# Maryland Office of the People's Counsel
# Fiscal Year 2004 - Annual Report

***Serving Maryland's Residential Utility Consumers***

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# MISSION STATEMENT

*The Office of the People's Counsel provides effective and zealous representation for Maryland's residential utility consumers. It is our mission to identify issues that impact consumers and pursue solutions that will provide safe, reliable, and affordable utility service. OPC works on both the state and federal level to advance the interests of residential consumers in the formulation and enforcement of protective statutes and rules, and to empower the utility consumers in their business dealings with utility companies. Finally, we serve as a resource to the community by providing education, referrals and training.*

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Office of the People's Counsel

**During Fiscal Year 2004, OPC strove to meet the goals it established in 2003: to address the evolving needs of Maryland's residential ratepayers through increased representation, outreach and education. I am pleased to report that these goals were met through the activities of OPC's attorneys and the Consumer Assistance Unit.**

**Additionally, OPC continued its role as an advocate in cases before the Maryland Public Service Commission, and other courts and agencies. I thank the entire staff for the work they have done on this report. I hope you will enjoy reading about OPC's litigation accomplishments in the pages that follow.**

**The coming year will bring changes in both regional and national energy markets. OPC is poised to respond to the changing needs of Maryland's consumers. We also encourage members of the Maryland Legislature, agencies, advocates and other interested parties to call upon us with questions and concerns about issues impacting consumers of electricity, natural gas, telephone and private water service.**

**It is my pleasure and privilege to serve as the attorney for Maryland's residential utility consumers. My staff and I look forward to continuing our representation to ensure that Maryland's residential utility consumers receive safe and reliable service at reasonable rates and prices.**

Patricia A. Smith

# Overview of Office of the People's Counsel

The Office of the People's Counsel (OPC), created in 1924, is the oldest consumer advocacy office of its kind in the United States. The People's Counsel is appointed by the Governor, with the advice and consent of the Senate, and acts independently of the Maryland Attorney General's Office and the Public Service Commission of Maryland.

OPC represents Maryland's residential consumers of electric, natural gas, telephone, private water services, and taxicabs. This mission underlines the fact that OPC literally touches the lives of every resident of the State of Maryland. When you make a phone call, use heating or air conditioning, or turn on a light in your home, OPC has been involved in decisions that affected the cost, quality of service and adequate supply of these utility services.

OPC does not receive taxpayer monies. Instead, a utility surcharge funds both our budget and the Public Service Commission's budget. This method of funding insures that we never overlook the fact that our clients are the ratepayers of Maryland.

In the Fiscal Year 2004, the Office of the People's Counsel operated with a budget of $2,407,408. OPC's largest expenditure, about 30 percent of our total budget, is for technical consultants. These consultants provide technical assistance and expert witness testimony. When dealing with highly complex national/international energy and utility issues, these consultants provide accounting, engineering and economic advice, which OPC staff uses when drafting opinions or challenges. The OPC presents these experts as witnesses in proceedings before the Public Service Commission (PSC), Federal Energy Regulatory Commission (FERC), Federal Communications Commission (FCC), Federal Trade Commission (FTC) and in the courts. Given the breadth of issues, and the specific technical knowledge and background required, it would be financially impossible to have such a large group of experts on the permanent staff.

OPC litigates in many administrative and judicial forums, both state and federal. In addition OPC participates in the formulation and review of laws and regulations. By statute, OPC reviews matters pending before the PSC, evaluating how the interests of residential ratepayers are affected.

OPC is a member of the National Association of State Utility Consumer Advocates (NASUCA) and participates on a number of Electric, Natural Gas, Telecommunications and Consumer Protection Committees. Acting with NASUCA, OPC responds to issues on a national level, which impact Maryland residential ratepayers. Such issues involve rules or laws under consideration by federal regulatory agencies, and the U.S. Congress.

## Consumer Outreach

OPC is a participant in the formulation of policies, regulations and laws that safeguard the interests of residential consumers and promote the reliability and safety of electricity, natural gas, telephone, water and transportation services. Consumer educational outreach has never been more important. As Maryland consumers are dealing with an ever changing national, regional and local utility marketplace. Responding to these challenges, OPC expanded statewide outreach in the areas of Consumer Protection, Consumer Information, and Consumer Education.

## Consumer Protection

In response to the significant changes in energy and telecommunications markets, the PSC is revising existing regulations and issuing new consumer protection regulations for regulated utilities and competitive suppliers. During FY 2004, OPC commented on these proposed regulations. They pertain to service terminations, payment plans and security deposit requirements for gas and electric utilities, and the need for flexibility and payment plans for customers faced with service termination due to high winter bills or other circumstances that may be beyond their control. Significantly, OPC advocated the use of diverse portfolio planning and hedging policies for winter gas supply to ameliorate consumer price spikes.

OPC works with our social service partners to encourage low and moderate-income working families to claim the Earned Income Tax Credit (EITC) on their federal income tax return. Dollars from the Earned Income Credit may be a very significant source of funds to assist the consumer in managing high energy bills and utility arrearages.

OPC continues to promote programs and educational forums that educate consumers about rising utility prices, and explaining the pros and cons of purchasing regulated and unregulated energy and telephone services. OPC staff members have a wealth of economic and regulatory knowledge at their disposal to act as effective educators and advocates for residential utility customers.

## Consumer Information

OPC introduced a series of *Consumer Alerts* in FY 2004. These alerts contain information on consumer rights and utility practices for a number of topics, including security deposits, gas pricing, service terminations, and EITC. We produce the *Resource Guide* series which describes available state and local energy, housing and telephone assistance programs in each County and Baltimore City, to help social workers, advocates, and volunteers identify financial aid offices, contacts and programs. The *Consumer Alerts* provide valuable and timely information to utility consumers. We distribute the comprehensive *Resource Guide* as part of our training materials to all levels of energy assistance providers.

OPC also presented training programs at various locations throughout the state, including local Maryland Energy Assistance Program (MEAP) offices in Baltimore City, as well as in Baltimore, Howard and Prince George's counties. OPC's training program presents effective strategies to help consumers resolve problems with applications for service, denial of service, payment arrangements, security deposits, landlord/tenant issues, termination procedures, billing issues, and help with questions regarding gas and electric suppliers.

Additionally, OPC distributes fliers that target consumer interests: *Contracting for Electricity and Natural Gas, Energy Telemarketing, Electric Universal Service Program, Electric Choice, and Energy Conservation.* These fliers inform consumers of their rights and responsibilities when choosing an energy supplier. These booklets are available in English and Spanish. On the national level OPC, with the National Association of State Utility Advocates (NASUCA), aided in developing the consumer fact sheet for the National Do Not Call Registry. This registry is the federal protection against unwanted telemarketing.

In all, OPC distributed 22,559 copies of its consumer information publications and alerts to individual consumers, bulk mailing to legislators, social service providers, faith based groups, and county library systems. These publications are also available at all our outreach events.

In FY 2004, OPC's website, *www.opc.state.md.us*, received a total of 418,636 visitors. This was an average of 1,147 visitors a day, a 14 percent increase over FY 2003. OPC's website contains all of our publications. The website has links to numerous government and business websites of interest to utility consumers. In addition, the website provides directions to a consumer on how to file a complaint with the Public Service Commission.

**Consumer Education**

The PSC established a Consumer Education Advisory Board (CEAB) in Case No. 8738 to assist with the further development of a statewide consumer education plan on electric restructuring. OPC was appointed to the Board in April 1999 and has served since the Board's inception.

OPC actively participated in the development of the PSC's consumer education efforts through its membership on the Board. OPC assisted CEAB to develop outreach, as well as multilingual editions of consumer handouts regarding EUSP.

OPC continues to provide consumer education materials to PSC staff and consultants, review draft educational materials and offer suggestions and revisions to the state consumer education campaign. OPC continues to monitor the development of the electric market and advises the PSC of residential utility consumer concerns through its membership on the CEAB.

Due to the limited electric choice activity in the retail market in Maryland, the consumer education campaign had focused resources on the Electric Choice website (www.md-electric-info.com) and call center (1-800-800-4491). The CEAB is currently tasked with assisting the PSC with programs to educate consumers about Standard Offer Service (SOS), customer protection, consumer options when price caps end, and environmental energy issues. OPC will continue active membership on the CEAB.

Additionally, OPC regularly meets with churches and energy advocates, as well as local and regional groups. These meetings are for the purpose of coordinating direct assistance and providing regulatory information. OPC encourages interested members of the energy advocate community to participate in CEAB meetings and to voice concerns related to statewide education about the Electric Universal Service Program (EUSP). Additionally, OPC provides ongoing information about cases and issues pending before the PSC that may impact low-income customers.

OPC is an active member of Department of Human Resources Office of Home Energy Programs (OHEP) Advisory Board, which addresses program design issues related to the Maryland Energy Assistance Program (MEAP). 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 MEAP. OPC's information provided the basis for new MEAP program provisions that offer greater access and coverage for limited-income customers.

## Speaking Out – Helping Out

OPC staff continued its outreach programs during FY 2004, appearing at community fairs and conferences around the state and on radio shows. During FY 2004 OPC participated in numerous events and training sessions. Some notable events include:

**Events**

- ◊ Prince George's County Energy Forum
- ◊ Prince George's County Energy Assistance Fair
- ◊ Montgomery County Energy Assistance Expo
- ◊ Baltimore City Energy Expo
- ◊ Maryland Association of Counties Convention
- ◊ Public Service Commission Gas Conference
- ◊ EUSP Advisory Board
- ◊ EUSP Statewide Outreach Committee
- ◊ Larry Young's Radio Show
- ◊ LIHEAP Lobbying Day
- ◊ Consumer Federation of America Conference
- ◊ Maryland Municipal League Conference
- ◊ Maryland Rural Summit
- ◊ Mid-Atlantic Association of Regulatory Utility Commissions
- ◊ Connectiv Power's Mid Year regional Conference

Additionally, OPC meets with other interested city and county agencies to develop outreach and informational efforts, similar to those listed above

**Training Sessions**

- ◊ Montgomery Co. Federation, training presentation
- ◊ Department of Social Services, training presentation
- ◊ Department of Health, Lead Paint Program, training presentation
- ◊ Kennedy-Krieger, training presentation
- ◊ Dublin-Darlington Community Council, training presentation
- ◊ Harford Community Council, training presentation
- ◊ Harford County Government, training presentation
- ◊ Jarrettsville/Norrisville Community Council, training presentation
- ◊ Kent Island Community Council, training presentation

- ◊ Montgomery County, Leisure World meeting and training presentation
- ◊ University of Maryland Medical System Community Support Program, training presentation
- ◊ Johns Hopkins University Law Enforcement Staff

OPC personnel participated in the planning and staffing of the Baltimore City, Prince George's and Montgomery County Energy Expos. During these events, crowds of people all day to apply for the State's energy assistance programs and learn about other state services. These expos bring together the utility companies, consumer advocate groups, and public service agencies in one location to serve the needs of consumers.

