

Keystone Connection

Utility News
in Pennsylvania

A newsletter published by the Pennsylvania Public Utility Commission regarding utility news in the telecommunications, energy, transportation, and water markets.

Spring/Summer 2005

Three Commissioners Rejoin Agency



James H. Cawley



Terrance J. Fitzpatrick



Bill Shane

Three former Commissioners rejoined the PUC on June 9, bringing the agency back to a full complement for the first time since September.

Gov. Ed Rendell nominated James H. Cawley, Terrance J. Fitzpatrick and Bill Shane on April 25. They were confirmed by the Senate on June 7.

With Chairman Wendell F. Holland, Commissioner Kim Pizzingrilli and the new members, the Commissioners have a combined 25 years of experience as Commissioners alone.

Commissioner Cawley, served on the Commission from 1979-85. He replaced Vice Chairman Robert K. Bloom of Mechanicsburg, and will serve a full term that ends in 2010.

Commissioner Fitzpatrick, of Hummelstown, served from 1999-2004 and was Chairman for his last 18 months. He will essentially succeed himself and will complete the remaining four years of the five-year term which ends in 2009.

Commissioner Shane, of Indiana, served from 1984-90 and was Chairman from 1987-90. His term will expire on March 31, 2006. He succeeds Glen R. Thomas, who resigned in February to join a utility law firm.

Farewell to Vice Chairman Bloom



Employees, industry representatives and former Commissioners attended a reception after the June 2 public meeting in honor of Vice Chairman Robert K. Bloom, who retired after a long career in public service. He holds the distinction of being the longest-serving Commissioner, with nearly 20 years of service, after serving two consecutive terms and having worked as a Commissioner in the 1970s. Vice Chairman Bloom (right) talks with PUC employee Kerry Klinefelter.

New Name and More News

Welcome to the inaugural issue of *Keystone Connection*, a publication of the Pennsylvania Public Utility Commission (PUC) that gives a "snapshot" view of the utility markets under the jurisdiction of the Commission: electric, natural gas, transportation, telecommunications, water and the major issues that affect each industry.

Keystone Connection replaces the *Keystone Competition* newsletter. The publication's new format allows coverage of all utilities, including news on consumer issues and general information on PUC happenings.

The Commission ensures safe, reliable and reasonably priced electric, natural gas, water, telephone and transportation service for Pennsylvania consumers, by regulating public utilities and by serving as responsible stewards of competition. Industry monitoring is a crucial part of this mission.

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West Penn Power Rate Cap Extension

In November 2003, West Penn Power Company filed a petition which sought permission to extend its stranded cost collection period from 2008 to 2010 and permit the utility to collect the full amount of stranded costs authorized in the 1998 restructuring settlement. West Penn had undercollected the authorized amount for each year it recovered the competitive transition charge (CTC). With carrying costs, transaction fees and the addition of the amount remaining to be collected through the original CTC, the full amount at issue is approximately \$115 million.

At the public meeting of April 21, 2005, the Commission approved a settlement which approved stranded cost collection through Dec. 31, 2010. West Penn may securitize the full amount at issue and share the resulting savings on a 75 percent/25 percent customer-company basis. Generation rates will be capped, with specified increases in the same proportions as in the restructuring settlement, but extended through 2010. West Penn will extend its distribution rate cap from 2005 through to Dec. 31, 2007.

In exchange for the extension of the stranded cost recovery period, West Penn agreed to the extended rate caps and will also provide additional funding for its Sustainable Energy Fund, adopt net metering protocols favorable to customer generators and provide for a bid-based provider of last resort process in which all customers can share in resulting savings, without affecting the price to beat for competitors.

Electric Utilities Report on Summer Reliability

Pennsylvania's electricity providers and PJM Interconnection briefed the Public Utility Commission on June 7 on their plans to meet the demand for electricity throughout the Commonwealth during the summer months, particularly at peak times.

Participating in the meeting were: PJM Interconnection; the Energy Association of Pennsylvania; the Midwest Independent System Operator; and the Electric Power Supply Association. The presenters also discussed their short-term plans to implement the North American Electric Reliability Council's new reliability standards.

Act 213 Implementation

On Nov. 30, 2004, the Alternative Energy Portfolio Standards Act, Act 213 of 2004, was signed into law. Act 213 requires that a specific percentage of the electricity sold by electric distribution companies and electric generation suppliers to retail customers in Pennsylvania be derived from alternative energy sources. By the end of the 15-year implementation schedule identified in Act 213, 18 percent of the electricity sold to retail customers by suppliers must be derived from alternative sources. This includes traditional sources of renewable energy such as wind, solar and hydropower, as well as certain other sources of energy, such as waste coal and wood pulp.

While Act 213 took effect on Feb. 28, 2005, compliance is not required in a service territory until the conclusion of either the generation rate cap or the term of a currently effective provider of last resort (POLR) plan. Accordingly, most service territories will be exempt from compliance until the end of the decade. The PUC is charged with carrying out the provisions of Act 213. The Department of Environmental Protection (DEP) has also been assigned some implementation responsibilities.

The Commission and DEP jointly presided over a technical conference on Jan. 19, 2005, at which interested parties offered unsworn testimony on issues relevant to Act 213's implementation. Subsequently, the Commission convened an Alternative Energy Portfolio Standards Working Group on March 3 for the purpose of developing rules for interconnection, net metering, demand side management and energy efficiency. The Commission then entered an order that established an implementation schedule for Act 213. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 was entered March 25.

The working group is currently developing a proposal for standards governing the participation of demand side management and energy efficiency resources in this market. The Commission is required to release an initial proposal on this topic by June 28. Final standards will be announced this fall. The working group is also considering standards for net metering and interconnection. The Commission has stated that it intends to issue proposed rulemakings for interconnection and net metering standards by the end of November 2005.

The Commission and DEP continue to meet on a regular basis to address implementation issues. The Commission expects to issue additional orders over the course of 2005 to resolve questions relevant to Act 213's successful implementation.

Default Service Rulemaking

On Dec. 16, 2004, the Commission issued a notice of proposed rulemaking on the obligation of electric distribution companies to serve retail customers at the conclusion of the restructuring transition period. This rulemaking was published in the *Pennsylvania Bulletin* on Feb. 26, 2005. Over 25 parties filed comments by the April 27 deadline. Comments have been posted to the Commission's website at Docket No. L-00040169. Reply comments are due by June 27. After completing its review of the filed comments, the Commission will prepare and issue a final rulemaking order on default service.

Exelon and PSEG Merger

On Feb. 4, 2005, Exelon Corporation and Public Service Electric and Gas Company (PSEG) filed a joint application with the Public Utility Commission (PUC), and a number of other state and federal regulatory agencies, for approval of a merger between the two companies. If approved, the combined utility, Exelon Electric & Gas Corporation, would be the nation's largest utility, serving customers in Pennsylvania, Illinois and New Jersey, with combined assets of approximately \$79 billion. Exelon Electric & Gas Corporation would own or control approximately 40,000 MW of generation in PJM Interconnection, a regional transmission organization, including approximately 17,000 MW of capacity in the eastern portion of PJM.

One of the more unique aspects of the joint application is the effect the merger has on competition. More specifically, it addresses how the merged entity intends to mitigate market power.

The merging parties propose to divest approximately 2,900 MW of fossil fuel generation within 18 months following the close of the merger. In addition, they propose to "virtually" divest approximately 2,600 MW of baseload nuclear capacity. According to their proposal, this "virtual" divestiture would take one of two forms: long-term firm energy sales contracts or, an annual auction in 25 MW blocks of firm entitlements to baseload generation. They also propose that any company with more than five percent of the generation in PJM East and PJM prior to 2004 be prohibited from purchasing assets they offer to divest or "virtually" divest through long term sales contracts.

Protests to the application have been filed by the Office of Consumer Advocate, the Office of Small Business Advocate, the Department of Environmental Protection, PPL, and FirstEnergy among others. The application is now pending before a PUC administrative law judge, who set public input hearings for June 30 in Philadelphia.

Feedback

We welcome any feedback on Pennsylvania Public Utility Commission's quarterly newsletter, *Keystone Connection*.

Staff from the Office of Administrative Law Judge, Bureau of Conservation, Economics and Energy Planning, Bureau of Consumer Services, Office of Communications, Bureau of Transportation and Safety, Office of Special Assistants, Bureau of Fixed Utility Services and the Law Bureau all contribute and write articles for this publication.

For media inquiries or to share ideas, feel free to contact Cyndi Page of the Communications Office at (717) 787-5722.

Electric Distribution Reliability

On Sept. 18, 2004, the amendments to the reliability regulations governing the electric distribution companies (EDCs) became effective. With better monitoring and reporting requirements now in place, the Commission has initiated an advanced notice of proposed rulemaking to consider whether to establish inspection, maintenance, repair and replacement standards.

The PUC's order seeking comments was adopted on Nov. 18, 2004, at Docket Number L-00040167 and was published in the *Pennsylvania Bulletin* on Dec. 11, 2004. The deadline for comments was Feb. 9, and reply comments were due March 11. Comments were requested on whether it is appropriate for the PUC to adopt specific inspection and maintenance standards. If standards are adopted, the PUC has sought input on what the standards should be and how they should be enforced.

