have saved during this temporary stay of the PSC's order. The Court of Appeals found that MAPSA had standing and remanded the case back to the Circuit Court.

On August 24, 2000, customers received the six percent rate reduction specified in the settlement agreement. In addition, BGE agreed to make customers whole for the savings that were lost during the period between July 1 and August 23, 2000 during which BGE charged higher, pre-settlement rates.

The trial court issued an order upholding the settlement and denying the MAPSA appeal. MAPSA appealed the trial court's ruling to the Court of Special Appeals. OPC argued in support of the PSC's decision to adopt the settlement. In FY 2002, the Court of Special Appeals issued an order denying MAPSA's appeal.

Case No. 8738 - Inquiry into the Provision and Regulation of Electric Service

Since the PSC issued its is December 3, 1997 order on retail electric competition, OPC has participated in roundtable working groups that dealt with all aspects of Electric Choice: supplier authorization, consumer protection, universal service, competitive billing, competitive metering and emissions and fuel disclosure. OPC's goal is to ensure that the rules contain adequate protections for residential consumers as this unregulated marketplace develops.

Supplier Authorization (licensing). As part of the restructuring legislation, the Commission will oversee and license electricity suppliers. Any business intending to serve customers in Maryland must apply for a license, and receive Commission approval. While the PSC is the licensing agency, OPC reviews all licensing applications and files comments with the Commission regarding any application that raises issues of concern for residential consumers. OPC continued to review and submit comments through FY 2002.

Consumer Protection. OPC has resolved a number of consumer complaints regarding electricity and natural gas supplier activities. OPC continues to work cooperatively with the PSC Office of External Relations to identify patterns of consumer complaints and work with suppliers whenever possible, to modify problem activities in the marketplace.

Universal Service. The *Electric Customer Choice and Competition Act of 1999* mandated an Electric Universal Service Program for low-income electricity customers. The program provides funding for bill assistance, retirement of past bills (arrears) and weatherization services to be administered by the Department of Human Resources Office of Home Energy Programs (DHR/OHEP). OPC is active in all of the working groups and proceedings concerning implementation of the program, since residential customers both fund and receive services from the program.

OPC has filed numerous sets of written comments, testified at Commission hearings and legislative hearings, participated as a member of the Commission's Universal Service Working Group, and the DHR EUSP Advisory Group, and worked extensively with local and non-profit agencies. OPC is also actively involved in statewide education and outreach regarding this program.

Since 1999 the Commission has conducted numerous hearings and issued a variety of orders related to the design and implementation of the EUSP. This has continued through FY 2002. The Commission also established a separate docket, Case No. 8903, for the EUSP in October 2001.

Competitive Metering. Energy suppliers had pushed to have metering services (i.e., ownership of the meter, installation, servicing, maintenance, test and billing) be fully unbundled so that non-utility suppliers could provide these services. Other parties, including OPC, advocated a more limited approach where non-utility suppliers could have access to meter information and meters could be owned separately. OPC saw no consumer benefits, and considerable risks, in fully unbundled metering services at this time. The Commission issued Order No. 74561 on September 15, 1998 and directed a Working Group to convene in September 2000 to consider competitive metering issues. The report recommended a "go slow" approach to the introduction of competitive metering. The Commission adopted the recommendations in a December 2001 order.

The Working Group re-convened in the spring of 2001. OPC participated in those meetings. On May 17, 2002 the Working Group submitted a report to the Commission, which OPC supported.

Emissions and Fuel Mix Disclosure. All electricity suppliers in Maryland are required to disclose the sources of the electricity they sell and the environmental impacts of the generation sources. The Commission issued Order No. 77412 on December 11, 2001 adopting rules for the disclosure of emissions and fuel mix data by electric companies and electricity suppliers to retail consumers. OPC joined on brief with parties requesting that the Commission adopt the tracking system used by PJM, the region's power pool. The PJM system uses transaction data recorded by the PJM control area operator to verify emissions and fuel mix data.

The PSC accepted the recommendation for a PJM system. However, the order provides for further review in order to permit parties to comment on the PJM conceptual and operational design. OPC will be active in assuring that an effective system is established to account for the emissions and fuel mix information that is currently disclosed on residential customer bills.

Mail Log Nos. 78768, 79085 and 79329 - Complaint of James L. Mitchell Regarding the Safety of Distribution Line and Crossing Brown's Creek

A BGE customer was unsuccessful in his request that BGE reroute a distribution power line crossing Brown's Creek in Baltimore County. The customer maintained that the line was dangerously low and could potentially come into contact with the large masts on sailboats. The customer, who had exhausted the two-step appeal process with the PSC's External Relations Department, filed an appeal with the full Commission and sought OPC's assistance. OPC filed a brief on the customer's behalf arguing that the existence of the distribution line represented a danger to area boaters.

Without a resolution on the location of the line, BGE sent a crew to replace the poles that supported the distribution line across Brown's Creek. Property owners at the site raised concerns about damage to their property from BGE's trucks. An OPC representative at the site also objected to BGE's attempt to replace the poles before a decision in the customer's appeal could possibly alter the course of the line. After hours of negotiations, BGE withdrew its crew and trucks.

As of August 2002, BGE had not replaced the poles. The matter is subject to a civil suit filed by BGE. A court decision is pending.

While the matter was pending before the PSC, a sailboat mast struck an overhead electric distribution line in Allegheny Power's service territory. The PSC then issued a notice on August 8, 2002 for all electric companies to examine electric lines crossing water surfaces to verify their compliance with vertical height clearance standards.

Applications for New Power Plants

Interest in power plant construction in Maryland increased during FY 2002. OPC focused its efforts on the economic and system reliability issues related to recent certificate of public convenience and necessity (CPCN) applications for new electric power plants in Maryland. OPC seeks to encourage development of power facilities, particularly facilities that can interconnect capacity to the electric grid. Such facilities supply both power and energy to the energy market and may reduce transmission constraints within the PJM power pool that supplies Maryland customers.

In June 2002, the Maryland Energy Administration and the Departments of Agriculture, Business and Economic Development; Planning; Transportation; Environment; Natural Resources and the Office of Smart Growth formed the Secretaries Task Force to develop state agency guidelines for CPCN review of plants in close proximity. OPC is providing input to the task force. The Secretaries planned to issue a final report on December 1, 2002.

In July 2002, OPC filed a request with the PSC to open a rulemaking to address issues related to applications for construction of power plant facilities in environmentally constrained areas of Maryland. The petition suggested that the PSC and the Secretaries Task Force develop appropriate review criteria and regulations for the siting of multiple new power plants in a single region. The request for rulemaking is pending before the PSC.

OPC participated in the following cases to construct new electric generation facilities during FY 2002.