People's Counsel Patricia A. Smith is committed to direct interaction with Maryland utility consumers. OPC has intensified its efforts to meet with consumers and those groups that assist the utility consumer.

# CONSUMER ASSISTANCE UNIT

In late October 2003, People's Counsel established a Consumer Assistance Unit to address the increased needs of utility consumers for information, advice and intervention. Ms. Smith and the dedicated members of this Unit are committed to identifying and addressing the individual consumer concerns that ultimately impact all utility ratepayers as a class.

The Consumer Assistance Unit provides advice to individuals with a variety of issues such as: large outstanding utility bills, loss of electricity needed for medical equipment, identity theft, quality of service, problems with accessing utility company customer service offices, access to various grants and loans available for bill assistance and other utility questions.

Effective advocacy of these issues is aided by OPC's involvement in various workgroups and planning committees throughout the State. OPC staff is able to bring to the table a realistic snapshot of the true problems currently faced by Maryland residential ratepayers. During the past year, this participation has been effectively utilized to address many of the systemic issues highlighted by our individual consumer complaints. When necessary, OPC can resort to a more formalized legal advocacy.

From November 2003 to July 2004, the newly established Consumer Assistance Unit received over 1,057 phone, mail, and e-mail inquires from Maryland utility consumers seeking help. OPC attributes this significant increase in calls over the prior fiscal year to increased outreach and the growing consumer needs. Although the Consumer Assistance Unit is a new unit within OPC, it is of particular note that this increased level of assistance was accomplished without the addition of new staff within OPC's existing budget. This budgetary constraint could not have been maintained without the dedicated efforts of OPC's consumer team. The Unit is staffed by devoted non-lawyer administrative personnel, with legal review and support by an attorney, when necessary. OPC also monitors this work with quality assurance reviews from individual consumers. All involved in the activities of the Unit have found the experience deeply rewarding and productive. Letters and calls of thanks have been an overwhelming source of pride for the office. They look forward to continuing to be a critical source of support for Maryland consumers.

In an effort to provide information and assistance where it is most needed, OPC established two new partnerships in 2004. As a pilot program, the OPC materials are made available to consumers through the District Court of Maryland in Baltimore City.

In addition, an OPC staffer has been available one afternoon a week in the City's Housing Court to provide assistance and information. The public response has been extremely positive. The Housing Court is a location where there is a true interface between utility termination and eviction.

A partnership was also formed with The Civil Clinic of the University of Baltimore School Of Law. OPC has provided training and support to law students and faculty, so that the consumer problems of their clients may be properly identified and addressed by the clinic, with support from our office, if needed.

# Legislative Activities

During the 2004 Legislative Session, OPC testified on the following bills:

**Senate Bill No. 88: Commercial Law -- Maryland Telephone Consumer Protection Act**

- OPC supported this bill, which prohibits a person from violating the federal Telemarketing and Consumer Fraud and Abuse Prevention Act or the federal Telephone Consumer Protection Act. The bill also provides that a violation is an unfair or deceptive trade practice and is subject to specified enforcement and penalty provisions. This bill passed and was signed into law.

**House Bill No. 2 Maryland Do Not Call Registry Act**

- OPC provided informational comments on this bill, which provided for the enforcement of the federal "do not call" registry through State law and would have required the Public Service Commission and the Maryland Attorney General's Office to examine whether the federal program is in effect. The bill did not pass; however, the "do not call" registry was enacted by Senate Bill 88.

**House Bill No. 107 Telephone Companies – Billing for Unaffiliated Entity**

- OPC supported this bill, which would have prohibited the practice of "cramming." In cases involving cramming, fraudulent charges appear on customers' telephone bills under unassuming titles. This legislation received an unfavorable report in committee.

**House Bill No. 141 Telecommunications Service – Charges for Directory Assistance**

- This bill would have amended the Public Utility Companies Article to prevent the Public Service Commission from authorizing telephone company charges for directory assistance from a residence for each monthly billing cycle for telephone numbers to destinations inside or outside the local service area of the calling station. OPC provided informational testimony. The bill did not pass.

**House Bill No. 487 Commercial Law – Telephone Solicitations – Maryland Do-Not-Call Registry**

- HB 487 would have provided for the enforcement of the federal "do not call" registry and would have required the Maryland Attorney General's Office to examine periodically whether the federal "do not call" program is in effect. The OPC provided informational comments and noted that Senate Bill 88 would provide the most comprehensive protection for the consumer. (See above.) This bill did not pass.

**Senate Bill No. 175 Declaratory Judgment Actions**

- OPC supported this Public Service Commission Departmental Bill which amended the current declaratory judgment provisions under the Public Utility

Companies Article to provide a thirty day time frame in which to seek judicial review. This bill passed and was signed into law.

**Senate Bill No. 380 Public Service Companies – Customer Accounts**

- This bill would have required residential ratepayers to provide written authorization in order to open a utility account, make changes to an account or receive information about an existing account. OPC opposed this legislation, citing concerns for vulnerable populations that would have difficulty complying with the requirements. This bill did not pass.

**Senate Bill No. 491 Electric Company Reimbursement to Ratepayers for Power Outages**

- OPC took an informational position on this bill, which would have required electric companies that are unable to distribute electricity to ratepayers for more than 24 hours to compensate consumers up to $200 per day for the loss of perishable food. This bill did not pass.

**Senate Bill No. 622 Underground Conversion – Pilot Program**

- This bill sought to establish a pilot program to test the effectiveness of undergrounding power lines. The OPC opposed this bill, citing the results of the Task Force to Study the Undergrounding of Overhead Utility Lines, which was established during the 2003 Session. The bill did not pass.

**Senate Bill No. 654 Energy Saving Investment Program**

- OPC supported this bill, which sought to create a demand side management program. This bill did not pass.

**Senate Bill No. 739 Electric Utility Regulation – SOS Total Rates (10 percent)**

- Would have prohibited an electric company from increasing the rate for electricity charged to residential customers by more than 10 percent in any year in which the company is obligated to provide standard offer service. OPC took an informational position on this bill. This bill did not pass.

**House Bill No. 81 Electric Companies – Special Medical Equipment Program List**

- OPC provided informational comments on this bill which would have required electric companies to maintain a special medical equipment program list as part of a plan to ensure that individuals who require life support equipment, or have other special medical equipment needs, will receive priority service in the event of a power outage. This bill did not pass.

**House Bill No. 503 Environmental Trust Fund – Extension of Environment Surcharge**

- This legislation extends the environmental surcharge on specified electrical energy generated in the State until 2010. OPC filed informational comments on this bill. The bill passed and was signed into law.

**House Bill No. 705 Public Service Commission – Transfer of Franchise**

- OPC supported this bill, which would have prohibited a public service company from assigning, leasing or transferring a franchise or a right under a franchise to a corporation unless that corporation is incorporated in Maryland. This legislation did not pass.

**House Bill No. 726 Public Service Commission – Examination of Accounts, Books and Records**

- This bill would have permitted the Public Service Commission to examine the books and records of a parent utility company or unregulated affiliate in particular cases, including rate cases, as well as where the Commission examines a public utility company's actions with regard to a franchise, a company's practices as to stocks, bonds and anticompetitive practices. OPC supported this bill. The bill did not pass.

**House Bill No. 1056 Electric Utility Regulation – Standard Offer Service – Total Rates**

- This bill was cross filed with Senate Bill 739. See comments above.

**House Bill No. 1269 Electric Companies – Net Energy Metering – Wind Electric Generating Facilities**

- This legislation expands the provisions of law relating to net energy metering with respect to electricity generated by electric company customers who own solar electric generating facilities to include eligible customers who own specified wind electric generating facilities. OPC supported this legislation, which passed and was signed into law.

**House Bill No. 1308 Electricity Regulation – Renewable Energy Portfolio Standard and Credit Trading – Maryland Renewable Energy Fund**

- This legislation requires the Public Service Commission to establish renewable energy portfolio standards for retail electricity sales during specified years. It also requires the standards to be met by accumulating renewable energy credits and provides for the eligibility of energy from specified sources, as well as setting out a framework for a renewable energy portfolio standard. OPC took an informational position on this bill. This bill passed and was signed into law.

**Senate Bill No. 12 Aggregation**

- This bill would have authorized counties or municipal corporations to act as an aggregator that purchases electricity on behalf of customers under specified conditions. The OPC filed informational comments on this bill. This bill did not pass.

**House Bill No. 23 Electric Industry – Aggregation – Counties And Municipal Corporations**

- This bill was cross filed with Senate Bill 12. See comments above.

**Senate Bill No. 387 Trade Name, Trademark**

- The OPC filed informational comments on this legislation. The purpose of this bill was to prohibit the use of a trade name or trademark of an electric or gas company by a party engaged in certain businesses concerning heating, ventilation, air-conditioning, refrigeration, plumbing services, appliances and home improvements, absent a finding by the Public Service Commission that the trade name or trademark does not put competitors at a competitive or economic disadvantage. This bill did not pass.

**House Bill No. 311 Task Force to Study Competition in the Residential Electricity Supply Market**

- OPC supported this bill, which would have established a task force to explore the development of competition in Maryland's energy market. This bill did not pass.

