

# THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE ANNUAL REPORT JANUARY – DECEMBER 31, 2005



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ANNUAL REPORT  
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**A. SELECTED LISTING OF PUBLIC PRESENTATIONS BY THE RATEPAYER  
ADVOCATE IN 2005<sup>1</sup>**

**JANUARY**

- 5 Presentation, **Public Hearing, In the Matter of the Petition of Atlantic City Electric**, BPU Docket No. EE0411374, Cape May Court House, Middle Township
- 11 Moderator, New Jersey Technology Council **“Beyond Outsourcing NJ and India”**, 744 Broad St., Newark, New Jersey
- 12 Presentation, **New Home Dedication**, New Jersey Natural Gas, Asbury Park, New Jersey
- 14 Panelist **“Women on Top”**, South Asian Leadership Forum, Los Angeles, CA
- 16 Participation, 19<sup>th</sup> Annual Martin Luther King, Jr. **Commemorative Celebration Ceremony**, War Memorial, Trenton, New Jersey
- 21 Speaker, **Chinese Cultural Night**, South Jersey Community Center, Cherry Hill, New Jersey
- 25 **Consumer Education Presentation**, AARP Chapter, Roxbury Dept. of Recreation Building., Succasunna, New Jersey
- 26 **55<sup>th</sup> Republic Day Greetings** – WCNJ Radio
- 31 Participation in **“LIHEAP: Action Day”**, U.S. Congress, Washington, D.C.

**FEBRUARY**

- 10 Meeting with Commissioner Jacob, Department of Health: **Assisted Living Facilities**, Trenton, New Jersey.
- 12 Presentation for Governor to the Greater Southern NJ Korean Association, **Asian New Year’s Celebration**, Angeloni’s Cedar Garden, Trenton, New Jersey

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<sup>1</sup>The Ratepayer Advocate or her designee made each of the presentations listed. This listing does not include numerous small meetings and presentations held throughout the year at the request of individual state and municipal legislators, legislative and municipal staff people, representatives of not-for-profit advocacy groups, community organizations, retirement communities and individual ratepayers.

- 17 Presentation on **Telecommunications Industry Forecast**, New Jersey Technology Council, AT&T Headquarters, Bedminister, New Jersey
- 19 Keynote Speaker on **Human Rights for Immigrants**, New Jersey Immigration Policy Network at Rutgers University Labor Education Center, New Brunswick, New Jersey
- 25 Participation in **State Homeland Security Exercise**, War Memorial, Trenton, New Jersey
- 26 Presentation for Governor at **the Asian American Engineer of the Year Award Banquet**, Whippany, New Jersey
- 26 Keynote speaker, **“Women in Law and Public Policy”**, South Asian Women’s Leadership Conference, Price Waterhouse, New York City, New York
- 28 Keynote, **Women’s Roundtable on Domestic Violence**, Ratepayer Advocate Office, Newark, New Jersey

## MARCH

- 4 Presentation, **Energy Assistance Grant Presentation** Elizabethtown Gas and AGL Resources Foundation, Union Plaza, New Jersey
- 4 Keynote speaker, **MANAVI’S 20<sup>th</sup> Anniversary Dinner**, South Brunswick, New Jersey
- 5 Presentation, **30<sup>th</sup> Anniversary Celebration**, Chinese American Cultural Association, Whippany, New Jersey
- 8 Presentation on behalf of Ratepayers to the **Board of Directors** of New Jersey Natural Gas Company Headquarters, Wall, New Jersey
- 12 Keynote, **South Asian Bar Association of New Jersey**, Hilton Woodbridge, Iselin, New Jersey
- 16 Radio Interview on Imaginasian Radio, San Francisco on **Asian Indian Non-Traditional Professions**, Broadcast on 96.1FKFQQ
- 16 Introductory Remarks **Tomorrow’s Leaders: Living Dr. King’s Dream Today**, Martin Luther King Commemorative Awards Ceremony, Ratepayer Advocate Office, Newark, New Jersey
- 17 Participation, NJ Immigration Policy Network, **Healthcare Training Symposium**, Beth Israel Medical Center, Newark, New Jersey

- 19 Presentation, **Issues Affecting South Asians in Post 9/11 America** to South Asian Leaders of Tomorrow (SAALT), Edison Public Library, Edison, New Jersey
- 21 Panelist, **Women Change America** in observance of National Women's History Month sponsored by New Jersey Natural Gas, Wall, New Jersey
- 24 Consumer Education Presentation on **Conservation, Energy Efficiency, Solar Energy and How to Read Your Utility Bill**, New Brunswick Senior Citizen's Resource Center, New Brunswick, New Jersey
- 30 Panelist, **Legislative and Communication Strategies for LIHEAP and Fuel Fund Fundraising** at the American Gas Association (AGA) Public Affairs Forum, savannah, GA

## APRIL

- 2 Keynote, **Tsunami Aid Fundraiser**, sponsored by Swarsaagar Academy of Music & Rita Dance Academy, Woodbridge High School, Woodbridge, New Jersey
- 9 Keynote, **March of Dimes Rangeela 2005**, West Windsor Plainsboro High School, West Windsor, New Jersey
- 10 Presentation on behalf of Governor to the **30<sup>th</sup> Annual Heritage Festival Ball**, May Fair Farms, West Orange, New Jersey
- 13 Interview on Prime Time, Points of Views on **Emerging Utility Issues** by American Desi TV, New York City, New York
- 16 Keynote speaker and Honoree, **Garden State Sikh Association**, Bridgewater Raritan Middle School, Bridgewater, New Jersey
- 21 Speaker, New Jersey State Bar Association's **Public Utility Law Section Spring Annual Conference**, Woodbridge Sheraton, Iselin, New Jersey
- 22 Presentation, NJ Chamber of Commerce's **8<sup>th</sup> Annual NJ Small Business Conference**, New Brunswick, New Jersey
- 29 Presentation, **Public Hearing on Regulations of Cable Television Bills for Service, Form of Bill, Due Date of Payment and Notice of Discontinuance, Proposed Amendments to N.J.A.C. 14:18-3.7 and 3.9**, Board of Public Utilities, Newark, New Jersey

## MAY

- 2 Presentation of Awards, **NJ Employee Recognition Awards Ceremony**, War Memorial, Trenton, New Jersey
- 4 Presentation, “**Safe Drinking Water Celebration**” Iselin, New Jersey
- 6 Presentation for Governor at **NJ Chinese American Chamber of Commerce 2<sup>nd</sup> Anniversary Gala**, Edison, New Jersey
- 9 Presentation, **Dedication of Photovoltaic System** at Island Beach State Park, Seaside Park, New Jersey
- 17 Presentation, **Consumer Issues** to the Board of Directors for New Jersey Natural Gas Company, Wall, New Jersey
- 19 Presentation, **Libraries-on-Line Open House**, Long Branch Public Library, Long Branch, New Jersey
- 20 Participation, “**Shaping New Jersey’s Future in Telecommunications**” at Princeton University, Princeton, New Jersey
- 23 Presentation, **Asian Pacific American Heritage Month Celebration**, Ratepayer Advocate Office, Newark, New Jersey
- 26 Presentation, “**Volunteers to Assist Victims of Domestic Violence in the Asian American Community**”, Project Planning Meeting, Ratepayer Advocate Office, Newark, New Jersey
- 28 Participation on behalf of Governor at **National Federation of Indian American Associations (NFIA) 25<sup>th</sup> Anniversary Celebration**, Terrace on the Park, Queens, New York

## JUNE

- 3 Participation **Employment Law Seminar**, NJ Department of Personnel, Mercer County Community College, West Windsor, New Jersey
- 12 Presentation **Indian American Political Action Council Anniversary Dinner**, Crowne Plaza, Englewood, New Jersey
- 15 Panelist, New Jersey League of Municipalities Mayor’s State Summit, on **The Status of Verizon System Wide Video Telecommunications Franchise**, Lawrenceville National Guard Armory, New Jersey

- 23 Convened **Women's Roundtable on Domestic Violence Planning**, Ratepayer Advocate Office, Newark, New Jersey
- 23 Participation at New Jersey Chamber of Commerce **8<sup>th</sup> Annual Legislative Reception**, Trenton, New Jersey
- 25 Keynote Speaker **4<sup>th</sup> Annual Hindi Mahotsav**, International Hindi Association West Windsor at Plainsboro High School, Plainsboro, New Jersey
- 30 Interview EBC (WTTM 1689 AM) Radio on the "**Four Cs of Conservation**" Metuchen, New Jersey

## JULY

- 3 Speaker, **Human and Legal Rights of Immigrants** at 2005 North American Bengali Conference Hotel, New York, New York
- 6 Consumer Education Presentation on "**Conservation, Energy Efficiency, Solar Energy and How to Read Your Utility Bill**," Harrison, New Jersey
- 11 Speaker at the New Jersey Motor Vehicle Commission (MVC) **Initiative for Non-U.S Citizens**, Harrison Senior Citizens Center MVC, Press Conference, MVC Wayne Regional Center, Wayne, New Jersey
- 15 Consumer Education Presentation on **Conservation, Energy Efficiency, Solar Energy and How to Read Your Utility Bill** to Morris Council of Older Persons, Morris Plains, New Jersey
- 21 Presentation, on **the Awarding of 100,000 New Jersey SHARE Grants**, New Jersey Board of Public Utilities, Newark, New Jersey
- 27 Interview, EBC Radio on the **Importance of Community Involvement in CERT (Community Emergency Response Teams)**, Metuchen, New Jersey
- 28 Presentation on "**Domestic Violence in Asian American Communities**", Ratepayer Advocate Office, Newark, New Jersey
- 29 Induction as member to **New Jersey Council on Volunteerism**, Governor's Office State House, Trenton, New Jersey

## AUGUST

- 9 Presentation, **Public Hearing in the Matter of the Petition of Pivotal Utility Holdings d/b/a Elizabethtown Gas Company to (1) Reconcile its Periodic Basic Gas Supply and Industrial Air Conditioning Distributed Generation**

**Uses and Seasonal Delivery Service**, BPU Docket No. GR05060494, Flemington, New Jersey

- 10 Presentation, **Public Hearing in the Matter of the Petition of Pivotal Utility Holdings d/b/a Elizabethtown Gas Company to (1) Reconcile its Periodic Basic Gas Supply and Industrial Air Conditioning Distributed Generation Uses and Seasonal Delivery Service**, BPU Docket No. GR05060494, Rahway, New Jersey
- 12 Meeting on **“No Child Left Behind” Legislation**, Dept. of Education, Trenton, New Jersey
- 12 Meeting on **Asian Curricula in New Jersey Elementary and High Schools**, at Department of Education Trenton, New Jersey
- 14 Presentation at **Celebration of Pakistan’s 58<sup>th</sup> Year of Independence**, Jersey City, New Jersey
- 14 Presentation, on **Independence Day Celebration** of the Indo American Senior Citizens Association, Jersey City, New Jersey
- 15 Presentation, on WCNJ, 89.3 FM of an **India Independence Day Greeting to the public**
- 15 Presentation, Federation of Indian Associations **“Flag Raising Ceremony”** Royal Albert Palace, South Brunswick, New Jersey
- 17 Speaker, **2005 Junior Statesmen Foundation Symposium of NJ Politics and Government**, State House, Trenton, New Jersey
- 19 Consumer Education Presentation on **Conservation, Energy Efficiency, Solar Energy and How to Read Your Utility Bill** to Flemington Senior Citizen Center, Flemington, New Jersey
- 21 Presentation at the Federation of Indians in America (FIA) **24<sup>th</sup> Annual India Day Parade**, New York City, New York
- 21 Presentation on behalf of the Governor at the **Indian Cultural Society of New Jersey**, Municipal Building, Union, New Jersey
- 21 Presentation to the **Federation of Indo-American Senior Associations of North America, First Senior Day Celebration**, Hindu Temple, Kearney, New Jersey
- 22 Presentation at **FIA Gala Banquet** at Royal Albert Hall, Edison, New Jersey

- 26 Consumer Education Presentation **Conservation, Energy Efficiency, Solar Energy and How to Read Your Utility Bill** during Tour of the Jean Walling Civic Center, East Brunswick, New Jersey
- 27 Presentation at **2<sup>nd</sup> Conference of Chinese American Parents**, Edison, New Jersey
- 30 Meeting with **New Jersey Coalition of Battered Women**, Trenton, New Jersey

## SEPTEMBER

- 4 Presentation to the Shirdi Sai Dham, **3<sup>rd</sup> Annual Indo-American Fair**, Mercer County Park, West Windsor, New Jersey
- 4 Presentation, **Federation of Gujerati Associations**, Silver Jubilee Forum, NJPAC Center, Newark, New Jersey
- 4 Presentation at the **Gitam Alumni Association of North America**, Akbar Palace, Edison, New Jersey
- 4 Keynote Address to **Kalanjali School of Dance Recital** Nicholas Music Center, Douglass Campus, New Brunswick, New Jersey
- 8 Presentations, **Public Hearing, the Provision of Basic Generation Service (BGS) for Year 3 of the Post-Transition Period Pursuant to EDECA N.J.S.A. 48:3-57** BPU Docket No. EO04040288, Holiday Inn, Montvale, New Jersey
- 10 Presentation to **MBN Financial Services on Utility Issues**, Avenel, New Jersey
- 12 Consumer Education presentation on **Conservation How to Read Your Utility Bill and Utility Assistance Programs**, West Windsor Senior Center, West Windsor, New Jersey
- 15 Presentation, **Public Hearing, I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2006**, BPU Docket No. EO05040317, Atlantic County Library, Mays Landing, New Jersey
- 18 Panel Presentation at the New Jersey Association of Counties Annual Conference on **“What County Officials Can Do to Save on Energy Costs”**, Bally’s Park Plaza, Atlantic City, New Jersey
- 22 Consumer Education presentation on **Conservation How to Read Your Utility Bill and Utility Assistance Programs**, Bergen County Activities Center, North Arlington, New Jersey

- 25 Keynote Address on the **Governor's Asian Education Curricula Initiative** before the Educator's Society for the Heritage of India, Busch Student Center, Piscataway, New Jersey
- 28 Consumer Education Presentation on **Conservation How to Read Your Utility Bill and Financial Assistance Programs**, to Concerned Citizens in Monmouth County, Manalapan Library, Manalapan, New Jersey
- 29 Presentation at **Public Hearing** on the **Petition of Jersey Central Power and Light Company for Approval of an Increase in Base Tariff Rates**, BPU Docket No. ER02080506, Morris County Administration and Records Bldg., Morristown, New Jersey
- 30 Presentation at **Public Hearing**, on the **Petition of Jersey Central Power and Light Company for Approval of an Increase in Base Tariff Rates**, BPU Docket No. ER02080506, Freeholder's County Administration Bldg., Toms River, New Jersey
- 30 Presentation: **"It's Cool to Conserve": A program for Young People**, Mount Olive Child Care and Learning Center, Flanders School

## OCTOBER

- 1 Keynote speaker on **The King Gandhi Philosophy: Understanding the Dynamics of Non-Violence and Community Understanding for World Peace** sponsored by NJ MLK Commission, the Governor's Office on Volunteerism and the International Institute for Scientific and Academic Collaboration, West Orange High School, West Orange, New Jersey
- 3 Keynote address and Presentation of Governor's Greetings to the Asian-Indian Association's **Deepawali Mela**, South Street Seaport, New York City, New York
- 5 Consumer Education Presentation on **Conservation How to Read Your Utility Bill and Utility Assistance Programs**, Franklin Lakes Public Library, Franklin Lakes, New Jersey
- 5 Presentation at Press Conference on **The Low Income Home Energy Program (LIHEAP)**, State House, Trenton, New Jersey
- 7 Radio Interview EBC Radio, (WTTM 1680 AM) on the **Importance of Voting**, Metuchen, New Jersey

- 8 Presentation at the **Celebration of the Coming of Autumn**, sponsored by Kallol of New Jersey at the Ukranian Church & Cultural Center, Somerset, New Jersey
- 13 Consumer Education Presentation on **Conservation and Financial Assistance Programs**, Annual Consumer Social Services Seminar, Merighis' Savoy Inn, Vineland, New Jersey
- 13 Presentation, **"It's Cool to Conserve"**, Woodbury Child Development Center, Woodbury, New Jersey
- 14 Presentation, **"It's Cool to Conserve"**, Roosevelt Elementary School, South Plainfield, New Jersey
- 15 Consumer Education Presentation on **Conservation**, Demarest Senior Center, Demarest, New Jersey
- 17 Consumer Education Presentation on **Conservation How to Read Your Utility Bill and Utility Assistance Programs**, Scotch Plains Public Library, Scotch Plains, New Jersey
- 20 Presentation and Introduction of the Honorable Wilfredo Caraballo, **Public Utility Law Section Meeting**, Ratepayer Advocate Office, Newark, New Jersey
- 20 Presentation, **Fourth Annual Welcome Ramadan Dinner (IFTAR)**, Islamic Educational Center of North Hudson, North Bergen, New Jersey
- 21 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill, and Utility Assistance Programs**, Flemington Senior Center, Flemington, New Jersey
- 22 Presentation, **Dushahra Festival 2005** in East Freehold Park, Freehold, New Jersey
- 23 **Acceptance of Community Service Award** at the Dushahra Festival, 2004, East Freehold Park, Freehold, New Jersey
- 23 Presentation on **"Globalization"**, New Jersey Chinese Computer Professionals, (NJCCPS), Clarion Hotel, Edison, New Jersey
- 24 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill, and Utility Assistance Programs**, Peapack Borough Hall, Peapack, New Jersey
- 24 Interview EBC (WTTM 1680 AM) Radio on **The Rising Cost of Oil and Gas and The Need for Conservation**, Metuchen, New Jersey

- 25 Consumer Education Presentation on **Services and Benefits for Seniors**, Old Bridge Senior Center, Old Bridge, New Jersey
- 26 Presentation at the Ratepayer Advocate's 2005 Conference: **New Jersey's Future: Emerging Challenges in Telecommunications and Water Services**", Holiday Inn, Monroe Township, New Jersey
- 27 Presentation on the **Role of the Ratepayer Advocate** to the Southern Energy Assistance Conference, Moorestown, New Jersey
- 28 Presentation on the **Role of the Ratepayer Advocate** to the Northern Energy Assistance Conference, Clifton, New Jersey
- 29 Presentation of Governor's Greetings to the Indian Cultural Society's **Nazratri Festival 2004**, Elizabeth, New Jersey

## NOVEMBER

- 1 Interview on EBC (WTTM/1680 AM) Radio on **State and Federal Benefits and Services Available for Seniors**, Metuchen, New Jersey
- 2 Presentation, **"It's Cool to Conserve"**, Grades K-8, Family Friendly Center, Newark, New Jersey
- 3 Presentation, **The Role of the Ratepayer Advocate and Conservation** at the Central Energy Conference, Edison, New Jersey
- 3 Consumer Education Presentation on **Conservation** at the PSE&G Central Energy Conference, Edison Training & Development Center, Edison, New Jersey
- 3 Presentation on **Energy Conservation**, The TAWA Restaurant, Piscataway, New Jersey
- 4 Presentation, **"It's Cool to Conserve"**, Grades K-8, Belmar Elementary School, Belmar, New Jersey
- 4 Presentation, **Diwali Celebration**, AXA Financial Headquarters, Equitable Atrium, New York, New York
- 5 Presentation of the **Governor's Greetings**, to the EBC Radio Diwali Celebration, Royal Albert Palace
- 7 Presentation to the **Opening of the Gurudwara (Temple)**, Port Reading, New Jersey