Case No. 8912 - Application of Mirant Chalk Point Development, LLC for a Certificate of Public Convenience and Necessity to Modify its Existing Generating Station in Prince George's County, Maryland

In this application, OPC sought to ensure that the record would support imposition of conditions on transmission requirements beyond the requirements imposed by PJM. OPC believes that the PSC should retain and exercise its authority to condition a CPCN regarding factors of electric system reliability and stability.

Case No. 8901 - Constellation Power Source Generation Request For A Determination on Whether a Change to a Synthetic Fuel is a Modification Pursuant to Section 7-205 of the Public Utility Companies Article

Mirant Power and Constellation Power sought permission to burn new coal-based synthetic fuels at their Morgantown and Wagner Station facilities. Motions for test burns were granted and both Mirant and

Constellation subsequently received authorization to use the synthetic fuel. The Hearing Examiner rejected a joint motion to establish the same procedural protocol for review of other requests to burn synfuel. The Hearing Examiner ruled that the Administrative Procedures Act conditions for establishing a rulemaking had not been followed and that therefore no rule concerning review of synfuel applications could be adopted. OPC appealed, stating that the legislature had provided for PSC rulemakings that did not rely on the Administrative Procedures Act. The appeal is pending.

Case No. 8891 - Application of Mirant Dickerson Development, LLC for a Certificate of Public Convenience and Necessity to Modify its Existing Generating Station H in Dickerson, Montgomery County

Mirant Mid-Atlantic acquired the Dickerson plant from Pepco. Pepco retained ownership of certain electric substations and transmission equipment on the site. Mirant seeks to convert some existing simple-cycle combustion turbine (CT) units to combined cycle and add a new combined cycle unit. The units burn natural gas, with some oil-burning back-up. The project does not require new transmission lines. OPC initially supported the grant of a CPCN for this project, but later became concerned about proposals submitted by the applicant to undertake the project in phases requested to accommodate changes in the energy marketplace. The request for such flexibility raised questions about the financial viability of the applicant and whether some elements of the proposed modification might not be built. OPC will seek to ensure that CPCN applications are granted to viable financial entities with a good faith intent to build a proposed facility.

The PSC suspended this proceeding pending completion of the Secretaries' Task Force report.

Case No. 8889 - Application of Zapco Development Corporation for a CPCN to construct a 4.2 MW Electricity Generating Facility at the Eastern Sanitary Landfill in Baltimore County, Maryland

A ruling to show cause is pending to close the proceeding if the applicant has abandoned the application.

Case No. 8888 - Application of Duke Energy Frederick, LLC for a Certificate of Public Convenience and Necessity to Construct a 640 MW Generating Facility in Frederick County Maryland

Duke applied for a CPCN in an area of Frederick County, where several other companies have also proposed to construct plants in close proximity. OPC argued that the PSC should open a "need" phase to consider the overhead transmission lines associated with the project. In order for the Duke proposed facility to be considered a capacity resource, PJM might require construction of an 8-mile transmission line. Duke argued that that the Duke CPCN involved only a generating station and a "generator lead route," and issues regarding overhead transmission should be addressed in another proceeding. PSC staff argued that Duke would bear the risk and cost related to construction of any transmission requirements imposed by PJM. The Hearing Examiner ruled that this proceeding would review only the generating station. Subsequently, the PSC suspended this proceeding pending the findings of the Secretaries' Task Force.

Case No. 8854 - Application of CHX Engineering for a Certificate of Public Convenience and Necessity to Construct a 4 MW Cogeneration Facility in Dorchester County, Maryland

OPC continues to await compliance by the applicant with conditions in the first proposed order in this case.

Mail Log No. 83826 - Application of NRG Energy, Inc. for a Certificate of Public Convenience and Necessity

In late June 2002, NRG Energy, Inc. filed an application for a CPCN to construct two 175 MW combustion turbine electric generating units and ancillary facilities in Vienna, Dorchester County, Maryland. A upcoming prehearing conference will set a schedule in this proceeding.

Federal Electricity Proceedings

OPC participated in numerous proceedings before the Federal Energy Regulatory Commission (FERC) during FY 2002 on behalf of Maryland's residential consumers. OPC filed comments on its own and as part of the National Association of State Utility Consumer Advocates (NASUCA).

Docket Nos. ER02-1205 and ER02-1326 - PJM Emergency Load Response Program and PJM Economic Load Response Program

OPC participated extensively in the PJM stakeholders process to develop a program to allow customers to modify their load usage and capture both reliability and economic benefits through the wholesale market. These are the PJM Emergency Load Response Program and the PJM Economic Load Response Program. OPC supported the implementation of these programs and, through the PJM Public Interest and Environmental Organization User Group, urged the PJM Board of Directors to submit these programs to FERC. FERC approved the programs, which were implemented in the summer of 2002.

Docket No. EC02-11 - Merger of Orion Holdings and Reliant, Inc.

OPC filed a protest at FERC to the request for approval of this merger between two holding companies that own generation in the mid-Atlantic region. OPC requested a full hearing and provided a preliminary analysis based on the available information that indicated that the combination of these two companies raised market power concerns in certain markets. FERC did not institute a hearing in the case and approved the merger without requiring further investigation of the market power considerations.

Docket No. ER98-4608-005 - Market Base Rates Application of PPL, Inc.

OPC filed a protest at FERC in opposition to the application of PPL, Inc., a vertically integrated utility in Pennsylvania, to continue selling wholesale electricity at market-based rates. FERC allows companies to sell electricity in the wholesale market at rates set by the company rather than by a regulator, if the company is selling into a sufficiently competitive market. OPC's protest contained an analysis that demonstrates the flaws and deficiencies of the PPL's analysis of market conditions. OPC requested that FERC docket the case for a hearing. FERC has yet to issue an order in the case.

Docket No. EL01-118 - Terms and Conditions of Market Based Rate Authorization

OPC filed extensive comments in this generic docket in which FERC is seeking to establish the terms and conditions by which it will authorize companies to sell wholesale electricity at market based rates. Currently, FERC uses an economic test to judge the competitiveness of the market. FERC only allows companies to sell electricity at rates set by the seller (as opposed to by a regulator) if the company is selling into a sufficiently competitive market. OPC's comments explain that the test that FERC currently uses is not adequate to identify markets in which competitive conditions do not exist. Therefore, OPC made recommendations for more a robust test for FERC to apply in considering market base rate applications.

Docket No. RT01-99 - Northeast RTO

OPC participated extensively in the litigation and mediation process conducted by FERC for the formation of the Northeast Regional Transmission Organization (RTO). All the electric utilities in Maryland are members of a regional transmission provider, PJM Interconnection, Inc. FERC issued an order that proposed that PJM merge with two Northeast power pools, the New York ISO and New England ISO, to form the Northeast Regional Transmission Organization (RTO).