Update on the FirstEnergy Reliability Investigation

At the public meeting of Jan. 16, 2004, the Commission voted to direct the PUC's Law Bureau to participate in a formal investigation examining the level of service reliability provided by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, all operating companies of FirstEnergy (Docket No. I-00040102).

On Sept. 30, 2004, after evidentiary hearings concluded, the PUC's Law Bureau, FirstEnergy, the Office of Consumer Advocate, the Pennsylvania Rural Electric Association, Allegheny Electric Cooperative Inc. and the Office of Small Business Advocate submitted a joint petition for settlement to the PUC's administrative law judge. The Commission approved and adopted the settlement at the public meeting of Nov. 4.

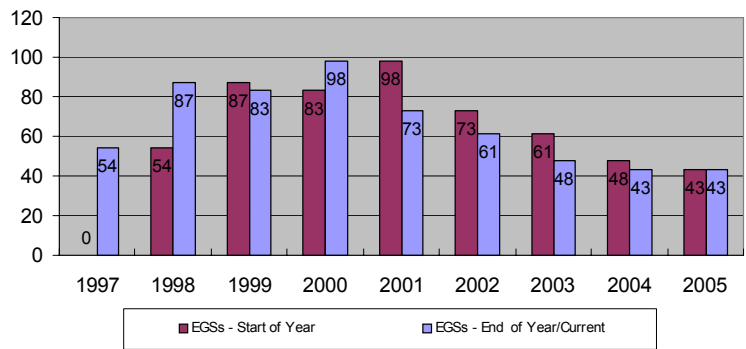
The settlement provides for specific commitments on the part of FirstEnergy to improve service reliability, including improvements in inspection and maintenance practices and a \$255 million minimum level of spending for transmission and distribution maintenance over the next three years. The settlement requires FirstEnergy to conduct education efforts for customers and emergency responders and provides for improvements in customer complaint handling. FirstEnergy is also undertaking a line/substation workforce study and has committed to establishing at least one college program in Pennsylvania to train future workers. The settlement includes a process for the Commission and other parties to closely monitor FirstEnergy's progress through a series of reporting requirements and quarterly meetings, as well as an expedited procedure to address any future performance problems.

Electric Supplier Licensing

Quarterly activity from to January 1 to March 31, 2005.

- 43 Active Licenses**
- 0 licenses canceled
- 0 licenses approved
- 3 applications pending

Number of Licensed EGSs



Customer Shopping and Load Levels for Electric Competition Programs

The charts reflect information from the total number of shopping residential/commercial/industrial (R/C/I) customers and load in Pennsylvania, Ohio, Texas, New York, New Jersey and Massachusetts. The Pennsylvania data is from April 2005, and includes 1,899 PECO residential customers on market share threshold.

A provision of the PECO restructuring settlement agreement resulted in an assignment of several hundred-thousand residential PECO customers to alternative suppliers in 2003. These customers received discounted electric generation service from several Electric Generation Suppliers (EGSs) for a period of one year ending in December 2004. Approximately 180,000 of these residential customers were reassigned to PECO in December 2004 at the conclusion of the assignment period.

Total Number of Shopping R/C/I Customers vs. Total R/C/I Customers Ranked Highest to Lowest by Percent of Total

Table 1	1	2	3
State	Total Participation	Total R/C/I	Percent of Total
Ohio	1,030,196	4,687,620	21.97%
Texas	1,237,387	6,036,499	20.50%
New York	424,952	6,458,413	6.60%
Pennsylvania	236,279	5,259,897	4.50%
Massachusetts	104,929	2,591,042	4.04%
New Jersey	10,238	3,723,706	0.27%

Total Number of Shopping R/C/I Load vs. Total R/C/I Load Ranked Highest to Lowest by Percent of Total

Table 2	1	2	3
State	Participant Load	Total R/C/I Load	Total Percent of R/C/I
Texas	7,544,372 MWh	15,422,989 MWh	48.92%
New York	2,981,215 MWh	9,253,469 MWh	32.20%
Massachusetts	1,051,052 MWh	4,142,365 MWh	25.37%
Ohio	2,224,113 MWh	11,500,039 MWh	19.34%
New Jersey	3,099 MW	20,176 MW	15.35%
Pennsylvania	2,914 MW	26,252 MW	11.00%

Customer Data Information

Some data was not available from UGI. The totals may differ due to rounding of the numbers. The Office of Consumer Advocate (OCA) is the source of the data.

The total number of customers and the total load figures for each EDC in Pennsylvania are not provided by the OCA. As a result, total R/C/I data in column two was derived by dividing the "Total R/C/I" number of customers serviced by alternative supplier by the total R/C/I percentage of customers served.

The state data was culled from each PUC website or from PUC staff. The Ohio data is from December 2004; Massachusetts is from February 2005; New Jersey is from February 2005; New York data is from January 2005; Pennsylvania is from April 2005; and Texas is from December 2004.

Philadelphia Taxicabs and Limousines Jurisdiction Transferred

On July 16, 2004, Act 94 was signed into law by Gov. Ed Rendell. Act 94 transferred oversight of the Philadelphia medallion taxicabs and other passenger carriers serving Philadelphia, from the PUC to the Philadelphia Parking Authority (PPA). On April 10, 2005, the PPA officially began regulatory oversight of medallion taxicabs and some additional passenger transportation.

Medallion taxicabs are identified by the presence of a metal disc on the hood of the taxicab, and the presence of a four-digit number preceded by the letter "P," painted on the fenders of the taxicab. PPA regulates medallion taxicabs that provide service between points within Philadelphia, from points within Philadelphia to destinations outside of the city, and from points outside of Philadelphia to points within the city. Some Philadelphia medallion taxicabs have been granted operating authority from the PUC to provide taxicab service between points outside of the city. This service will remain regulated by the PUC.

There are also five non-medallion taxi carriers authorized to provide taxicab service to designated areas within Philadelphia on a non-citywide basis. These carriers are: Bennett Cab Service, Concord Coach Taxi, Bucks County Services, Penn-Del Cab and Germantown Cab Company. The PPA will regulate these carriers when they are providing service in PPA jurisdiction and in PPA authorized vehicles. These carriers also provide taxicab service between points outside of Philadelphia, which will remain regulated by the Commission.

Act 94 broadened the PUC's definition of limousine service to include group and party service and airport transfer service. PPA now regulates common carrier passenger service between points in Philadelphia, and **from** any airport, railroad station or hotel located partially or wholly in the city. Limousine carriers that hold operating authority from both the PUC and the PPA will be regulated by the Parking Authority, if the specific vehicle is authorized by the PPA, for transportation to and from Philadelphia. All other limousine transportation within the state will be regulated by the PUC.

The PUC Bureau of Transportation and Safety's Philadelphia District Office has been relocated to the 12th floor of the State Office Building. The new phone number is (215) 965-3721.

Easier-Access Taxi



Harrisburg now has the area's first wheelchair-accessible taxi for people with disabilities. The van has a motorized lift and can accommodate three wheelchairs. It is available 24 hours a day as part of the American Taxi fleet. The Center for Independent Living of Central PA worked with Capital Area Transit, American Taxi, the Department of Transportation and the PUC to start the service, which was funded through a federal grant.

Overview of the Bureau of T&S

The Bureau of Transportation and Safety is responsible for the regulation of various aspects of motor carrier and railroad transportation, as well as safety oversight of intrastate pipeline operators. There are three divisions within the bureau.

The **Motor Carrier Services and Enforcement Division** regulates common carriers and contract carriers of passengers by motor vehicle providing service for compensation within Pennsylvania. This includes trucking companies, movers, buses, taxis and limousine carriers. The division processes applications for operating authority, maintains tariff records and documents showing proof of insurance, evaluates rate increase filings, and prosecutes informal consumer complaints.

Field enforcement staff work out of five district offices in Altoona, Harrisburg, Scranton, Philadelphia and Pittsburgh. Enforcement officers are responsible for conducting roadside driver and vehicle safety inspections, and the investigation of informal consumer complaints.

The **Rail Safety Division** has a staff of engineers that handle proceedings pertaining to the abolition, alteration, construction, relocation and suspension of public rail-highway crossings. This usually involves the improvement of at-grade crossings and the replacement or reconstruction of highway and railroad bridges over rail lines. The engineers also investigate complaints alleging that a hazardous condition exists at a public crossing.

Rail Safety also employs inspectors to conduct inspections of railroad companies to ensure compliance with the Federal Railroad Administration regulations. Each inspector has an area of expertise and is responsible to conduct compliance examinations. These areas are track, equipment, operating practice and hazardous material.

The **Gas Safety Division** is responsible for the PUC's certificated natural gas distribution companies, and also oversees safety compliance for intrastate petroleum liquid pipelines. Gas Safety enforces pipeline safety regulations, including federal requirements as adopted by the PUC, through inspections of pipeline facilities and examination of records of its regulated companies. Gas safety inspectors also investigate complaints and reportable incidents, such as explosions and outages. The PUC's Law Bureau may prosecute further if gas safety violations are found.