- 8 Presentation on **The Role of the Ratepayer Advocate and Conservation** at the Essex County Agency Conference, New Light Baptist Church, Bloomfield, New Jersey
- 10 Presentation on **The Role of the Ratepayer Advocate and Conservation** at the Hudson County Agency Conference, Secaucus Public Library, Secaucus, New Jersey
- 14 Presentation, **“It’s Cool to Conserve”** Grades 6-8, Louise Spencer School, Newark, New Jersey
- 15 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill and Utility Assistance Programs**, Berkley Heights Senior Citizens Center, Berkley Heights, New Jersey
- 18 Presentation, **“It’s Cool to Conserve”**, Grades K-8, Oak Crest Academy, Somerset, New Jersey
- 21 Presentation, **“It’s Cool to Conserve”**, Grades K-5, Lakewood Oak Street School, Lakewood, New Jersey
- 21 Presentation, **Public Hearing I/M/O the Joint Petition of PSE&G and Excelon Corp. for Approval of A Change in Control of PSE&G and Other Related Amortization, Board of Public Utilities, Public Hearing**, BPU Docket No. EM05020106 OAL Docket No. PUC 187405
- 22 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill and Utility Assistance Programs**, Bernardsville Senior Center, Sacred Heart Chapel, Bernardsville, New Jersey
- 22 **Public Hearing, I/M/O the Joint Petition of PSE&G and Excelon Corp. for Approval of A Change in Control of PSE&G and Other Related amortization, Board of Public Utilities, Public Hearing**, BPU Docket No. EM05020106, OAL Docket No. PUC 187405, Middlesex Administrative Bldg., New Brunswick, New Jersey
- 22 Presentation **2005-6 Governor’s School of Excellence Awards Ceremony**, Masonic Temple, Trenton, New Jersey
- 24 Interview on EBC Radio (WTTM/1680 AM) on **Home Heating Assistance Programs**, Metuchen, New Jersey
- 24 Keynote Address, **First South Asian Women’s Conference** of the IMAMIA Medics International, Pines Manor, Edison, New Jersey
- 28 Presentation, **“It’s Cool to Conserve”**, Grades K-2, Southard School, Howell, New Jersey

- 28 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill and Utility Assistance Programs**, Happy Rockers@Boroughhall, Peapack, New Jersey
- 28 Presentation **Public Hearing I/M/O the Joint Petition of PSE&G and Exelon Corp. for Approval of A Change in Control of PSE&G and Other Related Amortization, Public Hearing**, Board of Public Utilities, BPU Docket No. EM05020106 OAL Docket No. PUC 187405, Board of Public Utilities, Newark, New Jersey
- 29 Presentation, **“It’s Cool to Conserve”**, Grades K-8, St. Michael’s School, Union, New Jersey
- 30 Presentation, **“It’s Cool to Conserve”**, Grades K-2, Southwood School, Old Bridge, New Jersey

## DECEMBER

- 1 Presentation, **“It’s Cool to Conserve”**, Grade 3 (**Cub Scouts**), Kennedy Elementary School, Succasuna, New Jersey
- 2 Presentation, **“It’s Cool to Conserve”**, Grades K-8, Ironbound Community Corporation, Newark, New Jersey
- 4 Presentation in **response to the Pakistanis for America Award for Seema Singh’s Service to the Pakistani and Other Minority Communities**, Shah Navaz Palace, Edison, New Jersey
- 6 Presentation, **“It’s Cool to Conserve”**, Grades K-3, St. Patrick’s Elementary School, Jersey City, New Jersey
- 7 Presentation, **“It’s Cool to Conserve”**, Grades K-3, Robert N. Wilentz Elementary School, Perth Amboy, New Jersey
- 8 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill and Utility Assistance Programs**, Wellspring Child Development Center, Irvington, New Jersey
- 8 Presentation **Public Hearing I/M/O PSE&G Company’s 2005/2006 Annual BGSS Commodity Charge filing for Its Residential Gas Tariff for Gas Service, BPU NJ No. 13 Gas** Pursuant to *N.J.S.A. 48:2-21* and *N.J.S.A. 48:2-21.1*, BPU Docket No. GR05050470, New Brunswick, New Jersey

- 10 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill and Cable TV**, to the Northvale Golden Age Club, McGuire Senior Center, Northvale
- 11 Presentation at the **Benefit for Victims of the Pakistan Earthquake**, Shahanawaz Palace, Edison, New Jersey
- 11 Presentation of the Acting Governor's Greetings and Proclamation at the **Annual Holiday Ball of the Organization of Chinese Americans**, North Maple Inn, Basking Ridge, New Jersey
- 12 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill, and Utility Assistance Programs**, Cliffside Park Senior Activity Center, Cliffside Park, New Jersey
- 13 Consumer Education Presentation on **Conservation, How to Read Your Utility Bill, and Cable TV** at the West Milford Golden Age Club, Hillcrest Community Center, West Milford, New Jersey
- 13 NY Times Interview on the **Proposed PSE&G/Exelon Merger**
- 16 Presentation, **"It's Cool to Conserve"** Grades K-8, Edgar Middle School, Metuchen, New Jersey
- 16 Interview on EBC Radio on **"How to Conserve Energy and Save on Your Natural Gas and Electric Bills"**
- 17 Consumer Education Presentation on **New Jersey Utility Assistance Programs** for the International Institute of New Jersey, North Bergen Public Library, North Bergen, New Jersey
- 20 Consumer Education Presentation on **Service and Benefits for Seniors and How to Read Your Utility Bill** for the International Institute of New Jersey, North Bergen Public Library, North Bergen, New Jersey
- 28 Interview on EBC Radio (WTTM/1680 AM) on the Possible Affects on Ratepayers of the **Proposed Merger of PSE&G and Excelon**, Metuchen, New Jersey

## **POWER POINT PRESENTATIONS**

The following Power Point presentations were developed by the Ratepayer Advocate and her staff to provide not-for-profit, consumer, and governmental groups throughout New Jersey information in plain language about the current status of utility

and telecommunications rates and services in conjunction with her outreach to the public throughout the state.

Aggregation – The Consumer Education Challenge

Aggregation – A Guide for Consumers

Bringing The Benefits Of Energy Competition To Consumers

Cable Television Regulation

Conservation

Conservation For Kids (“It’s Cool to Conserve”)

Do Not Call

Financial Assistance Programs for Energy and Telecommunications Customers

Services & Benefits For Senior Citizens

State Level Advocacy: The Role Of The Ratepayer Advocate Of New Jersey

The Clean Energy Program

Understanding Your Utility Bill

Voice Over Internet Protocol (VOIP)

Water/Wastewater

**B. RATEPAYER ADVOCATE PARTICIPATION IN STATE AND NATIONAL UTILITY POLICY, WORKING GROUPS AND PROFESSIONAL ORGANIZATIONS**

**ENERGY**

National Association of State Utility Consumer Advocates (NASUCA)<sup>2</sup> Electricity Committee

National Association of State Utility Consumer Advocates (NASUCA) Natural Gas Committee

National Fuel Funds Network<sup>3</sup>

**FERC**

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency within the United States Department of Energy that

- Regulates the transmission and sale of natural gas for resale in interstate commerce;
- Regulates the transmission of oil by pipeline in interstate commerce;
- Regulates the transmission and wholesale sales of electricity in interstate commerce;
- Licenses and inspects private, municipal and state hydroelectric projects;
- Oversees environmental matters related to natural gas, oil, electricity and hydroelectric projects;
- Administers accounting and financial reporting regulations and conduct of jurisdictional companies, and;
- Approves site choices as well as abandonment of interstate pipeline facilities

When necessary and appropriate to represent the public interest of New Jersey Ratepayers, the Ratepayer Advocate applies for intervention and participates as a party in FERC activities.

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<sup>2</sup>A coalition of state consumer advocates which includes 40 states and the District of Columbia. NASUCA files comments and participates in various state and federal legal matters and legislative processes to present the perspectives of retail consumers on utility policies.

<sup>3</sup>The National Fuel Funds Network (NFFN), promotes energy assistance programs and advocacy throughout the United States for affordable and adequate state and national home energy assistance policies. Seema Singh was elected to its Board of Directors in 2004.

## **PJM**

PJM Interconnection, LLC is the organization that operates most of the electric transmission grid system in Delaware, the District of Columbia, Maryland, Pennsylvania, and most of New Jersey. PJM's objectives are to ensure reliability of the bulk power transmission system and to facilitate an open, competitive wholesale electric market.

The Ratepayer Advocate is a voting member of PJM with the right to participate in many of its policies and practices including several PJM working groups such as the Generation Attributes Tracking System User Group, the Demand Side Responsive Working Group, the Public Interest & Environmental Organization User Group and the Regional Transmission Planning Working Group. Our participation in these groups focuses on protecting the rights of New Jersey electric customers whenever PJM establishes any policy or program that affects New Jersey electric customers.

## **The North American Energy Standards Board (NAESB)**

In April 2003, the Ratepayer Advocate began to closely monitor the activities of the North American Energy Standards Board (NAESB) which is the successor to the Gas Industry Standards Board (GISB), formed by interested stakeholders to develop technical and operational standards to implement FERC's wholesale natural gas policies. Due to the cooperative nature of the GISB, FERC has relied upon GISB to submit consensus documents to implement its Orders. NAESB is composed of four distinct 'quadrants' or areas of concentration. Wholesale Gas (formally GISB), Wholesale Electric, Retail Gas and Retail Electric. The main mission of NAESB is to promote uniform business practices and standards within the energy industry with the input of various stakeholders. The Ratepayer Advocate's primary focus is upon the retail gas and electric quadrants as they affect New Jersey's retail electric and gas customers. Monthly NAESB status reports are prepared for legal staff review.

## **STRATEGIC ISSUES FORUM**

Seema M. Singh was invited to be a member of the Strategic Issues Forum which is sponsored by the Center For Energy, Economic and Environmental Policy, Edward J. Bloustein School of Planning and Public Policy, Rutgers University. The Strategic Issues Forum provides a venue for discussion of timely public policy issues affecting the state. Members include regulated electric, gas and telecommunications companies, government regulators and academics. The forum was created in the fall of 2003 and holds regular meetings to explore current and emerging issues affecting utility policy.

## **TELECOMMUNICATIONS**

National Association of State Utility Consumer Advocates (NASUCA)  
Telecommunications Committee

National Association of Telecommunications Officers and Advisors (NATOA)

## **WATER/WASTEWATER**

National Association of State Utility Consumer Advocates (NASUCA) Water Committee

American Water Works Association

The Ratepayer Advocate also participates in and monitors the activities of the following state agencies and not-for-profit groups concerned with water issues:

### **1. The New Jersey Department of Environmental Protection, including the following specific Units:**

- Division of Water Quality
- Water Supply Administration - Drinking water, water supplies, and wells
- Division of Science & Research Water Assessment Team - Water quality reports and water quality indicators
- Freshwater Wetlands Program
- Dam Safety
- NJDEP Lakes Management Program
- New Jersey Environmental Infrastructure Trust
- Division of Watershed Management

### **2. Raritan Basin Watershed Management Project**

This partnership project between the NJDEP and NJ Water Supply Authority deals with issues affecting the Raritan River Basin. The Ratepayer Advocate monitors the issues that arise, attends public hearings, and interacts with water and wastewater service purveyors about the unique needs of the region.

### **3. Clean Water Council of NJ**

Although the Ratepayer Advocate is not a formal member of the Council established in 1967 to serve as an advisory body to the NJDEP and to improve the Water Pollution Control Program in NJ, we monitor the council's activities. A subcommittee of the Clean Water Council is the NJ Water Supply Advisory Council, which meets contemporaneously with the Clean Water Council and makes specific policy recommendations to the Clean Water Council for deliberation and transmission to the DEP.

### **4. Passaic River Coalition and Ten Towns Great Swamp Committee**

These two citizens' groups are the watchdogs for the Passaic River, from its headwaters in the Great Swamp, located at the base of the Watchung Mountains in Morris and Somerset County, through the Upper Basin to the Great Falls in Paterson and then through the Lower Basin from the falls to the Newark Bay tidal area. These groups actively work to protect all aspects of the Passaic River Basin. Meetings are monitored regularly.

### **5. New Jersey Water Supply Authority**

The NJWSA is a source of drinking water and stream flow in the central part of the state, it conducts budgeting, forecasting and other business as a public body with notice, public hearings on rates for the sale of water to utilities and other water purveyors, as well as other water supply and planning issues. Its activities particularly those of the Manasquan section are monitored. Current issues include drought warnings issued in fall 2001 and ensuring security since the 9/11 attacks.

### **6. Local Finance Boards**

The agendas for each Local Finance Board (LFB) meeting are reviewed, and if circumstances require, a representative of the Ratepayer Advocate's office attends LFB proceedings to represent affected ratepayers.

## **OTHER PROFESSIONAL ORGANIZATIONAL RELATIONSHIPS**

Board of Consultors, New Jersey Bar Association, Public Utility Law Section

Institute for Continuing Legal Education (ICLE) New Jersey

National Association of Regulatory Utility Commissioners (NARUC)

Practicing Law Institute (New York)

## **New Jersey Advisory Council on Volunteerism and Community Service**

- Seema M. Singh was appointed in July 2005 by Acting Governor Richard Codey to the Governor's Advisory Council on Volunteerism and Community Service which encourages the expansion of volunteerism and community service in New Jersey by advising and supporting the mission and initiatives of the Office. Through short and long-term strategic planning and fundraising, Council members actively contribute their time and expertise to promote and advance the spirit of volunteerism throughout the state.

## C. PUBLICATIONS\*

### ***CONSUMER ASSISTANCE HANDBOOK: A GUIDE FROM THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE FOR NATURAL GAS, WATER, ELECTRIC, TELEPHONE AND CABLE TELEVISION CUSTOMERS REVISED 2006 EDITION PENDING\* NO COST***

This Handbook was prepared to provide consumers, residential, small business, not-for-profit, and commercial customers the detailed information needed to make informed choices when selecting energy and telecommunications providers in the restructured energy and telecommunications marketplaces. It also includes information about water/wastewater rates and services, how to read your utility bills, the Consumer Bill of Rights, information about the status of the cable television industry, and what to do during drought conditions and weather emergencies that affect water and energy services.

### ***CONSUMER CONSERVATION HANDBOOK 2nd EDITION\* NO COST***

This publication provides detailed information and tips in a room by room guide on how to reduce energy use for heating and cooling as well as the most economical choices of appliances in an easy to use consumer friendly format. Many of the conservation tips are inexpensive or free.

### **MANUAL FOR GOVERNMENT ENERGY AGGREGATORS: A GUIDE TO AGGREGATION PROCEDURES PURSUANT TO THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT AS AMENDED**

The Ratepayer Advocate consistently supported energy aggregation as the best way to provide the lowest possible energy rates for residential, small business and state and local governments since the passage of the Electric Discount and Energy Competition Act (EDECA) in 1999. On February 27, 2003, Governor James E. McGreevey signed into law legislation simplifying the energy aggregation process for municipalities in New Jersey, paving the way for money-saving opportunities for residential and business customers throughout the state, by ordering the Board of Public Utilities to adopt rules and regulations requiring electric or natural gas public utilities to assist municipal and county aggregators when establishing a government energy aggregation program at the request of the governing body of a county or municipality. The law also provides a role for the Ratepayer Advocate in the municipal aggregation process as a reviewer and analyst of bid notices, bidding documents and written agreements.

\*Publications with an asterisk are also available on the Ratepayer Advocate's Website <http://www.rpa.state.nj.us>. All publications can be ordered by fax, (973) 648-4848) or by mail from the Ratepayer Advocate, 31 Clinton St., 11<sup>th</sup> floor, P.O. Box 46005, Newark, NJ 07101.

The Ratepayer Advocate and her staff have completed this step-by-step, 206 page Guide to provide technical assistance to municipal and county officials and their counsel when planning their communities' energy needs. This loose leaf bound publication includes the most recent Board of Public Utilities aggregation rules and regulations and will be kept current for all purchasers.

To order a copy of the ***Manual For Government Energy Aggregators: A Guide to Aggregation Procedures Pursuant to the Electric Discount and Energy Competition Act As Amended***, send your request to the Ratepayer Advocate address indicated. Include a check payable to the Treasurer, State of New Jersey. The costs for the manual, mailing and handling are: \$50.00 for municipalities, other governmental agencies, and not-for-profit agencies and organizations. \$100.00 for profit making entities.

### **2005 FACT SHEETS\* NO COST**

**Current Water Issues**, Fall 2005

**Understanding Your Electric Bill**, June 2005

**Understanding Your Natural Gas Bill**, June 2005

**Financial Assistance Programs**, November 2005

### **THE NEW JERSEY ADVOCATE\* NO COST**

The quarterly newsletter of the Ratepayer Advocate is designed to keep residents of the state informed of emerging utility issues.

\*Publications with an asterisk are also available on the Ratepayer Advocate's Website <http://www.rpa.state.nj.us>. All publications can be ordered by fax, (973) 648-4848) or by mail from the Ratepayer Advocate, 31 Clinton St., 11<sup>th</sup> floor, P.O. Box 46005, Newark, NJ 07101.

## **II. 2005 LEGISLATIVE REPORT**

The Division of the Ratepayer Advocate represents the interests of all New Jersey's consumers of energy, water/wastewater, telecommunications and cable TV service in all pertinent legislative matters. The following are the legislative highlights of the past year.

### **MAJOR LEGISLATIVE ISSUES**

#### **HOME HEATING ASSISTANCE FUNDING**

In anticipation of extraordinarily high heating costs in the winter of 2005, Ratepayer Advocate Seema M. Singh strongly advocated for additional federal funding for the Low Income Home Energy Assistance Program (LIHEAP). The program helps eligible low-income households meet their home heating and cooling costs. The Ratepayer Advocate traveled to Washington, DC, to lobby for more federal funding for the program and participated in a press conference with Congressman Rush Holt in October 2005. Acting Governor Richard J. Codey also joined with 27 other Governors, urging Congressional leadership to provide \$1.2 billion in emergency appropriations for LIHEAP.

Assemblyman Wilfredo Caraballo introduced A-2342, which would increase the amount annually available for eligible households under certain energy assistance and energy conservation programs and provides for funding from increased revenue collected on rising natural gas prices. The Ratepayer Advocate supported the intent of the legislation to assist those most needy in paying their heating bills.

#### **STATEWIDE CABLE FRANCHISE LEGISLATION**

In an effort to create a statewide franchise for cable television services in New Jersey, two bills were introduced in the Assembly and Senate with the goal of bringing competition into the cable market. The Assembly version, A-4430 was sponsored by Assemblyman Wilfredo Caraballo. The Senate version, S-2912 was sponsored by Senator Joseph Doria.

Verizon New Jersey is seeking to enter the cable TV market by selling television service over a high-speed fiber-optic network. A statewide franchise would eliminate the requirement for the company to negotiate individual cable franchises in each of the state's municipalities.

The Ratepayer Advocate supported the concept of the legislation, advocating that more competition in the cable industry will bring lower prices and better services for customers. However, the Ratepayer Advocate contended there must be a level playing field for all competitors for ratepayers to receive the most benefits.

The Ratepayer Advocate will continue working with the Legislature, the Board of Public Utilities, the state's municipalities, Verizon and the cable industry on this issue to ensure that New Jersey's cable customers receive the best services at the lowest costs possible.

## **UTILITY RELIABILITY AND SERVICE QUALITY LEGISLATION**

Ratepayer Advocate Seema M. Singh has consistently served as an advocate for reliable utility service for New Jersey's residents and businesses.

The issue took on greater urgency this legislative session as the state Legislature worked to develop legislation to ensure better reliability by imposing stricter performance standards and harsher penalties for all regulated utilities in the state. The initial call for legislative action came after the July 4, 2003 weekend blackout at the Jersey Shore and the August 14, 2003 Northeast blackout—two major incidents that pointed to the critical need for reliable utility services in the daily lives of residents and businesses throughout the state.

The Division of Ratepayer Advocate staff participated in several working group meetings that were part of a collaborative process to develop key goals for the utility reliability legislation and to obtain comments from all stakeholders.

At the meetings and in subsequent written comments, the Ratepayer Advocate supported the intent of the proposed legislation to ensure better reliability of service from all utilities. The Ratepayer Advocate recommended that the service quality and reliability benchmarks be set at reasonable levels that take into account each regulated entity's historic performance levels as well as national, regional or sector-wide standards. The Ratepayer Advocate also cautioned that the impact upon customers' rates caused by any of the legislation's provisions should be carefully considered.

In addition, the Ratepayer Advocate recommended that no incentive payments or other financial rewards should be awarded to regulated entities for compliance with the service quality and reliability standards, stressing that utilities are currently required by law to provide safe, adequate and proper service.

The Division of the Ratepayer Advocate will continue to advocate on behalf of New Jersey's consumers on this critical issue that will affect utility reliability for years to come.

## **NEW JERSEY'S DO NOT CALL LAW**

The Ratepayer Advocate filed comments at the Federal Communications Commission seeking a dismissal of a petition that would significantly weaken the consumer protections provided under New Jersey's Do Not Call law.