**House Bill No. 1378 Electric Universal Service Program Fund – Extension**

- This bill proposed to extend the Public Service Commission's authority to retain unexpended funds in the Electric Universal Service Program Fund and to disburse these funds through June 30, 2005 to ratepayers who qualified for assistance during the fiscal years 2002, 2003 and 2004. OPC supported this bill. It did not pass.

# UTILITY CASES FOR FY2004*

## TELECOMMUNICATIONS

Since the Telecommunications Act of 1996 was passed by Congress, many telecommunications cases on the state and federal levels have dealt with implementing provisions of the Act or associated regulations promulgated by the Federal Communications Commission (FCC). A number of the cases in which the OPC participated in FY04 involve this continuing evolution of the competitive local exchange market. For example, the Batch Hot Cut and Triennial Review cases are a direct outgrowth of FCC mandates. Likewise, since the Telecommunications Act mandates that competitive local exchange companies must have access to the unbundled network elements (UNEs) of the incumbent local exchange company; parties in Maryland periodically have rate cases on the appropriate rates for UNEs.

The OPC continues its efforts to ensure that Maryland consumers have affordable local phone rates. OPC reviews each annual Price Cap filing by Verizon to ensure that it complies with Maryland Law and the Commission's Price Cap Order. The Price Cap review in FY04 resulted in rate decreases for consumers.

The OPC also participates in any case which may affect either the price of telephone service or its quality. For example, because of the diligent efforts of a Montgomery County consumer, the OPC became aware of a problem with how Verizon was collecting a county tax. The OPC reached a settlement with Verizon and other parties to remedy the situation.

The OPC also continues to participate in workgroups and rulemakings involving service quality issues, streamlining interactions among competitors, numbering issues and prices for service.

- **Case No. 8988—Batch Hot Cut**

This case was instituted in response to the Federal Communications Commission's (FCC) Triennial Review Order which, in part, mandated that state public service commissions examine the efficiency of the processes used by the incumbent local exchange carrier (Verizon) to migrate large numbers of switching customers to its competitors (a batch hot cut). Due to an intervening Federal Court decision, this case has been temporarily stayed by the Public Service Commission. The OPC will continue to participate in the proceeding if the stay is lifted.

- **Case No. 8983—Triennial Review**

* The cases listed highlight the types of issues OPC engaged in during FY 2004; as such it not intended to be a comprehensive list of all the cases or workgroups in which OPC was involved.

This case was instituted in response to the FCC's Triennial Review Order, adopting new network unbundling requirements for the local telecommunications market. OPC is a party to this matter, but the PSC has imposed a stay on all proceedings as a result of a Federal Appeals Court decision. (See Case No. 8988.) OPC will continue to litigate this case once the stay is lifted.

- **Case No. 8971—Verizon Montgomery County Telephone Tax**

OPC filed a complaint and request for investigation regarding Verizon's attempt to retroactively collect Montgomery County Telecommunications taxes from County residents as a result of Verizon's own billing error. OPC believed that state regulations prohibited Verizon from billing current customers for its failure to collect taxes since 1999. The parties involved (OPC, Montgomery County and Verizon) began negotiations and reached a settlement which allowed Verizon to recover a portion of the uncollected taxes from certain Montgomery County customers through a small surcharge on their bills. Verizon will recover no more than $5,164,332 over a period of about 13 months. Verizon also agreed as part of the settlement to revamp its bills in Montgomery County so that the amount of the taxes would be clearly set out on customer bills as a line item.

- **Case No. 8965—Bosley v. Verizon**

The complaint in this matter was filed by a resident of Northern Baltimore County who sought to change from Verizon's Foreign Exchange (FX) service to local service without changing his phone number. Verizon argued that its tariff would prevent the customer from keeping his phone number because FX service is associated with a particular Verizon Central Office (CO). The PSC dismissed the customer's complaint, and he has appealed. OPC, while sympathetic to the customer's plight, argued that the tariff would prevent the relief he requested.

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

This case stems from the sixth annual review of the Price Cap Regulatory Plan that was adopted by the PSC in 1996. Subsequent to the close of the record in that proceeding, filed a motion to reopen the record for "new" information. OPC objected, showing that each "new" piece of evidence that Verizon sought to introduce was merely cumulative. In response, the PSC ordered the parties to convene new settlement talks to see if some of the annual price cap filings made by Verizon during the pendency of the price cap plan could be resolved. As a result of those talks, the parties reached an agreement on the 2001 and 2002 Annual Price Cap filings which resulted in an overall decrease in rates of $1,836,205.

- **Case No. 8979—Investigation into Rates for Unbundled Network Elements (UNE) Pursuant to the Telecommunications Act of 1996**

This case began when OPC and WorldCom filed petitions with the PSC requesting that the Commission re-examine unbundled network element rates in Maryland. At the close of this case, the PSC issued an Order on June 30, 2003, adopting many of OPC's recommendations regarding adjustments to the Verizon UNE cost studies that would reduce the UNE loop recurring rates. The PSC also agreed with OPC on other issues such as depreciation rates, common overhead costs, switching UNE costs, cost-of-capital, and poles and cable material costs.

Various parties filed motions for rehearing and reconsideration of that order. OPC responded to those motions, arguing that the PSC was correct in its determination to adopt a 62 percent Distribution Fill Factor, a new switch discount and the forward looking to current factor. However, OPC did agree with some parties that the PSC was incorrect in ordering only 50 percent GR303 IDLC (integrated digital loop carrier) technology. OPC pointed out that that part of the order would not result in a rate for UNEs based upon least cost, efficient technology as required by law. Additionally, OPC showed that this aspect of the order was contrary to the way Verizon actually conducts its business.

- **Case No. 8916—Performance Assurance Plan: Verizon**

OPC continues to participate in reviews and negotiations of issues involving Verizon's Performance Assurance Plan (PAP) which governs how Verizon and Competitive Local Exchange Carriers (CLECs) interact with each other to provide local service. OPC also will continue to participate in the ongoing audit of the Verizon PAP standards.

- **Case No. 8853—Numbering Issues**

This case was closed on the Public Service Commission's docket by order issued February 14, 2004. The order left open the possibility for OPC, or any party to argue for rate center consolidation, in order to preserve phone numbers if shortages of numbers developed in the future.

- **Case No. 8862—IntraLATA**

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 charge is a non-recurring charge that applies when telephone customers change, their intraLATA primary interexchange carrier. The intraLATA primary interexchange carrier is the carrier that telephone customers select to carry their direct-dialed, non-dial-around intraLATA toll calls. IntraLATA toll calls are toll calls made within the boundaries of a local access and transport area, which toll calls are sometimes inartfully 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 PSC Hearing Examiner adopted all of OPC's positions. The case was appealed and is still pending as of this date.

- **Case No. 8927—CloseCall America**

CloseCall America, Inc., a competitive local telephone exchange provider, filed a complaint with the PSC concerning certain business practices of Verizon Maryland. CloseCall alleges 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 alleges that Verizon unlawfully bundles certain services, such as DSL and voicemail, with its local telephone service, so that consumers who choose CloseCall for local telephone service cannot obtain these ancillary services. The PSC Hearing Examiner and the PSC adopted OPC's position on Verizon's harmful business practices. Both Verizon and CloseCall appealed the case.

- **Case No. 8745—Verizon v. Public Service Commission, *et al*. (Court of Appeals)**

Both Verizon and AT&T appealed a PSC decision in Case No. 8745, regarding the need for a Universal Service Fund and whether access fees were set at an appropriate level. A Universal Service Fund would be created by a consumer surcharge to ensure that funds are available to expand or upgrade the land-line telecommunications infrastructure in Maryland, to ensure all Maryland residents can get telephone service at affordable rates. Case No. 8745 determined that a Universal Service Fund was not necessary. Access fees are collected by the incumbent local exchange carrier, which in Maryland is Verizon-Maryland, from long distance carriers for access to Verizon's telecommunications facilities, which access is necessary to complete a long distance telephone call. Verizon argued the access fees were adjusted too low, and AT&T argued they were not set low enough. In the Circuit Court for Montgomery County, OPC argued that the PSC order should be upheld. Afterwards, Verizon and other parties filed appeals to the Court of Special Appeals of the Circuit Court decision. Verizon prevailed at the Court of Special Appeals. Ultimately the Court of Appeals refused to grant certiorari.

- **Public Service Commission, Rulemaking No. 6—Access and Payphone Dial Around Surcharge**

The OPC reviewed an amendment to regulations increasing by $.25 the per call rate offered by an interexchange telephone company for pay phone dial around services to its customers. Essentially, the revised regulation will cause people who make a long-distance call through their chosen long distance carrier rather than using the payphone provider's long distance carrier to incur an extra charge of $.50 per call.

- **NASUCA Telecom**

OPC is a member of a committee that develops and articulates multi-jurisdictional positions on telecommunications issues before the Federal Communications Commission, other federal agencies and various federal courts.

# NATURAL GAS

OPC has analyzed the gas hedging programs by the state's major gas utilities, Columbia Gas of Maryland (Columbia), Washington Gas Light Company (WGL) and Baltimore Gas and Electric Company (BGE). Gas hedging programs are designed to reduce overall gas price volatility by obtaining contracts which fix the price of gas. The hedged gas purchases protect the utility and its customers from undue price volatility in the markets, as may occur in a winter that is unseasonably cold or has an unusual and unexpected weather pattern. Fixed price contracts allow for either hedging through physical purchases of gas supplies or through futures contracts. Generally, the utility also continues to purchase gas supplies in the monthly or daily markets so that a degree of consistency as to market prices is maintained.

As a result of recent litigation and negotiation, all of the utilities in Maryland are considering, or have adopted, hedging strategies to address gas price volatility. OPC supports strategies that provide stability and consistency in customer bills while also achieving cost savings when possible. As the various utility companies develop hedging programs, OPC is prepared to ensure the best interests of the residential consumer are protected.

- **Case No. 8950—Baltimore Gas Electric**

OPC, in a stipulation and agreement with other parties, was able to resolve the question of how to calculate and fairly allocate responsibility for a provider of last resort (POLR) capacity costs related to suppliers who exit the competitive market place while having an outstanding obligation to serve customers. When BGE holds capacity reserves to meet outstanding POLR obligations incurred upon a suppliers' exit, this cost will now be properly allocated and recovered from the gas suppliers who caused the need for these reserves. Customers who have chosen not to participate in the competitive market will not be forced to pay for these costs. This case also addressed costs related to changes in customer growth and participation in gas choice programs.