PUC Implementing the New Chapter 30 Provisions

Over the past few months, the PUC has taken numerous steps to implement the various provisions of the new Chapter 30, which was signed into law as Act 183 by Gov. Ed Rendell on Nov. 30, 2004, and took effect the next day. The original Chapter 30 was in place from July 1993 until it expired on Dec. 31, 2003.

Under the original Chapter 30, the PUC was authorized to permit a reduced, alternative form of regulation for incumbent local exchange carriers (ILECs) who promised 100 percent broadband deployment by 2015. Act 183 seeks to encourage earlier completion of these commitments by providing ILECs with the ability to file amended network modernization plans (NMPs) to accelerate broadband deployment. In return, the new legislation offers ILECs more economic incentives and lesser PUC regulation, particularly in the area of reporting requirements.

Currently, the PUC is processing amended NMPs filed by all 33 Pennsylvania ILECs, which must be ruled upon within 100 days of the filing date. The first amended NMP was approved on March 3, and it is expected that all remaining ones will be acted upon by the end of June.

On March 8, the PUC entered a tentative order seeking comments regarding Lifeline programs and eligibility notifications. As to reporting requirements, on March 23 the PUC voted at Docket No. M-0004185 to eliminate various pre-Act 183 reports and convened facilitated discussions on May 11 to address the content of the annual financial report, as well as the validity of other reports that remain open for comment. By order entered on March 29 (Docket No. L-00050170), the PUC initiated a proposed rulemaking to eliminate the requirement for interexchange carriers to file tariffs for intrastate competitive services. On June 23, the PUC is expected to impose the first annual assessments for education technology funds. Other measures taken by the PUC include efforts to define the NMP audit process and the review of filings made by ILECs containing competitive service designations.

Amended Chapter 30 Network Modernization Plan

Act 183 allows ILECs to amend their original Chapter 30 Network Modernization Plan (NMP) to accelerate broadband deployment in return for additional regulatory relief.

The new law outlines three broadband acceleration options for ILECs. Option 1, chosen by all but two rural ILECs, commits the company to 100 percent broadband availability in its service territory by Dec. 31, 2008. Option 2, chosen by Sprint/United Telephone and ALLTEL, requires 100 percent broadband availability by either Dec. 31, 2013, or Dec. 31, 2015, as does Option 3 which only applies to Verizon PA and Verizon North. Options 2 and 3 mandate the offering of a Bona Fide Retail Request Program (BFRR) and a Business Attraction and Retention Program (BARP). Under all three options, the ILECs committed to 100 percent broadband availability for public schools, industrial parks, and health care facilities by Dec. 31, 2005; technical assistance to political subdivisions; a 30 percent discount for intrastate broadband services to schools via a three-year contract; and technical assistance to schools applying for E-Rate funding.

For ILECs serving less than 50,000 access lines, Act 183 provides a waiver of non-facilities-based interconnection rules under Section 251(c) of the federal Telecom Act until Dec. 31, 2008. Therefore, competitive local exchange carriers must use their own network to compete with small ILECs.

In March, the first amended NMP was approved and all the remaining ones are expected to be acted upon by the end of June.

Assistance Programs Available

The telephone assistance programs, Link-Up and Lifeline 150, are undergoing significant changes because of Act 183 and the Federal Communications Commission's (FCC) April 29, 2004, Lifeline and Link-Up Order. Link-Up provides eligible households with discounts on their line connection charges while Lifeline 150 provides a monthly credit for one telephone line.

Act 183 contains new Lifeline rules for eligible telecommunication carriers (ETCs), and the Department of Welfare (DPW), such as the "automatic notification" of DPW program recipients of the eligibility for Lifeline service and the elimination of restrictions on vertical services for Lifeline 150 customers.

By order entered on May 23, the Commission entered a final order at Docket No. M-00051871, implementing changes to the current eligibility requirements for these programs because of the FCC's new Lifeline and Link-Up order eligibility requirements. The final order expands the program to include the FCC's income only criterion (135 percent of the federal poverty guidelines) and adds the National School Lunch free lunch program as a qualifying program. Also, in accordance with the provisions of Act 183, non-ETCs are no longer required to provide Lifeline service. Interested parties were invited to provide comments regarding these changes.

Triennial Review Remand Order Update

In March, following a long and complex history, new federal rules became effective that govern access to an incumbent local exchange carrier's (ILEC's) unbundled network elements (UNEs). In its *Triennial Review Remand Order*, the Federal Communications Commission (FCC) phases out the UNE-Platform over 12 months to eliminate disincentives to infrastructure investment. The FCC also clarifies the impairment standard and modifies its application of the unbundling framework.

If parties cannot reach agreement on alternative terms for discontinued UNEs, a transition plan is provided to service the embedded base of customers. The new rules will be implemented by the parties through amended interconnection agreements pursuant to change of law provisions.

Unbundling Framework

The touchstone of "impairment" (access to UNEs) has been a vague uneconomic entry standard. The impairment standard is now based on the capabilities of a "reasonably efficient competitor," defined as "a hypothetical competitor acting reasonably efficiently." This standard is the underlying support for the new rules, and it is being challenged on appeal. Other modifications of the framework are: use of UNEs exclusively for mobile wireless or long-distance services ("competitive downstream markets") is prohibited; the prospect for competition in a geographic market is now based on the state of competition in other, similar markets; and UNEs can be used to replace ILEC special access in the local exchange market for several reasons including the possibility of ILECs engaging in price squeeze behavior.

Dedicated Interoffice Transport

The impairment test for dedicated transport is based on business line counts and fiber-based collocators in ILEC wire centers. Competing carriers (CLECs) may access DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines. CLECs may access DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines. Limits are placed on multiple DS1 and DS3 circuits. Entrance facilities connecting an ILEC's network with a CLEC's network are not available as UNEs.

The wire center test is considered an accurate, administrable and an appropriately nuanced evaluation of impairment, but possibly under-inclusive or over-inclusive. The FCC may refine its rules during its biennial review procedure.

High-Capacity Loops

CLECs may access DS3-capacity loops except in any building within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators. CLECs are impaired without access to DS1-capacity loops except in any building within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators. Dark fiber UNE loops are no longer available.

Mass Market Local Circuit Switching

Due to the prevalence of CLEC switches deployed nationwide, the use of packet switches and softswitches, and developments in ILEC "hot cut" processes, ILECs have no obligation to provide CLECs with unbundled access to mass market local circuit switching, effectively also eliminating UNE-P. Unlike loops or transport, access to switching is subject to a "nationwide bar" due to the disincentives to investment posed by the availability of unbundled switching.

The FCC implemented the new rules because federal law requires that ILECs provide other telecommunications carriers with "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point at rates, terms and conditions that are just, reasonable and nondiscriminatory." The FCC is authorized to determine which elements are subject to unbundling.

Verizon, its competitors and others have filed challenges to the new rules before the District of Columbia Circuit at lead Docket No. 05-1095. The PUC is monitoring the appeals.

For further details, see *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, *Order on Remand* (rel. Feb. 4, 2005) (FCC 04-290).

Network Modernization Plan Audit Program

By order entered April 15, 2005, at Docket No. M-00051872, the Commission requested comments be filed by interested parties to address the nature, extent and funding of any audit program that may be needed to verify independently each company's network deployment as reported in its network modernization plan (NMP) updates.

The Commission's purpose in seeking comments is to gather sufficient information to develop a useful, comprehensive and appropriate NMP monitoring and enforcement program in accordance with Act 183.

After consideration of the comments received, the PUC expects to issue an order establishing an audit program that will allow it to fulfill its statutory responsibility of monitoring and enforcing NMP broadband commitments to the ultimate benefit of all Pennsylvanians.

Pennsylvania Relay Campaign Update



The Pennsylvania Relay public awareness campaign on April 1 launched its

spring advertising campaign to “Spread the Word” about communicating by phone with people who are deaf, hard of hearing and speech disabled. The PA Relay campaign is a partnership of the PUC, the Pennsylvania Relay Service Advisory Board and AT&T.

The advertising campaign featured billboards; radio spots by Christy Smith, campaign spokesperson and the only deaf contestant from CBS TV’s “Survivor”; transit ads; and mall kiosk ads. The ads focus on learning about 7-1-1, the telephone number for connecting to the relay service, and encouraging Pennsylvanians to log on to www.parelay.net for more information about relay services.

The PUC completed the recalculation of the Relay Service surcharges as it applies to residence and business customers for the ensuing 12 months. The annual calculation of the Pennsylvania Relay Service System Surcharge relies on the following schedule:

- The local exchange carriers (LECs) will provide the total number of access lines;
- AT&T supplies the PUC with a statement of the estimated minutes of Relay Service use;
- The fund administrator will provide the PUC with a statement of the financial status of the fund;
- The PUC notifies the LECs of the new surcharge rate to be applied for the prospective period; and
- The new surcharge rate of \$0.07 for residences and \$0.10 for businesses becomes effective July 1, 2005, for the ensuing 12-month period with conforming tariffs to be filed upon one day’s notice.