The American Teleservices Association (ATA) filed a petition before the FCC seeking to eliminate certain provisions in the rules for implementing the law, claiming they were inconsistent with FCC rules. The Ratepayer Advocate argued that's petition was unwarranted and should be dismissed, arguing that the Telecommunications Act of 1996 permits New Jersey to impose more restrictive standards than those established by the FCC. The Ratepayer Advocate will continue fighting to protect the rights afforded to consumers under New Jersey's Do Not Call law, the toughest anti-telemarketing law in the nation.

At the state level, the Ratepayer Advocate supported AR-274, which called upon the FCC not to weaken New Jersey's "Do Not Call" Telemarketing law.

## **ENERGY EFFICIENCY STANDARDS LAW**

The Ratepayer Advocate testified before the Legislature and advocated in support of legislation, A-516/S-332, which establishes minimum efficiency standards for select appliances and equipment sold, offered for sale, or installed in New Jersey. The bill was signed into law on March 8, 2005.

The new law sets minimum efficiency standards for commercial clothes washers, illuminated exit signs, traffic lights, torchiere lighting fixtures, low-voltage dry type distribution transformers, unit heaters and commercial refrigerators and freezers. The measure is designed to encourage more energy efficiency in the state.

## **CABLE TV ("a la carte") PRICING LEGISLATION**

Ratepayer Advocate Seema M. Singh has taken a national leadership role in calling on the Federal Communications Commission to give consumers the freedom of choice to pick the cable television channels they want and to not have to pay for the channels they don't watch. The Ratepayer Advocate has called on the FCC to implement what is known as "a la carte" pricing rules to counter skyrocketing cable TV prices.

At the state level, the Ratepayer Advocate supported Senate resolution, SR-77, sponsored by Senator Joseph Doria (D-31), which urges cable companies to offer subscribers a wider array of video programming choices and the ability to choose the number and types of channels they desire. The Ratepayer Advocate also supported,

AR-168, which urges the state's cable television industry to offer a family-friendly package of television channels. The measure was approved and filed with the Secretary of State.

### **CLEAN WATER TRUST FUND LEGISLATION**

To address future drought problems, legislation has advanced that would establish the "New Jersey Clean Water, Drought Mitigation and Water Resource Security Trust Fund." The bill, S-192, would create a fund to be placed under the New Jersey Department of Environmental Protection, which would be derived from a water consumption fee of three cents per thousand gallons consumed.

The purpose of the bill is to ensure the safety and security of New Jersey's water supplies with a dedicated funding source. The Ratepayer Advocate supported the intent of the measure to provide a specific funding source to protect ratepayers against drought and provide a safe water supply and believes the increase would be minimal. However, the Ratepayer Advocate recommended that the legislation should clearly state that the funds not be used for any purpose other than water preservation and water quality.

### **CONSUMER AND CONSERVATION LEGISLATION**

The Ratepayer Advocate supported the following pro-consumer bills acted on and introduced by the Legislature in the 2004-2005 session:

\*A-3208 -- Increases the penalties for natural gas pipeline safety violations.

\*S-318/A-981 -- Requires the state to purchase Energy Star products in public contracts.

\*AR-182 -- Urges Congress to enact legislation imposing federal energy efficiency standards for certain products.

\*A-408 -- Regulates telephone customer service practices to provide customers with better services.

\*A-397 -- Establishes customer protection requirements for cable television customers.

\*A-3095 -- Permits municipal utilities authorities to promote the production and use of alternative electrical energy.

\*A-3208 --Increases the penalties for natural gas pipeline safety violations.

\*A-2077 -- Establishes consumer protection measures for cellular telephone customers.

\*A-3703 -- Prohibits telecommunications, utility or cable television companies from charging certain customers prior to actual billing due date.

\*A-1463 -- Upgrades penalty for misusing public utility employee identification badge; establishes penalties for making, selling or possessing simulated public utility employee identification badge.

\*ACR-164 -- Establishes a "Propane Gas Price and Distribution Task Force."

\*A-669 -- Prohibits the transmission of unsolicited fax advertisements over telephone lines.

\*ACR-69 -- Urges counties and municipalities to adopt policies and procedures which foster increased communication and coordination with public utilities when planning and conducting transportation infrastructure improvements.

\*S-1635/A-2808 -- Clarifies that a school district may finance energy savings improvements with a 15-year lease purchase agreement.

\*S-2346 -- Allows certain public entities to join with state under certain circumstances for purchase of certain energy services for their facilities.

## **FEDERAL LEGISLATIVE ISSUES**

### **ENERGY POLICY ACT OF 2005**

The Ratepayer Advocate is reviewing the implications of the passage of the Energy Policy Act of 2005 and its effect on utilities, rates and ratepayers in New Jersey. Among the issues are the repeal of the Public Utility Holding Company Act and the resulting transfer of certain jurisdiction from the SEC to FERC and state regulatory commissions. In addition, the FERC has over 30 rulemakings and other implementation procedures that must be concluded in timeframes extending on over the next four years.

### **REVISION OF THE TELECOMMUNICATIONS ACT OF 1996**

There are a number of proposed changes to the Telecommunications Act of 1996 pending before Congress. These include a variety of deregulation initiatives affecting matters such as cable franchising, Broadband, Voice over Internet Protocol, Universal Service and limiting the states regulatory role. The Ratepayer Advocate will continue to review these bills as they advance and will provide comments regarding the necessity of protecting ratepayers and maintaining the state role in telecommunications and cable regulation.

## **CONSUMER EDUCATION**

### **RATEPAYER ADVOCATE EDUCATIONAL PRESENTATIONS**

Throughout 2005, Ratepayer Advocate Seema M. Singh conducted an enhanced statewide, comprehensive Consumer Education Campaign to help ratepayers reduce their electric and natural gas utility bills; to understand the many complicated issues affecting the costs for essential energy and water and telecommunications services; and to teach school children to help conserve water and energy.

Ms. Singh traveled throughout the state visiting dozens of municipalities and schools to give the presentations. The events were also attended by legislators and county and local officials, as well as utility company representatives, at the invitation of the Ratepayer Advocate.

The adult consumer education presentations provided detailed information on a variety of consumer topics including: energy conservation; how to understand utility bills; financial assistance programs; clean energy programs; cable television; and water conservation. The presentations, which included power point presentations and educational materials for distribution, were tailored to meet a community's specific needs and requests.

The Ratepayer Advocate's Conservation for Kids program is a new, statewide initiative to educate elementary and middle school students on the importance of energy and water conservation. The theme of the program is "It's Cool to Conserve."

The presentation, given at schools and after-school programs, includes a video, an interactive PowerPoint on conservation, a quiz, a question-and-answer session, the distribution of educational materials and "It's Cool to Conserve" giveaways for the students. Students are asked to take a pledge to actively participate in conservation efforts at home and at school. The students also are given "Conservation All Star" certificates and are invited to participate in poster/essay contests. These school events have been very successful and also well attended by local officials.

In all legislative matters and consumer education programs, the Division of the Ratepayer Advocate is committed to working for and protecting the ratepayers of New Jersey.

### III. ENERGY

#### A. ENERGY RESTRUCTURING

##### ***The Electric Discount And Energy Competition Act, P.L. 1999, C. 23 (EDECA)***

In September 1998, the New Jersey Legislature proposed comprehensive legislation that restructured the monopoly electric and natural gas industries in the State. The bill contemplated full retail competition by mid-1999 and 5% rate reductions for all electric utility customers by August 1999 with a 10% rate reduction by August 2002.

Legislative hearings on the bills were held in October 1998 at which the Ratepayer Advocate presented comments and amendments to the proposed legislation. Although the Ratepayer Advocate supported retail customer choice, there were concerns that some aspects of the introduced legislation could have an adverse impact on small end-users such as residential, small business, and not-for-profit customers. The Ratepayer Advocate's suggestions to the legislation were crafted to provide all energy customers tangible, long-term benefits from retail competition through lower rates, improved technology, new products and services, and continued reliable electric and gas service.

After extensive legislative hearings through the end of 1998, and reviews of several revised versions of the bill, P.L. 1999, C. 23, the *Electric Discount and Energy Competition Act* (EDECA) was signed into law by then Governor Whitman on February 9, 1999. The main provisions of the Act included retail competition for 100% of all electric and natural gas.

The final Act included: municipal aggregation; retail competition; Affiliate standards; A Universal Service Fund for the benefit of low-income ratepayers and other social programs; and Comprehensive Resource Analysis Programs for the State's electric and gas utilities.

#### B. MAJOR ENERGY PROCEEDINGS IN 2005

##### **I/M/O THE ESTABLISHMENT OF A UNIVERSAL SERVICE FUND PURSUANT TO SECTION 12 OF THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT OF 1999, (EDECA) BPU DOCKET NO. EX00020091**

Section 12(b) of EDECA which established an energy Universal Service Fund ("USF") within the Board gave it responsibility to determine the level of funding, the appropriate administration, and purposes and programs to be funded with monies from the fund. The Ratepayer Advocate was an active participant in the proceedings to develop the USF program, and continues to actively participate in the process of implementing the permanent program.

Beginning in early 2000, the Board held proceedings to consider the establishment of the fund and programs. These proceedings culminated in an interim USF program, implemented in 2002, and a permanent program, which began issuing benefits in October 2003. The permanent program adopted by the Board incorporated a number of key recommendations of the Ratepayer Advocate including:

1. The program was structured as a "percentage of income payment program" ("PIPP"), providing qualifying low-income consumers with monthly bill credits designed to reduce their energy bills to affordable levels.
2. The USF is administered on a statewide basis by the New Jersey Department of Human Services ("DHS"), with uniform benefits statewide.
3. The program is funded through uniform statewide per kilowatt-hour (electric) and per therm (gas) charges.
4. Participants in the federal Low Income Home Energy Assistance Program ("LIHEAP") and the New Jersey Lifeline program were automatically screened for eligibility for USF benefits.

With the establishment of the Universal Service program, the Board created a USF working group to address issues related to the implementation of the program of which the Ratepayer Advocate continues to be an active participant.

Beginning in October 2003 the Ratepayer Advocate worked with a subcommittee to develop an arrearage repayment program to enable USF participants to earn forgiveness of arrearages accumulated prior to their enrollment in the USF program. In March 2004 the Board adopted the "Fresh Start" program, based on the subcommittee's proposal. The Fresh Start program allows USF participants to earn forgiveness of their pre-enrollment arrearages by keeping current with their post-enrollment monthly bills for a year.

In October 2003, the Ratepayer Advocate worked with AARP to develop a proposal for reporting and cost accounting requirements that will enable the Board to evaluate the impact of the Universal Service program. Following discussions within the working group, Staff retained a consultant to assist with this issue. The consultant met with the utilities' technical personnel to evaluate the feasibility of collecting various types of data, and then prepared draft specifications for the USF data tracking system. Following discussions and comments, the Board adopted the recommended system, with minor modifications, in June, 2004.

The Ratepayer Advocate is also a member of the Communications/Outreach subcommittee, formed to develop a communications and outreach strategy and written materials in anticipation of the enrollment system enhancements and worked on the development of a brochure that has been distributed to social service agencies and consumers statewide.

In March 2005 the Board approved a contract with APPRISE a consultant firm to conduct a comprehensive evaluation of the Universal Service program to date. The Ratepayer Advocate is monitoring the progress of the evaluation through participation in the USF working group. The Ratepayer Advocate also participated in a subcommittee that helped the consultant develop a customer survey that is being conducted as part of the evaluation. On October 26, 2005 the Board circulated APPRISE's draft of a "History and Operations Report" on the USF program. This report is the first step of APPRISE's evaluation. The remaining sections of the report are expected in January, 2006.

In November and December, 2005, there was considerable concern about the impact on USF recipients of the Basic Gas Supply Service rate increases that were approved by the Board in December to cover the dramatic wholesale natural gas price increase that occurred as a result of Hurricanes Katrina and Rita. Under current USF enrollment procedures, customers whose applications were processed before the rate increases were approved by the Board on December 15, 2005 will receive benefits based on the previously effective BGSS rates. Based on discussions in November 2005 it was hoped that the Board would solicit comments from interested parties on the issues of whether these customers' natural gas USF benefits should be recalculated based on the higher rates. However, the working group was advised in December that the Board would not be taking action on this issue. The Ratepayer Advocate joined AARP and the Department of Human Services in objection to the Board's decision in this matter.

#### **UNIVERSAL SERVICE FUND 2005 COST RECOVERY PETITIONS PURSUANT TO BPU DOCKET NO. EX00020091**

On April 1, 2005 the seven electric and gas utilities filed petitions to establish statewide rates for the recovery of USF costs effective July 1, 2005. The petitions also sought to establish rates to fund the New Jersey Lifeline program, which is funded through electric and gas utility rates in accordance with the FY 2004 budget legislation. In their petitions, the utilities proposed that the statewide rates previously established by Board Order dated June 30, 2004, \$0.00946 per kilowatt-hour and \$0.0093 per therm for USF, and \$0.00710 per kilowatt-hour and \$0.0043 per therm for Lifeline, remain unchanged. The utilities also proposed that the Board consider changing the annual filing and effective dates for USF rates from April 1 and July 1, to July 1 and October 1, respectively. The petitions stated that this schedule change would provide a better starting point for estimating the level of USF benefits for the upcoming year.

On May 6, 2005 the Ratepayer Advocate filed comments expressing concerns about the utilities' filings and with the Board's process for review and reconciliation of USF costs and recoveries, including: (1) the filings did not include sufficient information concerning the amounts of ratepayer funds expended for administrative costs incurred by the Department of Human Services (DHS) and other agencies; (2) the filings included no information on how the estimated administrative costs reflected in the filings

were determined; (3) the filings did not include backup information on how over/under recovery balances were determined; and (4) the limited information contained in the filings suggested a possible subsidy flowing from electric customers to gas customers. The Ratepayer Advocate proposed that the current rates, implemented on an interim basis on July 1, 2004, remain in effect on an interim basis pending completion of a contested proceeding to review and reconcile USF rates and recoveries. We further proposed that the information missing from the utilities filings be provided to them by the appropriate state agencies, and that the utilities submit amended filings including this information.

On June 22, 2005 the Board issued an Order allowing the current USF and Lifeline rates to remain in effect for the 2005/06 program year. These rates will continue to be considered interim until the proper level of cost recovery net of savings can be determined. The Board rejected our proposal to require the utilities to submit amendments to their April 1, 2005 filings but did address concerns about the incompleteness of the information contained in the utilities' filings. The Board's Staff was directed to work with Department of Human Services (DHS) to prepare a formal budget each year in sufficient time to allow the information to be incorporated in the utilities' annual USF compliance filings. The Staff was also directed to provide semi-annual reports on USF revenues and disbursements. In response to concerns about possible cross-subsidization from electric customers to gas customers, the Staff was directed to begin calculating monthly remittances from the USF clearinghouse separately for the gas and electric utilities. The schedule for the filing and effective dates for USF rates was changed in the 2006/07 program year as proposed by the utilities.

#### **THE NEW JERSEY CLEAN ENERGY PROGRAM, BPU Docket No. EO02120955; CLEAN ENERGY COUNCIL, (undocketed)**

Beginning in the 1980s, New Jersey's electric and natural gas utilities, under Board oversight, implemented "demand-side management" or "DSM" programs intended to manage the State's need for electricity and natural gas through the implementation of cost-effective energy efficiency technologies. These programs, funded with monies collected from the utilities' ratepayers, provided financial incentives for customers and energy efficiency contractors to install energy-saving technologies such as insulation and high-efficiency lighting, appliances, and heating and cooling equipment.

Section 12 of EDECA directed the Board to conduct a proceeding to determine the appropriate level of funding for continued energy efficiency programs, as well as additional "renewable energy" programs to promote the development of renewable energy sources that do not deplete natural resources, such as solar energy, wind and biomass. The programs initially implemented under EDECA were known as "comprehensive resource analysis" or "CRA programs." Over the years, the Ratepayer

Advocate monitored these programs and responded to the Board when necessary. During 2001 and 2002, the CRA programs received \$115 million and \$119.326 million, respectively, with 25% of the funds reserved for renewable energy programs.

In Orders issued on January 22, 2003, March 3, 2003, and April 29, 2003, the Board (1) renamed the CRA programs the "Clean Energy Programs" (CEP); (2) established the New Jersey Clean Energy Council, with the Ratepayer Advocate and representation from the private and public sectors, to advise the Board on issues of administration, programs, funding levels, and performance measures; and (3) established Clean Energy programs and a budget for 2003. During 2004, the Clean Energy Council held committee and subcommittee meetings to prepare recommendations for the 2004 programs and budgets in which the Ratepayer Advocate participated. The Board of Public Utilities also held a series of meetings and hearings this year on the Clean Energy Programs to determine the final 2005 budget and to determine what the programs and budgets should be for the period from 2006 through 2009. The 2005 budget was set at \$139.126 million, has recommended by the Ratepayer Advocate, but with the caveat that \$15 million of that total would not be collected from ratepayers unless it was needed to meet 2004 expenditures.

The Clean Energy Council and the Board are currently in the process of developing the programs that should be in the CEP for the years of 2006 through 2009 and the budgets for that period. The Ratepayer Advocate actively participates in that process and will work to improve the programs and protect ratepayers from any unnecessary rate increases that may be proposed.

### **The Clean Energy Council**

In its Order of December 18, 2002, the Board established the New Jersey Clean Energy Council. Previously the development and management of the CEP was in the hands exclusively of the utilities, with the collaboration of only one non-utility party. By establishing the Council as an advisory body, the Board decided to access comments from consumer groups, energy experts, industry groups, government agencies, utilities and others who can contribute substantially to the development of the best possible programs for the State. The Council began meeting in the spring of 2003. Through a set of committees and working groups, the Council worked to examine most aspects of the CEP in detail. The Ratepayer Advocate and its technical expert review all of these activities and in 2005 actively participated in these committees.

**ENERGY COMPETITION STANDARDS, RENEWABLE & ENERGY EFFICIENCY  
BPU DOCKET NO. EX05080733**

On December 16, 2005 comments were filed on behalf of the Division of the Ratepayer Advocate concerning the proposed re-adoption of N.J.A.C. 14:4 (Energy Competition Standards) and proposed new rules for N.J.A.C. 14:8 (Renewable Energy and Energy Efficiency). The BPU published the proposed rules in the New Jersey Register on October 17, 2005. Chapter 4 concerns standards for anti-slamming (changing energy providers without the ratepayer's permission), affiliate relations, licensing and registration, government aggregation and retail choice consumer protection. Chapter 8 will address environmental information disclosure, renewable portfolio standards (RPS) and net metering and interconnection. The Ratepayer Advocate reinforced the necessity for aggressive consumer protection and prudent renewable portfolio standards that consider bill impacts to consumers. The full text of the comments and reports submitted in this matter can be available on the Ratepayer Advocate's website, [www.rpa.state.nj.us](http://www.rpa.state.nj.us).

**EXELON CORPORATION, PUBLIC SERVICE ENTERPRISE GROUP  
INCORPORATED MERGER APPLICATION  
FERC DOCKET NO. EC05-43-000**

On February 4, 2005, Exelon Corporation and Public Service Enterprise Group Inc. (the "applicants") filed an application with the Federal Energy Regulatory Commission ("FERC") seeking authorization to merge. The filing was supported by volumes of testimonies from expert witnesses. The Division of the Ratepayer Advocate moved to intervene on March 3, 2005. Discovery was exchanged between all of the intervening parties. On February 10, 2005, the FERC issued a Notice of Filing requiring all comments to be filed on April 11, 2005. On that date, the Division of the Ratepayer Advocate filed comments and requested an evidentiary hearing. The Ratepayer Advocate's comments included expert affidavits opposing this merger due to its enormous scope and the applicants failure to address key market power issues resulting from the proposed merger.

On June 30, 2005, the FERC approved the proposed merger without evidentiary hearings or addressing the concerns raised by the interveners, including the Ratepayer Advocate. The FERC accepted the company's assurances that there would be no harm to competition. On August 1, 2005, the Division of the Ratepayer Advocate filed a request for a rehearing, raising due process concerns as the FERC failed to address material issues of fact and failed to convene evidentiary hearings. On December 15, 2005, the FERC affirmed its June 30, 2005 approval of the merger reiterating that the company's proposed mitigation measures satisfied concerns that no competitive harm would result from the merger. On December 21, 2005, the Order was issued affirming its decision. The Division of the Ratepayer Advocate plans to appeal this FERC decision to the D.C. Circuit Court of Appeals in 2006.