- **Case No. 8897—Washington Gas Light and Case No. 8952—Columbia Gas of Maryland**

Under orders in both cases, these companies may hedge substantial portions of their gas purchases for firm service customers. The WGL pilot will be in effect for a two year period. The identified purpose of the pilot is to permit WGL to obtain information on the benefits and operation of a hedging plan. OPC also supported adoption of the Columbia Gas program which permits the purchase and sale of New York Mercantile Exchange (NYMEX) futures contracts as well as the purchase of fixed price physical gas supplies.

- **Case No. 8511—Gas Costs, Columbia Gas of Maryland**

The issues in this case involve the continuing investigation of the purchased gas adjustment and actual cost adjustment of Columbia Gas of Maryland. OPC is emphasizing the review of actual gas costs and purchasing practices for Local Distribution Companies (LDC), like Columbia. Although OPC did not seek a disallowance of any gas costs incurred, OPC requested improvements in the filed information submitted by Columbia to support its Purchased Gas Adjustment (PGA). Also, OPC sought synchronization among the parties regarding the twelve month review period. These changes were accepted for the next PGA by Columbia, and a stipulation and agreement was filed which was adopted by the proposed order of the Hearing Examiner. The order was not appealed.

- **Case No. 8991—Washington Gas Light**

OPC achieved a compromise on the long standing issue of a Gas Administrative Charge (GAC) that had been requested by gas suppliers. This charge would recover from customers who were not participating in choice programs certain non-gas costs that have been recovered from all customers in distribution rates. The suppliers argued that at least seven types of non-gas costs such as billing, gas supply acquisition, advertising, and uncollectible expenses were improperly recovered by WGL in distribution rates. They also argued that these costs should be billed to the utility's sales customers who receive both gas supply and distribution from WGL. The gas suppliers sought to implement the GAC to make their competitive offerings to customers more attractive by requiring the WGL sales customers to bear the proposed charges through the GAC.

In this dispute, some parties claimed that improper subsidies existed between WGL sales customers and gas suppliers. The issue was resolved by stipulation which accounted for billing costs to be recovered from all customers by WGL and to create a small GAC for recovery of uncollectible expenses that were clearly related to uncollected billing amounts for sales service customers. The agreement further contains a provision for a stay of additional requests to add more costs to the GAC until 2007 or until WGL's next base rate case.

- **Cases No. 8990 and No. 8986—Washington Gas Light**

OPC is monitoring the results of these cases to ensure that costs are fairly allocated between a particular division of customer classes: interruptible and firm customers. WGL residential ratepayers are among the group of firm customers who are guaranteed uninterrupted gas service and supply by WGL. These customers pay rates consistent with the obligation of WGL to provide the customers with reliable firm service. Another group of customers, called "interruptible," traditionally have received service at lower rates consistent with WGL's ability under specified tariff conditions to interrupt gas service to these customers.

In Case No. 8990, the parties will establish a value for the services provided to interruptible customers, and a full cost of service for these customers will be reviewed in this case. Also in Case No. 8986, the parties developed new tariffs which cover the conditions and costs of a new interruptible balancing service which sets costs and conditions of storage and transportation for interruptible suppliers and customers.

In these cases concerning interruptible customers, OPC seeks to protect firm ratepayers from improperly bearing costs related to interruptible service when interruptible rates do not fully recover for the services provided to interruptibles.  Firm ratepayers, including residential customers, should not pay for gas supply costs incurred to make interruptible service less risky or less prone to interruption by WGL.

- **Case No. 8500(aa) —BGE: Market Based Rates**

This case concerned the PSC's annual review of any changes in the commodity cost of gas that BGE passes on to its customers.  OPC argued that the level of gas commodity purchases during the March time frame were excessive.  BGE explained that the reasons for the sharp increase in March's costs included an operational flow order (OFO) from the Columbia Gas pipeline, which caused a need for the increased purchases during a period of high gas prices.  The PSC determined that no adjustments were necessary because BGE had correctly calculated the cost components of the commodity cost of gas and properly applied the market-based rates in accordance with its tariff.

- **Case No. 8933—Investigation Into the Continuation of the Retail Sale of Natural Gas**

The OPC has participated for a period of years in Gas Roundtables concerning gas competition. Periodically, the PSC issues orders as a result of Roundtable activity. In February, 2004, the PSC issued an order addressing whether it would be appropriate to split Maryland Energy Assistance Program (MEAP) grants between gas utilities and gas suppliers as a way to increase competition. The OPC opposed this proposal because no record had been developed to show whether this proposal would actually help MEAP eligible residential households maintain utility service. The OPC also argued that there was actually an increased possibility of service termination if this proposal were to be adopted, since less money would be applied to reduce past due utility bills if MEAP grants were split with suppliers. Based upon the arguments of the OPC and other parties, the PSC rejected the proposal to split MEAP grants between utilities and suppliers.

- **Case No. 8958—Violation by Operators Energy Services**

Operators Energy Services has prematurely curtailed gas service to customers, in violation of existing contracts.  Customers were absorbed by Washington Gas Light. Those customers who were able to prove damages were granted a refund by the PSC pursuant to a settlement agreement.

- **Case No. 8860-Investigation into the Operation of Baltimore Gas 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, which determines the commodity cost of natural gas that is charged to BGE customers. OPC requested that the review incorporate BGE's capacity release and off-system sales programs, including current margin sharing arrangements. After negotiations, the parties entered into a settlement agreement in which BGE agreed to purchase between 10 to 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 price volatility of spot market purchases for residential consumers. The settlement also reduces what consumers must pay for BGE to reserve future gas supplies from $1.625 million to $300,000 per year. OPC continued to monitor the operation of the MBR in FY 2004.

- **Case No. 8960—Washington Gas Light**

WGL filed an application to accelerate the depreciation rates for the equipment and other assets that WGL uses in its natural gas distribution service. WGL proposed to use a new accounting methodology in order to accomplish the depreciation process and proposed to shorten the life of many of its assets. OPC opposed WGL's methodology and proposal to shorten the life of its assets. WGL prevailed regarding the accounting methodology; however, the PSC did not adopt WGL's proposal for a shorten life for many of its assets.

- **Case No. 8509(aa) —WGL Purchased Gas Adjustment Proceeding**

This case involves the continuing investigation of the Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA) of (WGL). OPC argued that WGL's gas commodity purchasing practices were flawed and OPC pointed out an over $1 million disallowance required as a result of excess purchasing costs incurred by WGL. OPC noted that more active management by WGL could have resulted in significant savings to ratepayers. The Hearing Examiner in this case agreed and required WGL to justify its purchasing practices or face possible disallowances in future PGA proceedings.

Both OPC and WGL sought clarifications of the proposed order. On appeal, the Public Service Commission noted that the party opposing WGL's purchasing practices had the burden of proof to demonstrate that alternative purchasing practices would be more cost-effective than current WGL practices. OPC has filed an application for reconsideration of the Commission's final order.

- **Dean v. Washington Gas Light**

Ms. Dean's gas meter malfunctioned over a period of six months. WGL, in the absence of an accurate meter reading, grossly miscalculated what they deemed Ms. Dean owed. Ms. Dean appealed through the PSC, complaint process, without success. OPC intervened on her behalf, but its initial efforts were also unsuccessful. The PSC ruled in favor of WGL. OPC filed an appeal before the PSC, but before the PSC Commission could rule on the appeal, WGL withdrew their demand for additional charges. OPC's efforts covered a period of three years, but achieved a positive result for Ms. Dean.

- **NASUCA Gas Committee**

The NASUCA Gas Committee coordinates the efforts of consumer advocates in matters impacting the interests of consumers of gas resources at the national and state levels. NASUCA frequently files on behalf of its members in cases at the Federal Energy Regulatory Commission (FERC). This past year NASUCA has focused on diverse matters including gas price indexing, affiliate standards and a blanket sales certificates rulemaking at the FERC. NASUCA also focuses on issues such as solutions to mitigate gas price volatility which affect all of its membership. This year a special study was undertaken on gas price volatility and also a resolution was passed to encourage NASUCA members to address issues regarding the recovery of uncollectibles outside of base rate proceedings.

OPC participates in the regular meetings of the gas committee and provides input to the committee on matters of concern to Maryland ratepayers.

# ELECTRICITY

OPC participated in a wide variety of forums on electric issues on behalf of Maryland's residential customers. The majority of Maryland residential customers still buy their electricity from their local utility. As a result of electric restructuring, the utilities no longer own their own generation plants. Therefore, the utilities must buy the power in the regional wholesale market. And the utilities must offer residents what is known as Standard Offer Service (SOS). OPC closely monitors the procedures the utilities use to buy power from the wholesale market for SOS to assure that it is as efficient as possible. OPC participated in several cases before the PSC with the goal of achieving SOS prices resulting from a fair and competitive bid process.

The wholesale electricity markets are under the jurisdiction of the Federal Energy Regulatory Commission (FERC), which has approved extensive rules on how those markets should be run. There is a continuous stream of proposals to change those rules. OPC participates in the stakeholder forums where those proposed changes are discussed. OPC also provides recommendations on those proposals to FERC based on how the proposals would affect consumer interests. These recommendations are made through protests, comments and rehearing requests made to FERC and on appeal to the federal courts.

OPC continues to be focused on the reliability of the electric system. OPC made recommendations in cases before the PSC on improved tree trimming and vegetation management practices to improve electric delivery service as well as recommendations on rules to best assure that there will be sufficient generation resources in the region to meet load demands.

There were cases at both the PSC and FERC on rates for the delivery of electricity to Maryland consumers. OPC participated in all the cases, providing expert testimony where appropriate, to achieve reasonable rates for that service.

OPC also provided assistance to individual customers with complaints against their utility, such as safety issues and bill responsibility. OPC also provided recommendations to PSC in support of programs to assist low-income customers, particularly home weatherization assistance, restrictions on termination of service in cases of customers with serious illness or life support equipment, and consumer protection in dealings with alternate electricity suppliers.