OPC raised a number of issues during the proceeding, including the regional rules for maintaining an adequate level of generation, the governance of the Northeast RTO, and the cost and benefits to consumers of forming such a regional organization. FERC ordered the parties to participate in a six-week mediation process before an administrative law judge. After that mediation process, the administrative law judge filed a report that described a proposal for forming a Northeast RTO. OPC filed extensive comments and concerns about the proposal contained in the judge's report. The matter is still pending before FERC.

Docket No. RT01-02 - PJM Interconnection, Inc. RTO Application

OPC filed comments that generally supported PJM Interconnection, LLC's application to be a Regional Transmission Organization (RTO) under FERC's Order 2000. OPC raised concerns about the ability of consumer advocates to influence the governance of the RTO. FERC conditionally approved PJM as an RTO. FERC did not resolve OPC's concerns, but did address the concerns in Docket No. ER02-101.

Docket No. ER02-101 - Consumer Advocate Voting Rights in PJM Interconnection, LLC

The Members Committee, comprised of stakeholders from all segments of the electric industry, has both advisory and governance roles in PJM. Consumer advocate offices, such as OPC, were allowed to participate in the Members Committee meetings but did not have voting rights. OPC formulated a proposal to grant consumer advocates voting rights in the Members Committee without subjecting the offices to liability that could not be undertaken by a state agency. OPC was able to gain the support of the PJM Board of Directors as well as a majority of the PJM stakeholders. FERC accepted the proposal. OPC, as well as other consumer advocates in the region, now exercise their voting rights in the PJM Members Committee.

Docket No. EL01-105 - New Power Company vs. PJM Interconnection, Docket No. EL01-3 - LLC Morgan Stanley Capital vs. PJM Interconnection, LLC

New Power Company and Morgan Stanley Capital filed complaints against PJM Interconnection, LLC claiming that the requirement that load-serving entities in PJM acquire sufficient capacity to serve their load was unjust and unreasonable. OPC filed in support of the PJM protocols on the basis that they remain necessary to ensure that adequate generation is available for the region and that they reduce price volatility in the associated energy markets. FERC rejected both complaints, but there continues to be ongoing processes to investigate whether there should be changes to the PJM capacity requirement system.

Docket No. EX01-01 - Reserve Generation Capacity

OPC filed extensive comments in FERC's generic proceeding on requirements for reserved generation capacity. OPC urged FERC to require that each load-serving entity acquire, through ownership or contract, sufficient generation capacity to satisfy the peak demand of its customers plus a reserve margin as calculated by an independent entity such as PJM Interconnection, LLC. Capacity requirements have been in place for many years in the mid-Atlantic region and have been very beneficial. OPC's comments explain that elimination of the capacity requirement could leave the region subject to inadequate generation capacity. Such a situation would be particularly troubling in the new environment of retail choice. The case is still pending before FERC.

Docket No. RM01-02 - Standard Market Design

FERC has opened a major rulemaking proceeding to investigate standardized rules for wholesale energy markets. Prior to issuing the Notice of Proposed Rulemaking (NOPR), FERC instituted a number of technical conferences and issued white papers. OPC participated in the technical conferences and submitted comments on the white papers. OPC’s comments included: requirements to maintain adequate generation; principles for the setting of rates for transmission service; market rules to facilitate a competitive market; monitoring and mitigation rules to prevent, identify, and eliminate market power in wholesale energy markets; the necessity of independent conduct and oversight of energy markets; and the governance of independent entities running the energy markets.

After receiving comments on these topics, FERC issued a NOPR in July, 2002. There will be an extensive comment process before FERC issues a final rule.

Atlantic City Electric Co., et al. v. FERC

Several regional utilities filed an appeal of a FERC order that created PJM as an independent system operator. The utilities challenged the FERC order as transferring too much authority from the utilities to PJM. OPC supported the FERC order and filed a brief that disputed the utilities' arguments. The D.C. Circuit Court issued an opinion that reversed part of the FERC decision. Because the decision of the court does not affect PJM's authority in a way that is harmful to consumers' interests, OPC did not take further legal action.

PPL v. FERC, U.S. Circuit Court for the D.C. Circuit, Case Nos. 01-1369 and 1370

A Pennsylvania utility, Pennsylvania Power and Light (PPL), filed an appeal of a FERC decision that changed some PJM capacity market rules in order to stop ongoing market manipulation and enhance system reliability. Market manipulation is harmful to consumers. OPC filed a brief in the appeal that supported the FERC order. A decision by the court is pending.

Maintaining the Reliability of the Region's Power Pool

PJM is responsible for the safe and reliable operation of the transmission system and ensures the reliable supply of energy from generating resources to wholesale customers. During FY 2002, OPC continued to expand its efforts to monitor and participate in the decision-making process at PJM. OPC participated in PJM committees concerned with issues affecting Maryland residential consumers. These committees are comprised of interested parties in the region including utilities, competitive suppliers, generation owners, and industrial customers. OPC also works closely with other consumer advocates in the region to provide representation for small consumers on these committees. OPC has participated in the following committees and groups:

Reliability Committee. This committee focuses solely on reliability issues in the region, particularly assuring that there is enough generation to meet the load requirements of the region. OPC believes that maintaining reliable electric systems in a competitive market environment is an important consideration for residential customers.

Transmission Expansion Planning Advisory Committee. This committee reviews the plans for expanding and enhancing the transmission system to ensure that the transmission meets reliability criteria. This committee also reviews the applications for interconnections for new generation facilities. Transmission systems must remain reliable in the new competitive market. New generation projects may require transmission upgrades in order to interconnect to the system. The Advisory Committee helps determine the need for such upgrades in an equitable manner to ensure that sufficient generation is built in the region to meet critical load requirements.

Regional Transmission Stakeholders Advisory Process. This committee has been exploring the role of regional planning in expansion of the transmission system to serve customers in the most cost-effective manner possible. OPC has advocated that PJM, as an independent entity, should take a strong role in analyzing the transmission system to identify economic inefficiencies and ensure that system operators make the necessary improvements.

Joint Capacity Adequacy Group. This group examines how to maintain a reliable electric system in a competitive environment. During the first quarter of 2001, there were extremely high prices for capacity in PJM. Capacity is the right to buy from a generating plant if power is needed to supply the system. Thus, capacity is necessary for a reliable electric system. OPC participated in a series of meetings to address the pricing issues and supported a proposal to change the capacity market rules to reduce the ability of sellers to exert market power in the capacity markets. FERC approved this proposal over the objections of suppliers.

The group also proposed that companies serving load must acquire capacity for an entire season before the season begins. This change would ensure that sufficient generating resources were committed to PJM to supply the load for an entire season, particularly the summer. OPC supported this proposal, which FERC adopted.

Distribution Generation User Group. This group examines the incorporation of new technologies, particularly smaller generation units, into the power grid. OPC believes that these technological advances will be critical to allowing both small customers and large customers to enjoy the full benefits of retail choice in electricity supply.