**PJM INTERCONNECTION, L.L.C.  
FERC DOCKET NO. EL05-121-000**

By order dated May 31, 2005, the FERC established a hearing under section 206 of the Federal Power Act to examine the justness and reasonableness of continuing PJM's Modified Zonal Rate Design. A prehearing conference was scheduled on June 23, 2005. At that conference, the Administrative Law Judge delayed this proceeding until the hearings on *Baltimore Gas and Electric Company, et. al.*, Docket No. ER05-515-000, (discussed below) were concluded.

**BALTIMORE GAS AND ELECTRIC COMPANY; AND PEPSCO HOLDINGS INC.  
OPERATING AFFILIATES: POTOMAC ELECTRIC POWER COMPANY, DELMARVA  
POWER & LIGHT COMPANY AND ATLANTIC CITY ELECTRIC COMPANY  
FERC DOCKET NO. ER05-515-000**

In this case, certain PJM transmission owners filed Tariff Sheets to establish the general methodology for recovery of costs incurred under the Regional Transmission Expansion Plan ("RTEP"), process. The purpose of the filing of these transmission owners, including Atlantic City Electric Company's parent, Pepco Holdings Inc., is to establish a formula rate for recovery of transmission costs, including RTEP costs. The proceedings at the FERC will determine the appropriate balance so that the Transmission Owners can recover for new transmission infrastructure and allowing customers to obtain the needed infrastructure to support robust competitive markets. As part of the filing, the Transmission Owners explained that the formula rate is only for them and is not intended to affect the rates for any other transmission zones. However, the Division of the Ratepayer Advocate is concerned that this formula rate will become the template for future rate increases by other New Jersey Electric Distribution Companies.

Accordingly, the Ratepayer Advocate moved to intervene in this matter on March 3, 2005, especially since the companies proposed to increase their rates annually merely by posting a notice on the PJM website approximately thirty days before they become effective every June 1. Since then, there have been numerous settlement conferences at FERC in which the Ratepayer Advocate participated. The Ratepayer Advocate will continue to participate in these conferences to protect ratepayers interests.

**NEPTUNE REGIONAL TRANSMISSION SYSTEM, L.L.C. VS.  
PJM INTERCONNECTION, L.L.C.  
FERC DOCKET NO. EL05-48-000**

On December 21, 2004, the Neptune Regional Transmission System L.L.C. filed a complaint against PJM Interconnection L.L.C. alleging that PJM inappropriately restudied Neptune's interconnection request to provide a high voltage direct current transmission cable under the Atlantic Ocean from New Jersey to Long Island. This project anticipates delivery of 660 MW of energy and capacity to 1.1 million Long Island customers beginning in June 2007, which is the commencement date of the 20 year contract that the Long Island Power Authority signed with Neptune.

The Ratepayer Advocate moved to intervene in January 2005. In its Answer, PJM stated that granting the Complaint would improperly shift the transmission system costs and exist, because Neptune's project, to all other users of system. On February 10, 2005, the FERC issued an order requiring PJM to perform a facility study within 60 days as well as to submit an Interconnection Agreement to Neptune within 10 days. Various parties filed Requests for Rehearing due to the fact that the FERC did not determine who should bear the necessary upgrade costs due to this Neptune Project. It was pointed out that New Jersey retail customers should not have to pay for upgrades caused by the Neptune Project since Neptune and the Long Island customers would be the only beneficiaries. On April 13, 2005, the FERC granted a rehearing request. On June 23, 2005, the FERC issued an order affirming its previous decision and noted that the PJM Tariff does not permit re-studies for announced generation retirement. The FERC also found that PJM's continuous delay in finalizing an Interconnection Agreement was unjust and unreasonable. The Ratepayer Advocate will continue to monitor this matter so that the interests of New Jersey Ratepayers can be protected.

**COMPENSATION FOR GENERATING UNITS SUBJECT TO LOCAL MARKET  
POWER MITIGATION IN BID -- BASED MARKETS PJM INTERCONNECTION, L.L.C  
FERC DOCKET NO. EL03-236-000**

On September 30, 2003, PJM Interconnection L.L.C. submitted amendments regarding mitigation of local market power to the PJM Open Access Transmission Tariff and the Operating Agreement. These amendments included the implementation of an auction to solve long-term scarcity problems should they arise in PJM. The filing would impact retail customers as any new costs imposed on the load serving entities would simply be passed on. A technical conference was held on February 4 & 5, 2004, and as a result, on May 6, 2004, the FERC ordered PJM to modify certain tariffs and develop policies regarding retirement of generating units; to consider pricing that recognizes operating reserve deficiencies in market design; and to consider a tariff to provide the right for more frequently mitigated units needed for reliability to receive higher offer caps or alternative compensation.

On July 16, 2004, PJM filed tariff revisions that stimulated protests and comments. As a result, PJM made another filing, part of which was accepted by FERC by Order dated January 25, 2005. The Order also required PJM to clarify certain other provisions of the tariff sheets, which PJM did on February 24 and March 4, 2005. As various issues continued to raise concerns, another technical conference was scheduled for June 16, 2005 so that all parties could come to a common understanding of the current PJM capacity situation, including PJM's Reliability Pricing Model ("RPM") proposal. On July 5, 2005, the FERC issued another Order directing PJM to make another compliance filing which they did on August 4, 2005. Various settlement conferences ensued and a settlement resolving certain issues was filed with the FERC on November 16, 2005 and certified on December 20, 2005. These issues included the test to be used to determine whether market power is reasonably mitigated in areas subject to transmission constraints and appropriate scarcity pricing market rules. The Ratepayer Advocate will continue to monitor such issues to protect the interests of New Jersey Ratepayers.

**PSEG ENERGY RESOURCES & TRADE L.L.C., PSEG FOSSIL L.L.C.  
FERC DOCKET NO. ER05-644-000**

On February 24, 2005, PSEG Energy Resources & Trade, L.L.C. ("PSEG ER&T") and PSEG Fossil, L.L.C. (collectively the PSEG companies) filed a cost of service recovery rate tariff for reliability services by PSEG ER&T to PJM Interconnection, L.L.C. The PSEG Companies state that the tariff provides the charges associated with the provision of reliability services by PSEG ER&T to PJM from two New Jersey generation plants (the Sewaren Station, Units 1-4 and Unit 1 at the Hudson Station). The filing was accepted by the FERC by Order dated April 25, 2005.

A technical conference was convened on June 16, 2005 to discuss the PJM capacity markets, the proposed Reliability Pricing Model ("RPM"), and other proposed alternatives such as the Enhanced Integrated Transmission and Capacity ("EITCC") construct. Various settlement conferences were held and the PSEG companies filed a Stipulation and Agreement on September 23, 2005, a provision of which required refunds retroactive to the February filing date. FERC staff filed supportive comments on October 13, 2005 and a Certification of Uncontested Offer of Settlement was issued on October 31, 2005 and approved by the FERC on November 28, 2005. The Division of the Ratepayer Advocate will continue to monitor the potential impact on ratepayers of the pass through costs to protect the interests of New Jersey Ratepayers.

**CROWN LANDING/BP OIL LIQUEFIED NATURAL GAS (LNG) PROJECT  
FERC DOCKET NO. CP04-411-000 and CP04-416-000**

On September 16, 2004, Crown Landing LLC (Crown Landing), an affiliate of BP Oil Co., filed an application before the Federal Energy Regulatory Commission requesting authorization to construct and operate a liquefied natural gas terminal on the shoreline of the Delaware River in Logan Township, NJ. Texas Eastern Transmission, LP (Texas Eastern) filed a related application for permission to construct and operate a natural gas pipeline to connect to the proposed LNG terminal (Logan Lateral Project). The proposed LNG terminal would have the capacity to store up to 450,000 cubic meters of imported LNG and send out vaporized natural gas at a rate of 1.2 billion cubic feet per day (Bcfd). The facility would interconnect with all three of the interstate pipelines in that region (Texas Eastern, Columbia Gas and Transcontinental Gas). Construction of the LNG facility will allow direct import of needed gas supply to satisfy high demand for NJ consumers.

On July 28, 2005, the New Jersey Attorney General filed a complaint before the US Supreme Court against the State of Delaware because of the refusal of Delaware officials to approve transport along the Delaware River for the LNG terminal. Citing a 1905 Compact between New Jersey and Delaware, the NJ Attorney General's Office is seeking a declaratory ruling that NJ is not preempted from making improvements on its shoreline including the construction of an LNG facility. On November 28, 2005, the US Supreme Court accepted the complaint for review. The Ratepayer Advocate will continue to monitor this proceeding on behalf of New Jersey ratepayers.

**PROPOSED MERGER OF PUBLIC SERVICE ENTERPRISE GROUP (PSEG) AND  
EXELON CORPORATION, BPU DOCKET NO. EM05020106**

On December 20, 2004, Public Service Enterprise Group and Exelon Corporation announced that the two companies would file a Joint Petition with the New Jersey Board of Public Utilities requesting approval for their merger. The merger valued at \$12.8 billion, if approved, would result in the largest power company in the United States. The combined companies would own generation assets capable of producing over 52,000 megawatts of power, serve over nine million customers through three utility companies, and potentially earn approximately \$27 billion in annual revenues.

The companies filed the Petition in February 2005 along with the testimony of six witnesses. The Board transmitted it to the Office of Administrative Law on February 18, 2005, assigned to Administrative Law Judge Richard McGill. A pre-hearing conference was held on April 5, 2005, and a pre-hearing order was issued establishing a procedural schedule with hearings scheduled for October 2005.

In addition to the filing with the BPU, Joint Petitioners sought approval of the merger from the Federal Energy Regulatory Commission (FERC). They included in the

petition, a proposal for a “Virtual Divestiture” of assets as mitigation for the market power of the merged entities. The FERC is supposed to determine whether or not a proposed merger of utilities will have an adverse effect on competition because of the Market Power resulting from the merger.

The Ratepayer Advocate, along with the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, and a number of intervenors filed with FERC and requested that the agencies hold hearings on the merger. On July 1, 2005, FERC determined that hearings were not necessary and approved the merger. The Ratepayer Advocate and a number of other parties filed a request for reconsideration by FERC. The request for reconsideration was denied on December 21, 2005. The Ratepayer Advocate is reviewing the FERC Order and will decide whether or not to appeal in early 2006.

During the pendency of the state proceedings which continued until the end of 2005 and will go on January, 2006, the New Jersey Board of Public Utilities requested submissions concerning the Standard of Review that it should use in deciding the Joint Petition. The Ratepayer Advocate submitted comments recommending the “Positive Benefits to Ratepayers Standard” rather than a “No Harm Standard”. The Positive Benefits Standard was adopted by the Board on November 9, 2005.

The Ratepayer Advocate retained expert consultants to address significant issues in the case before the Board of Public Utilities including: market power, service quality, low income issues, synergy savings, accounting treatments, financial matters, gas issues, and overall policy issues. Included in the Ratepayer Advocate testimony were recommendations that the merger should not be approved as filed, and, if approved by the Administrative Law Judge or the Board, it should only be approved, if the specific Ratepayer savings and recommendations were adopted. Among these recommendations were a rate freeze or rate reduction, additional synergy savings, market power mitigation proposals, commitments to low income ratepayers, guarantees of service quality and reliability, additional requirements for financial protections, accounting treatments and accountability to New Jersey regulators.

Over twenty concerned intervenors and participants are participating in this matter including: Jersey Central Power and Light and First Energy Solutions Corporation; PPL Electric Utilities Corporation; Rockland Electric Company; International Brotherhood of Electrical Workers, Local 94; International Brotherhood of Electrical Workers, Local 97; Office and Professional Employees, Local 153; Utility Workers of America, AFL-CIO, Local 601; Public Utility Construction and Gas Appliance Workers, Local 855; International Brotherhood of Electrical Workers, Local 1289; Gerdau Ameristeel Corporation; Mount Holly Municipal Utilities Authority and Stony Brook Regional Sewage Authority; New Jersey Large Energy Users; Amerada Hess Corporation; Cinergy; Constellation NewEnergy, Inc.; Direct Energy and Energy America; East Coast Power L.L.C.; Independent Energy Producers of New Jersey; Midwest Generation, LLC; Philadelphia Gas Works; Retail Energy Supply Association; Natural Resources Defense Council; New Jersey Department of Environmental

Protection; New Jersey Public Interest Research Group Citizen Lobby, Inc.; Elizabethtown Gas Company; New Jersey Natural Gas Company; South Jersey Gas Company; City of Philadelphia; and New Jersey Citizen Action.

The initial procedural schedule that established hearings in October 2005 was extended by 60 days and, subsequently, by an additional 30 days resulting in hearings being scheduled for January 4 through January 20, 2006. The Joint Petitioners filed additional Direct Testimony in August 2005 and the Ratepayer Advocate and other parties filed Direct Testimony on November 14 and 28, 2005. The Joint Petitioners filed Rebuttal Testimony in November and December 2005, and finally on December 27, 2005 the Ratepayer Advocate and other parties filed Surrebuttal Testimony.

Public Hearings were held on November 21, 2005 in Trenton and Hackensack, on November 22 in New Brunswick, on November 28, 2005 in Newark, and on November 29, 2005 in Cherry Hill. The Ratepayer Advocate attended the public hearings to obtain public responses on the proposed merger. The Ratepayer Advocate filed the Direct Testimony of seven expert witnesses in eight specific areas, and seven Surrebuttal Testimonies. Throughout the proceeding the parties have conducted extensive discovery including written interrogatories, depositions and interviews with Joint Petitioners' witnesses. Over 55 witnesses are scheduled to testify at the hearings in January. After the hearings, the record will be closed and the Administrative Law Judge will issue an Initial Decision to be transmitted to the Board of Public Utilities. The Board may then adopt, affirm or modify the Initial Decision of the Administrative Law Judge.

## C. ELECTRIC MATTERS

### **I/M/O ATLANTIC CITY ELECTRIC d/b/a CONECTIV POWER DELIVERY FOR APPROVAL OF AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN INCREASE IN RATES FOR ELECTRIC SERVICE (ATLANTIC'S DEFERRED BALANCE), BPU DOCKET NO. ER02080510**

Atlantic City Electric Company ("Atlantic") doing business as "Conectiv" is a New Jersey electric public utility primarily engaged in the delivery and sale of electric energy and related utility services to approximately 500,000 residential and commercial customers located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem Counties. Conectiv merged with Pepco in 2002; both are subsidiaries of Pepco Holding Inc.

On August 1, 2002 Atlantic filed its deferred energy balance petition with Board. Deferred balances were accrued when Conectiv implemented provisions of the Electric Discount and Energy Competition Act ("EDECA") mandating minimum rate reductions of 10%, while capping rates for a four-year period that ended August 1, 2003. Conectiv's discount under EDECA was 10.2 percent. At the time of filing, Atlantic projected, up to 7/31/03, a deferred balance of approximately \$176.4 million including carrying costs.

The Company did not request securitization for its deferred energy balance. Instead, it requested that the entire deferred balance be amortized over four years with interest as a seven year treasury note plus 60 basic points. The requested annual increase to net operating revenues would be \$71.6 million representing an overall average rate increase of 8.4%.

In January 2002, Atlantic filed with the Board its 2002 Customer Education Program Petition to review the prudence and recoverability in rates of \$3.9 million (including interest) incurred in connection with their consumer education program. The Petition was merged into the deferred balance case by the Board. The Ratepayer Advocate investigated the prudence and accuracy of the Company's proposed deferred balance amount and the manner in which the Company should be allowed to recover the deferred balance. After its review, the Ratepayer Advocate filed Direct Testimony on January 3, 2003, recommending that the Company be allowed to increase rates by only \$13.4 million per year for 10 years, \$25.4 million less than the Company's requested increase.

#### **Status of BGS Deferred Balance Application:**

The Board's Auditors recommended disallowance of \$6.119 million of increased costs for failure to purchase offered 400MW of capacity.

The Ratepayer Advocate proposed BGS disallowances of \$32.430 million as follows:

\$ 1.993 million LEAC interest recalculation  
\$ 25.527 million – third party energy costs (July – August 2001)  
\$ 3.375 million – excess capacity  
\$ 3.528 million BGS administrative costs  
\$32.430 million proposed disallowances

The Board adopted the ALJ's recommendation to accept the Board Auditor's recommendation and to reject the RPA LEAC recalculation. The Board did accept the RPA recommended disallowance of \$25.527 million in third party energy costs and \$3.375 million of excess capacity.

The Board postponed a decision on the BGS administrative costs pending further review in the Phase II proceeding.

**Status of Market Transition Charge (MTC) Deferred Balance:**

The Board rejected the RPA proposed \$29.569 million excess capacity disallowance and the \$3.793 million adjustment to Cash Working Capital.

The Board did not decide the 13% interest on BL England which was transferred to another proceeding as was the on-going O&M costs to base rate proceeding. A decision on restructuring and third party billing costs was deferred pending further review.

**Status of Net-Non Utility Generation Charge (NNC) Deferred Balance:**

Treatment of Logan legal and other costs were deferred to a Phase II proceeding, the NNC was reduced by \$0.459 million in Buyout interest as recommended by Auditors.

**Status of Societal Benefits Charge (SBC) Deferred Balance:**

The auditors disallowance of \$1.417 million in excessive reserve for uncollectible accounts was adopted by Board.

The effect of the rate changes are a net increase of \$37.5 million – or approximately 4.4% - with a 3.4% BGS total increase of approximately 7.8%.

In July of 2003, the Board reduced Conectiv Power Delivery Company's request for \$176.4 million in rate hikes for deferred balances by \$44.6 million because the costs were not prudently incurred, reducing the increases in bills for Conectiv's customers effective August 1, 2003. With the end of rate caps, automatic discounts and the rising costs of energy, average residential customers saw an overall increase in their monthly

bills of approximately 8.1 percent or \$7.00, increasing the average residential bill to \$92.75 from \$85.75.

**ATLANTIC DEFERRED BALANCE APPEAL, APPELLATE DIVISION DOCKET NO. A-006947-03T3**

On August 19, 2004, Atlantic filed an Appeal of the Board's decision in the Deferred Balance case stating that the Board's actions were arbitrary and capricious in denying the Company recovery of \$44 million in deferred BGS costs. The Ratepayer Advocate filed a cross claim on September 3, 2004, arguing that approximately \$100 million should have been disallowed.

Atlantic filed its brief in support of its appeal on August 18, 2005 disputing:

The Board's disallowance of \$25.527 million in energy prices incurred for the months July and August 2001;

The disallowance of \$3.375 million in excess capacity costs;

The \$6.1 million reduction in the Deferred Balance determined by the Auditors to be the amount ratepayers were harmed by the Company's failure to procure reasonably priced capacity when offered; and

The net of tax interest calculation.

The Ratepayer Advocate, on October 3, 2005, filed a brief with the Appellate Division in response to the Company's arguments and also filed a cross appeal on the issues of:

The Board's denial of \$2.0 million in interest accrued on the Company's LEAC over-collections; and

The Board's allocation to ratepayers of excess capacity costs incurred through the Company's failure to successfully divest the fossil generating units.

This matter is pending before the NJ Appellate Division as of December, 2005.

**I/M/O ATLANTIC CITY ELECTRIC d/b/a CONECTIV POWER DELIVERY FOR APPROVAL OF AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN INCREASE IN RATES FOR ELECTRIC SERVICE, BPU DOCKET No. ER03020110**

On February 3, 2003, Atlantic filed a Petition seeking an increase in current base rates for electric service of \$30.578 million and an adjustment to its Regulatory Asset

Recovery Charge of \$4.193 million. The Ratepayer Advocate recommended a rate decrease of \$13.076 million and an increase in the Regulatory Asset Recovery Charge of \$1.537 million. The matter was transmitted to the Office of Administrative Law. On September 30, 2003 a prehearing conference was held before the Administrative Law Judge and a procedural schedule was agreed upon. Evidentiary hearings were held in late March and early April 2004. Initial Briefs were filed on August 4, 2004 with Reply Briefs filed on August 23, 2004. Settlement discussions continued.

On April 15, 2005, a global Stipulation of Settlement was signed by the Company, Board Staff and the Ratepayer Advocate which resolved the Phase I base rate proceeding, along with the issues from the Phase II deferred balance proceeding and the Service Company Agreement Approval proceeding (discussed below).

With respect to the issues in the base rate proceeding, the parties agreed to an increase in distribution revenues of approximately \$16 million and an increase in the Regulatory Asset Recovery Charge of approximately \$2.8 million, resulting in a total revenue increase of approximately \$18.8 million. This increase was offset by the return to ratepayers of an excess accumulated depreciation reserve amortized over 8 years. The net effect was a decrease in revenues of approximately \$0.3 million.