Local Exchange Reporting Requirements

In response to the recent passage of Act 183 and the Legislative Budget and Finance Committee’s (LB&FC) 2004 report, the PUC entered a tentative order on April 15, at Docket No. M-00041857, directing the continuation, consolidation and/or elimination of numerous filing and reporting requirements presently imposed on local exchange companies (LECs) operating in Pennsylvania. In its order, the PUC provides interested participants a 45-day comment period as well as a facilitated discussion to address the PUC’s LEC reporting requirements. In addition, the PUC’s order directs staff to initiate rulemaking proceedings to eliminate various pre-Act 183 reports.

Also on April 15, the PUC issued a secretarial letter convening a facilitated discussion on May 11, 2005, to discuss certain reporting requirements including the annual financial report, the Lifeline tracking report, the service outage and accident reports, and quarterly slamming reports. The purpose of the facilitated discussion was to receive additional comment from interested parties, so that the Commission can reach a final determination in accordance with Act 183.

An administrative law judge convened the discussion to provide an opportunity for an exchange of ideas and views to better understand the provisions of Act 183 and the PUC’s current reporting requirements. Numerous participants, including the Pennsylvania Telephone Association, legislative and PUC staff, the Office of Consumer Advocate and MCI expressed their views regarding the information that should be included in the various reports. An informal meeting was held May 19, to further discuss the issues, and final comments were due June 2. The transcript of the facilitated discussion as well as all comments will be provided to the PUC so that it can determine what reporting requirements remain for LECs in light of the statutory changes and the LB&FC’s recommendations.

Telecommunication Mergers

Each of the three mergers of large telecommunications firms that have been announced this year will require varying types of approval by this Commission.

An application was filed on Feb. 28, 2005, by SBC Communications, AT&T Corporation and AT&T’s Pennsylvania subsidiary for approval of SBC’s acquisition of AT&T. The application was formally protested by a small number of parties, and there were notices of intervention filed. Consequently, the case was assigned to the Office of Administrative Law Judge for adjudication or other resolution.

On March 7, 2005, Verizon Communications Inc. and MCI Inc. filed for approval of MCI’s acquisition by Verizon and the consequent change in control of several Pennsylvania utility subsidiaries of MCI. This application also has been the subject of protests and interventions. After a protracted bidding contest for MCI between Verizon and Qwest Communications International Inc., Verizon raised its bid for MCI a second time on May 2, and Qwest withdrew its bid later the same day. Following the amendment by Verizon and MCI of their application to reflect these developments, this case has been assigned to the Office of Administrative Law Judge.

The Commission is expecting the filing in late June of an application seeking approval of the spin-off of United Telephone Company of Pennsylvania by Sprint Corporation following the latter’s merger with Nextel Communications Company. United PA and its 17 sister local exchange subsidiaries of Sprint are planned to be spun-off to become subsidiaries of a brand new independent company that will be formed to only provide local wireline telephone service. Wireless, long distance and Internet service as well as competitive local exchange service will then be provided by the merged Sprint-Nextel.

PA Supreme Court Affirms PUC Conclusion on Water Case

In *Chester Water Authority v. Pennsylvania Public Utility Commission*, No. 108 MAP 2004 and No. 109 MAP 2004 (filed Feb. 23, 2005), the Pennsylvania Supreme Court concluded that the PUC did not abuse its discretion in declining to conduct a hearing on a water provider's application for a certificate of public convenience, where the uncontested averments of the application indicated a demand and need for service, the inadequacy of existing facilities and the provider's technical, financial and legal fitness.

This case began in August 2001 when Philadelphia Suburban Water Company (PSW), now Aqua Pennsylvania, applied for a certificate of public convenience. PSW sought to supply water service to a new residential development, the Cherry Farm tract, located in Thornbury Township, Delaware County. The Chester Water Authority (CWA), a municipal authority not regulated by the PUC, filed a protest in which it averred that it was willing and able to service the tract as a natural extension of its water system. CWA also averred that it was in the public interest for CWA to service the tract because its rates were significantly lower than those of PSW.

The PUC granted PSW's motion for judgment on the pleadings and granted PSW a certificate of public convenience without a hearing. The majority of an *en banc* Commonwealth Court panel reversed and remanded. The majority determined that the PUC erred in granting judgment on the pleadings because material issues of fact existed concerning water rates, proximity and developer preference. Following an appeal of the Commonwealth Court's majority decision, the Supreme Court reversed the Commonwealth Court and remanded for reinstatement of the PUC's order.

In its decision, the Supreme Court agreed with President Judge Colins' dissent from the Commonwealth Court's majority decision, in which he asserted that the hearing provisions of the Public Utility Code, 66 Pa.C.S. § 1103(b), do not require the PUC to hold a hearing on every application for a certificate of public convenience. The language of Section 1103(b) supported the PUC's longstanding interpretation that it may, within the limits of sound administrative discretion, award certificates of public convenience without the necessity of a public hearing. The Supreme Court held that the PUC did not abuse its discretion in declining to conduct a hearing because the uncontested averments of PSW's application were sufficient to demonstrate a demand and need for service, the inadequacy of existing facilities and the applicant's technical, financial and legal fitness.

Court Rules Against Wastewater Surcharge

In *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, No. 2497 C.D. 2003 (filed March 14, 2005), the Commonwealth Court, in a 5-2 decision, reversed a PUC order that had approved a petition filed by Pennsylvania-American Water Company to implement a Collection System Improvement Charge (CSIC) for its wastewater operations. Specifically, the majority concluded that the Commission did not have the authority under Section 1307(a) of the Public Utility Code to approve a rate mechanism such as a CSIC to recover the fixed costs of a utility plant placed in service between base rate cases.

The case revolved around the September 2003 decision of the PUC to allow Pennsylvania-American to recoup approximately \$3 million to replace collection mains in three sewer systems it purchased between 1995 and 2002. Pennsylvania-American wanted the surcharge so it could accelerate its replacement of aged and deteriorated wastewater infrastructure, which has a "direct and immediate impact on health, safety and the environment," stated the company.

The Commonwealth Court, however, ruled against the PUC decision allowing the surcharge. According to the majority opinion, the surcharge "means that utilities can recover their capital costs without any incentive to invest wisely and efficiently." Costs beyond the control of a utility, such as fluctuating natural gas rates or regulatory costs, are among the exceptions the Public Utility Code has allowed for utility surcharges.

In the two dissenting opinions, it was written that the majority substituted its judgment for that of the PUC and construed the Public Utility Code too narrowly.

On April 13, 2005, both the PUC and Pennsylvania-American filed petitions for allowance of appeal in the Pennsylvania Supreme Court.

Small Water Task Force

In 1986, the Commission formed an internal working group to address the many challenges confronting the small water systems that are regulated by the PUC. The Small Water Company Task Force meets on a bimonthly basis with the Department of Environmental Protection, PENNVEST and the Office of Consumer Advocate to address the rapidly changing water industry that focuses on, among other things, viability and regionalization.

The Task Force reaches out to the various state agencies and the larger, more viable systems to address the many challenges that confront small water and wastewater systems in the Commonwealth.

Water System Acquisitions

Of Pennsylvania's more than 2,200 community drinking water systems, about 90 percent are small, serving 3,300 customers or less. Small water systems are more likely to become troubled than the larger systems and may provide less than adequate service. Small systems often lack the technical and managerial expertise, along with the financial ability to implement necessary plant improvements and comply with increasing service and water quality mandates.

The PUC encourages regionalization, which occurs when one or more small systems interconnect, physically or managerially, to form or join a larger system capable of providing safe and reliable service. Where appropriate, the PUC encourages mergers and takeovers of compliance-challenged or otherwise troubled systems by larger, well-established water companies. Savings can be significant, as the needed expenses for improvements can be spread over a broader customer base. These "economies of scale" lessen the cost to all ratepayers in the long run. Service improvements result as well. During the past decade, over 160 small water systems have been acquired by the two largest jurisdictional companies, Pennsylvania-American Water Company and Aqua Pennsylvania. York Water Company and United Pennsylvania, have also played an important role in this trend.

By fostering the decrease in the number of troubled and potentially troubled small water systems, the PUC helps insure that safe and reliable water service is available to all citizens at a reasonable price.

Water: We Always Need It and We All Need It

The PUC marked National Drinking Water Week, from May 2-6, by unveiling a new consumer-education effort to inform ratepayers about the importance of water issues such as: the value of water service; how water is brought from the source to the tap; conservation tips; infrastructure improvements; and assistance available for low-income ratepayers.

With the theme - "Water: We Always Need It and We All Need It" - the consumer-education effort features a new display and brochure used at community events, senior centers and presentations to community-based organizations.

Joining Chairman Wendell F. Holland and Commissioner Kim Pizzigrilli for the public-private partnership were members of the General Assembly; the state's water companies; grade-school students; and an actor portraying Ben Franklin, who wrote "When the well is dry, we know the worth of water."

Water companies, regulatory agencies and water-related public interest associations marked National Drinking Water Week with exhibits in the Commonwealth Keystone Building Atrium, educating the public about all aspects of water service, including how service is regulated to provide safe and reliable drinking water at a reasonable price.