- **Case No. 8987—Choptank SOS**

This case was instituted by the PSC as an inquiry into Choptank's plans for provision of SOS to its customers. Choptank's obligation is to provide SOS until 2010. Unlike other large utilities which purchase the power used to serve SOS customers through a bid process, Choptank has a long-term contract with a supplier, Old Dominion Electric Cooperative (ODEC). After review, OPC recommended that the PSC allow Choptank to continue its current procurement method for SOS. As of the publication of this Report, the PSC has not yet issued an order.

- **Case No. 8977—Investigation Into the Outages Caused by Hurricane/Tropical Storm Isabel**

This case involved a PSC investigation into the preparedness and performance of utilities during and after Hurricane/Tropical Storm Isabel and the thunderstorms of August 26 - 28, 2003. Each of those storms resulted in massive power outages in Maryland. All utilities were required to file major storm reports. OPC reviewed these reports and made recommendations for improvement. In particular, OPC noted that the utilities in general appeared to have less than effective tree trimming and vegetation management strategies which contributed to the extent of the outages and, in some cases, may have impeded restoration efforts.

Additionally, OPC noted that customers had sought information from their utilities regarding restoration times. OPC did note, where appropriate, that some utilities had shown improvement in certain categories from the restoration after Hurricane Floyd in 1999. Although it was hard to reach a firm conclusion based upon the available evidence, in some cases it appeared that some utilities' decreased levels of total distribution expense correlated with the length of the restoral times.

As a result of the case, the PSC ordered, among other things, that each utility meet with the Maryland Emergency Management Agency (MERTT), as well as local emergency agencies. PSC ordered that all utilities work with MERTT to develop better ways to manage privately owned trees near utility rights-of-way, and that all utilities engage in public education about the proper trees to be planted near power lines. Additionally, all utilities were directed to develop procedures to allow for selective undergrounding and to develop written descriptions of their life support/vulnerable customer programs. Finally, PEPCO and Conectiv were required to modify and report on their Outage Management Systems under hurricane level conditions.

- **Case No. 9019—Implementation of Maryland Renewable Portfolio Standard**

Under the recently enacted legislation establishing a Renewable Portfolio Standard (RPS), Maryland electric utilities and electric suppliers have been required to purchase a percentage of their electricity from renewable energy resources. These resources include solar, wind and biomass energy facilities. The legislation requires an extensive structure to support the RPS and includes a registry of generators who are eligible to provide electricity qualifying under the RPS standard. Although most of the renewable energy will initially be obtained under bilateral contracts, steps are being taken to encourage an RPS market, including a voluntary electronic bulletin board. Pursuant to a recent ruling in this case, the Commission has initiated the drafting of regulations to implement the RPS. Currently, the Commission anticipates that the PJM Generation Attributes Tracking System (GATS) will form the basis for sales and trading of renewables in Maryland. OPC will continue to participate in the implementation process to monitor ratepayer interests in an appropriate and cost-effective implementation of the requirements of this new law.

- **Case No. 8796—PEPCO Income Tax Issue Related to Restructuring Settlement**

As part of PEPCO's restructuring settlement, a dispute arose among the parties regarding the proper treatment of Excess Deferred Income Taxes (EDIT) and Accumulated Deferred Investment Tax Credits (ADITC). OPC argued that the law supported returning $16 million to ratepayers. The IRS issued a notice of proposed rulemaking on this issue. (See below). The OPC asked that the Commission immediately rule that PEPCO should return $16 million to ratepayers; PEPCO argued that the PSC should wait until the IRS fully resolved the issue.

In November, 2003, the Hearing Examiner assigned to the case ruled in favor of OPC on this issue. PEPCO appealed the ruling to the PSC. OPC filed a reply, asking that the PSC uphold the Hearing Examiner's ruling. The parties await the PSC's order.

- **Case No. 8956—Easton CPCN**

The Town of Easton filed a Certificate of Public Convenience and Necessity (CPCN) in order to construct an additional 9 MW of combustion turbine generation and sought to augment its ability to produce electric power for the Easton service territory. Power is for both sale and internal use of the Easton territory. The ability to produce additional energy also serves to ensure Easton's competitiveness during bidding for contracts for electricity from prospective suppliers. OPC agreed that Easton's CPCN filing demonstrated cost-effective savings and reduced electricity power costs over an extended planning horizon.

OPC also advocated for a requirement that, when reporting information on interconnection of the new facility to the electric grid, such information would be provided to PSC staff at least 30 days prior to the start up of the new facility. This language provides for additional PSC oversight. Adoption of this amended condition was subsequently negotiated in stipulations and agreements in other CPCN cases including Mirant Corporation's facility at Dickerson in Case No. 8888, and its facility in Chalk Point in Case No. 8912.

- **Case No. 8941—Hatfield v. Potomac Edison**

This investigation arose after an Allegheny Power (t/a Potomac Edison) customer was electrocuted when the mast of a sailboat he was helping to dock struck a high tension wire which extended over a portion of Deep Creek Lake. PSC Engineering Staff contended that Allegheny should have found this problem with appropriate inspection and was therefore negligent. The company contends it did not violate any PSC or national electric code regulations. The proposed order by the Hearing Examiner found no fault on the part of Potomac Edison. OPC has filed an appeal to the PSC. The decision is pending.

- **Case No. 8844—PEPCO Service Connection Fees**

PEPCO filed a proposed tariff revision to increase the service connection fees for certain residential accounts (mainly apartment buildings) while decreasing the fees for single family homes and town homes. OPC recommended that the Commission staff's recommendation limiting the amount of the increase be accepted. The PSC approved the changes consistent with the recommendations of its Staff and OPC.

- **Case No. 9015—Washington Gas Energy Services**

The only activity in this case during FY 2004 was the actual filing of the complaint by Washington Gas Energy Services (WGES). WGES filed for a Declaratory Order asking the PSC to order PEPCO to provide it with more than three supplier ID designations. These designations are used to pass important information about the WGES electric load to the PJM. WGES alleged that PEPCO's refusal limits their ability to offer Maryland customers competitive electric prices. This case is ongoing.

- **Case No. 8995—PEPCO's Class Cost of Service and Revenue Requirements Study for Distribution Service**

The matter is as a result of Case No. 8890, which approved the merger between PEPCO and Delmarva. This case was docketed for an investigation into the rates of PEPCO (with a similar case opened for Delmarva). The case could only result in no change in rates or a rate decrease as a result of the terms of the merger. The main concern was to ensure that the merger had not provided any windfall to the parent or its subsidiaries. The settlement also provided for a change in the allocation of uncollectible expenses which, under the terms of the merger, would be considered a change in rates. In order for PEPCO to address both the change in allocation of uncollectible expense between choice and non-choice customers and other issues, such as the appropriate rate of return and capital structure, this proceeding was fully litigated.

OPC proposed ring-fencing of the PEPCO subsidiary serving Maryland customers to insulate the regulated subsidiary from riskier business activities of its parent PHI and other unregulated affiliates of PHI. OPC also argued against any inflation of the rate of return of PEPCO to subsidize the parent's activities. The Hearing Examiner determined that there was not a showing of a need to reduce rates for PEPCO.

- **Case No. 8981—PEPCO Energy Services v. Washington Gas Light**

In this case, Pepco Energy Services (PES) alleged that new operating procedures adopted by Washington Gas Light (WGL), allowed WGL to deny confirmation of, or cancel, deliveries of natural gas to competitive suppliers using secondary capacity on the Columbia Transmission Co. pipeline. PES stated this procedure impeded its ability to compete with WGL. The PSC ruled that tariff provisions adopted by the Hearing Examiner will assure suppliers of adequate notice of circumstances under which curtailment of demand of delivery of secondary gas may occur. The PSC also ruled that WGL must bring operational changes that have meaningful impact on suppliers to PSC's Gas Roundtable 90 days prior to implementation.

- **Case No. 8908—(Phase II) Electric Standard Offer Service**

In a four to one decision, the Public Service Commission ruled that utilities are not allowed to raise electricity rates for SOS ratepayers in order to compensate for utility income taxes. The utilities that sought the increase in electricity rates were BGE, PEPCO, Conectiv and Allegheny Power.

The Office of People's Counsel opposed the utilities' efforts to increase electricity rates to residential consumers. Had the utilities prevailed, SOS rates for Maryland's residential ratepayers would have increased by approximately $7 million per year. This increase would have reached approximately $18 million per year once administrative charges were applied to BGE's residential customers in 2006.

The OPC argued that the utilities' proposal would result in the collection of higher returns than agreed by all parties in the settlement of Public Service Commission Case No. 8908. In its order denying the utilities' request for an increased return, the Commission accepted the arguments of the Office of People's Counsel and other parties who opposed the utilities' request. This decision was important, given the announcement that electricity rates for those residential ratepayers residing in the PEPCO and Connectiv territories would increase 16percent and 12 percent respectively, beginning July 1, 2004.

- **Case No. 8985—SMECO Standard Offer Service**

In this case, the PSC reviewed Southern Maryland Electric Company's (SMECO) plans for acquiring power for SOS customers. All SMECO residential customers are SOS customers. The costs incurred by SMECO in acquiring this power will be passed directly through to its customers. SMECO proposed to use a self-managed portfolio approach to acquiring power. OPC recommended to the PSC that SMECO use an RFP process similar to that approved for the other utilities in Maryland in Case No. 8908. After litigation on the issue, the PSC decided to allow SMECO to use the self-managed portfolio approach beginning January 1, 2005. SMECO's progress in using this method will be reviewed on an annual basis. Also, OPC will receive monthly reports of the costs incurred by SMECO, and OPC has the right to request information from SMECO to explore any issues that arise.

- **Case No. 8980—Resource Adequacy Investigation**

The PSC docketed this case as a legislative style review of the methods used to assure that there are sufficient generating resources to supply Maryland's customers. OPC supplied extensive comments and expert testimony to aid the Commission. Because of electric restructuring, the amount of generating resources available to serve Maryland customers is dependent on regional wholesale energy markets. OPC provided recommendations on rules for those markets that would maintain adequate resources and keep prices at reasonable levels. The PSC issued a whitepaper in December, 2004 on the subject and is keeping the docket open to assess future developments.