**I/M/O ATLANTIC CITY ELECTRIC d/b/a CONECTIV POWER DELIVERY FOR APPROVAL OF AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN INCREASE IN RATES FOR ELECTRIC SERVICE- ATLANTIC PHASE II, BPU DOCKET NO. ER03020110**

The Board reserved its decisions on certain unresolved issues from various cases, to be decided collectively in a Phase II proceeding. Carry over issues from the Deferred Balance proceeding included recovery of an additional \$25.4 million of BGS/MTC deferred costs. In addition, issues from the BL England proceeding were rolled into this Phase II proceeding, including rate making treatment for on-going O&M costs of approximately \$20 million; potential additional stranded costs; and the issue of the future use of the BL England plant that would provide the most benefit for ratepayers. Finally, issues from the Phase I audit – adjustment to deferred balance for 1999 Deepwater and CT capacity costs were also addressed. The Ratepayer Advocate filed testimony on August 27, 2004 proposing, among other things, a sharing mechanism for BL England excess of O&M costs and a recommended disallowance of \$14.4 from the Company's proposed deferred balance proceeding costs. Hearings were held in October of 2004. Briefs were due in late December and early January, 2005 with an Initial Decision to follow in late February, 2005.

As part of an April 15, 2005 global settlement the deferred balance was reduced by approximately \$48.0 million for a total aggregate adjusted Deferred Balance of \$116.8 million. The Parties agreed to a four year amortization of the aggregate adjusted Deferred Balance which produces an annual revenue requirement of

approximately \$30.4 million. Netting this revenue requirement against the annual recovery currently in rates yielded a net revenue requirement increase of approximately \$17.4 million. In addition, the parties agreed to the elimination of an existing SBC credit which increased the Company's revenue requirement by \$14.9 million. The net revenue requirement increase was offset by a one year return of over-recovered deferred balances.

The parties further agreed that the existing Board approved treatment of the costs and the revenues for Keystone, Conemaugh and BL England would continue.

**I/M/O THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR APPROVAL OF A SERVICE COMPANY AGREEMENT, BPU DOCKET NO. EM02090633**

On September 10, 2003, Atlantic filed a Petition with the Board seeking approval for contracts under which Conectiv Resource Partners, Inc. ("CRP"), an existing service company, could continue to provide service to current affiliates, including Atlantic, and could also begin to provide services to other companies within the Pepco Holdings, Inc. system of companies.

CRP was a result of the merger between Atlantic and Delmarva Power & Light Company, which formed Conectiv. Subsequently, Conectiv merged with Pepco Holdings Inc. As a result of this second merger, CRP was no longer a subsidiary of Conectiv but was to become a subsidiary of the new holding company to be renamed Pepco Holdings Inc. Service Company ("PHI Service Company").

Atlantic is seeking Board approval for the change from CRP to PHI Service Company which is to provide management, administrative support and other services pursuant to one or more service agreements. The proposed Service Agreement has been approved by the SEC which has oversight over the assignment of costs to PHI subsidiaries, including Atlantic. Atlantic seeks Board approval for those issues which are under Board jurisdiction, including the New Jersey rate making treatment of PHI Service Company's costs that are assigned or otherwise allocated to Atlantic and borne by Atlantic customers. The Ratepayer Advocate has expressed concern in testimony and briefs about the allocation of costs between Atlantic and its subsidiaries.

This matter was consolidated with the Atlantic Base Rate case (see above). Evidentiary hearings were held in late March and early April 2004. Initial Briefs were filed on August 4, 2004 with Reply Briefs filed on August 23, 2004.

As part of an April 15, 2005 global settlement, the Company agreed to increase direct billing where possible and to make certain policy adjustments for ratemaking purposes. The Company also agreed to additional reporting requirements.

**I/M/O THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR A DETERMINATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40:55D-19 THAT THE USE OF CERTAIN LANDS WITHIN THE CITY OF MILLVILLE, CITY OF VINELAND AND THE TOWNSHIP OF MAURICE RIVER WITHIN THE COUNTY OF CUMBERLAND; WITHIN THE TOWNSHIP OF UPPER AND THE TOWNSHIP OF DENNIS IN THE COUNTY OF CAPE MAY AND WITHIN THE CITY OF ESTELL MANOR AND THE TOWNSHIP OF EGG HARBOR IN THE COUNTY OF ATLANTIC, ALL IN THE STATE OF NEW JERSEY, ARE REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE OR WELFARE OF THE PUBLIC; AND THAT THE ZONING AND LAND USE ORDINANCES OF THOSE MUNICIPALITIES AND COUNTIES SHALL HAVE NO APPLICATION THERETO, BPU DOCKET NO. EE04111374**

On November 1, 2004, Atlantic filed a petition with the Board of Public Utilities seeking an Order exempting its proposed transmission lines from local municipalities' application of the Municipal Land Use Law. Of the seven affected municipalities, City of Millville, City of Vineland, Township of Maurice River, Township of Dennis, Township of Upper, City of Estell Manor, and the Township of Egg Harbor; only the Township of Upper and the County of Cape May filed responsive pleadings to the petition. The petition sought exemption from the land use regulations specifically dealing with height, lot width and size, and front side and rear yard setback restrictions. Discovery was exchanged by the Division of the Ratepayer Advocate and Board Staff and a public hearing was held on January 5, 2005 in Cape May Court House. The Township of Upper filed a motion on February 2, 2005 to consolidate this matter with another proceeding before the Board which affect the operation and eventual planned closure of the B.L. England Generation Plant operated by the Company located in Upper Township. By Order dated March 2, 2005, Commissioner Alter denied the Motion for Consolidation. On March 1, 2005, the PJM Interconnection, LLC ("PJM") filed a Motion to participate in the proceedings which was granted by Order dated March 23, 2005.

On March 28, 2005, an evidentiary hearing was held before Commissioner Alter at which the Company produced various witnesses. Post-hearing briefs were submitted in which the Ratepayer Advocate expressed reservations regarding the lack of definite plans by the Company to close B.L. England, but the Ratepayer Advocate also agreed that the Company's proposed upgrades are necessary for reliability purposes if B.L. England is to be retired. The Ratepayer Advocate further noted that its non-objection is predicated upon the timely retirement of the B.L. England facility and the Company's adherence to the proposed construction timeline. By Order dated April 21, 2005, the Board determined that the proposed upgrades were necessary and that they should be exempt from local municipal land use restrictions and thereby gave the Company permission to perform the upgrades.

**I/M/O ATLANTIC CITY ELECTRIC FOR APPROVAL OF THE SALE OF CERTAIN INTERESTS IN THE KEYSTONE AND CONNEMAUGH GENERATION STATION BPU DOCKET No. PENDING**

During restructuring, Atlantic divested most of its electric generating units. However three fossil electric generating units remain as jurisdictional assets of Atlantic for New Jersey ratemaking purposes: a 100% ownership interest in the oil- and coal-fired B.L. England generating plant located in Beesley's Point, Cape May County; and minority ownership interests in two coal-fired generating plants located in Pennsylvania: the Keystone and Connemaugh generating plants. Atlantic's earlier efforts to sell these fossil plant interests were unsuccessful. Atlantic is again offering to sell its fossil plant interests and in December of 2005 Atlantic filed for approval of the sale of its interests in Keystone and Connemaugh. According to the Company, they are still attempting to sell BL England separately. Some of the issues to be reviewed by the Ratepayer Advocate include whether the auction was an arms length transaction and, the prudence of the sales price.

**I/M/O THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY, CONSIDERATION FOR ALTERNATIVES TO CONTINUED OPERATION OF B.L. ENGLAND, BPU DOCKET NO. EO04050357**

**I/M/O ATLANTIC CITY ELECTRIC D/B/A CONECTIV POWER DELIVERY FOR APPROVAL OF STRANDED COST CATEGORIES AND FINDINGS WITH RESPECT TO PRUDENCE OF THE DECISION TO SHUT-DOWN THE B.L. ENGLAND GENERATION STATION AND FOR OTHER PURPOSES, BPU DOCKET No. ER0412754**

**I/M/O THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY D/B/A CONECTIV POWER DELIVERY FOR APPROVAL OF YEAR 2005 CAPITAL PROJECTS WITH RESPECT TO B.L. ENGLAND GENERATION STATION, BPU DOCKET ER04111425**

Concurrent with its sale efforts with Keystone, Connemaugh and BL England generation plants, Atlantic has pending before the Board several filings related to plans to close the B.L. England plant. In one proceeding (BPU Dkt. No. EE04050357), Atlantic recommends retiring the B.L. England plant in 2007 and using transmission enhancements to maintain reliability in the surrounding area, and seeks recovery of costs associated with the transmission plan. In another filing (BPU Dkt. No. ER04121754), Atlantic seeks *inter alia* a Board determination regarding the prudence of closing the B.L. England plant in 2007 and the recovery of closure-related costs. Finally, in accordance with an earlier Board ruling in BPU Dkt. No. EO03020091, et al., in another filing (BPU Dkt. No. ER04111425) Atlantic seeks recovery of certain 2005/2006 B.L. England capital expenditures to keep the plant going until such time as the plant is retired or sold. If the current effort to sell the B.L. England plant is successful, it is anticipated that Atlantic will modify or withdraw some or all of its

pending related filings. Recently, Atlantic announced that it sold its interests in the Keystone and Conemaugh plants, subject to BPU approval. These matters are pending before the Board in 2006 and the Ratepayer Advocate will participate in these proceedings to ensure that ratepayer interests are protected.

**I/M/O THE DEFERRED BALANCES AUDIT OF ATLANTIC CITY ELECTRIC COMPANY, PHASE II: AUGUST 2002-JULY 2003, BPU DOCKET NOS. EX02060363 AND EA02060364, AND;**

**I/M/O THE DEFERRED BALANCES AUDIT OF JERSEY CENTRAL POWER AND LIGHT COMPANY PHASE II: AUGUST 2002-JULY 2003, BPU DOCKET NOS. EX02060363 AND EA02060365**

On July 29, 2002, the Board of Public Utilities issued a request for proposals to secure the services of an independent consultant to conduct audits of the restructuring-related deferred balances of New Jersey's four electric utilities. On October 2, 2002, Mitchell & Titus LLP and Barrington-Wellesley Group, Inc. were contracted to perform the Deferred Balance Audit of ACE, JCP&L and PSE&G. The objective of the audit is to provide the Board with a certified opinion as to whether the utilities deferred balances as of July 21, 2003, are accurately calculated, correctly recorded, fairly stated in all material respects and in compliance with Board orders.

On December 2, 2005 at the Board's Agenda meeting, the Board acknowledged receipt of the Atlantic City Electric and Jersey Central Power & Light Company deferred balances Phase II audit reports and released them for public comment. Pursuant to the Secretary's letter dated December 5, 2005, initial comments on the audits are due on January 10, 2006 and reply comments are due on January 24, 2006. The Ratepayer Advocate is reviewing the filings and will be filing comments on both matters.

**I/M/O THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF AN INCREASE IN AND ADJUSTMENTS TO ITS UNBUNDLED RATES AND CHARGES FOR ELECTRIC SERVICE, AND FOR APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION THEREWITH, BPU DOCKET NO. ER02080506 (Base rates filing)**

**I/M/O THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF ITS DEFERRED BALANCES RELATING TO THE MARKET TRANSITION CHARGE AND SOCIETAL BENEFITS CHARGE (SBC), BPU DOCKET NO. ER02080507 (Deferred balance filing)**

**I/M/O THE CONSUMER EDUCATION PROGRAM (CED) ON ELECTRIC RATE DISCOUNT AND ENERGY COMPETITION - JERSEY CENTRAL POWER & LIGHT**

**COMPANY'S VERIFIED PETITION FOR DECLARATORY RULING, BPU DOCKET NO. EO02070417 (CED filing)**

**I/M/O THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF COSTS INCURRED FOR ENVIRONMENTAL REMEDIATION OF MANUFACTURED GAS PLANT SITES AND FOR AN INCREASE IN THE REMEDIATION ADJUSTMENT CLAUSE (RAC) OF ITS FILED TARIFF IN CONNECTION THEREWITH, BPU DOCKET NO. ER02030173 (RAC filing)**

Jersey Central Power and Light Company is a New Jersey electric public utility primarily engaged in the delivery and sale of electric energy and related utility services to more than 1,000,000 residential, commercial and industrial customers located within 13 counties and 236 municipalities of the State of New Jersey. On March 12, 2002, the Company filed a Petition with the Board of Public Utilities ("Board") seeking a review and a change in rates in the Company's Remediation Adjustment Clause (RAC) for the period from January 1, 1996 through July 31, 2002. On July 17, 2002, the Company filed a second Petition seeking a declaratory ruling by the Board permitting the recovery in customer rates for costs incurred in the Company's Consumer Education Program.

On August 1, 2002, JCP&L filed with the Board a base rate case, a deferred balance case and a motion seeking to consolidate the JCP&L's earlier RAC filing and CED filing with the base rate and the deferred balance cases.

In JCP&L's RAC filing, the Company sought recovery of \$11,866,000 in expenses resulting from the environmental remediation of its former manufactured gas plant sites. In the deferred balance filing, JCP&L sought recovery of its deferred balance of approximately \$684 million. The rate case filing projected an average decrease in delivery revenue of approximately \$11 million or 0.6% and an average decrease in the SBC of \$14 million or 0.7%. The Company included in its rate case filing the elimination of a \$109 million one time credit passed on to ratepayers pursuant to EDECA mandated rate reductions. JCP&L requested an overall revenue increase of \$153 million per year, or 7.8% assuming that JCP&L would be permitted to securitize the deferred balance. If the deferred balance was amortized over four years, the overall revenue increase would have been \$279 million or 14.4%.

The four cases were transmitted to the Office of Administrative Law on August 22, 2002. A prehearing conference was held on October 31, 2002 and a procedural schedule was established.

After review of the Company's Petition, the Ratepayer Advocate determined that the Company had over-recovered RAC expenses and recommended a decrease in the Company's RAC recovery. The Ratepayer Advocate also filed testimony recommending a reduction in the Company's deferred balance of \$298.5 million and supported an overall revenue decrease of \$243 million. The Ratepayer Advocate also filed testimony regarding the Company's poor service quality and reliability performance

and asked the Board to establish service quality standards with provisions for automatic penalties for failure to meet these standards. The Ratepayer Advocate also proposed individual customer rebates for prolonged outages and other service quality failures.

On June 13, 2003, the parties filed a Stipulation of Settlement of the Remediation Adjustment Clause resolving all the issues in the RAC matter. This stipulation was adopted by the Administrative Law Judge and was found by the Board to be a just, reasonable and efficient resolution of the RAC case.

On July 25, 2003, the Board disallowed \$152.5 million of the Company's deferred balance and allowed the Company an overall increase of approximately \$82.8 million or 4.5% to become effective August 1, 2003. The Board agreed with the Ratepayer Advocate that the Company's system wide reliability was a problem and ordered a Phase II proceeding to review the Company's performance and to establish performance standards for JCP&L. The Board also adopted the Ratepayer Advocate's recommended return on equity of 9.5% on an interim basis, to be reviewed as part of the Phase II proceeding. On May 17, 2004 the Board issued its Final Order memorializing the action taken by the Board Commissioners at its July 25, 2003 agenda meeting which was summarized in the Board's Summary Order dated August 1, 2003. On June 1, 2005 the company filed a Motion for rehearing and reconsideration of this Final Order which was considered and revised in 2005. (See discussion below).

#### **The Board's Decision:**

##### **1. Cost of Capital**

This office recommended a return on equity of 9.5% and the use of FirstEnergy's capital structure (with an additional 35 basis points added to the Return of Equity (ROE) to reflect FE's highly leveraged capital structure) for an overall return of 8.08%.

The Board imputed a capital structure with 46% equity ratio and ordered a ROE of 9.5%, (25 basis points lower than other New Jersey electric utilities to reflect the Company's "recurring reliability problems") for an overall return of 8.38%.

##### **2. Distribution revenues**

Company proposed a rate base of \$2.054 billion. The Ratepayer Advocate recommended a rate base of \$1.914 billion. The Board adopted the position of Board staff and allowed a rate base of \$2.016 billion.

The Company proposed to decrease delivery service revenues by \$41,494,000 while the Ratepayer Advocate recommended a decrease in delivery service revenues of \$251,560,000. The Board adopted Staff's recommended decrease of \$218,904,000.

### 3. **BGS deferred balance**

The Company projected a BGS/MTC deferred balance of \$618.0 million.

The Ratepayer Advocate recommended that the Board deny recovery of \$239 million of the deferred balance as well as \$59,463,586 in interest collected on NUG over market costs. Board staff recommended that the Board disallow \$327 million based on the cost of procuring the same energy using PJM process and then offset the disallowance with PPA below market purchases and NUG mitigation savings. The Board adopted the recommendation of Staff of a total disallowance of \$152.5 million.

#### **Motion for Reconsideration**

On June 1, 2004, the Company filed a Motion for Rehearing, Reconsideration, and Partial Remand of the Base Rate and Deferred Balance issues. The Ratepayer Advocate filed a response on June 18, 2004. The Board granted the Company's motion in part and oral argument was held before Commissioner Butler on August 4, 2004.

On May 20, 2005, Deputy Attorney General Susan J. Vercheak circulated for comment a draft stipulation of settlement agreed upon between JCP&L and Board Staff. The Ratepayer Advocate did not sign this stipulation but rather filed comments on May 25, 2005 clarifying three specific areas of concern raised by the proposed stipulation. Specifically the Ratepayer Advocate's comments focused on (1) the issue of merger savings, (2) the issue of the extended amortization from storm damage costs, and (3) the issue of securitization.

##### 1. Merger Savings

The proposed stipulation of settlement granted to JCP&L a \$23.0 million distribution rate increase reflecting a two year amortization of \$42.7 million in claimed costs to achieve merger savings. The Ratepayer Advocate objected to this increase arguing that the proposed stipulation violated the terms of an earlier stipulation entered into pursuant to the JCP&L/FirstEnergy merger and approved by the Board.

##### 2. Storm Damage Expense

The proposed stipulation extended the three year amortization of storm damage expense for an additional eight years. In the Restructuring Order, the Board permitted JCP&L to recover \$40 million in deferred storm damage costs over three years. By extending the annual recovery of the \$4.37 million in deferred storm damage costs, the Board allowed the Company to collect \$13.5 million from ratepayers while reducing the deferred storm costs account by less than \$2.0 million a year. Accordingly, the Ratepayer Advocate objected to a stipulation that gave to the Company an \$11.5 million rate increase without proper notice or evidentiary hearing.

### 3. Securitization

Rather than a commitment from JCP&L that ratepayers would see at least \$8.0 million in securitization savings if the Board permitted securitized of the deferred balance, the Company only anticipated this level of savings, subject to a true-up, and would not agree to pass on at least this level of savings to ratepayers. The Ratepayer Advocate recommended that the Board order the Company, as a condition of settlement, to commit to at least \$8.0 million in securitization savings to be passed through to ratepayers. The Ratepayer Advocate further recommended that the securitization of the deferred balance should be deferred until the Phase II deferred balance audit has been released.

At the agenda meeting on May 25, 2005 the Board rejected the Ratepayer Advocate's objections and adopted the Company's and Staff's stipulation.

#### **I/M/O JERSEY CENTRAL POWER & LIGHT COMPANY INCREASE IN BASE RATES- PHASE II, BPU DOCKET NO. ER02080506**

On July 16, 2004 the Company filed a verified supplemental Petition for a Phase II proceeding pursuant to the Board's Final Order in the Deferred Balance and Rate Cases. The Phase II petition claims that JCP&L's reliability has improved since 2003 and seeks the Board's approval of additional annual revenues of \$36 million with an equity increase of 9.75%. The Ratepayer Advocate issued discovery on September 7, 2004. This issues before the Board included whether 1) the Company spent the money as recommended by the Board's experts, the Special Reliability Master and Booth and Associates; 2) such expenditures improved reliability; 3) these costs were prudently incurred and reasonable; 4) the costs were incurred for additional infrastructure improvements above and beyond any improvements ratepayers are currently paying for through existing rates; and whether 5) these improvements should have been made in the past 10 years and therefore the ratepayers are being asked to pay for improvements twice. Ratepayer Advocate filed testimony in November 2004 recommending that the Company be granted an increase in revenues of \$9 million and a further recommendation that the Company's equity return be held at 9.5% until the Company demonstrates improved reliability to the Board's satisfaction.