Update on CashPoint

By order dated June 4, 2004, the PUC opened a proceeding relating to the bankruptcy of CashPoint, a money transmitter in Pennsylvania and other states. The order contained a series of questions for the purpose of gathering information about how utilities are responding to the bankruptcy and to better understand CashPoint's role in the flow of funds from consumer to utility. All relevant utilities responded.

CashPoint filed Chapter 7 bankruptcy in the United States Bankruptcy Court for the Southern District of New York. As a result of the bankruptcy, a large volume of consumer complaints were filed with the PUC's Bureau of Consumer Services. Since Autumn 2004, all utility companies have now applied credits to virtually all relevant accounts. The PUC has closed all CashPoint cases. Customers who had receipts have had their accounts credited.

'Ben Franklin' Visits PUC to Celebrate National Drinking Water Week



The National Drinking Water Week celebration featured displays by water companies as well as words of wisdom from "Ben Franklin." A new consumer-education effort was also unveiled to inform consumers about the importance of water issues, such as conservation tips and help for low-income ratepayers.

The media event generated news coverage from several local outlets, including *The Patriot-News*, WGAL TV, PCN TV and Radio PA.

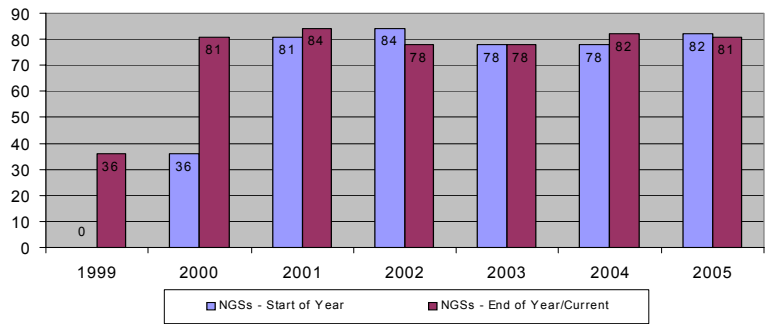
Natural Gas Supplier Licensing

Quarterly Activity from January 1 to March 31, 2005.

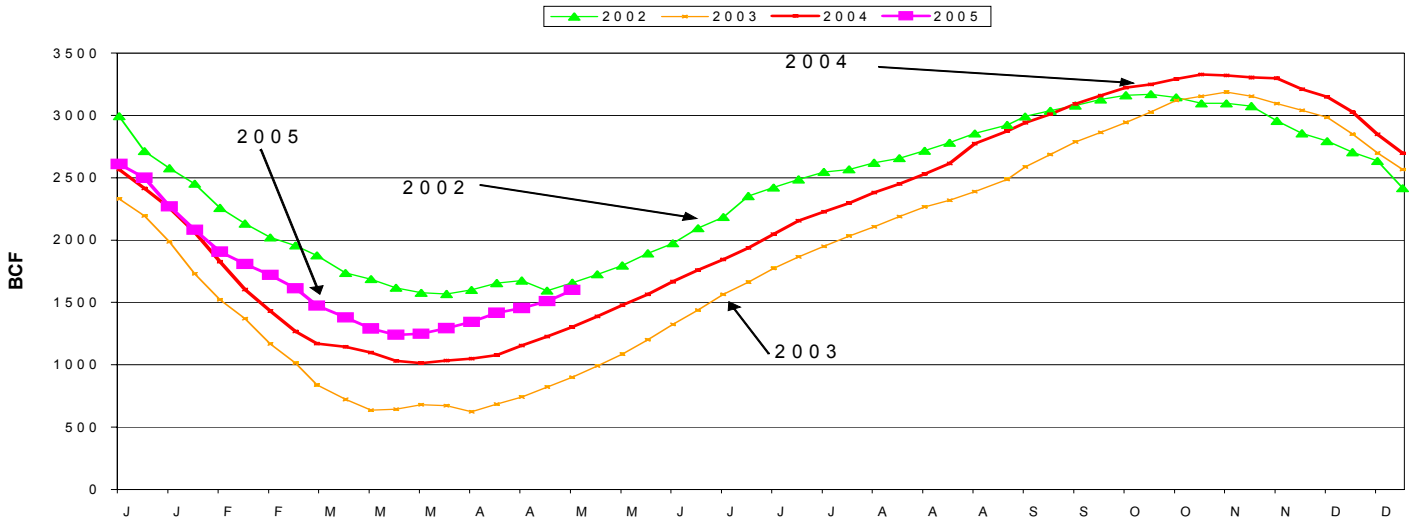
81 Active Licenses

- 2 licenses canceled
- 1 license approved
- 5 applications pending

Number of Licensed NGGs



Natural Gas Storage for 2002-05



As of May 20, 2005, the Energy Information Agency (EIA) reports that working gas in storage is 1,692 Bcf. This is 21.8 percent above the five-year average. Last year at this time storage was 1.6 percent below the five-year average. Two years ago storage was 37 percent below the five-year average. Data is taken from EIA's *Gas Weekly*.

Recent Safety Regulation Changes Affecting NGDCs

Rule changes for Operator Qualification and Pipeline Integrity Management were established by the United States Department of Transportation's Office of Pipeline Safety (OPS) and significantly impact Natural Gas Distribution Companies (NGDCs) and the PUC's safety oversight of its certificated NGDCs.

The operator qualification rule was initiated by recommendations from the National Transportation Safety Board (NTSB), following its investigation of pipeline accidents. NTSB found that many pipeline incidents resulted from, or were exacerbated by, human error. The operator qualification rule requires that pipeline operators, including NGDCs, establish formal qualification programs for all personnel performing specified safety-related tasks. It includes tasks that are part of the operations and maintenance of a pipeline, and applies to both employees and contractors who perform safety-related tasks. An operator's

qualification program must include an evaluation to ensure an employee is capable of performing the safety-related task. Most operators meet this stipulation through formal training and testing. Pipeline operators must also maintain records of its qualified employees and contractors and its qualification methods.

The integrity management rule applies to operators of transmission lines and includes intrastate lines. Transmission lines transport gas from a storage facility to a gas distribution system. Operators of transmission lines are now required to ensure the integrity of the pipelines through advanced testing methods such as pigging (inserting a testing device into a pipeline for examination of defects), direct assessment (uncovering the pipeline for physical examination) and through review of the pipeline's leak history. This rule is applicable in "high consequence areas," such as locations with high population or public assembly areas.

In 2004, the PUC's Gas Safety Division inspected each regulated NGDC to ensure it was in compliance with the operator qualification requirements. Inspections for the integrity management requirements began in 2005. Each inspection can take up to five days to complete field inspections and records examinations.

Energy Price Forecast for June 2005

The Energy Information Agency's (EIA's) June 2005 *Short Term Energy Forecast* offers no quick relief from high energy prices. Crude oil, natural gas and gasoline are all expected to remain near the current prices.

West Texas Intermediate (WTI) crude oil slipped to \$47 per barrel in mid-May, but by the end of the month the price recovered to \$52. Monthly average WTI prices are projected to remain above \$50 per barrel for the rest of 2005 and 2006. WTI is the benchmark for crude oil in the United States.

The average Henry Hub natural gas wholesale spot price was \$7.30 per thousand cubic feet (Mcf) in April and \$6.66 per Mcf in May as weather in the Midwest and East moderated and crude prices eased.

EIA projects that natural gas prices will continue to increase as electric generation requires more gas in the