Members Committee. The Members Committee reviews for final approval or final consideration all proposals developed by other PJM committees. The Members Committee also provides advice to the independent board of managers on certain issues. OPC recently won the right to vote on this committee on behalf of residential consumers.

Energy Market Committee. This committee reviews the rules that govern PJM energy markets. OPC monitors the activities of this group and advocates for rules that produce fair and reasonable energy prices while maintaining reliability.

Market Monitoring Organization Working Group. This group has been examining the organization of the PJM Market Monitoring Unit (MMU). The MMU has a staff of economists that continuously monitor the regional electricity markets in search of market power abuses and other anomalies. OPC has advocated that the MMU have the authority and discretion to take decisive actions that benefit the public when it finds that market prices are not justified.

Public Interest and Environmental Organizations User Group. This group brings together the consumer advocate offices in the PJM region along with numerous public interest and environmental organizations that represent small consumers on electricity issues. The OPC representative is currently chair of this committee. This group has been very active in PJM since its formation. During FY 2002, this group filed pleadings in support of the ability of PJM's market monitoring unit to gather the necessary information to determine if there is market power affecting the wholesale energy market. This group closely monitors all developments at PJM and in all the PJM committees and user groups and takes positions as necessary to support small consumers.

NERC Planning Committee. OPC has a representative with full voting rights on the Planning Committee of the North American Electric Reliability Council (NERC). The NERC Planning Committee works to develop appropriate standards to ensure that utilities upgrade and maintain the grid so that sufficient resources are available to supply the load. OPC will continue to participate in this group to advocate for reliability for residential customers.

Natural Gas

Case No. 8933 - Continuation of the Retail Sale of Natural Gas

The Commission convened its second Retail Natural Gas Market Conference in September 2001. The Commission solicited comments regarding the status of wholesale gas markets and prices, as well as the supply expectations of the local gas companies for the coming winter. OPC and others raised issues concerning the continuing obligation of the local gas companies to provide natural gas supply to its customers. At the direction of the Commission, OPC and other parties submitted briefs to the Commission regarding the Commission's legal authority to permit or require local gas companies to leave the gas supply business. [After the close of the fiscal year, the Commission issued an order directing the local gas companies to continue providing gas supply service to their customers, and established a new docket, Case No. 8933, to address future issues.]

Case No. 8920 - Application of Washington Gas Light Company to Increase its Existing Rates and Charges for Gas Service and to Implement an Incentive Rate Plan.

Washington Gas filed a request with the Public Service Commission on March 28, 2002 to increase rates in Maryland. This was the company's first general filing for a rate increase in Maryland since 1994. The company also proposed increases in some residential service fees, and an incentive rate plan.

The PSC divided the case into two phases. The first phase dealt primarily with the rate increase. OPC took the position that WGL was entitled to increase its rates by a fraction of the requested amount but opposed increases in other fees. OPC was a leader in settling this case. OPC protected consumers by minimizing the rate increase and by minimizing the proposed increases in WGL's fees. The Commission will address the second phase of this case in late 2002.

The settlement provides an increase of $1.00 per month in the monthly system charge for residential customers and an average increase of $0.64 per month in the distribution charge. The total increase in a typical residential customer's bill will therefore be $19.63 per year, or an average of $1.64 per month. The settlement also provides for increases in some of miscellaneous service fees, eliminates the proposed Incentive Rate Plan and Firm Flexible Pricing programs, and eliminate changes to the company's main and service line extension provisions. Washington Gas has also agreed to meet with OPC and other parties to discuss the establishment of service quality standards. [The Commission held hearings on the settlement in August, and approved the settlement in September, 2002.]

Washington Gas Application for Exemption from Certain COMAR Provisions (June 19, 2002 Administrative Agenda Item 11)

On March 13, 2002, the Washington Gas Light Company (WGL) disclosed in a PSC filing that the company had either over or underbilled many of its customers due to a system-wide billing error. The company asked the PSC to grant them an exemption from Code of Maryland (COMAR) requirements that prohibit the company from billing customers for any under-billed amount that took place more than twelve months before the discovery of the error (COMAR 20.55.04.05. 2a). WGL sought a three-year period for the treatment of any refunds or under-billed amounts. WGL did offer to refund with interest any over-billed amounts, and rebill any under-billed amounts without interest.

The billing errors resulted from an incorrect billing adjustment factor for homes that had 2.0 psi delivery pressure, which is higher than standard delivery pressure. Standard meters cannot register the greater volumes of gas that are present with 2.0 psi service. WGL used a billing adjustment factor with those customers. Washington Gas misapplied this factor for approximately 2.5 percent of its Maryland service territory.

After negotiations with OPC, Washington Gas agreed to limit refunds to over-collections that occurred during a three-year period ending March 2001. Further, customers that were undercharged would only be rebilled for the period beginning one year proceeding the date of the first corrected bill.

Case No. 8897 - Application of Washington Gas Light Company for Authority to Revise Its Purchase Gas Charge Tariff to Include Costs Association with Gas Price Hedging Transactions

In June 2001, Washington Gas proposed to revise its Purchased Gas Charge (PGC) to include costs associated with gas price hedging transactions. OPC recommended that the Commission reject the revised PGC, as filed with the Commission, and asked the PSC to require Washington Gas to develop a hedging plan to submit to parties for review. The PSC referred the matter to the Hearing Examiner Division.

OPC actively negotiated with Washington Gas and the Commission's technical staff to to devise an acceptable Hedging Pilot Program that allows the Company to engage in hedging transactions, with adequate PSC oversight. The objectives of the Hedging Plan include: (1) increased stability in the cost of gas to the Company's firm sales service customers; and (2) reduced exposure to prices spikes, such as those experienced by customers during the winter of 2000-2001.

The plan supported by OPC requires Washington Gas to purchase a portion of its gas supply at a fixed price, through a variety of instruments, to ensure Washington Gas's purchased gas portfolio does not solely rely on the spot price for gas on the market at any given time. OPC believes that this portfolio approach will work to the benefit of residential consumers.

OPC monitored the operation of the Hedging Pilot Program during the past year and is evaluating the information gained during the plan's first year. OPC looks forward to a detailed analysis in the future.

Case No. 8860 - Investigation into the Operation of Baltimore Gas and Electric Company's Market-based Rates Mechanism, Capacity Release and Off-system Sales Programs and Margin Sharing Arrangements

On September 1, 2000, OPC petitioned the Commission to establish an investigation into the operation of BGE's market-based rates (MBR) mechanism used to determine the commodity cost of natural gas that is passed onto customers of BGE. OPC requested that the review incorporate BGE's capacity release and off-system sales programs, including current margin sharing arrangements. The Commission docketed the case and delegated its resolution to the Hearing Examiner Division.