On May 25, 2005, the Board approved the stipulation of settlement executed by the Ratepayer Advocate, JCP&L and Board Staff. The stipulation of settlement gave the Company an additional \$36.1 million in overall annual revenues which included an increase in the Company's allowed rate of return from 9.5% to 9.75%. The increased return on equity was tied to performance standards: if at any time during the next 18 months, the Company reliability indicators fell below a certain minimum level for two consecutive quarters, the Company's allowed return on equity would be reduced to 9.50%.

**I/M/O JERSEY CENTRAL POWER & LIGHT COMPANY FOR THE REVIEW AND APPROVAL OF AN ADMUSTMENT OF THE NON-UTILITY GENERATION CHARGE CLAUSE OF ITS FILED TARIFF, BPU DOCKET NO. PENDING**

On December 2, 2005, Jersey Central Power and Light Company filed a petition requesting approval of an adjustment to the Company's Non-Utility Generation Charge Clause ("NUG") formally known as the Market Transition Charge Clause ("MTC"). If the Company's proposed plan is approved as filed, residential customers would pay an approximate net increase of \$165 million for costs incurred in buying power from independent energy suppliers. According to the filing, rates for a typical customer using 500 kWh a month would rise about \$4 a month or about 7%.

The Ratepayer Advocate is currently reviewing the filing to determine if expert consultants are needed and to ensure that all costs requested by the Company are justified and reasonable.

**I/M/O THE VERIFIED PETITION OF JERSEY CENTRAL POWER AND LIGHT COMPANY FOR A BONDABLE STRANDED COSTS RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS OF 1999, AS AMENDED, TO AUTHORIZED THE IMPOSITION OF A NON-BYPASSABLE TRANSITION BOND CHARGE, THE ISSUANCE AND SALE OF UP TO \$420 MILLION AGGREGATE PRINCIPAL AMOUNT OF TRANSITION BONDS BY A FINANCING ENTITY TO RECOVER PETITIONER'S BONDABLE STRANDED COSTS, AND THE APPLICATION OF TRANSITION BOND PROCEEDS TO RETIRE OUTSTANDING DEBT, EQUITY OR BOTH, AND TO APPROVE THE METHODOLOGY FOR THE CALCULATION AND ADJUSTMENT OF THE TRANSITION BOND CHARGE AND MARKET TRANSITION CHARGE-TAX RELATED THERETO, BPU DOCKET NO. ER03020133**

On February 14, 2003, Jersey Central Power & Light Company, ("JCP&L") requested from the New Jersey Board of Public Utilities an irrevocable Bondable Stranded Cost Rate Order for authorization to issue up to \$420 million of Transition Bonds. The Company stated that the net proceeds of the Transition Bonds would be used by the Company solely for the purposes of reducing the amount of its otherwise recoverable eligible stranded costs, or reducing the amount of its Basic Generation Service Transition Costs and/or other Bondable Stranded Costs through the retirement of debt or equity or both. At the time of the filing, JCP&L anticipated that the Recoverable Deferred Balance Amount, to be determined by the Board in the deferred balance proceeding, would be approximately \$687.8 million, which included deferred taxes of approximately \$280.9 million. Thus the Company sought a Financing Order authorizing the recovery through the issuance of Transition Bonds of approximately \$420 million of the Company's Bondable Stranded Costs, which included Upfront Transaction Costs and Capital Reduction Costs aggregating approximately \$12.6 million.

In September 2003, JCP&L filed an amendment to its petition which reflected a Recoverable Deferred Balance at July 31, 2003 of approximately \$459 million. This amount included deferred taxes of approximately \$187 million, Upfront Transaction Costs of approximately \$4.4 million and Capital Reduction Costs of \$4.4 million. One of the issues is whether the Company should be permitted to securitize the Deferred Balance when the Company filed a motion for reconsideration of the Final Order and whether securitization is preferable to recovery over 15 years on a 7 year treasury rate. Hearings were held on February 5, 2004 before Commissioner Alter and Ratepayer Advocate's comments were filed February 27, 2004.

On July 20, 2005, JCP&L wrote to the Board asking the Board to set a procedural schedule to bring this matter to the Board agenda so as to make a final determination regarding the Company's Petition as soon as practicable. The letter noted that the Board's recent decision in the deferred balance proceeding and the expiration of the appeal period "should remove all impediments to the processing of the subject securitization Petition." The matter is pending as of December, 2005.

**I/M/O THE APPLICATION OF JERSEY CENTRAL POWER AND LIGHT COMPANY FOR THE APPROVAL OF THE TERMINATION OF THE POWER PURCHASE AGREEMENT CURRENTLY EXISTING BETWEEN IT AND PRIME ENERGY LIMITED PARTNERSHIP AND THE EXECUTION OF A NEW POWER PURCHASE AGREEMENT WITH PRIME POWER SALES I, LLC BPU DOCKET NUMBER EM05040314**

JCP&L filed an application dated April 4, 2005 seeking Board authorization to terminate an existing Power Purchase Agreement ("Original PPA") between JCP&L and Prime Energy LLP and to execute a new Power Purchase Agreement between JCP&L and Prime Power Sales I, LLC, an affiliate of Prime Energy LLP. ("New PPA") The Original PPA was entered into in recognition of JCP&L's obligations under the Public Utility Regulatory Policies Act.

JCP&L claimed in its filing that the prices it pays under the Original PPA are significantly above today's market prices for power, resulting in stranded costs for JCP&L that are recoverable from its customers. The Company claims that it sought to restructure the Original PPA in order to reduce stranded costs.

The Ratepayer Advocate filed comments on the Company's filing on May 10, 2005. The Ratepayer Advocate raised concerns about the accuracy of the estimate of benefits accruing to JCP&L customers and about the potential operability of the Prime facility. The Ratepayer Advocate noted that the Company had recently experienced a turbine failure and had not in the past achieved the performance level called for under the new PPA.

The Ratepayer Advocate recommended that the Board's approval be granted only under the following conditions:

1. Any additional revenues received by JCP&L from Prime under the New PPA should be promptly credited to the Company's customers.
2. JCP&L should report to the Board and the Advocate regarding any change to the proposed Restructuring Credit.
3. Recognition by JCP&L that it has a continuing obligation to prudently manage and administer the New PPA for the benefit of its customers.

The Board approved the Company's application by Order dated May 16, 2005 and on September 18, 2005 the Company applied to the MTC Deferred Balance \$15.1 million in Restructuring Credit.

**I/M/O JERSEY CENTRAL POWER AND LIGHT COMPANY- WAIVER OF NUCLEAR DECOMMISSIONING RULES, BPU DOCKET NO. E0031211014**

Pursuant to a Board Order dated April 28, 2004 and other Board Orders and regulations, this matter involves the funding of the decommissioning of the Saxton experimental nuclear reactor and the accident-damaged Three Mile Island (TMI-2) nuclear unit. Ratepayer funding of the Saxton decommissioning ended in April 2004 which is expected to be fully decommissioned in 2005. TMI-2 is expected to be decommissioned sometime in the future and ratepayers continue to contribute to the decommissioning trust fund created to cover the costs of its future decommissioning. At issue is continuation of the current level and duration of ratepayer contributions to the TMNI-2 decommissioning trust fund. In filed comments, the Ratepayer Advocate argued that New Jersey ratepayers' share of the TMI-2 total decommissioning expense should be limited to 25%, based on JCP&L's ownership share (TMI-2 is jointly owned by several utilities, one of which is JCP&L); further ratepayer contributions should be suspended, based on fund gains, the likely extension of the date for the commencement of the decommissioning process, and the amount of past ratepayer contributions (compared to shareholder contributions). The Ratepayer Advocate also asked that the Board order, at this time, that any remaining TMI-2 post-decommissioning funds be returned to ratepayers, and that JCP&L provide an accounting of the Saxton decommissioning costs and ratepayer contributions. This matter is pending before the Board as of December, 2005.

**I/M/O THE JOINT PETITION OF JERSEY CENTRAL POWER AND LIGHT COMPANY AND REEP, INC. SEEKING APPROVAL OF A STIPULATION OF SETTLEMENT, BPU DOCKET NO. EO05050471**

On September 2, 2004, REEP, Inc. filed an informal complaint in lieu of petition with the Board of Public Utilities. It requested that the Board facilitate a settlement of a dispute between REEP and Jersey Central Power. REEP alleged that JCP&L owed it \$9,000,000 in a contract dispute relating to residential demand side management work performed by REEP. REEP had also filed a complaint with the New Jersey Superior Court Law Division in Mercer County on September 6, 2000.

As part of the informal complaint process, the Division of the Ratepayer Advocate filed comments with the Board on July 12, 2005. In its comments, the Ratepayer Advocate noted its serious concerns regarding the reasonableness of the proposed \$2.95 million settlement to be paid by JCP&L to REEP. According to the analysis of the Ratepayer Advocate's expert, there was insufficient data to support the reasonableness of the settlement amount and accordingly the Ratepayer Advocate requested that the Board reserve the issue of JCP&L's recovery of the \$2.95 million until the Company's next SBC filing. Furthermore, the Ratepayer Advocate recommended denial of JCP&L's approximate \$300,000 in other litigation fees as the Company had failed to show that these costs were not already recovered through ordinary legal expenses built into existing rates. By Order dated August 19, 2005, the Board approved the settlement of JCP&L's \$2.95 Million payment to REEP in addition to legal and litigation fees incurred by the Company not to exceed \$300,500. The Board did request that JCP&L provide documentation of actual legal fees incurred before it is authorized to collect them.

**I/M/O PUBLIC SERVICE ELECTRIC AND GAS COMPANY REQUEST FOR DEFERRAL ACCOUNTING AUTHORITY FOR THE ENERGY INFORMATION AND CONTROL NETWORK PILOT PROGRAM, BPU DOCKET NO. EO04060395**

The Energy Information and Control Network ("EICN") pilot program is a program being conducted by Public Service Electric and Gas Company ("PSE&G") to evaluate advanced metering and load control equipment for residential customers, and to test residential customers' response to electric pricing that varies depending on when the electricity is used. The program also includes a separate "load control" pilot program, modeled on the Company's current air conditioning cycling program, in which residential and small commercial customers agree to be subject to curtailment by means of remote-controlled switches installed on air conditioners and other qualifying appliances. The company proposes to test volunteer customers in the towns of Cherry Hill and Hamilton, NJ.

Initially, in July 2004, Company filed a petition requesting the Board to authorize deferred accounting treatment for the costs of the program. The Ratepayer Advocate

filed comments which did not oppose deferred accounting, subject to a number of conditions. In August 2004 the Board approved the Company's petition for deferred accounting, subject to some of the conditions recommended by the Ratepayer Advocate, i.e. (1) the Board's authorization was limited to deferred accounting, with all ratemaking issues reserved to a future proceeding; (2) the Board directed that implementation of the program be subject to prior Board review and approval of the rates and tariffs associated with the program; and (3) the Company was permitted to defer only incremental, out-of-pocket costs.

The "load control" component of the pilot program is currently in progress. The Company selected the participants, installed the necessary equipment, and began implementing the program during the summer of 2005. During the summer of 2005 the Company conducted 19 out of a maximum of 20 curtailment events. The load control pilot will continue during the summer of 2006.

In November 2004 the Company filed proposed tariffs containing the proposed variable electric rates to be implemented as part of the remaining components of the pilot program. The Ratepayer Advocate worked with the Company and the Board Staff to address concerns that the rate structure proposed the Company might be too complex for residential customers. In June 2005, the Ratepayer Advocate, the Company, and Staff reached agreement on a modified rate structure. The modified rate structure was approved by the Board in August 2005. The Company is currently working toward implementing the program beginning in April 2006. The duration of the program will be approximately 18 months. The Ratepayer Advocate is monitoring the Company's development of customer communications and other materials related to the implementation of this program.

**I/M/O PUBLIC SERVICE ELECTRIC AND GAS COMPANY- FINANCIAL REVIEW,  
BPU DOCKET NO. ER02050303, et al.**

Pursuant to a Board Order dated April 22, 2004 in the Company's base rate case, the Board initiated a financial review proceeding to consider the Company's proposed \$64.2 million rate increase associated with the expiration of the 29-month amortization of a \$155 excess depreciation credit, effective January 1, 2006. The Board stated that since an automatic increase was unacceptable, the scope of the review should include, but not limit it to, the Company's earnings, credit quality, and indicators of overall financial integrity. Furthermore, the Board required the Company to file certain financial information necessary to conduct its review. The Company filed explanatory comments on November 30, 2005. The Ratepayer Advocate reviewed the Company's filing and responses to discovery requests, and filed its Comments on December 15, 2005.

**I/M/O THE DEFERRED BALANCES AUDIT OF PUBLIC SERVICE ELECTRIC & GAS COMPANY PHASE II: AUGUST 2002 - JULY 2003  
BPU DOCKET NOS. EX02060363 & EA02060366**

At the May 5, 2005 public agenda meeting, the Board acknowledged receipt of its auditors' Phase II report concerning the deferred balances of Public Service Electric and Gas Company (PSE&G) for the year ending July 31, 2003. The Board invited initial comments by June 13, 2005 and reply comments by June 28, 2005 concerning the proper accounting and ratemaking treatment for the utility's market transition charge (MTC). The Board reserved the issue of the appropriate treatment of investment tax credits associated with PSE&G's divested generating units for a separate proceeding.

The MTC issues centered around the proper ratemaking treatment of a refund to ratepayers amounting to \$255.137 million from the Phase I audit report proceeding. PSE&G's June 13 initial comments objected to the review of this issue and essentially claimed that the utility had properly accounted for this refund.

The Ratepayer Advocate's June 13 initial comments requested that additional information concerning the issues the Board wished to review be provided because the audit report itself had insufficient information concerning the issue. The Ratepayer Advocate's initial comments also raised other issues including additional revenues from PSE&G's sale of energy from the St. Lawrence nonutility generation (NUG) project, whether or not PSE&G is successfully maximizing the value it receives for its NUG contracts, and PSE&G's efforts to renegotiate and restructure its remaining NUG contracts.

The Ratepayer Advocate's reply comments included calculations concerning the MTC refund based on information available as of that date which was not all actual data, but included some forecast data. The calculations showed an additional refund due to ratepayers of \$105.018 million plus an additional \$13.193 million in interest on the refund. The Ratepayer Advocate also requested that PSE&G be required to provide additional data concerning income tax benefits on the refund that should be credited to ratepayers and that PSE&G be required to update the record to include all monthly actual (not forecast) data through July 31, 2003 so that a complete calculation could be made of the additional refund plus interest due to ratepayers.

At the August 17, 2005 public agenda meeting, the Board accepted for filing its auditors' Phase II report. The Board Secretary issued a letter instructing the parties to execute a confidentiality agreement and for PSE&G to provide the Ratepayer Advocate all responses to discovery propounded by the Board Staff and the auditors concerning PSE&G's MTC. The Board also directed the Ratepayer Advocate to provide comments to the Board within 30 days of receipt of the discovery responses. PSE&G was to provide reply comments to the Board within fourteen days of the Ratepayer Advocate's comments, and the Ratepayer Advocate to provide reply comments within fourteen days of receiving PSE&G's comments.

As of December, 2005, PSE&G and the Ratepayer Advocate continue to negotiate the terms of an acceptable confidentiality agreement. The Ratepayer Advocate has not yet received the information needed to prepare and submit comments.

**I/M/O PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S DEFERRAL FILING INCLUDING PROPOSALS FOR CHANGES IN ITS RATES FOR ITS NON-UTILITY TRANSITION CHARGE (NTC) AND ITS SOCIETAL BENEFITS CHARGE (SBC) FOR THE POST TRANSITION PERIOD PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1 BPU DOCKET NO. ER02080604**

**I/M/O PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH N.J.S.A. 48:3-49 BPU DOCKET NO. EF03070532**

On July 9, 2003, PSE&G filed a Petition with the Board requesting that the Board issue an irrevocable Bondable Stranded Costs Rate Order (BSCRO) for recovery of PSE&G's Basic Generation Service (BGS) Transition Costs incurred during the period from August 1, 2002 through July 31, 2003 (Year 4 Deferred BGS Balance), as well as related tax liabilities, and other related costs. Specifically, PSE&G requested that the Board authorize: (i) the imposition of a non-bypassable Transition Bond Charge (TBC), as provided in N.J.S.A. 48:3-67, (ii) the imposition of a non-bypassable BGS Market Transition Charge-Tax (BGS MTC-Tax) to recover the federal, state and local tax liabilities associated with the receipt of revenue from billing the BGS Transition Bond Charge; (iii) the sale of BGS Bondable Transition Property to an approved financing entity; (iv) the issuance and sale of not more than \$150 million aggregate principal amount of transition bonds (BGS Transition Bonds) by the financing entity to recover PSE&G's net-of-tax Year 4 Deferred BGS Balance, together with Upfront Transaction Costs; and (v) the formula for the calculation and adjustment of the BGS TBC and BGS MTC-Tax to provide for the recovery of the principal and interest on the BGS Transition Bonds and related tax liabilities.

PSE&G stated that the proceeds of the BGS Transition Bonds (net of Upfront Transaction Costs) would be used by or on behalf of PSE&G solely for the purpose of recovering its unamortized BGS Transition Costs, through the refinancing or retirement of its debt or equity, or both. PSE&G later amended its request to issue no more than \$118 million in BGS Transition Bonds based on an updated deferred BGS costs balance and updated Upfront Transaction Costs of \$2.7 million.

PSE&G estimated that the sale of the BGS Transition Bonds would produce benefits to its ratepayers through lower costs than would have been achieved without the issuance of the BGS Transition Bonds. PSE&G asserted that, in accordance with N.J.S.A. 48:3-62(c)(3), the BGS Transition Bond Transaction will produce ratepayer benefits by lowering the utility's overall cost of capital and minimizing the rate impact as

compared to the immediate recovery in one year of the then unamortized Year 4 Deferred BGS Balance. PSE&G asserted that its proposed securitization transaction, as compared to standard rate base/rate of return recovery, would result in a benefit of over \$36 million (over \$32 million on a net present value basis assuming a discount rate of 6.52%). Petitioner stated it would account to the Board for the use of the net proceeds, so as to assure that the entire savings from the bond issuance is passed on to PSE&G's electric customers, in accordance with N.J.S.A. 48:3-62(a).

The Ratepayer Advocate presented expert testimony and also filed comments on the proposed securitization. The Ratepayer Advocate asserted that there is insufficient data in the record to conclude that the remaining Year 4 BGS deferred balance should be securitized and provided testimony that securitization would only be reasonable if the BGS balance was sufficiently large to make securitization cost beneficial, but that the information needed to make this determination was still outstanding. The Ratepayer Advocate asserted that a review of the Phase II Audit Report regarding the Year 4 Deferred BGS Balance is required to support a decision to securitize that balance. In PSE&G's most recent deferred balance case, the Board found that PSE&G had overrecoveries in certain components of its deferred balances and approved certain credits to be given to customers over 29 months beginning on August 1, 2003.

The Ratepayer Advocate argued that any credits remaining from that PSE&G deferred balances case should be quantified and be used to offset the amount that PSE&G wanted to securitize in this proceeding. The Ratepayer Advocate's expert provided various alternatives to securitization including financing with conventional, nonsecuritized debt or some fixed amortization at an appropriate interest rate.

The Ratepayer Advocate recommended that all cost savings that accrue from the use of transition bond proceeds be passed through directly to ratepayers and that this be done in a timely manner rather than waiting until the utility files a new base rate case and also urged the Board to reject PSE&G's inclusion of \$645,581 for a retroactive interest increase in the Year 4 BGS deferred balance.

On July 12, 2005 the Board issued an order permitting the securitization in an aggregate principal amount not to exceed the lesser of PSE&G's then-outstanding net of tax Deferred Year 4 BGS Balance at the date of securitization or \$100 million, plus Upfront Transaction Costs not to exceed \$2.7 million. However, concerning the issue of retroactive interest, the Board deferred consideration of that matter until PSE&G's next proceeding related to its NTC. Pursuant to the Board Order, PSE&G issued transition bonds in the amount of \$102.7 million in early September 2005. PSE&G filed a new NTC petition and the issue of the \$645,581 in retroactive interest is included for resolution in that docket in 2006.