- **Case No. 8974—PEPCO Standby Distribution Service Rates**

PEPCO filed for a change to its standby distribution rates for certain commercial customers. OPC became involved because there are common costs of distribution that could be allocated to residential customers if commercial customers are permitted to pay less. In addition, there were earlier settlement agreements implicated by PEPCO's proposal and the potential for a harmful precedent that could result and adversely affect residential customers on other issues. OPC successfully argued that PEPCO's filing was barred by an earlier settlement agreement and the PSC dismissed the filing.

- **Case No. 8975—Conectiv Standby Distribution Service Rates**

Similar to Case No. 8974 (above), Conectiv filed a request to establish a standby distribution rate for certain commercial customers. OPC argued that settlement agreements prevented the change Conectiv seeks to make, but the PSC found that the language of the Conectiv settlement agreements allowed the filing. OPC has monitored the litigation of this case to assure that no other interests of residential customers are affected.

- **Case No. 8903 – Electric Universal Service Program (EUSP)**

OPC has remained involved in this ongoing matter before the Public Service Commission. Per the Commission's February 5, 2004 letter order, the EUSP Working Group was requested to explore several topic areas pertaining to the operation of this program. EUSP is an energy assistance program for low-income ratepayers and is funded through a charge collected from ratepayers. OPC participated in all phases of the EUSP Working Group and proceedings associated with this matter. In particular, OPC advocated for improvements to the weatherization segment of the EUSP, as well as for increases in the allotment of funds for arrearage retirements; among other issues. OPC continues to be an active party.

- **Case No. 8890—PEPCO/Delmarva Power and Light**

PEPCO filed an application with the PSC for authorization to merge with Delmarva Power & Light Company, a public utility subsidiary of Conectiv which is a public utility holding company. In the past, OPC has advocated that a merger should not be authorized by the PSC, unless consumers realize a net benefit from the merger company. PEPCO argued that the companies would not be offering any net benefits to consumers; however, PEPCO did alternatively propose a service quality program from the merged companies as a consumer benefit. OPC argued that the standards of the service quality program were too low and that the standards for the program should be raised or the program should be eliminated. After hearings were held before the PSC, PEPCO contacted OPC and other interested parties to settle the case in lieu of further litigation. The companies agreed to freeze their rates for 18 months, and agreed not to pass along to consumers any costs associated with the merger and agreed not to adopt the proposed service quality program. The parties also agreed to form a working group, whereby all stakeholders could work to establish a more appropriate service quality program.

- **Case No. 8800—Town of Easton**

The Town of Easton filed a petition with the Public Service Commission to expand its electricity service territory into a territory served by Choptank Electric Cooperative, Inc. The service territory, formerly a farm, is now being developed into single-family homes and has been annexed to the Town of Easton. The Town of Easton argued that the public interest was better served if Easton, rather than Choptank Electric Cooperative, provided electricity to the future residents of this new 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.

This case was is notable because it is the first case to apply a new statute that was enacted to address electricity territory disputes involving an area annexed by a town. The statute provides that an electricity franchise over a particular area will not be transferred to a municipal corporation that annexes this area unless the PSC determines that the transfer is in the public interest. OPC argued that this statute be interpreted in a way that best protects residential consumers. After reviewing the facts, both OPC and PSC staff argued the Town of Easton did not provide clear and convincing evidence that the transfer of the electricity service franchise was in the “public interest.” Opponents also argued that Easton had not proven that these residential consumers of electricity would be better off with the Easton’s service than with Choptank’s service.

The PSC agreed with Choptank, OPC, and PSC staff and determined that the franchise would not be transferred to the Town of Easton. The Commission's decision was appealed to the Circuit Court for Talbot County. The Town of Easton did not prevail in the appeal and took an appeal to the Court of Appeals which affirmed the Circuit Court's decision.

- **Case No. 8994—Delmarva Power and Light (d/b/a Conectiv) Class Cost of Service and Revenue Requirements Study for Distribution Service**

Conectiv applied for an increase in its distribution rates as a result of the settlement in Case No. 8990. This rate case prompted active participation by OPC, presenting expert witness testimony and surrebutal testimony, leading to a stipulated agreement between all parties. The proposal was for an allocation of generation-related uncollectible costs which would have been excessively allocated to the residential class of rate payers. Pursuant to the settlement, the Company agreed to a particular rate of recovery for generation-related uncollectible costs, and also had an increase in the distribution rates for its commercial and industrial customers capped until 12/31/06.

- **Case No. 8930—McMillan v. BGE**

Mr. McMillan filed a complaint, *pro se*, with the Commission alleging that he was not responsible for a utility bill associated with a property his son had occupied for several years. Despite continuous non-payment, BGE did not terminate service for 15 months. OPC intervened on Mr. McMillan's behalf and over the course of six months, prepared and filed numerous pleadings in an effort to have the Commission reconsider its decision. The PSC had the statutory authority to overlook the late filing; however, the Commission sustained the Hearing Examiner's decision to impose costs on McMillan.

- **Case No. 8997—Catoctin Power, LLC-CPCN**

Catoctin Power, LLC filed an application for a Certificate of Public Convenience and Necessity, seeking to install a 600 MW generator in Frederick Co. The testimony of multiple experts has been filed and a hearing was held on January 12, 2005. A decision is expected shortly.

- **Case No. 8998—Potomac Edison-CPCN**

Potomac Edison filed an application for a Certificate of Public Convenience and Necessity to modify the existing Marlowe-Boonesboro transmission line in Washington Co. The proposal was approved by the PSC which determined that the project would involve rebuilding on an existing right-of-way. The PSC also determined that the project would be cost effective, would enhance reliability and prevent projected system failure.

- **Case No. 8899—Mid-Atlantic Petroleum Distributors Assoc., *et al.* v. Southern Maryland Electric Cooperative, Inc., *et al.*, Circuit Court for Baltimore City 24-C-03-008205**

The issue on appeal in this case was procedural in nature: whether the PSC's denial of the Petitioner's Request for Rehearing was subject to judicial review. The OPC argued that the Commission took the proper action. Because the Petitioners, Mid-Atlantic, did not present new evidence or changed circumstances, which is required under the legal standard for rehearing, the Circuit Court determined that it had no grounds on which to review the Commission's denial of the request for rehearing.

The Court also determined that a petition for judicial review of an order issued subsequent to an initial order (such as the order denying rehearing in this case) does not automatically subject the underlying order to review without a sufficient or fair inference of a request for review of the initial order. The Circuit Court correctly ruled that the Public Service Commission was correct in not reaching the merits of the Petitioner's argument.

- **D.C. Circuit Court Federal Court of Appeals No. 02-11211 and No. 03-1236**

This appeal of a FERC decision was brought by a group of Midwestern utilities seeking an order on appeal that would weaken rate caps and freezes implemented at the state level. There are freezes and caps currently in place for many residential customers in Maryland. OPC intervened in the case to oppose the efforts of these utilities from the Midwest. The appeals court rejected this portion of the utilities' appeal.

- **PJM GATS Case No. 8973—Generation Attributes Tracking System and Emissions Disclosure**

OPC has actively monitored this case which involves environmental issues impacting sellers of electricity in Maryland. OPC has advocated reliance on systems developed at PJM to ensure an effective verification of emissions disclosures for electricity sold in Maryland. The use of the PJM system involves establishment of certificates for each kWh of energy sold in PJM. The certificates will identify the significant environmental attributes related to the kWh produced, and also permit trading of certificates containing the attributes of the underlying energy sold. PJM has worked on development of this accounting system to ensure the accuracy of information and verification of emissions.

Discussions have occurred among stakeholders regarding the best method of cost recovery and currently it appears that the costs of the system will be billed to individual users who need to obtain the certificates, which will be produced under GATS to meet requirements of environmental laws enacted in the states. OPC is involved to consider the appropriateness of the costs for system development and operation, and believes that PJM's system can be designed to be cost-effective and efficient. Also, currently by order of the PCS, Maryland utilities are relying on PJM average regional data, in order to fulfill

Maryland requirements for verification of emissions disclosures, included in bills of residential customers.

## REGULATIONS

- **Public Service Commission, Rulemaking No. 2—Electric and Gas Consumer Protection Regulations**

The Office of People's Counsel participated in the drafting of new regulations to govern consumer protections for contracting with gas and electric suppliers. Previously the rules governing these interactions were found in a number of PSC orders. Now, consumers have the benefit of knowing exactly what their rights are in these contracts. The regulations cover, among other things, minimum contract terms, slamming and cramming, economic redlining, advertising, required consumer disclosures and priority of payment posting mechanisms. The regulations will become effective July 1, 2005.

- **Public Service Commission, Rulemaking No. 3—Restriction- Serious Illness/Life Support Equipment**

The OPC participated in the drafting of revised regulations governing the delay of terminations of service because of a serious illness or the need for life support equipment. The regulations have now been revised to make clear that physicians no longer have to state the nature of an illness on the form requesting a delay of termination. This change was made to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The revised regulations also limit a utility's ability to question the adequacy or integrity of the certification provided.

- **Public Service Commission, Rulemaking No. 4—Affiliate Code of Conduct**

The OPC participated in the drafting of new regulations to establish procedures governing certain gas and electric utilities' interactions with their affiliates. The regulations were drafted to ensure that the utilities do not subsidize their affiliated companies. Among other things, the regulations provide for the filing of cost allocation manuals, restrictions on the sharing of certain personnel with affiliates, training of personnel to be compliant with the regulations, disclaimers in advertising when certain affiliated companies of utilities use trade names or logos and restrictions or certain loans or debt guarantees by a utility to an affiliate. These regulations have not yet been finalized.

- **Public Service Commission, Rulemaking No. 5—Financial Fitness of Applicants for an Electric Supplier License**

For many years, the Commission reviewed the financial fitness of applicants for an electric supplier license based on standards developed through review by its Staff and as presented in administrative meetings. This Rule represented a codification of appropriate requirements for electric suppliers seeking to obtain a license to participate in Maryland markets. OPC advocated that important measurements of supplier financial integrity should be retained as established in the Maryland statute. Under the proposed regulations, the Commission has permitted a supplier to rely on an analysis of financial integrity as presented by financial fitness to participate in PJM markets, including consideration of PJM collateral requirements. A supplier who does not rely on participation in PJM must still demonstrate standards of financial integrity including the submission of a $250,000 bond or guaranty to support the application to supply electricity.