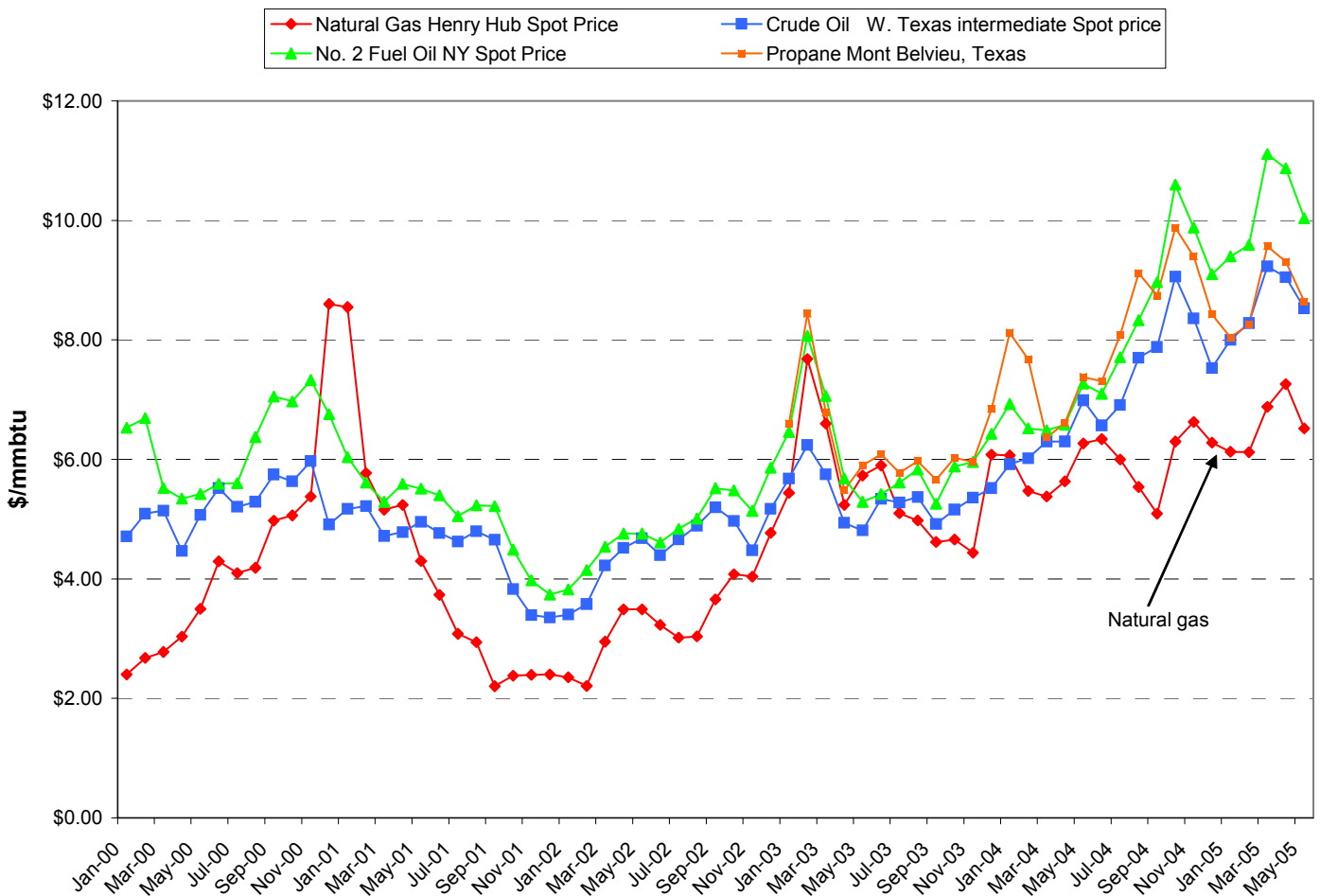
summer, and when the winter heating season boosts natural gas demand. Monthly average spot prices are likely to reach \$7.50 per Mcf by the end of the year.

On June 6, average retail gasoline prices were \$2.12 per gallon. Pump gasoline prices for the summer (April through September) are now projected to average \$2.17 per gallon, about 26 cents per gallon above the year-ago level.

The projected summer average for retail diesel is \$2.22 per gallon, up approximately 45 cents per gallon from last summer. Nationally, monthly average diesel fuel prices are expected to remain above regular gasoline prices through 2006.

Wholesale Fuel Prices by Heat Content

Data from EIA's *Weekly Gas Report* and *Weekly Petroleum Status Report*



FCC Highlights

The Federal Communications Commission (FCC) recently issued several important orders that impact Pennsylvania.

Numbering Resources for SBC Internet Services

On Feb. 1, 2005, the FCC granted SBC Internet Services Inc. (SBCIS) a waiver from its rules to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA) for use in deploying Internet Protocol-enabled (IP) services, including Voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers. The FCC also requested that the North American Numbering Council (NANC) review whether and how its numbering rules should be modified to allow IP-enabled service providers access to numbering resources in a manner consistent with its numbering optimization policies. The waiver will be in effect until the FCC adopts final numbering rules for IP-enabled services.

The FCC stated that allowing SBCIS to directly obtain numbers from the NANPA and the PA will help expedite the implementation of IP-enabled services that interconnect to the PSTN and enable SBCIS to deploy innovative new services and encourage the rapid deployment of new technologies and advanced service that benefit American consumers. The FCC also imposed certain conditions on SBCIS, including numbering utilization and optimization requirements, industry guidelines and practices, pooling, a facilities readiness requirement, and numbering authority delegated to state commissions. Further, SBCIS must submit any requests for numbering resources to the FCC and the relevant state commission at least 30 days prior to requesting resources from the NANPA or the PA. Currently, eight additional IP service providers have filed for a similar waiver from the FCC. There are 11 additional IP numbering petitions waiting for FCC action.

In the Matter of Administration of the North American Numbering Plan, CC Docket No. 99-200.

Transfer of Control for Adelphia Business Solutions

On Feb. 2, 2005, the FCC released for public notice streamlined processing of the domestic section 214 application in the above referenced matter. Specifically, the applicants requested approval to transfer control of Susquehanna's 50 percent interest in the partnership to TelCove Holdings. On Feb. 23, the applicants, along with the United States Department of Justice, including the Federal Bureau of Investigation and the United States Department of Homeland Security filed with the FCC a joint petition to defer granting this application while the parties address potential national security, law enforcement, and public safety issues. Thus, the application was removed from streamlined review in response to the

request filed. The FCC will decide the matter once it receives notification from the agencies and applicants that the evaluation has been completed, or within 180 days from public notice that the applications were accepted for filing.

Domestic Section 214 Application filed for Transfer of Control of Susquehanna Adelphia Business Solutions from Susquehanna Fiber Systems Inc. to Telcove Holdings of Pennsylvania Inc., WC Docket No. 05-43.

Intercarrier Compensation Proposed Rulemaking

On Feb. 10, 2005, the FCC adopted a Further Notice of Proposed Rulemaking (FNPRM) soliciting comments on seven reform proposals submitted by the industry as well as other issues related to intercarrier compensation. The Commission is seeking comment on reform proposals submitted by: Intercarrier Compensation Forum (ICF); Expanded Portland Group (EPG); Alliance for Rational Intercarrier Compensation (ARIC); Cost Based Intercarrier Compensation Coalition (CBICC); Home Telephone Company and PBT Telecom; Western Wireless; and the National Association of State Consumer Advocates (NASUCA). The FCC will examine many issues in the FNPRM, including the effect any intercarrier compensation change will have on technologies and on consumers and the universal service fund. The PUC filed comments due to the FCC by May 23, and reply comments are to be submitted by July 20.

Report and Order and Further Notice of Proposed Rulemaking on Intercarrier Compensation, CC Docket No. 01-92.

Proposed Rulemaking on Minimum Customer Account Record Exchange Obligations

On Feb. 10, 2005, the FCC adopted a another FNPRM regarding the mandatory exchange of customer account information among all local exchange carriers (LEC). Under the new rules, a LEC will be required to supply customer account information to an interexchange carrier (IXC) when: (1) the LEC has placed an end user on the IXC's network; (2) the LEC has removed an end user from the IXC's network; (3) an end user that is presubscribed to the IXC makes certain changes to her account information via her LEC; (4) the IXC has requested billing, name and address (BNA) information for an end user who has usage on the IXC's network but for whom the IXC does not have an existing account; and (5) the LEC rejects an IXC-initiated order to change a customer's presubscribed interexchange carrier (PIC). In addition, an IXC will be required to supply customer account information to a LEC when an end user contacts the IXC directly either to select or to remove the IXC as his PIC. At the same time, the FCC did not specify the method that carriers should use when sharing information. The carriers are permitted to share customer account

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information pursuant to state-mandated data exchange requirements, privately negotiated agreements with other carriers, or voluntarily established business rules, including the Customer Account Record Exchange (CARE) process.

The FCC also issued a FNPRM seeking comment on whether it should extend the rules to situations where consumers change LECs. Specifically, the FCC is seeking comment on whether all local service providers should be required to participate in the exchange of customer account information and, if so, what information local service providers should be required to supply.

Report and Order and Further Notice of Proposed Rulemaking on Minimum Customer Account Record Exchange Obligations for LECs and IXCs, CG Docket No. 02-386.

Verizon's Petitions Regarding Fiber to the Premises and Fast Packet Services

On Feb. 11, 2005, the FCC released an order extending consideration of Verizon's petitions for fiber-to-the-premises (FTTP) deployment until Sept. 23, 2005. On June 28, 2004, Verizon filed two petitions with the FCC regarding its deployment of FTTP infrastructure. In its first petition, Verizon requests that the FCC either issue a declaratory ruling regarding broadband service provided via FTTP or waive its common carrier and Title II rules for an interim period in the same manner as currently applied to cable modem service providers. In its second petition, Verizon requests that, in the absence of a declaratory ruling, the FCC should exercise its forbearance authority to provide interim regulatory relief for such services until an appropriate regulatory framework for broadband services has been established.

In a similar action, on Feb. 16, 2005, the FCC extended consideration of Verizon's petition regarding pricing flexibility for new services until Sept. 22. On June 25, 2004, Verizon filed a petition requesting that the FCC refrain from enforcing its rules and order on pricing flexibility for new services. Verizon requests this relief so that it can exercise pricing flexibility for certain advanced services that rely on packetized technology in areas where Verizon has already been granted pricing flexibility for other special access services.

Verizon Telephone Companies' Petition for Forbearance with Regard to Broadband Services Provided via Fiber to the Premises, WC Docket No. 04-242; *Petition for Forbearance from Pricing Flexibility Rules for Fast Packet Services*, WC Docket No. 04-246.