After filed testimony, discovery and negotiations, BGE, Commission staff, OPC and other parties entered into a settlement agreement which OPC believes is beneficial to residential natural gas consumers.

Under the terms of the Settlement, approved by the Commission, BGE agreed to purchase between 10 percent and 20 percent of its winter flowing gas requirements under fixed price contracts. The settlement will bring some diversity to BGE's gas supply portfolio and should help mitigate the effects of spot market purchases to residential consumers. The settlement also reduces what consumers must pay for BGE to reserve future gas supplies from $1.625 million per year to $300,000.

OPC continued to monitor the operation of the MBR in this fiscal year. Information provided in Case No. 8500(y) has caused OPC to initiate further investigation of the terms of the settlement in 8860.

Case No. 8846 - Generic Gas Roundtable

In response to the *Natural Gas Supplier Licensing and Consumer Protection Act of 2000*, the PSC established a Generic Gas Roundtable to make recommendations for licensing and consumer protection rules and standards for natural gas suppliers. The Roundtable participants included OPC, PSC Staff, the Consumer Protection Division of the Office of the Attorney General and representatives of gas utilities and gas suppliers. The Roundtable met numerous times to discuss recommendations for gas supplier licensing and consumer protection "rules of the road" in accordance with the statute. OPC actively participated in the Roundtable and proposed rules that would provide equivalent consumer protections for customers of gas and electricity suppliers.

Licensing. As with the electricity suppliers, OPC reviews all gas supplier applications and submits comments to the Commission on issues of concern to residential customers. The Commission began taking license applications in early 2001 in order to comply with the Act's requirement that all gas suppliers be licensed as of July 1, 2001.

Competitive Billing. The Generic Gas Roundtable also met to consider competitive billing issues relating to gas suppliers. "Competitive billing" refers to the availability of different billing options for natural gas service. The Roundtable submitted a report to the Commission in April 2001. At the request of the Commission, OPC submitted comments on competitive billing issues in May 2001. At that time, OPC urged the Commission to adopt bill content and disclosure requirements for gas suppliers that are equivalent to those for electricity suppliers. The Commission issued an order in September 2001 adopting OPC's recommendations.

Case No. 8683 - Inquiry Concerning Staff's Proposed Framework for Future Regulation of Gas Services in Maryland

This proceeding, started in 1994, considers the unbundling of gas supply service for residential customers. The PSC established Gas Roundtable proceedings for the three largest gas utilities to develop gas supply pilot programs. In July 1996, Washington Gas Light Company and Columbia Gas of Maryland received approval from the PSC to begin pilot programs for their residential customers to shop for a natural gas supplier other than the local utility. The PSC approved Baltimore Gas and Electric Company's pilot program in January 1997. The pilot status has since been eliminated and the programs have expanded. The three gas roundtables were less active during FY 2002, although they continued to address operational revisions and issues regarding the operations of the individual programs. OPC continues to monitor the enrollment of residential customers in these programs, which has declined during FY 2002 in all three service territories.

Case Nos. 8500(x)(y), 8501(x), 8502(x), 8504(x), 8505(x), 8506(x), 8507(x), 8508(x), 8509(z), 8511(y)(z), 8512(x), 8513(x), 8514(x), 8516(x) - Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA) Cases

Pursuant to Section 4-402 of the PUC Law, small electric utilities and gas utilities in Maryland that procure supply and pass those costs directly on to customers must justify those costs in an evidentiary proceeding before the PSC at least once every 12 months. OPC actively participates in these proceedings, reviewing the companies' filings, engaging in appropriate discovery, and providing expert testimony as necessary. OPC seeks to ensure that customers are not required to pay for gas supply procured in an unjustified or imprudent manner. When justified, OPC will ask that recovery of all, or a portion, of the costs sought by the utilities be disallowed.

Case No. 8500(y) - Investigation of the Commodity and Purchased Gas Adjustment Charges of Baltimore Gas and Electric Company

Subsequent to the conclusion of Case No. 8500(x), and prior to the commencement of Case No. 8500(y), BGE increased its monthly gas charge to begin recovery of $9.4 million dollars it claimed resulted from undercharges dating back to 1997. OPC protested, and after argument at an administrative meeting, the PSC agreed with OPC and ordered BGE to discontinue collection of the alleged undercharge. They deferred investigation of the matter to the annual gas cost review, Case No. 8500(y).

OPC investigated the claims made by BGE regarding the alleged $9.4 million undercharge. OPC argued that BGE's attempt to recover two out-of-period adjustments should be rejected. The "underrecoveries" were caused by BGE's unilateral, internal misapplication of its tariff and its failure to recognize its own errors in a timely manner. OPC averred it is fundamentally unfair, and in contravention of sound regulatory policy, to require consumers to pay for the unrecognized errors of BGE outside of the time period allocated by law for review. OPC is currently awaiting a decision in this case.

Federal Natural Gas Proceedings

OPC actively participates in proceedings before the Federal Energy Regulatory Commission (FERC) either as a separate party or as a member of the National Association of State Utility Consumer Advocates (NASUCA). OPC works to ensure that federal policies do not harm residential gas consumers or affect their access to safe, reliable and reasonably priced natural gas.

Docket Nos. CP01-76-001, CP01-77-001, RP01-217-001, and CP01-156-001 - FERC Cove Point Proceeding

The Cove Point terminal and pipeline was built nearly 30 years ago to receive tanker shipments of liquefied natural gas (LNG) originating in Algeria. LNG shipments to Cove Point began in early 1978 and ended in late 1980. From 1980 to 1994, Washington Gas used the Cove Point facilities, owned by Columbia Gas, to provide interruptible transportation service. In 1994, FERC authorized Cove Point to reactivate the onshore LNG facilities and to construct a liquefaction unit to provide a peaking service where shippers could liquefy and store domestic gas during the summer for withdrawal during winter peak times. Cove Point currently offers firm peaking services as well as firm and interruptible transportation services.

Williams Company purchased Cove Point from Columbia Gas. On January 31, 2001, Cove Point filed an application for a certificate to construct new facilities and reactivate its existing LNG import terminal. OPC and PSC Staff joined Washington Gas in raising safety issues related to the reactivation of the LNG facilities. FERC issued an order approving its certificate application on October 12, 2001 but was continuing to examine the national security implications of reactivating Cove Point.

Dominion Energy then purchased the Cove Point project from Williams and received authority to reopen the Cove Point liquid natural gas terminal. OPC continues to monitor the proceeding and expects that the reopening will follow the conditions of the reactivation granted to the previous owner, Williams Company.

Docket No. RM01-10 - Standards of Conduct for Transmission Providers

The Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking on September 27, 2001 to consolidate standards of conduct applied to interstate gas pipelines and electric transmission providers. FERC also proposed to include a broader range of affiliates than are covered by the current standards. OPC helped draft the comments of the National Association of State Utility Consumer Advocates (NASUCA).