**I/M/O PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND RUTGERS UNIVERSITY NEWARK - STANDARD ENERGY SAVING AGREEMENTS, BPU DOCKET NO. EO04060578**

Rutgers University and PSEG Demand Side Management Company ("PSEG DMC"), an affiliate of PSE&G on jointly seeking approval of 5-year contract extensions for two demand side management contracts which were originally approved by the Board pursuant to the Board's Standard Offer 1 program. Under the terms of the contracts at issue, DMC and Rutgers are entitled to payments over the term of the contract, pursuant to the provisions of the Standard Offer 1 program. The Board subsequently approved Standard Offer 2 and 3 programs, each superseding the earlier program. In 2005, as a result of changes in demand side management programs set forth in the Electric Discount and Energy Competition Act of 1999 ("EDECA", codified at N.J.S.A. 48:3-49 et seq.), there are no outstanding Standard Offers for new customers. Presently, rate recovery under the Standard Offer programs is only permitted over the unexpired terms of pre-existing Standard Offer contracts. The Rutgers and PSEG DMC contracts at issue are substantially similar 10-year contracts, with the Rutgers contract originally approved by the Board in 1993 and the PSEG DMC contract approved in 1996. PSEG DMC and Rutgers seek 5-year extensions to their respective contracts, thereby extending them to 15 years. In comments filed with the Board, the Ratepayer Advocate argued that the contracts should not be extended since there are no outstanding Standard Offer programs upon which new rates could be based and, furthermore, the EDECA and subsequent Board Orders set forth a new policy for demand side management, ending the Standard Offer program, and implementing new programs and methods for recovery. This matter is currently pending before the Board as of December 2005.

**I/M/O ROCKLAND ELECTRIC COMPANY 2004 and 2005 SOCIETAL BENEFITS CHARGE FILINGS, BPU DOCKET NOS. ET04040235 and ET05040313**

In September 2005 the Ratepayer Advocate entered into a Stipulation with Rockland Electric Company and the Board Staff to resolve the Rockland's 2004 and 2005 Societal Benefits Charge ("SBC") filings. The SBC was established under EDECA to provide for pass-through cost recovery of the costs incurred by electric and gas utilities for programs deemed to be socially beneficial. Rockland's SBC recovers the costs of Board-approved energy efficiency and renewable energy programs, the costs of consumer education relating to the implementation of energy restructuring, and the cost of the Universal Service and Lifeline programs. Since the rates for recovery of the costs of the Universal Service and Lifeline programs are established in separate, state-wide proceedings, Rockland's two SBC filings concerned only the costs of energy efficiency and renewable energy programs and consumer education costs. Under the Stipulation, Rockland was permitted to increase its overall SBC rate from 0.2792 cents to 0.4260 cents per kilowatt hour. The rate increase was necessary due to a Board-mandated increase in the Company's funding level for energy efficiency and renewable

energy programs, from the \$543,000 per year in effect in 2004 to in excess of \$2 million per year for 2005 to 2005. The increase in mandated spending was implemented over the objections of the Ratepayer Advocate in a Board order dated December 23, 2004 in the Board's Docket No. EX04040276. The amount of the rate increase was offset by the Company's agreement to credit ratepayers for prior over collection including lost revenue claimed to have being incurred after July 31, 2003.

### **I/M/O ROCKLAND ELECTRIC COMPANY PROPOSED DISCONTINUATION OF CURTAILABLE SERVICE RIDER, BPU DOCKET NOS. ET04060436**

December 19, 2003 Rockland filed revised tariff leaves proposing a revision to eliminate the Company's Curtailable Service Rider. The Company stated in its filing that the revised tariff leaves were being submitted as a "housekeeping" matter, in accordance with the Board's July 22, 2002 Final Decision and Order in the Rockland Rate Unbundling, Stranded Cost and Restructuring proceeding, BPU Docket Nos. EO97070464, EO97070465 and EO97070466. In the earlier proceeding, the Board, in a Summary Order date July 26, 1999, the Board directed Rockland to discontinue its curtailable load program effective August 1, 1999. No new customers were to be enrolled after that date, and the contracts of existing customers were to be honored through their expiration dates but not renewed. These same directives were also included in the July 22, 2002 Final Decision and Order. Following the expiration the existing contracts, Rockland made its December 19, 2003 filing to eliminated the Curtailable Service Rider from its tariffs. In May 2004 our office was advised that The Board's Staff had reservations about eliminating the Curtailable Service Rider and was initiating a review of the Company's filing. In September of 2004 the Ratepayer Advocate served the Company with discovery questions concerning the details of PJM's load response programs and Rockland's participation in those programs. The purpose of the discovery questions was to provide information that would assist in developing appropriate modifications to the Company's curtailable service program. However, the Company objected to the Ratepayer Advocate's discovery questions on grounds that they were "overbroad, unduly burdensome, harassing, expensive and oppressive. As of December 2005, this matter remains open but inactive.

### **OTHER ELECTRIC MATTERS**

### **I/M/O THE PROVISION OF BASIC GENERATION SERVICE ("BGS") FOR THE PERIOD BEGINNING JUNE 1, 2006 BPU DOCKET NO. EO05040317**

Under EDECA, New Jersey's electric distribution companies (EDCs) are required to provide basic generation service (BGS) for customers who have not chosen a competitive supplier following the implementation of retail electric choice. For the past

several years the Board ordered the EDCs to procure the electric supply for BGS by a single, statewide auction.

The EDCs submitted a joint proposal to procure BGS supplies, by means of a single statewide auction, for the Period Beginning June 1, 2006 on July 1, 2005. The Ratepayer Advocate and other intervenors including electric suppliers actively participated in the Board's consideration of this proposal. Among other issues, the Ratepayer Advocate proposed the following modifications to the joint proposal:

The Ratepayer Advocate recommended that the approximately \$25 million in uncommitted funds collected through the Retail Margin should be returned to the ratepayer classes from which it was collected. The Ratepayer Advocate also strenuously objected to the proposal of the Atlantic City Electric Company that Atlantic be allowed to retain a portion of the revenues collected through the Retail Margin as profit. The Ratepayer Advocate also objected to Atlantic's proposal to extend the Retail Margin to residential and commercial customers taking service under the BGS-FP service.

**The Rejection of the Expansion of the Commercial Industrial Energy Pricing (CIEP) Class** - The CIEP class was recently expanded and some parties have recommended further expansion of the CIEP class. The Ratepayer Advocate is concerned about forcing customers into the CIEP class and argued before the Board that mandatory inclusion in the CIEP class should be limited to those customers for whom it is the best option. The Ratepayer Advocate believes that there has been insufficient justification or evidence to support expansion of the CIEP class.

**The Rejection of the Pass-through of Changes in Transmission Costs** - The EDCs have included a provision in their proposal that allows BGS-FP auction prices to be adjusted if the Board finds that there has been a change in "transmission costs." The full range of FERC/PJM actions that could lead to such changes are unclear. The Ratepayer Advocate finds that this provision unacceptably shifts risk to ratepayers who rely on stable prices from the BGS auction.

At its October 12, 2005 public agenda meeting, the Board voted to approve an auction process to obtain the majority of the State's electric supply requirements for the upcoming year. The Board deferred a decision on the threshold level of inclusion in the class of customers that would be priced on an hourly basis and requested supplemental comments on this issue. The Ratepayer Advocate in supplemental comments filed on October 21, 2005 recommended that the Board not expand the hourly pricing class at this time.

In addition, the Board also deferred decision on the use of the \$45 million in accumulated retail margin funds. Pursuant to a Board request, the Ratepayer Advocate filed additional comments on November 22, 2005. In those comments the Ratepayer Advocate reiterated its recommendation that these funds be returned to customers in

the rate classes that paid into this fund. These matters are pending as of December, 2005.

**I/M/O WHEELABRATOR FALLS, INC. AND WHEELABRATOR GLOUCESTER, L.P. v. NEW JERSEY BOARD OF PUBLIC UTILITIES, *et al.*, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, DOCKET NO. 05-2844 (KSH)(PS)**

The Ratepayer Advocate is an Intervenor in this federal lawsuit brought by Wheelabrator Falls, Inc., and Wheelabrator Gloucester, L.P. (collectively, "Wheelabrator") against the Board and its individual Commissioners. The lawsuit involves a dispute over the ownership rights to the economic value inherent in the "renewable" source of the electricity generated by the two municipal waste burning electric generating facilities. The net output of both facilities is committed to two New Jersey electric utilities under long-term purchase agreements ("PPAs") approved by the Board as part of its implementation of Section 210 of the federal Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. § 824a-3. One of the purposes of PURPA was to reduce the nation's reliance on oil and natural gas by encouraging the development of small electric generating facilities using non-fossil fuel sources such as solar, wind, geothermal and biomass sources. Section 210 of PURPA directed the Federal Energy Commission ("FERC") to issue rules requiring electric utilities to purchase electric energy from certain types of facilities, known as "Qualifying Facilities" or "QFs," State regulatory authorities were then required to implement the FERC rules. The Wheelabrator PPAs were approved by the Board as part of the Board's implementation of PURPA.

The current dispute arose from the Board's implementation of the provisions of EDECA that directed the Board to establish Renewable Energy Portfolio Standards ("RPS") to require all electricity sold to New Jersey consumers to include some energy from renewable, non-fossil energy sources. In order to facilitate compliance with the RPS by suppliers that do not own renewable energy sources, and to promote development of renewable energy sources, the Board's RPS regulations provided for the creation of a program that will allow the trading of renewable attributes in the form of Renewable Energy Certificates ("RECs").

In proceedings before the Board, Wheelabrator and other QFs asserted that they had the right to sell RECs associated with their facilities. The Board, based on its consideration of the terms of the previously approved PPAs and their factual and regulatory context, determined that the RECs belong to the utilities, to be used for the benefit of their ratepayers, for the duration of the PPAs. In the federal lawsuit Wheelabrator asserts that the Board's determination (1) is pre-empted by PURPA and the FERC's implementing regulations, (2) violates the Contract Clause of the United States Constitution, and (3) results in an unconstitutional taking of Wheelabrator's property without compensation.

On August 15, 2005 the Division of Law filed a motion to dismiss in lieu of an Answer on behalf of the Board and its individual Commissioners. The motion was based on 11<sup>th</sup> Amendment immunity and the abstention doctrine. JCP&L and PSE&G were granted leave to intervene on August 19, 2005, and the Ratepayer Advocate was granted leave to intervene on August 22, 2005. All three Intervenors also requested and were granted permission to file a joint motion to dismiss in lieu of an Answer on or before September 2, 2005. The Ratepayer Advocate joined in a motion to dismiss filed on behalf of three Intervenors on September 2, 2005. The motion was based on lack of subject matter jurisdiction and the abstention doctrine. The Court has taken the motions under advisement and its decision is pending as of December, 2005.

**I/M/O THE PROVISION OF BASIC GENERATION SERVICE FOR YEAR TWO OF THE POST-TRANSITION PERIOD - COMMITTED SUPPLY RENEWABLE ATTRIBUTES-APPEAL - I, APPELLATE DOCKET NO. A-3710-03T5**

This appeal involves a challenge to an Order of the Board of Public Utilities dated January 24, 2004. In that Order, the Board recognized that the ownership of renewable energy credits (RECs) associated with energy generated by Non-utility Generators (“NUGs”) had not yet been determined in New Jersey. Concerned about the impact this uncertainty could have on the upcoming BGS Auction, the Board credited to current and potential suppliers of energy through the BGS Auction in New Jersey, an equivalent amount of renewable energy credits that would be associated with the power supplied by the NUGs through long term power purchase agreements with the State’s utilities. The Board did not address the ultimate issue of REC ownership but left this issue to be resolved in a subsequent proceeding.

Claiming that the Board’s Order violated the terms of the Power Purchase Agreements it had entered into with PSE&G and JCP&L, Wheelabrator Falls Inc. and Wheelabrator Gloucester Inc. (collectively “Wheelabrator”) filed a Notice of Appeal with the New Jersey Superior Court Appellate Division on March 11, 2004. Wheelabrator claimed that the Board’s action was an unlawful modification of the Power Purchase Agreements, violated Wheelabrator’s right to due process, and, unlawfully interferes with Interstate Commerce. Wheelabrator filed a brief on March 21, 2005. The Ratepayer Advocate’s brief is due on January 6, 2006.

**I/M/O THE OWNERSHIP OF RENEWABLE ENERGY CERTIFICATES (“RECS”) UNDER THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT, AS IT PERTAINS TO NON-UTILITY GENERATORS AND THE BOARD’S RENEWABLE ENERGY PORTFOLIO STANDARDS- APPEAL - II, APPELLATE DIVISION DOCKET NO. A-5183-04T5, A-5189-04T5, A-5191-04T5**

The Board made a final determination regarding REC ownership at the public agenda meeting on January 12, 2005 and a Final Order was issued on April 20, 2005. *I/M/O the Ownership of Renewable Energy Certificates (“RECs”) Under the Electric Discount and Energy Competition Act, As It Pertains to Non-Utility Generators and the Board’s Renewable Energy Portfolio Standards*, BPU Dkt. No. EO04080879, Decision and Order, April 20, 2005. (“2005 Order”). The Board decided that as a matter of state law and policy, the renewable attributes associated with the sale of power from the NUGs to the EDCs belong to the purchasing EDCs.

Notices of Appeal of the April 20, 2005 Order were filed on June 6, 2005 by Wheelabrator (App. Div. Dkt No. A-005189-04T5), Covanta Energy Corporation (App. Div. Dkt No. A-005191-04T5), and the Pollution Control Financing Authority of Camden County (App. Div. Dkt No. A-005183-04T5). On September 29, 2005 an Order was issued consolidating the three appeals and directing that the appeal of the previous REC Order be scheduled “back to back” with the consolidated appeals. Briefs were filed by the appellants on November 7, 2005. The Ratepayer Advocate’s respondent’s brief is due January 6, 2006.

**I/M/O THE PROPOSAL TO PERFORM AUDITS OF COMPETITIVE SERVICES PURSUANT TO THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT, N.J.S.A. 48:3-55, 48:3-56 AND 48:3-58, BPU DOCKET NOS. AA02020094, EA02020095, EA02020096, EA02020097, EA02020098**

Pursuant to a Request for Proposal issued by the Board on March 20, 2002, Liberty Consulting Group, was hired by the Board to conduct a comprehensive audit of the four electric utilities competitive service offerings. The general purpose of the independent consultants was to conduct audits of the competitive business segments of all New Jersey electric and gas utilities for compliance with the Board’s affiliate standards regulations.

Following the release of the draft audit reports, the four electric utilities filed comments with the Board in March, 2003. In June, 2003, the Ratepayer Advocate filed response comments and recommended additional changes to the audit reports. Subsequently, the utilities submitted response comments to our recommendations. Final decision on the matters were pending at the Board.

After two years of the matters being dormant, the Board issued an order on November, 2005 directing the utilities to prepare and file updates to the original

comments by November 30, 2005, and reply comments due from interested parties fifteen days from the filings. Two of the four utilities provided comments while the remaining utilities requested extensions of time. The Board granted the extensions and comments from these utilities were due on December 15 and responses were due on December 30, 2005.

## **D. NATURAL GAS MATTERS**

### **2005 NATURAL GAS MAJOR CASE OVERVIEW**

Rising natural gas prices continued to cause concern throughout 2005 due to market volatility and recurring natural disasters. Specifically, Hurricanes Katrina and Rita caused pervasive damage to the nation's gas production and transport infrastructure resulting in gas prices peaking at an unprecedented average \$15 per Million British Thermal Units (MBTU). As a result, the Energy Information Agency (EIA) of the federal Department of Energy predicted that residential home heating costs would increase about 33% for the 2005-2006 heating season (November to March). To keep pace with the rising costs of natural gas, the local distribution companies (PSE&G, New Jersey Natural Gas, South Jersey Gas and Elizabethtown Gas), filed for emergent relief before the New Jersey Board of Public Utilities to increase their respective basic gas supply service (BGSS) charges. A more detailed discussion of individual BGSS rates for the respective gas distribution companies follows in this report.

In response to the impact on ratepayers of these severe increases in residential heating costs, Acting Governor Richard J. Codey announced on January 3, 2006 that the State's Division of Taxation would forward about \$2.52 million from a special utility trust fund to NJ SHARES, a non-profit organization that provides energy assistance to eligible ratepayers. Funded through utility escheat accounts, NJ SHARES is also supplemented by donations from companies and individuals. At the federal level, Congress announced the release of \$100 million in emergency funds for the Low Income Home Energy Assistance Program (LIHEAP). Congress has also appropriated \$2.1 billion in funding for LIHEAP for fiscal year 2006. Unfortunately, despite the sharp increases in home heating costs, Congress did not increase funding for LIHEAP above the level previously established for fiscal year 2005. Eligibility for LIHEAP or NJ SHARES is discussed in detail in the Ratepayer Advocate's "Consumer Assistance Handbook" available on the Ratepayer Advocate's website [www.rpa.state.nj.us](http://www.rpa.state.nj.us) and on request from the Division.

### **SMART GROWTH / TARGETED REVITALIZATION INFRASTRUCTURE PROGRAMS (TRIP), BPU DOCKET NO. AX03110973**

In his January 2003, "State of the State" address to the New Jersey Legislature then Governor McGreevey emphasized the Administration's commitment to containing overdevelopment of suburban and open areas, commonly referred to as "sprawl". The Department of Environmental Protection (DEP) and the State Planning Commission jointly developed the Blueprint for Intelligent Growth Map (the BIG Map) so that real estate developers and municipalities would be able to consider the control of sprawl and direct reinvestment to urban areas in connection with the State Development and Redevelopment Plan.

On January 31, 2002 the Governor signed into law *Executive Order Number 4*, which mandated that all State Agencies include the principles of 'smart growth' and the State Plan into their regulations and policies. On October 25, 2002, *Executive Order Number 38* was issued which defined the goals of the smart growth plan to specifically target the state's urban centers for redevelopment. The Office of Smart Growth was created within the Department of Community Affairs (DCA) to coordinate such efforts.

To implement this initiative, on April 15, 2003 the Board met with the Ratepayer Advocate and utility representatives to develop a Smart Growth infrastructure rulemaking draft. The Board suggested a two-phase approach to promote Smart Growth for public utilities including, initially, the publication of a rule which governs extensions and expansions of service within a utility's territory through "disincentives" to develop infrastructures in non-growth designated areas. Phase Two proposes the promotion of positive incentives for growth in State-designated areas.

On January 20, 2004, the Board published for comment in the *New Jersey Register* proposed amendments to existing rules for main extensions and to promote Smart Growth. The Ratepayer Advocate submitted its comments on March 19, 2004 and participated in stakeholder meetings held between June and July 2004. On November 9, 2004, the Board accepted the final rules for Utility Main Extensions which were published in the *New Jersey Register* on December 20, 2004 for implementation.

Pursuant to the newly promulgated main extension rules, New Jersey Natural Gas (NJNG) filed a petition before the Board, BPU#GR05080717, on August 17, 2005 for a pilot project to upgrade the cast iron mains in the waterfront district of Asbury Park. NJNG estimated that replacing the cast iron mains with high-pressure plastic technology will cost about \$875,000 to complete. As of December, 2005, the Ratepayer Advocate issued discovery and is evaluating the impact of this application on ratepayers.

## **THE BASIC GAS SUPPLY SERVICE (BGSS) PRICING PROCEEDINGS**

Pursuant to EDECA, *N.J.S.A. 48:3-58*, the Board was required to decide by January 1, 2002 whether to make Basic Gas Supply Service (BGSS) available on a competitive basis. Traditionally, BGSS had been fully regulated, non-competitive service. The Board established a working group to consider major issues affecting this issue in its January 17, 2002 Order. The Board initially decided that there was no reason why BGSS could not be provided on a competitive basis. However, several major policy issues, including pricing structure and gas supply reliability, needed to be investigated further before the Board could determine the proper structure for BGSS on a long-term basis. The Board also directed its staff to convene a Gas Policy Group including Board Staff, the Ratepayer Advocate, New Jersey gas utilities and other interested entities including suppliers. The parties met and several proposals submitted for review. On December 13, 2002 the parties submitted a joint settlement to

the Board (BGSS Proposal). By Order dated Jan. 6, 2003 in Docket No. GX01050304, the Board approved the following BGSS pricing methodology.

- **Price Structure**

The approved price structure provides for Monthly Pricing and Periodic Pricing. Monthly BGSS pricing applies to commercial and industrial (C&I) customers. (All Public Service C&I customers were already on monthly pricing). This price structure also applies to Elizabethtown, New Jersey Natural Gas and South Jersey Gas' larger commercial customers. Customers on Monthly BGSS Pricing have their rates adjusted each month based on the New York Mercantile Exchange (NYMEX) price for that month.