Eligible Telco Carrier Requirements

On Feb. 25, 2005, the FCC adopted additional mandatory requirements for telecommunications carriers to be designated as eligible telecommunications carriers

(ETC) and thus eligible to receive federal universal service support. Also, states are encouraged to adopt these requirements when deciding whether a common carrier should be designated as an ETC. In order to obtain ETC designation, an applicant must provide certain information including a five-year plan demonstrating how high-cost service support will be used to improve service coverage and quality, proving its ability to remain functional in emergency situations, and satisfy consumer protection and service quality standards. Current ETCs will be required to submit this same information by October 2006.

In addition, the FCC is requiring that each ETC submit on an annual basis progress updates on its five-year service quality improvement plan, detailed information on outages on its network, unfulfilled service requests, and certifications of the above mentioned requirements. Further, the FCC grants certain pending petitions for redefinition of rural incumbent LEC study areas, modifies annual high-cost certification and line count filing deadlines and schedules, and delegates to USAC responsibility for standards for the submission of any maps that ETCs are required to submit under the FCC's rules.

Requirements for Eligible Telecommunications Carriers, CC Docket No. 96-45.

Dialing Arrangements for N11 Codes

On March 10, 2005, the FCC adopted an order that designates 811 as the nationwide number for contractors and others to call before conducting excavation activities. The FCC stated that the nationwide abbreviated dialing code will provide an effective replacement for an array of numbers used across the nation to connect to communications systems operated by underground utility operators and state and local governments. The FCC ordered that 811 be operational two years from publication in the *Federal Register* which took place on April 13, 2005. All service providers must use 811 as the national abbreviated dialing code and discontinue use of other dialing arrangements for access to One Call Centers. This action is taken by the FCC in accordance with the 2002 Pipeline Safety Improvement Act, which required the FCC to establish a three-digit, nationwide toll-free number to be used by state underground utility line location systems.

Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105.

Verizon and MCI Merger

On March 24, 2005, the FCC issued a notice requesting comments on the Verizon Communications Inc. and MCI Inc. merger pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended. The applicants seek FCC approval of the transfer of control to Verizon of licenses and authorizations held directly or indirectly by MCI. The transfer of control will take place as a result of a proposed acquisition whereby MCI will become a wholly owned subsidiary of Verizon. Comments

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were due to the FCC by May 9, and reply comments were due May 24, 2005.

Verizon Communications Inc. and MCI Inc. Merger, WC Docket No. 05-75.

Request for Declaratory Ruling on States Regulating Broadband Internet Services

In April 2005, the *Federal Register* published the FCC's notice of inquiry to examine the competitive consequences of providers bundling their legacy services with new services to end users so that the services are not available independent from one another. In this inquiry, the FCC has requested comments on how the bundling of legacy services with new services might affect both intramodal and intermodal competition on a public interest basis as well as whether there are benefits to consumers. In addition, the FCC is seeking comment on whether such bundling behavior is harmful to competition, particularly unaffiliated providers of new services such as Voice over Internet Protocol. Further, the FCC is requesting input on the least invasive regulations that could effectively remedy any potential competitive concerns including the FCC's authority to impose remedies and the costs of any potential regulatory remedies.

BellSouth Telecommunications Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers, WC Docket 03-251.

Federal Legislation

Introduced in January 2005, H.R. 214 creates a new regulatory classification, Advanced Internet Communications Services (AICS), and requires all AICS providers to receive the same regulatory treatment regardless of the technology they use to reach end users.

Notably, the bill also pre-empts state regulation of AICS and sets forth a specific list of areas - 911 services, disability access, universal service and compensation for use of the public switched telephone network - that the FCC can regulate. The legislation would permit FCC regulations to be limited by technical feasibility and economic reasonableness.

H.R. 214 (Advanced Internet Communications Services Act) was referred to the House Subcommittee on Telecommunications and the Internet in January 2005.

FERC Highlights

The Federal Energy Regulatory Commission (FERC) recently issued several important orders that impact Pennsylvania.

United States Energy Bills

The United States House of Representatives passed an energy bill in April (H.R. 6, The Energy Policy Act of 2005), and the Senate Committee on Energy and Natural Resources has reported a bill out (not yet introduced, and at this point referred to simply as "The Energy Bill") in late May. Both bills have electricity provisions, although the bills differ in major areas such as transmission planning, FERC authority and repeal of old laws. It is anticipated that most of the major issues affecting wholesale electricity and interstate transmission will be resolved in conference committee meetings between the House and Senate later this year.

Organization of PJM States Inc.

The Organization of PJM States Inc. (OPSI) has elected officers and adopted bylaws and was formally incorporated as a Delaware not-for-profit organization on May 13, 2005, with members from each of the 14 state commissions in states located within the PJM transmission footprint area. OPSI, which will be funded through a FERC approved tariff to be filed by PJM, has signed a memorandum of understanding with PJM outlining the future relationship of the organization with PJM, the PJM Board of Managers and the PJM market monitor. PJM and OPSI have agreed to engage in mutual consultation regarding matters of common interest.

PJM/MISO Joint and Common Market Operational

PJM and MISO (which opened its LMP based competitive wholesale energy market on April 1, 2005) are now operating a joint and common market, dispatching energy transactions across their respective borders. PJM broke the 100,000 MW dispatch level in early June, with last fall's addition of AEP to the PJM footprint and generation fleet.

SECA Proceedings (EL02-111 etc.)

The FERC initiative to eliminate through and out rates, and its directive to PJM and MISO to file SECA (seams elimination cost adjustment) tariffs continues to be extremely controversial. FERC ordered SECA tariffs in order to "hold harmless" those transmission owners who assert that they would lose money because of tariff seams elimination. Major investigations have been launched into SECA rates, including extensive discovery, scheduled hearings and the filing of numerous petitions and letters with FERC asking it to reconsider. A number of large and small end users and load serving entities, including some Pennsylvania transmission owners, LSEs and distribution companies have asserted in petitions filed with FERC that the effect of FERC's SECA orders will force them into bankruptcy or out of the PJM and

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MISO market altogether due to the unanticipated and extreme effects of recently filed SECA tariffs. Investigations and discovery regarding the justness and reasonableness of the SECA tariffs themselves continues before FERC administrative law judge, with hearings expected to begin this fall. FERC's position thus far is that all SECA tariffs are being collected subject to refund and that there is no reason justifying a stay of any of the SECA tariffs.

Neptune Project (EL05-48)

FERC's order directing PJM to enter into an interconnection service agreement with the Neptune Project, a 29 mile cable proposed to be laid from New Jersey to Long Island, was the subject of numerous petitions for rehearing (including a petition by the Pennsylvania PUC) alleging that the order is based upon errors of fact and law and that the order unfairly allocates costs imposed by the project onto the ratepayers of New Jersey, when it is the ratepayers of Long Island that chiefly benefit from the project. The matter continues to be held in abeyance pending further FERC action on rehearing, which was granted on April 13, 2005.

Exelon/PSEG Merger

Exelon and PSEG announced a proposed merger, subject to review by FERC and several state agencies, including the Pennsylvania PUC. The Pennsylvania application is currently under review by the Commission's Office of Administrative Law Judge. *PECO Energy Company and Public Service Electric and Gas Company Application*, Docket No. A 110550F0160.

PJM Reliability Pricing Model (RPM)

RPM, originally proposed last year by PJM management as a replacement for the existing unforced capacity market model, has undergone more than a year of review by PJM stakeholders and regional state commissions. Despite numerous changes and modifications to the original model in response to criticisms and suggestions by stakeholders, RPM has failed to pass in any PJM committee. A number of state commissions, including the Pennsylvania PUC, have urged caution and further deliberation before PJM files this controversial proposal for approval by FERC.

FERC scheduled a technical conference that was held in Washington, D.C., on June 16. The conference explored the major issues surrounding RPM and wholesale capacity markets generally.

FERC Proposes Rules on Wind Power Interconnection, RTO Costs and Accounting

FERC has recently issued orders proposing special operational rules to favor the interconnection and

operation of wind powered generators on the interstate transmission grid. FERC has also proposed reporting changes and modifications to its Uniform Systems of Accounts to require regional transmission organizations to more consistently and transparently report costs and expenditures.

EGS Assessment Litigation

On March 31, 2005, the Pennsylvania Supreme Court reversed both the Commonwealth Court and the Commission holding that the PUC may not collect annual assessments from electric generation suppliers (EGSs). The Supreme Court stated that, although EGSs were public utilities for limited purposes, those purposes did not include the payment of assessments. The Public Utility Code requires public utilities to pay assessments to fund the PUC's operations. The Supreme Court held that the legislature did not intend EGSs to be considered public utilities for purposes of paying assessments when it approved the Electricity Generation Customer Choice and Competition Act. *See, Delmarva Power & Light Co. v. Commonwealth and Pennsylvania Public Utility Commission*, 870 A.2d 901 (Pa. 2005).

Chapter 14 Implementation

On Nov. 30, 2004, Gov. Ed Rendell signed into law Senate Bill 677 now known as Act 201. This act went into effect on Dec. 14, 2004. The Act amended Title 66 by adding Chapter 14 (66Pa.C.S. §§ 1401-1418), Responsible Utility Customer Protection. The stated purpose of the Act is to protect responsible bill paying customers from rate increases attributable to uncollectible accounts from customers that can afford to pay their bills, but choose not to pay. The legislation is applicable to electric distribution companies, water distribution companies and larger gas distribution companies (those having an annual operating income in excess of \$6,000,000). Steam and wastewater utilities are not covered by Chapter 14.