## RATES

- **BGE Line Extension, Residential Line Extension**

BGE filed a new tariff to require residential customers to pay for the cost for line extension charges. That is, the consumer pays the cost of running an underground electrical line from a new residence to the distribution main. BGE charges a basic fee for any electrical connection, up to 75 feet. Under BGE's proposal, this basic fee would increase for a single home from $580 to $1453 (electric only). Excess footage would cost $7.64 per foot. BGE sought to make the provision in this tariff permanent. OPC, in agreement with PSC Staff, argued that this tariff provision should not be permanent. The Commission voted to approve the tariff, which became permanent on September 30, 2004.

## FERC

- **Docket No. AO03-7-002**

The Federal Energy Regulatory Commission has opened this docket to address abuses in business practices that provide improper price information on natural gas sales and purchases. This information is important because it is used by the Public Service Commission, utilities, and suppliers in contract negotiations, tariffs, and to address reasonableness of procurement practices of distribution utilities. As a part of this case, FERC held conferences, issued surveys to market participants and produced a lengthy report on natural gas price and electric price indices. OPC is monitoring this matter through National Association of State Utility Consumer Advocates.

- **Docket No. ER04-342—Allocation of Pennsylvania-New Jersey-Maryland (PJM) Congestion Revenue**

PJM filed a proposal to change the manner that congestion revenue is allocated to market participants in the region. OPC generally supported this proposal and intervened in this case to assure that the interests of Maryland residential customers were not adversely affected.

- **Docket No. ER04-361—Compensation for Reactive Power**

PJM filed a proposal to change the system for compensating generators for providing reactive power. Reactive power is needed to operate the system reliably but it is not used directly by consumers. Therefore, a special compensation mechanism is necessary. OPC did not oppose the rules proposed in this case but intervened to monitor the litigation.

- **Docket No. ER04-364—Rate Issues for Customers in Michigan and Wisconsin Resulting from the Integration of Commonwealth Edison into PJM**

This case involves rate issues for customers in Michigan and Wisconsin resulting from the integration of Commonwealth Edison into PJM. Maryland consumers were potentially affected by the issues in this case because costs previously borne by customers in other states could be shifted to Maryland consumers. OPC has intervened in the case to be able to respond to any such proposals.

- **Docket No. ER04-367—PJM Operating Agreement Changes for the Commonwealth Edison Integration**

PJM filed ministerial changes to its Operating Agreement necessary for the integration of Commonwealth Edison into PJM. OPC intervened in this case to assure that the interests of Maryland residential customers were not adversely affected.

- **Docket No. ER04-375—Joint Operating Agreement Between PJM and Midwest Independent Transmission Operator**

PJM filed a Joint Operating Agreement between PJM and the Midwest Independent Transmission System Operator (MISO), which is an organization similar to PJM for a region that borders PJM to the west. OPC intervened and monitored this case because this Agreement can improve the reliability of the regional grid and the efficiency of the regional markets.

- **Docket No. ER04-608—Behind the Meter Generation**

This case involves rule changes for commercial and industrial customers who have on-site generating units. The rules for these generators affect the allocation of costs for transmission and ancillary service for all customers. Therefore, OPC intervened in the case to assure that the interests of Maryland residential customers were not adversely affected.

- **Docket Nos. PL04-2 & EL03-236—PJM Market Mitigation Proposal**

This case involves PJM's rules for wholesale electric pricing in load pockets. Load pockets exist in areas of the system where there is a limited amount of transmission available to deliver power from outside of the area. This often results in the need to rely on higher priced power from inside the load pocket and, as a result, higher prices for the local area. Load pockets often present opportunities for the abuse of market power because the load in the load pocket must buy a certain amount of power from generators inside the pocket. PJM filed a proposal to amend its rules for this type of situation. OPC supported the rules filed by PJM, and litigated the case to oppose other proposals that would likely result in unreasonably high prices. The FERC issued an order in the case that resolved certain issues. OPC has a filed request for rehearing of certain issues pending before FERC. In particular, OPC objects to FERC's creation of a presumption that certain units are entitled to higher rate caps based on operating history. OPC argued that there is no factual basis for the presumption FERC created. Also, OPC objected to FERC's finding that units built after 1996 should be exempted from market power mitigation rules. Other issues are currently being discussed through PJM stakeholder committees.

- **Docket No. ER03-262—PJM Expansion**

Commonwealth Edison, American Electric Power, Dayton Power and Light, and Dominion Virginia Power have all sought to join the PJM region. This issue affects Maryland consumers because these utilities charge a fee for use of their transmission system in order to sell out of their region and into PJM. FERC has issued an order approving the expansion of PJM to include these companies; however, FERC will hold a hearing on the rate issues. OPC has participated in these cases to ensure that the expansion would not present any reliability issues concerning electricity for Maryland and provide a better regional energy market. The rate issues are being litigated in FERC Docket No.ER02-111.

- **Docket Nos. ER04-156/EL04-41—New Transmission Surcharge**

The four Maryland investor-owned utilities, BGE, PEPCO, Conectiv and Allegheny Power, filed a request to increase the rates charged for new transmission facilities. These higher rates would have been applied as a surcharge to bills. If approved, this proposal would have resulted in higher rates for all Maryland residential customers. OPC opposed these higher rates because they resulted in unjustifiably high returns for the utilities. Because of the opposition by OPC, consumer advocates, and other customer groups, the utilities agreed to withdraw their filing until 2005. In 2005, other related issues involving transmission rates will have been addressed by FERC which may impact the surcharge issue.

- **Docket Nos. EL02-111/EL03-212/EL04-135/ER05-6—Regional Transmission Rate Design**

Prior to this group of cases, customers paid transmission rates based on the transmission assets owned by their local utility. FERC has instituted a number of policies that could result in transmission rates being calculated on a regional basis. OPC has opposed proposals to implement these policies because there has not been a showing that there are comparable benefits for Maryland consumers that come from paying a portion of the costs of transmission assets located in other states. FERC has issued interim orders that institute a new transmission rate design but has not adopted some of the proposals that would have had significant rate impact on Maryland consumers. These orders are not final and OPC is a party to a number of outstanding protests, and requests for rehearing in this matter.

- **Docket No. RT01-2—PJM RTO Filing**

During 2004, OPC's litigation in this matter focused on the details of PJM's economic planning protocol. The goal of this protocol is to determine if there are any transmission upgrades that would result in more savings for customers than the costs of the upgrade. OPC advocated that PJM should carry out this role because it has the requisite data and expertise to carry out this function. OPC also actively litigated issues involving the details of the planning protocol to improve the system.

- **Docket No. EL03-01—Incentive Rates for Transmission Owners**

FERC issued a proposed policy statement on incentive rates for transmission owners. As part of NASUCA, OPC filed comments in this matter. NASUCA's comments opposed the proposed rate adders because they were not targeted to activities that would be beneficial to customers would compensate utilities for actions already taken, and the cost adders were not in any way based on performance. The case is pending at FERC.

- **Docket No. PA03-12—Delmarva Congestion Charges**

This case concerns an investigation of congestion charges for customers on the Delmarva Peninsula. Congestion charges occur when prices are higher in certain areas than the system as a whole and result from limitations of the transmission system. The Administrative Law Judge for the case issued a set of recommendations which are primarily comprised of issues to be addressed by the PJM stakeholder process. OPC has been participating in the PJM stakeholder process on these issues.

- **Docket No. ER98-4608-005—PPL Market-Based Rate Authority**

FERC regularly reviews the status of generators that have market-based rate authority. OPC and the Pennsylvania Office of Consumer Advocate (PaOCA) asked FERC to convene hearings to further investigate whether PPL, which is a Pennsylvania utility that owns substantial generation, should continue to have market-based rate authority. OPC and PaOCA requested these hearings to determine whether PPL can exert market power in the PJM capacity markets, which would therefore affect prices for Maryland and Pennsylvania consumers. The issue is pending before FERC.

- **Docket No. EL01-118—Terms and Conditions on Market-Based Rate Authorization**

FERC issued an order that attaches conditions to the authority granted to all companies selling power in the wholesale markets. These conditions are designed to protect the interests of consumers by requiring companies to act in a competitive manner and subjecting them to penalties that accrue from the time the anti-competitive behavior begins. OPC filed comments in this docket as part of NASUCA that were generally supportive of the FERC proposal, but seek stronger penalty provisions. FERC issued an order that adopted some, but not all, of NASUCA's recommendations. NASUCA filed a request for rehearing of certain issues. The matter in pending before FERC.

- **Docket Nos. ER02-1205, ER02-1326, ER03-807—PJM Load Response Programs**

OPC has joined other consumer advocate offices in supporting PJM's Load Response Programs. These programs allow customers, usually large customers, the ability to reduce demand during higher cost times. This usually results in a lower wholesale price, which benefits all customers. The programs have been approved by FERC, and instituted. In 2004, PJM filed to extend the programs for another three years, OPC filed in support of that request. The matter is pending before FERC.

## WORKGROUPS

- **NASUCA Electricity Committee**

OPC is a member of a committee that develops and articulates multi-jurisdictional positions on electricity issues.

- **Warrior Run—Bids for Electricity Capacity**

OPC is participating in a process where the bidding for the electric energy from the Warrior Run generating plant is monitored by OPC. This is important because the revenues from the plant are credited to offset the cost of supplying consumers with electricity.

- **Pennsylvania-New Jersey-Maryland Stakeholder Committees**

PJM interconnection L.L.C. (PJM) is an independent entity designated by the FERC to oversee the regional transmission grid and wholesale electricity markets. In order to solicit input on performing these tasks, PJM has an extensive array of stakeholder committees. The stakeholders include customer representatives such as; OPC, generating companies, transmission owners, municipal and cooperative utilities, and competitive suppliers. OPC representatives participate in PJM stakeholder committees and working groups that provide recommendations to PJM on its rules and procedures that affect the reliability of the transmission grid, the amount of generation maintained on the system, and the prices for various wholesale electricity products for the region.