NASUCA recommended that the FERC: (1) promulgate a single set of new rules to apply to both interstate gas pipelines and electric transmission providers; and (2) expand the scope of its standards of conduct to include transactions between these providers and all of the affiliates within their corporate families. NASUCA also urged the Commission to consider imposing limitations on the amount of capacity that affiliates can hold on their affiliated interstate pipelines or electric transmission providers, with exemptions for companies serving retail consumers or acting as providers of last resort. Finally NASUCA recommended that FERC require electronic posting of all affiliate transactions, limit the number of times employees can transfer jobs between affiliates and require utilities to retain records of such transfers, and place restrictions on the type of information that can be shared by transferred employees

Telecommunications

Case No. 8927 - In the Matter of the Complaint of CloseCall America, Inc. vs. Verizon Maryland, Inc.

CloseCall America, Inc., a competitive local telephone exchange provider, filed a complaint with the PSC concerning certain of Verizon Maryland's business practices. CloseCall alleged that when customers elect to switch from Verizon to CloseCall, Verizon abruptly cuts off telephone service for those customers, in some cases before the customers are able to secure alternative service. In addition, CloseCall alleged that Verizon unlawfully bundles certain services, such as high speed Internet and voicemail, with local telephone service so consumers who choose CloseCall for local telephone service cannot obtain these ancillary services. OPC is taking an active role in this matter to ensure that residential consumers are protected from any unreasonable or unlawful business practices. The case is pending.

Case No. 8921 - Review by the Commission into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271 (c)

On April 12, 2002, Verizon Maryland Inc. Verizon made a Section 271 filing with the Commission. Section 271 of the Federal Telecommunications Act of 1996 requires a Bell operating company to apply to the Federal Communications Commission (FCC) for authorization to provide long distance (known as interLATA) telephone service originating in any state. When reviewing applications filed under Section 271, the FCC is required to consult with the public service commission in the state that is the subject of the application to verify that the company is in compliance with Section 271(c) of the 1996 Act. Section 271 requires that Verizon meet a 14-point checklist to establish that its market is open to competition. The PSC docketed a proceeding to create a record that the FCC will reference when considering Verizon's application for Section 271 interLATA authority.

OPC is participating in the case and will recommend that the FCC reject Verizon's application to provide long distance service in Maryland. OPC is concerned about the lack of competition for local telephone service, and is working with expert witnesses to prepare testimony for the proceeding. OPC’s analysis found that Verizon controls 96 percent of the local telephone market in Maryland, providing one of the lowest levels of competition in the nation, and that both the market share and the number of active competitive local telephone companies in Maryland declined during 2002. Without adequate competition, OPC is concerned that Verizon will use its position in local markets to dominate the long distance and Internet business without offering consumers lower rates or better services. The PSC was expected to issue a report in this case in the fall of 2002.

Case No. 8918 - Review of Verizon Maryland Inc.'s Price Cap Regulatory Plan

In 1997, the PSC implemented a Price Cap Regulatory Plan for Verizon Maryland Inc. The plan caps rates for a "basket" of local telephone services. During each year of the six-year plan, the PSC applies a formula involving inflation factors to Verizon's rates to determine if any changes are warranted. Regulators use price cap plans, also called Alternative Regulation Plans (ARP), to promote rate stability and encourage competition for local telephone service.

The PSC scheduled a review of Verizon's performance no later than the beginning of the sixth year of the plan. On March 15, 2002, the Commission docketed a proceeding to consider Verizon's performance under the plan.

OPC began working with expert witnesses to prepare testimony to be filed in August 2002. OPC's review of local telephone rates under the current ARP concluded that the price caps in the plan are too high, allowing Verizon to accumulate excess earnings. The case is pending before the PSC.

Case No. 8862 - Investigation into the Appropriate Level of the PIC Change Charge

By Letter Order dated July 14, 2000, the PSC decided to investigate the amount of the charge assessed to telephone customers for changing their intrastate intraLATA Primary Interexchange Carrier (LPIC). The LPIC Change Charge is a non-recurring charge that applies when telephone customers change, at their request, their intraLATA primary interexchange carrier. The intraLATA primary interexchange carrier is the carrier that telephone customers select to carry their direct-dialed calls outside the caller's local calling area but within a specified region or area. These toll calls are sometimes referred to as "local long-distance." Verizon charges $5.00 for this service; however, OPC found that the true cost of this service was about $2.25. OPC argued for the reduction of this fee. The Administrative Law Judge has not yet issued a decision.

Case No. 8772 - Investigation into Local Calling Area Boundaries

This case involved an investigation into three specific local calling area expansion requests for Kent Island, Northern Montgomery County and the communities surrounding Dunkirk.

The case was appealed to Circuit Court for Baltimore County by Verizon. OPC argued that the PSC decision was the correct decision (i.e., that the costs of reducing certain exchange rates to $2.00 should be recovered on an exchange area to area basis and not from all residential customers). The Circuit Court sided with OPC in upholding the PSC decision. The revenue impact of the exchange changes was remanded to the PSC for consideration in the Case No. 8918, the Price Cap proceeding.

Case No. 8745 - Provision of Universal Service to Telecommunications Consumers

This case started as a review of potential changes to universal service policies in Maryland but evolved into an examination of whether the PSC should reduce access rates for long distance companies. Access rates are fees charged to telephone customers to recover the costs borne by the local network in providing local and long distance services. Verizon argued that if the PSC reduced access rates, residential customers would have to pay more because access rates subsidize their rates. OPC disagreed and documented that access rates do not subsidize residential rates. In fact, residential rates more than cover the cost of service. OPC also argued that long distance companies should pay their fair share toward the joint and common costs of the local loop used to provide long distance service.

The PSC issued an order in July 2002 that reduced access rates slightly, found that residential service was not subsidized, and found no need for a universal service fund, which would have increased rates. The PSC deferred the loop allocation decision to Case No. 8918. Verizon and AT&T appealed the PSC decision in two different circuit courts.

Verizon Notice Regarding Customer Proprietary Network Information

On February 11, 2002, OPC filed with the Public Service Commission a request seeking an immediate halt to Verizon's opt-out notification practice regarding Customer Proprietary Network Information. A change in FCC rules allowed Verizon to start providing sensitive customer information to other Verizon companies that offer wireless, long distance and Internet services. A notice in Verizon bills informed customers that they had to call a special telephone number within 30 days of receipt of the notice to register a request to restrict the use of their proprietary information.

OPC issued a Consumer Alert and requested that the Commission institute a proceeding to investigate whether Verizon's opt-out notice is sufficient to protect consumer privacy rights. The case is pending.

Federal Telecommunications Proceedings

OPC actively participates in proceedings before the Federal Communications Commission (FCC), and the Federal Trade Commission (FTC), as a member of the National Association of State Utility Consumer Advocates (NASUCA), and as a member of a coalition of consumer advocates from selected states. OPC works to ensure that Maryland residents have access to affordable local and long distance telephone services.