On Jan. 28, 2005, the Commission issued a secretarial letter identifying general subject areas to which interested parties were encouraged to file written comments. In addition, on Feb. 3, the PUC held a Roundtable Forum to address the implementation and application of Chapter 14. Based upon our review of the comments filed by interested parties pursuant to our Jan. 31 secretarial letter, and the oral comments expressed at the Roundtable Forum, the PUC narrowed the issues of contention to the issues identified and addressed in the implementation order issued March 4, 2005. The Commission determined, among other things, that consumers will receive only one payment arrangement and utilities were also required to file an implementation plan. Another Roundtable Forum will be on July 1.

The Hearing Process

The Office of Administrative Law Judge (OALJ) is responsible for adjudicating formal cases filed with the PUC. The subject matter of these cases includes billing and service disputes, protested applications for certificates of public convenience and rate investigations. The same general hearing process applies to all cases.

The Secretary's Bureau assigns formal cases to OALJ and, at this time, the parties may request mediation as an alternative method of resolving the case. If mediation is not pursued, an evidentiary hearing is scheduled and a presiding officer (administrative law judge or special agent) is assigned by the Chief Administrative Law Judge. The presiding officer reviews the case and, at his/her discretion, issues a prehearing order outlining procedures applicable to the case. At the hearing, a presiding officer's primary responsibility is to develop a clear record of the evidence. This is accomplished through the presentation of testimonial and documentary evidence by the parties, and rulings on that evidence by the presiding officer. During the hearing, the presiding officer must make determinations regarding the credibility of witnesses and the admissibility of evidence, as well as ruling on objections and motions.

Following the evidentiary hearing, the presiding officer reviews the record and issues a decision. The decision will be either an initial decision or a recommended decision depending on the subject matter of the proceeding. All decisions are appealable to the full Commission, and any party may request review of a presiding officer's decision by filing exceptions. Recommended decisions are automatically subject to Commission review. Full Commission review, of decisions not subject to automatic review, may also be initiated at the request of two or more Commissioners. If review is requested, the Commission reviews the record and determines the final disposition of the case at a public meeting. If no exceptions are filed and Commission review is not requested, the decision of the presiding officer becomes final by operation of law and the Secretary of the Commission issues a final order, closing the case.

Numbering Update

On April 30, 2005, the North American Numbering Plan Administrator (NANPA) released the most recent area code exhaust dates. Some of Pennsylvania's area codes projected exhaust dates were extended. Four Pennsylvania area codes are not projected to exhaust until end of year 2009. The 610/484 area codes are due to exhaust in second quarter 2009 while 570 and 717 are predicted to exhaust in the third and fourth quarters of 2009, respectively. The 814 Numbering Plan Area (NPA) is projected to exhaust in first quarter 2010 followed by the 215/267 NPAs in first quarter 2012. In Western Pennsylvania, the 412/724/878 area codes continue to be projected to exhaust in 2023.

Self Certification Security Rulemaking

On March 10, the PUC issued a regulation titled Public Utility Security Planning and Readiness, Docket No. L-00040166. Pursuant to the regulation at 52 Pa. Code §101.1-101.7, jurisdictional utilities must develop and maintain written physical, cyber security, emergency response, and business continuity plans. Jurisdictional utilities must file a self certification form with the PUC documenting compliance with the four plans.

The self-certification process was developed to make sure that all utilities that are located or travel within the Commonwealth are proactively examining their security plans on an ongoing basis and testing these plans with the realization that, in each passing year, circumstances change and new threats may be present. This regulation will help ensure that utilities are effectively equipped and prepared to provide safe and reliable utility service when faced with abnormal operating conditions. A utility need only file the confidential self certification with the PUC, and not the plans themselves.

In addition, the regulation is drafted so that any overlapping reporting duties or regulation by other state and federal agencies can be accommodated. The Independent Regulatory Review Commission approved the regulation on April 28 and it became effective following its publication in the *Pennsylvania Bulletin* on June 11.

PUC Recognized for International Work

In April, the PUC received the Regulatory Agency Volunteer Award from the United States Energy Association (USEA). The Regulatory Agency Volunteer Award recognizes an agency that has demonstrated exceptional effort in sharing its utility knowledge and best practices with international utility regulators.

"Since we began welcoming international delegations in 1996, the PUC has hosted 511 visitors as part of 110 delegations from 69 countries," said Chairman Wendell F. Holland. "Our Commission and our staff have worked diligently to build our reputation in the international arena for utility regulation. And we are proud to be viewed by our fellow utility regulators as being in the forefront of our profession. While our primary interest is to protect the public interest here in Pennsylvania, we also export our expertise literally throughout the nation and the world. I want to thank the efforts of all PUC personnel - past and present - whose efforts and commitment have led to this reputation."

Customer Service Performance Reports

The Commission released the 2003 *Customer Service Performance Report: Pennsylvania Electric & Natural Gas Distribution Companies* on Jan. 12, 2005. The Bureau of Consumer Services prepared the combined report on the customer service performance of the major electric distribution companies (EDCs) and the natural gas distribution companies (NGDCs). The report's data falls into two categories: company-reported performance data and customer survey results. The company-reported data measures telephone access, the timeliness of meter reading and billing, and the time a company takes to respond to disputes. The report measures three different factors to ascertain the quality of telephone access: the percent of calls that received a busy signal, the percent of calls abandoned by callers, and the percent of calls answered within 30 seconds.

The second section of the report provides the results of uniform surveys of randomly selected consumers who interacted with the EDCs and NGDCs during 2003. The purpose of the transaction survey is to assess those consumers' perceptions regarding the interactions. The survey questions the consumers on different aspects of customer service such as ease of reaching the company, employee courtesy and knowledge, promptness and timeliness of a company's response or visit, and satisfaction with the handling of the interaction.

Changing Local Service Providers

For a number of years, telephone consumers have been complaining to the Bureau of Consumer Services about various problems they encounter when trying to change local service providers (LSPs). On May 5, 2005, following a process that began in 2002 with collaboratives involving staff, the telecommunications industry, statutory advocates and others, the PUC entered an order approving final regulations designed to ensure that customers can migrate from one LSP to another without confusion, delay or interruption of basic telephone service.

The final regulations, at Docket L-00030163, establish rules, procedures and standards for telephone service providers (at both the wholesale and the retail levels) to follow for migrations of customer service. Through the rulemaking process, the participants identified and discussed the issues and possible solutions to these problems. The final regulations will become effective upon approval by the Independent Regulatory Review Commission and publication in the *Pennsylvania Bulletin*.

PUC Awaits Funding for InfoMAP

The PUC is awaiting approval of a funding proposal in our 2005-06 Budget Request for the Information Management and Access Project, or InfoMAP. This project would overhaul the existing case management system to improve electronic workflow capability and would provide for more efficient access by consumers, utilities and practitioners through the implementation of electronic filing and e-commerce initiatives. Hoping that such approval will come in June, the PUC is preparing a Request for Proposal for issuance later this summer.

To ensure that stakeholders have had ample opportunity to provide input into the process, the Commission held sessions on May 18 and 19 to gather feedback as to their expectations for improved electronic access to documents filed with and produced by the PUC. Generally, the stakeholders identified a desire to make electronic filings, electronically access documents filed with the Commission, and have the ability to track the status of pending filings. The participants also raised questions about requirements associated with electronic filing, proprietary documents, search capabilities and timeframe for implementation.

The PUC needs to upgrade the existing technology that is based on COBOL applications developed internally in 1978. In terms of electronic access by users of the system, the PUC should be on par with other state agencies, our federal agencies and utility regulatory agencies in other states.

The state appropriation for the Commission's 2005-06 budget request is about \$50 million, \$3.85 million of which is earmarked for InfoMAP. Current versions of the Commission's budget bills, Senate Bill 612 and House Bill 816, pending in the General Assembly, contain funding for InfoMAP.

Modem Hijacking

The Bureau of Consumer Services (BCS) has investigated more than 250 modem hijacking complaints from Pennsylvania's telephone customers. Modem hijacking occurs when a computer user clicks on a computer ad that triggers the download of software to the user's computer. The software automatically dials international long-distance phone numbers without the customer's knowledge. The customers who contacted BCS received bills for long distance calls to Sao Tome, Tuvalu, the United Kingdom (UK), Austria and Lichtenstein.

In March, Verizon and the Office of Consumer Advocate signed a settlement agreement concerning victims of modem hijacking. Verizon agreed to give these customers a credit or refund of money they paid for these unauthorized international charges. BCS sent a letter to customers who had filed consumer complaints about modem hijacking informing them of the agreement and advising them to call Verizon if they have not received a credit or refund.

Meanwhile, BCS forwarded information to a United States attorney about cases that involved modem hijacking charges to the UK. The attorney is building a case to bring charges against the perpetrators. BCS received 26 complaints about calls to the UK.