These committees include: the Members Committee, Electricity Markets Committee, Reliability Committee, Planning Committee, Market Implementation Committee, Market Monitoring Advisory Committee, Economic Planning Stakeholders Working Group, and the Reliability Adequacy Model Working Group. Most of the significant rule and procedure changes recommended by these committees are filed with FERC for approval.

**Members Committee**. The Members Committee (MC) is at the top of the organizational chart of PJM committees. The MC's role is to provide advice to PJM on issues involving transmission rate design and transmission operation and scheduling matters. The MC has authority over whether filings are made with FERC to change market rules. PJM (or any other party) can file a complaint with FERC to change PJM rules or procedures. After lobbying by OPC and other consumer advocate offices, FERC approved changes to the PJM Operating Agreement that allowed the consumer advocate offices in the region to vote in the End Use sector.

An OPC representative also participates on the following committees:

> **Electricity Market Committee**. The EMC is the subcommittee of the MC that deals with all issues related to the PJM energy, capacity and financial transmission rights markets. The committee votes on proposed changes to market rules.
>
> **Reliability Committee**. The RC provides stakeholder input into the process by which PJM calculates the necessary reserve margin to maintain sufficient resource adequacy to meet the applicable reliability standards. This includes the structure of the capacity obligation and associated markets. The RC has two standing committees, the Operating Committee and the Planning Committee. The Operating Committee issues are only occasionally important to OPC's interests.
>
> **Planning Committee**. PJM has traditionally engaged in planning to assure that there is sufficient transmission to meet the applicable reliability requirements regarding the ability of the system to deliver power to all loads. These standards do not involve the cost of the electricity that is delivered. In other words, if sufficient electricity can be delivered to a certain area but it is only from expensive generation, there is no reliability issue, and PJM planning would take no action. PJM planning studies the adequacy of generation in the region, but has no authority to bring about more generation, if necessary, other than to alert others to a problem.
> OPC, among others, has argued that PJM planning should examine the ability of the transmission system to support the competitive market and have the ability to direct upgrades to the system to improve

economic efficiency. Such upgrades would only be pursued if the savings that would result from the upgrade (the benefit) would outweigh the cost of the upgrade. FERC has supported this position in a number of orders and PJM is in the process of implementing a new planning protocol. OPC participated in this process to ensure that PJM planning will analyze whether there are transmission projects that would cost less than the energy price savings that would result, and PJM should have the authority to direct that such upgrades be built without unnecessary delay.

- **PJM Mid-Atlantic Distributed Resources Initiative—Demand Resource Forward Marketing**

This working group was created by the state public service commissions in the Mid-Atlantic region in late 2004 to address issue involving generating units that are smaller and spread out on the grid. These units are called distributed resources and they have the potential to provide environmental and economic benefits to consumers in the region. However, there may have to be changes in regulatory frameworks to accommodate this type of resource. OPC is participating in this working group to attempt to find ways to bring the benefits of these resources to Maryland consumers in a cost-effective manner. This effort will continue into 2005.

# WATER

The demands created by our mandated oversight of the privately owned water and sewer systems that are OPC's responsibility have changed radically over the past 15 to 20 years. In the past, the major concern of OPC has been essentially the consumer representative in rate proceedings. In that capacity, OPC presented expert accounting testimony and sound legal representation assuring the customers that their water and sewer rates were fair and reasonable. However, Maryland has 21 privately owned water and sewer companies that are regulated by the PSC. These companies have as few as twelve (12) customers and the largest has about five thousand (5,000) customers. The major water systems (Baltimore City, Washington Suburban Sanitary Commission (WSSC), other counties and municipalities) are not regulated by the PSC and therefore are outside OPC's jurisdiction. As the EPA and Congress have imposed higher water quality standards and stricter standards with regard to the discharge of effluents from the sewer plants, a cost associated with these new regulations has created a serious economic burden upon companies with small customer bases.

OPC realized early that absorption of these systems into existing and strategically located county and municipal water and sewer systems could be the solution. However, for reasons of their own, the counties and municipalities were not generally receptive to assuming these customers. We have encouraged and counseled the customers to pursue relief through their government representatives and where there was strength in numbers success was achieved. A recent experience in Carroll County demonstrates the difficulty OPC encounters when the customer base is small. A system of only twelve (12) customers had its private ownership attempting to charge $617.00 per month for water. Carroll County water rates were $38.00 per quarter. Carroll County refused to operate the system. Through OPC's intervention at the PSC and the Circuit Court for Carroll County, we were able to win a court order directing the County to assume operation of the system. Another example of our efforts concerned a water and sewer system in Prince George's County which was providing poor water quality at very high rates. OPC convinced the customers and governmental representatives that the operation of the system by WSSC would give the customers the relief they sought. WSSC over the course of years amassed funds ($6,000,000) thought to be sufficient to acquire the system by condemnation. While the ownership had an investment of only $2,500,000, a jury awarded $13,000,000 for the property. The effort to acquire the system was subsequently abandoned by WSSC. OPC's efforts on behalf of its clients have become much more complicated and demanding but hundreds of customers have received significant permanent relief and we continue our vigilance on behalf of those who may someday benefit from our efforts to merge the remaining systems with county and municipal operations.

Another area of concern for OPC is the monitoring of the operation of four private systems that have been recently acquired by foreign corporations. Our largest private water system located in Belair (Harford County) is now owned by RWE Aktiengesellschaft, a German Corporation which purchased American Water Works – one of the largest water companies in the United States. Utilities, Inc. of Chicago, the owner of eighty (80) water systems throughout sixteen states was purchased by NUON, a Dutch Corporation. Four of its water systems are located in Maryland. While these European companies have excellent credentials and were strictly examined and approved by the Maryland PSC and other state jurisdictions, OPC is closely examining their method of operation as well as their approach when seeking rate relief in the future. As a part of our effort in the merger/acquisition approval process, we were able to gain, through negotiations, a restriction against rate filings for a reasonable period after PSC approval. We await the opportunity to examine in detail operation of the systems over the elapsed time of ownership, when they ultimately pursue rate relief.

While attempts to resolve the normal daily problems encountered by customers of these water systems continues to consume much of our time, the challenges created by the above-mentioned efforts to facilitate mergers with counties and municipalities, and the monitoring of the systems acquired by foreign entities are all new tasks for which our expertise is expended to accommodate and protect the best interests of our constituents.

- **Case No. 8962—Application of Greenridge Utilities, Inc. for Authority to Increase Its Existing Rates and Charges for Water Service**

Greenridge Utilities sought a 52 percent water rate increase to collect a revenue deficiency of $138,000. An OPC expert witness examined the filing and prepared testimony that shows the revenue deficiency should be reduced by $75,847. A rate increase was granted essentially adopting the recommendations of OPC.

- **Case No. 9006—National Archives v. WSSC**

WSSC maintains that the National Archives cooling tower is discharging water into the sanitary system in violation of Maryland law. A dispute has arisen as to the calculation of charges associated with cooling tower waters returning to WSSC's sanitary sewer system. Parties are currently involved in a discovery dispute which has delayed hearings until further notice.

- **Case No. 8934—Washington v. Hagerstown**

Under a special PSC law, Washington County sought PSC examination of increases in sewer and water charges imposed by the City of Hagerstown upon county customers. Hagerstown contends the county is bound by terms of contracts between the parties and cannot seek PSC review. The hearing examiner decided that the rates were fair and reasonable. Washington County appealed the decision of the Hearing Examiner to the PSC on January 5, 2005.

# GLOSSARY

As with any special area of law, there are many unique words that have been developed to describe complicated processes or agencies.  These definitions should help explain the terms used in this report.

**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.

**Certificate of Public Convenience and Necessity (CPCN) -** A certificate issued by the Public Service Commission of Maryland, to any company that wants to build an electricity generation facility.

**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.

**Competitive Local Exchange Carrier (CLEC) –** A telephone company, that competes with the established (incumbent) local telephone company, such as Verizon.

**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 an 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 companies charge customers for products or services 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.

**IntraLATA** - A telephone call made 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 a commodity in the relevant market.

**Maryland Energy Assistance Program (MEAP) –** A state program that distributes federal funds for gas, oil, electricity and other home heating and cooling bills to limited-income individuals and families.

**National Association of State Utility Consumer Advocates (NASUCA)** - Association of 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.

**New York Mercantile Exchange (NYMEX) -** The financial commodities board that investors and companies use to trade options on energy, fuels, and metals

**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.

**Redlining-** the practice of economic discrimination wherein the company attempts to select customers based on race, geography, economic class, etc. The goal of redlining is to capture a group of customers who are good credit risks, and are able and willing, to pay higher costs for a product and exclude less profitable groups from a company's service.

**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 IntraLATA call. Maryland residents can choose their regional toll call provider just as they can select their long-distance telephone company.

**Regional Transmission Organization:** A voluntary organization of electric transmission owners, users, and other entities interested in coordinating transmission planning, expansion, operation, and use on a regional and inter-regional basis. Such groups are subject to FERC approval.

**Ring Fencing-** Involves an effort to wall off certain assets or liabilities within a corporation—by creating a new subsidiary. It seeks to protect the larger corporation from lawsuits aimed at the activities of the small unit.

**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 utility 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).

**UNE or Unbundled Network Elements** - Parts of a telephone network that incumbent local exchange carriers such as Verizon are required to offer to their customers on an unbundled basis.

**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.

**Consumer Rights and Education**
Office of the People's Counsel
410-767-8150
1-800-207-4055
www.opc.state.md.us

**Electricity Rates Hotline:**
Office of the People's Counsel
1-866-601-2233

**Financial Assistance - MEAP and EUSP**
Office of Home Energy Programs
1-800-352-1446
www.dhr.state.md.us/meap

**Complaints**
Public Service Commission, Office of External Relations
1-800-492-0474
www.psc.state.md.us/psc

**Information on Electric Choice**
Public Service Commission, Answer Center
1-800-800-4491
www.md-electric-info.com