During FY 2002, People's Counsel Michael J. Travieso was the chair of the NASUCA Telecommunications Committee. In this capacity, he led the development of NASUCA's telecommunications policies. He was also responsible for filing the FCC and FTC comments discussed below on behalf of NASUCA.

FTC File No. R411001 - Telemarketing Rulemaking Comment; Proposed Privacy Act System, Do Not Call Registry

The Federal Trade Commission (FTC) issued a Notice of Proposed Rulemaking to propose changes to the Telemarketing Sales Rule that would establish a National Do Not Call Registry for consumers who do not wish to receive telemarketing telephone calls. The FTC also issued a Notice of Proposed Rulemaking that outlined the proposed process for gathering of information from consumers for the Do Not Call Registry and the dissemination of Do Not Call lists to telemarketers. The FCC proposed to use an automated system for answering incoming calls from consumers asking to be in the registry.

NASUCA, in its comments, urged the FTC to establish such a registry. State efforts to address unwanted telemarketing calls have not been comprehensive or consistent. The need for a comprehensive, consumer-friendly national Do Not Call Registry outweighs most of the additional costs that telemarketers and sellers might incur. A decision is pending at the FTC.

FCC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170 - Universal Service Fund Contribution Mechanism

In a Notice of Proposed Rulemaking, issued February 26, 2002, the FCC requested comments on changes to the contribution base for the Universal Service Fund (USF). In its initial and reply comments, NASUCA argued that major structural changes to the collection mechanism are not necessary because the contribution base for the USF is not shrinking. Further, the connection-based mechanism proposed by the FCC is inequitable.

FCC Docket Nos. 02-33, 95-20, 98-10 - Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities

On February 15, 2002, the FCC issued a Notice of Proposed Rulemaking to examine the appropriate legal and policy framework for broadband access to the Internet provided over domestic wireline facilities under the *Telecommunications Act of 1996*. The FCC indicated that wireline broadband Internet access services should be classified as information services subject to regulation. Comments by OPC and other consumer advocate offices maintain that the FCC's characterization of the bundle of services--wireline broadband and Internet access--as a single service is incorrect. The classification of these many functions as a single service, based upon whether the incumbent local exchange carriers (ILECs) sell the underlying transmission separately, gives the ILECs far too much control over competitive access to their bottleneck facilities.

FCC Docket Nos. 00-199, 97-212, 80-286, 99-301 - Continuing Property Records (CPR)

The Uniform System of Accounts requires Regional Bell Operating Company (RBOC) subsidiaries to maintain continuing property records that describe all capital equipment, identify its location, reference the equipment's installation work order(s) including date of installation, and identify the equipment's cost. The FCC audits sample CPR records and verifies compliance by spot-checking whether reported equipment actually exists. The FCC issued a Notice of Proposed Rulemaking on CPR on November 5, 2001. In its comments, NASUCA said that the FCC emphasis should be on enforcement, not elimination or streamlining of CPR. Recent national security and accounting developments highlight the need for CPR record requirements and increased audits by regulatory staff.

FCC Docket Nos. 96-262, 94-1, 96-45 - Public Notice for the Initiation of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps

The FCC opened a proceeding to review the economic cost data to see if the current Subscriber Line Charge (SLC) of $5.00 should be increased. The SLC is a flat charge that recovers the interstate portion of local loop costs from an end user. OPC, acting as the attorney for NASUCA, opposed the increase as uneconomic and unfair to residential consumers. The FCC issued an order increasing the SLC cap to $6.00 as of July 1, 2003 and $6.50 as of July 1, 2004. NASUCA appealed the order. The case is pending.

FCC Docket No. 96-45 - In the Matter of Federal-State Joint Board on Universal Service

In response to the Joint Board on Universal Service public notice, OPC submitted comments with the Ohio Consumers' Counsel on the Lifeline and Link Up Low Income Telephone assistance programs. These programs are part of the national universal service initiative to ensure that low-income consumers have access to telecommunications services. The NASUCA comments recommended that the FCC take steps to increase participation and promote additional outreach efforts, including policies favoring automatic enrollment for low-income consumers enrolled in other programs and self-certification for consumers who cannot be auto-enrolled. Finally, NASUCA recommended that the FCC encourage the use of payment arrangements to return disconnected Lifeline-eligible customers to service.

FCC Docket No. 01-92 - In the Matter of Developing a Unified Intercarrier Compensation Regime

Both the Office of People's Counsel and the National Association of State Utility Consumer Advocates voiced opposition to a proposal by the FCC to use a "bill and keep" system for telephone company networks exchanging traffic with each other. OPC and NASUCA said that such a proposal is unfair, inefficient and would raise costs substantially for residential telephone and Internet services.

When a customer of one telephone company calls a customer of a different telephone company, current FCC regulations require the companies to compensate each other for the costs of the equipment used to switch calls from one telephone company to another. The payments help each of the companies involved in a call recover their network costs. Under the proposed system, these companies would use each other's networks for free and charge the hundreds of millions of dollars of network costs directly to retail customers who receive the calls. While the current system requires customers who originate the calls to pay for them, the proposed plan would have the effect of requiring customers who receive telephone calls to pay for them.

In comments filed in August 2001, OPC and NASUCA warned that consumers would end up paying those costs in new surcharges on their bills. Also, because Internet service providers receive a huge volume of calls while originating little or no traffic, charging ISPs to receive calls will drastically increase the cost to the ISPs and the general public.

Petition by the National Association of State Utility Consumer Advocates, et. al., to Require Interexchange Carriers to Provide 30 Days Notice to Consumers Prior to Changing the Terms and Condition of Their Service

NASUCA and others filed a petition with the FCC seeking an order that long distance companies provide a minimum of 30 days notice to consumers prior to changing the terms and conditions of their service plans.

The FCC "de-tariffed" the services provided by long distance companies in 2001. This resulted in long distance companies entering into individual contracts with consumers. Long distance companies have been changing the terms and conditions of these contracts without sufficient notice to consumers. The petition seeks to remedy this situation.

Water and Sewer

Sub-Metering/RUBS (Rates Utility Billing Systems)

During FY 2002, OPC became involved in a case concerning water billings in some apartment dwellings in Howard County. Historically, landlords included water charges in gross rental charges. Some companies have persuaded landlords to establish a separate water charge based upon the square footage rented, and bill tenants separately for these charges. The company receives a commission from the billings. Tenants in apartments with Rates Utility Billing Systems (RUBS) start receiving water bills in addition to their rent charges.

OPC attended several citizens meetings where apartment residents voiced their grievances about RUBS. OPC is working with representatives of the Howard County government to resolve the matter

Case No. 8898: In the Matter of the Petition of Utilities, Inc. for Approval of a Merger and Acquisition of Stock by nv Nuon.

Utilities, Inc., a company holding the voting securities of several water companies, including one in Maryland, filed a petition with the PSC for authority to transfer control of the Maryland water company to nv Nuon, a Dutch company holding a variety of utility assets throughout Europe and the United States. OPC took the lead in negotiating an agreement with the companies to settle the case. OPC protected consumers by ensuring that the costs of the change of control were not passed through to consumers. In addition, OPC was able to convince the companies to freeze rates for one year. The companies also agreed to maintain certain water quality standards. All interested parties signed the settlement, which was accepted by the PSC.

Transportation

Case No. 8904 - Application and Petition of Association of Maryland Pilots to Modify Its Rates and Charges for Pilotage Services

OPC participates in bay pilot cases that are subject to PSC jurisdiction. OPC supports reasonable requests for modern equipment to insure safe navigation.

The Association of Maryland Pilots (MPA) filed a request in September 2001 for an increase in rates for pilotage services within Maryland waters. OPC, MPA and the Maryland Maritime Association negotiated a settlement, which the PSC accepted, that calls for an across-the-board increase in rates and charges of eight percent as of February 1, 2002. An additional increase of four percent is to become effective as of January 1, 2003. The Settlement provides sufficient revenues to allow each pilot to have his own Differential Global Positioning System, which is an upgrade in pilotage safety.

Case Index

Electricity - PSC

Telecommunications - Federal

Water and Sewer - PSC

Transportation - PSC

Glossary of Consumer Terms

Here are definitions for many of the terms used in the work of the Office of People's Counsel.

Access Charges - Fees charged to telephone customers designed to recover the costs borne by the local network to provide local and long distance services to end users.

Affiliate - A company or person directly or indirectly controlled by, or sharing the same owner, as another company.

Aggregator - A buying group/organization that negotiates prices for a group of customers or a company that purchases a product, such as energy, in bulk for resale to retail customers.

Base Rate - The rate public gas and electric utilities charge customers for the cost of providing service, plus a profit. State regulators set base rates.

Collocation - The ability of a competitive local exchange carrier (CLEC) to connect its facilities to facilities owned by an incumbent local exchange carrier (ILEC).

Competition - When two or more entities sell similar products/services in the same consumer market. For example, more than one company sells energy and supply to Maryland consumers in some service areas.

Competitive Transition Charge (CTC) - A charge, approved by the Public Service Commission that allows unbundled utilities to recover investments in certain assets, such as power plants. The charge covers the remaining investment costs that were previously included in electric rates. A CTC allows utilities to recover these costs over a set period of time (the transition period), after which the CTC is phased out. See **Stranded Costs**

Competitive Billing - A provision of a electric or gas choice program that would permit customers to select the billing company for their electricity or gas service.

Cramming - A fraud in which telephone companies charge customers for products or services such as voice mail that the customer never ordered and may not have received.

Customer Choice - The ability of electricity and natural gas customers to shop, compare prices, and choose the company that generates or supplies their electricity and natural gas. Their utility continues to provide delivery service under regulated rates and conditions.

Deregulation - The removal of government regulations. In the case of the utility industry in Maryland, the PSC has ordered the introduction of supply competition into electric service, and permits utilities to allow competition for gas supply services. Under these programs, consumers can choose their energy supplier. Only the supply of electricity and natural gas is deregulated; transmission and distribution services remain regulated. This type of limited deregulation is also referred to as unbundling or restructuring.

Electric Universal Service Program (EUSP) - A fund established by the *Electric Consumer Choice and Competition Act of 1999* to help limited-income consumers meet their electricity needs. The money for the fund is collected through electricity rates.

Electricity (or Power) Marketer - A company that acts as a coordinator or broker, and obtains energy from any source or combination of sources, including independent generators, utility system power or spot purchases, for delivery to a utility or end user.

Electricity Supplier - A company that sells electricity or natural gas supply and services, such as billing or metering services. Suppliers/marketers of electricity and natural gas must be certified or licensed by the Public Service Commission to sell electricity to customers within the state of Maryland.

Federal Communications Commission (FCC) - The independent federal agency responsible for regulating interstate telecommunications services.

Federal Energy Regulatory Commission (FERC) - The independent federal agency responsible for regulating wholesale electric transactions and interstate natural gas pipelines.

Federal Universal Service Fund Surcharge - A surcharge on telephone bills that is used to help pay for telephone service to: people living in rural or other high-cost areas; low income customers; schools and libraries; and rural health providers.

InterLATA - A telephone call make within a specific region but outside the caller's local calling area. See **Regional Toll Call**

Loop Line - For local telephone service, a communications channel from a switching center or message distribution point to the user terminal. Also known as a subscriber line.

Market Power - The ability of a seller/ buyer, either individually or in collaboration with other sellers/buyers, to affect the price of electricity in the relevant market.

National Association of State Utility Consumer Advocates (NASUCA) - Association of 42 consumer advocate offices in 40 states and the District of Columbia whose members represent the interests of utility consumers before state and federal regulators and in the courts.

PJM - Pennsylvania-New Jersey-Maryland LLC Interconnection responsible for maintaining the Mid-Atlantic power grid.

Price to Compare - The electricity utility's price for electricity supply. For utilities that have unbundled delivery and supply services, this price appears separately on their customer's electricity bill. See **Shopping Credit**

Public Service Commission (PSC) - Maryland's state authority (agency) responsible for the regulation of public utilities and transportation companies doing business in Maryland.

Regional Toll Call - A call made outside the caller's local calling area and within a specified region or geographic area. Also known as an **InterLATA** call. Maryland residents can choose their regional toll call provider just as they can select their long-distance telephone company.

Shopping Credit - The price that an electric utility will charge its customers for the production of electricity, less any competitive transition charge (CTC). The credit is the amount consumers will use to compare offers when shopping for electricity. It is also known as the **price to compare**.

Slamming - The unauthorized switching of a customer's telephone or energy supply service without the customer's authorization.

Standard Offer Service (SOS) - Electricity supply purchased from a customer's electric utility company.

Stranded Costs - Payments to utilities for investments (e.g. power plants, purchase power contracts) that were required under a regulated system and approved by the Public Service Commission but are not part of the utility's regulated service under restructuring. Legislation provides that they will be recovered via the Competitive Transition Charge (CTC).

Universal Service - A provision guaranteeing that service is available and affordable to all residential customers. Universal telephone service is a federal program. Universal electric service is a Maryland state program. The costs for these programs are recovered in fees collected from users of the service.

Universal Service Fee - A fee paid by all users of electricity in Maryland to provide public interest programs for low-income users. The fees help eligible customers pay their electricity bills and also provides for energy conservation measures and weatherization.

Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202
410-767-8150
Toll free: 1-800-207-4055
MD Relay Services: 711
www.opc.state.md.us