- The Periodic BGSS price structure applies to residential and small C&I customers not included in monthly pricing. Periodic pricing, also based on the NYMEX price, permits three price adjustments a year. The companies must file a petition by June 1 each year, with notice and hearing, subject to Board approval, with new rates to be effective on October 1. Two additional limited self-implementing rate adjustments of up to 5% each are permitted each year upon notice to the Board and the Ratepayer Advocate of the estimated changes. By November 1 and January 1 of each year, the Gas Distribution Companies (GDCs) are to provide notice of the increases to become effective on Dec. 1 and Feb. 1, respectively. These rate adjustments are provisional subject to true-up and imposition of interest in the companies' annual filings.
- The GDCs are permitted to decrease rates at any time with two weeks' notice to the Board and the Ratepayer Advocate. Interest on over-recoveries shall be credited to the benefit of ratepayers; there will be no interest on under-recoveries. Budget payment plans will remain available.

- **Minimum Filing Requirements**

The GDCs make their annual BGSS filings by June 1 of each year, with periodic notices due by November 1 and January 1 for implementation of increases on December 1 and February 1, respectively. The filings must contain, but not be limited to:

- A reconciliation of actual versus estimated costs and revenues from the last Board-approved rate change for commodity, storage and interstate transportation costs, including the costs and results of any supplies set by hedges;
- Projected rates supported by projected volumes, revenues, and commodity, transportation, storage and transaction costs, including the cost of supplies set by hedges;
- Deferred balances and the time-frame over which they are proposed to be collected or returned;

- A written explanation of the circumstances that caused the deferred balance; and
- A written explanation of any significant activities or trends which may affect costs for the prospective period.

### **A Summary of BGSS Filings in 2005**

As required by the Board, the four GDCs filed their BGSS petitions for recovery of gas costs from 2004- 2005 and projected costs between 2005 - 2006:

- Public Service Electric & Gas (PSE&G) filed its petition, Docket No GR05050470, on May 27, 2005. The company requested an increase in its BGSS rate from \$0.7477 per therm to \$0.8652 per therm, or an increase of 10.6%. The company, Board Staff and the Ratepayer Advocate executed a stipulation in August 2005 which the Board adopted for provisional rates, subject to refund, in its Order dated August 19, 2005, effective September 1.
- New Jersey Natural Gas (NJNG) filed its petition, Docket No. GR05060488, on June 1, 2005. NJNG requested an increase in its BGSS rate from \$0.8921 per therm to \$0.9461 per therm, or an increase of 4.2%. The company, Board Staff and the Ratepayer Advocate executed a stipulation in August 2004 which the Board approved for provisional rates, subject to refund, in its Order dated August 19, 2005, effective September 1.
- South Jersey Gas (SJG) filed its petition, Docket No. GR05060496, on June 3, 2005. The company requested an increase in its BGSS rate from \$0.8707 per therm to \$0.9295 per therm, or an increase of 4.4%. SJG, Board Staff and the Ratepayer Advocate entered into a stipulation in August 2005 which the Board approved for provisional rates, subject to refund, in its Order dated August 19, 2005, effective September 1.
- Elizabethtown Gas (E'Town) filed its petition, Docket No. GR05060494, on June 1, 2005. The company requested an increase from \$0.8369 per therm to \$0.8724 per therm, or an increase of 2.8%. The company, Board Staff and the Ratepayer Advocate executed a stipulation in August 2005 which the Board adopted for provisional rates, subject to refund, in its Order dated August 19, 2005, effective September 1.

In September 2005, the Gulf Coast region of the nation was severely damaged by Hurricanes Katrina and Rita. Regional gas production and supply infrastructure (i.e., exploration rigs, pipelines and trading hubs) were significantly destroyed or left inoperable. The commodities market reacted accordingly and natural gas prices soared

to record levels of about \$15/Mmbtu. Even before the hurricanes, natural gas prices had been steadily rising over the summer because warmer than normal weather caused increased demand for gas by electric generation plants to operate air conditioners.

As a result of the unforeseeable impact of the hurricanes on natural gas pricing, on November 10, 2005, the four GDCs filed emergent motions for rate relief before the Board. Each petition filed by the GDCs cited to drastically increased gas costs and significant underrecoveries for the following year if immediate rate relief was not granted. The Ratepayer Advocate participated in meetings with the companies and Board Staff to evaluate the requested rate increases which ranged between 15 to 30%. Public hearings were held throughout the state in the respective service territories of the GDCs, attended by the Ratepayer Advocate. With notice of a Special Board Meeting, on December 14, 2005, the BPU ordered that the interim BGSS rates for the respective GDCs would become effective, subject to refund and any evidentiary hearings, as of December 15, 2005 as follows:

**Provisional BGSS Rates as of December 15, 2005**

	New Rate Per therm	% Increase	Monthly bill increase	Avg. monthly bill (using 100 therms)
PSE&G	\$1.0636	15.4%	\$19.84	\$148.96
NUI/E'Town	\$1.1690	22.9%	\$29.66	\$159.11
NJNG	\$1.2597	23.2%	\$31.36	\$166.29
SJG	\$1.2664	24.3%	\$33.69	\$172.30

In addition, the Board ordered each GDC's hedging practices to be examined in a future generic proceeding by an independent consultant to ensure that the best practices are being utilized given market volatility. The Board also suspended any self-implementing rate increases in December or February given the extraordinary BGSS increases already granted. The Ratepayer Advocate will continue to participate actively in the various BGSS dockets to protect the interests of ratepayers.

**I/M/O PETITION OF PUBLIC SERVICE GAS & ELECTRIC COMPANY(PSE&G) TO INCREASE ITS GAS BASE RATES AND GAS DEPRECIATION RATES, BPU DOCKET NO. GR05100845**

On September 30, 2005, PSE&G filed its petition for a \$132.8 million increase its gas base rates for gas distribution service. The requested increase represents a 3.78% in the company's overall rate structure. The rate impact on residential customers would be about 6.09%. The petition further requests changes to depreciation rates for the

company's natural gas property and also requested significant tariff changes, which include: the establishment of a new rate schedule called Fixed Price Gas service, or FPG; and changes in the Third-Party Supplier Requirements section affecting gas nomination procedures, credit requirements and cash-out procedures. The Ratepayer Advocate is currently analyzing the petition for its impact on ratepayers in conjunction with the pending PSEG/Exelon merger filing. By mutual agreement, among Board Staff, the company and Ratepayer Advocate, this petition will not be transmitted to the Office of Administrative Law (OAL) for full evidentiary hearings until after January 20, 2006.

**I/M/O THE FOCUSED AUDIT/MANAGEMENT AUDIT OF SOUTH JERSEY GAS COMPANY, SOUTH JERSEY INDUSTRIES AND ITS AFFILIATES, BPU DOCKET NO. AX04040277**

At its July 7, 2004 agenda meeting, the BPU authorized the issuance of RFPs for a focused audit of South Jersey Gas Company. The audit was scheduled for an initial focused phase: gas procurement and risk management. The second phase would be a management audit. The RFP was posted on the Board's website for prospective bidders. On October 1, 2004, the Ratepayer Advocate attended a meeting with representatives of Board Staff and the successful bidder Liberty Consulting Group. At this meeting the Ratepayer Advocate presented the auditors with issues of concern to the public interest. A report on the first phase of the audit was originally targeted for January 2005. As of December, 2005, the Board had not released a public version of the results of the audit. The Ratepayer Advocate will continue to closely monitor this matter and will file its comments on the final audit report when released by the Board.

**THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF INCREASED BASE TARIFF RATES AND CHARGES FOR GAS SERVICE AND OTHER TARIFF REVISIONS, BPU Docket NO. GR03080683**

**THE PETITION OF SOUTH JERSEY GAS COMPANY TO IMPLEMENT CERTAIN PROVISIONS OF ITS RATE UNBUNDLING STIPULATION, BPU Docket NO. GE00050295**

On August 29, 2003, South Jersey Gas Company filed a petition to increase its base rates for natural gas distribution service. The Company sought a rate increase of \$42.4 million, or 8.7% overall and applied for a change in the company's depreciation rates. This proposed rate increase was based upon reportedly increasing operating costs.

A significant major issue arising from the application the company's request for approval of a mechanism to automatically increase rates based on major capital improvements expected to take place after the conclusion of the proceeding. This

proposal is a departure from standard utility ratemaking principles which permit utilities to recover the costs of capital additions only if they are in service at the time a base rate increase application is considered.

The Company also proposed several changes in its tariffs for natural gas service, including dividing its General Service customer class into classes based on level of usage, creating two new Electric Generation Service rates; extending its existing Firm Electric Service rate, currently provided to Atlantic City Electric Company (ACE), to purchasers of ACE's electric generating units; and expanding the number of customers subject to monthly BGSS pricing.

At the suggestion of the Ratepayer Advocate, the base rate proceeding was consolidated with a proposal, filed by the Company in 2000, to implement a Capacity Allocation Charge (CAC). This proposal was filed in accordance with the Stipulation resolving the Company's rate unbundling proceeding, requiring the Company to propose a rate mechanism to charge its transportation customers (i.e., customers who purchase their natural gas commodity from non-utility suppliers) for the costs of providing backup service to these customers. These costs are currently absorbed by the Company's BGSS customers, who purchase their gas commodity from the Company.

Discovery was completed in January 2004. Expert testimony was filed by the Ratepayer Advocate in February 2004. On June 30, 2004, a partial settlement was reached by the parties which provided for a \$20 million base rate increase, rather than SJG's request for \$46.5 million. The stipulated base rate increase will be offset by \$38.9 million in rate decreases through various cost recovery clauses within the Company's tariffs. A typical residential heating customer using 200 therms of gas per month should receive about a 5% decrease.

The issues concerning cost allocation of interstate gas transportation and storage are to be resolved in a "Phase II" proceeding of the rate case, consolidated with the 2000 docket regarding capacity allocation charges. The ALJ accepted the settlement in his July 6, 2004 Initial Decision. However, ALJ Miller erroneously considered the partial settlement a total resolution of the issues in the base rate proceeding. The Board adopted the partial stipulation and Initial Decision in its July 8, 2004 order. To clarify the procedural error, the Ratepayer Advocate filed a Motion for Reconsideration on July 23, 2004.

The parties executed a Memorandum of Understanding clarifying the misrepresentation of the parties' intent concerning consolidation of the remaining base rate issues with the capacity allocation proceeding. The Company's 2004 – 2005 BGSS filing was also to be consolidated. In its September 14, 2004 Order, the Board directed the consolidation of the remaining outstanding issues in the base rate case including the capacity allocation filing, and the 2004-2005 BGSS matter to be transmitted to the Office of Administrative Law for evidentiary hearings. On October 19, 2004, counsel for all parties jointly submitted a procedural schedule to ALJ Miller for the consolidated

proceeding. Hearings were scheduled for May and June 2005; however, the company needed additional time to complete discovery responses and hearings were postponed.

Since then, many settlement meetings have taken place seeking a “global resolution” of all outstanding contested issues with the company. As of December, 2005 these settlement meetings continue.

**I/M/O PETITION OF SOUTH JERSEY GAS COMPANY (SJG) AND NEW JERSEY NATURAL GAS (NJNG) FOR AUTHORIZATION TO IMPLEMENT A CONSERVATION AND USAGE ADJUSTMENT CLAUSE; BPU DOCKET NO. GR05121019 AND GR05121020**

On December 5, 2005, SJG and NJNG filed separate but interrelated petitions before the Board to implement a pilot program to encourage ratepayers to conserve energy. Named a “Conservation and Usage Adjustment” (CUA) clause, the companies asserted that such a mechanism is necessary to enable company employees to aggressively promote conservation versus gas sales and thereby change corporate culture. The proposed adjustment mechanism would be either an extension or replacement of the companies’ respective weatherization or temperature adjustment clauses, which currently serve to “normalize” the revenue requirements for the utilities. Additionally, the companies’ respective CUA clauses would allow recovery of lost revenues as a result of conservation since reduction in energy usage affects commodity sales. However, each utility would continue to charge the same delivery costs to be kept “whole” concerning revenue levels. The Ratepayer Advocate is reviewing these unprecedented matters and will carefully analyze the rate impacts on the consumers affected.

**I/M/O THE NEW JERSEY NATURAL GAS COMPANY (NJNG) LONG BRANCH MANUFACTURED GAS PLANT (MGP)-SITE LAWSUIT; SUPERIOR COURT DOCKET NOS. MON-L-3597-03, MASS TORT CODE NO. 268, DOCKET NO. BER-L-5847-04 MT**

New Jersey Natural Gas Company (NJNG) is responsible for remediating three former contaminated manufactured gas plant sites. One site in Long Branch is the subject of several lawsuits in which approximately 502 plaintiffs are suing NJNG for damages resulting from the contaminated site. The plaintiffs allege that, as a result of the Company’s action or inaction on the Long Branch site, they were subjected to noxious odors and dangerous chemicals, became ill, and were forced to move from their homes. This matter, filed on July 1, 2003, is pending before the Superior Court of New Jersey, Law Division, Bergen County and is designated as a Mass Tort action. Jersey Central Power & Light Company (JCP&L) is also named as a defendant.

The facts indicate that NJNG gave the City of Long Branch a parcel of land for a park (Jerry Morgan Park), located next to Seaview Manor, a public housing project. When the Long Branch MGP remediation investigation began, it was discovered that the park site was contaminated and that the contamination had migrated onto the Seaview Manor property. NJNG reclaimed the park site as part of the remediation effort and also worked with the Long Branch Housing Authority and the City of Long Branch to remediate the Seaview Manor site. A number of families were relocated and the site is being cleaned. Current and former residents of the property felt that they had been harmed by their proximity to the MGP site and filed suit.

The NJ Dept. of Health and Senior Services issued a draft report on indoor air related to the plant site, finding that the Seaview Manor residents' levels of exposure to contaminants were not likely to result in health problems. However, state and federal agencies are conducting further tests and continue to participate in site review. As of December, 2005, discovery and depositions in the Superior Court proceeding continue. The Ratepayer Advocate is closely monitoring this litigation.

### **Gas Meter Protection Working Group, BPU Docket No. Pending**

In February 2003, a Mount Laurel resident's car slid on an icy driveway and struck a natural gas meter. The resulting explosion destroyed three homes and damaged as many as twenty-four homes. A lawsuit, *Barkers vs. PSEG*, Docket No. GO03080640, was subsequently filed, alleging that Public Service Electric & Gas was negligent in locating the meters too close to driveways, parking areas and garage door openings. Although the lawsuit was settled, the accident raised the issue of where these meters should be located and how the public should be protected.

In response, the Board of Public Utilities planned to propose new rules governing the protection of natural gas meters located near vehicular traffic in both residential and nonresidential areas. The Board convened a stakeholders meeting on October 8, 2004 to discuss these issues. The attendees included utility representatives, Board staff, the Ratepayer Advocate and a representative from the Department of Community Affairs.

The group discussed which meters should be regulated, excess flow valves and specifications for protective structures. Although the discussion was very thorough, it did not consider retrofitting existing meters. The facilitator requested email comments, which Ratepayer Advocate sent on November 8, 2004. Comments were submitted by NJNG, ETG, PSE&G and SJG.

At the December 2, 2005 meeting, the Board approved proposed rules in which all gas companies must survey their high-pressure meter sets within six months of the final rules and report to Board Staff their remediation plans for questionable meter placements. The proposed rules are planned to be published in the January 17, 2006 New Jersey Register, with comments due within 60 days. The Ratepayer Advocate will closely monitor this docket and file comments upon publication of the draft rules.

**I/M/O THE PETITION OF SOUTH JERSEY GAS (SJG), NEW JERSEY NATURAL GAS (NJNG), PUBLIC SERVICE ELECTRIC & GAS (PSE&G) AND ELIZABETHTOWN GAS (E'TOWN) TO IMPLEMENT A PIPELINE INTEGRITY MANAGEMENT TRACKER; BPU DOCKET NO. GO05100879**

On December 17, 2002, Congress passed the Pipeline Safety Improvement Act which established that the Department of Transportation (DOT) and its Office of Pipeline Safety (OPS) would issue new regulations to be implemented for compliance by local utilities concerning gas pipeline integrity and safety. The regulations require that each gas utility develop a 'customized' pipeline safety program, which would require extensive evaluation, repair of any leaks and validation of the integrity of transmission pipelines. Specifically, the regulations target gas transmission lines in "high consequence areas" (HCAs) - locations on a pipeline that would cause the most harm to the surrounding area and environment if a leak or rupture occurred. The OPS's compliance goals are reduced accidents, increased ability to site new pipelines, reduced pipeline shut-downs and increased safety.

The four GDCs each developed individual "pipeline integrity management plans" which would identify the transmissions lines within their respective HCAs. As a mechanism to recover the incremental costs incurred by the utilities to comply with the regulations, the companies jointly filed a petition before the BPU on October 11, 2005 to implement a Pipeline Integrity Management Tracker (PIMT). The GDCs argue that establishing the PIMT will permit more efficient recovery of incurred costs outside of a traditional base rate case, given that such costs are not currently recovered in rates. The GDCs further argued that total costs to comply with the DOT regulations are unknowable at this time due to assessment results and repairs. The Ratepayer Advocate has met with the four GDCs and is closely analyzing the petition for the rate impact upon consumers. Discovery and further settlement discussions will continue in 2006.

## **IV. TELECOMMUNICATIONS AND CABLE TELEVISION PROCEEDINGS AND DEVELOPMENTS**

### **INTRODUCTION**

By the end of 2005, the hope that New Jersey would be open for residential and small business telecommunications competition had grown dim. The Federal Communications Commission (FCC) and Department of Justice (DOJ) approval of the mergers of SBC/AT&T and Verizon/MCI has all but eliminated any hope for mass market competition. The federal preemption trend also picked up momentum in 2005 as several FCC decisions further undermined the regulatory role of the states.

The FCC's reclassification of DSL from a telecommunications service to an information service is an example of federal preemption of states' authority. In the past the FCC required facilities-based providers to offer the wireline broadband transmission component separately from their Internet service as a stand-alone service, and classified that component as a telecommunications service. In its Order released September 23, 2005 the FCC determined that wireline broadband Internet access service is an information service functionally integrated with a telecommunications component.

The reclassification of DSL removes it from the purview of state regulation because DSL providers will no longer be subject to unbundling and tariffing requirements. The reclassification of DSL may also have tax implications for states who may no longer be permitted to tax DSL services, resulting in a reduction of their revenues. This decision will also enable DSL providers to challenge state commissions who require these providers to offer naked DSL to their customers. They will essentially argue that these naked DSL requirements constitute state regulation of broadband or Internet access and clash with federal preemption. This decision also has implications for Universal Service and consumer protections. However the FCC has ordered that DSL providers must continue to contribute to Universal Service Fund (USF) based on their current levels of reported revenues for a 270 day period.

Further erosion of states' rights took place when the FCC released its Truth-in-Billing Order addressing line items on consumers' wireless bills. The FCC's decision in part held that state regulations requiring or prohibiting the use of line items for wireless bills constitute rate regulations which are preempted. While Congress had specifically prohibited states from regulating wireless "rates", it had given states the ability to regulate "other terms and conditions." These other terms and conditions include matters relating to customer billing information and practices. As stated by Commissioner Copps in his statement in response to the FCC decision, "state efforts to curtail or require line item explanations are not exercises in ratemaking." The decision is currently being appealed in the 11<sup>th</sup> Circuit and the FCC has sought dismissal of the appeal on the basis of a lack of standing.

Most recently, the FCC's Consumer & Governmental Affairs Bureau announced that it is reopening a public comment period on petitions for declaratory rulings calling for federal preemption of state Do Not Call legislation. Petitions have been filed with respect to Do Not Call legislation in New Jersey, Florida, Indiana, and Wisconsin. The Petitioners comprise 33 organizations, including trade associations, individual companies and non-profit groups with interstate telemarketing activities. These groups complain that states have adopted and proposed "divergent rules applicable to interstate telemarketing that undermine the desired uniform federal regulatory regime," citing dozens of existing and proposed state laws that differ from the Telephone and Consumer Protection Act rules.

The groups want the FCC to resolve the situation by revisiting and reaffirming previous determinations on the "interplay between federal and state authority" over interstate telemarketing activities and the FCC's exclusive authority. In the past, the FCC stated that federal law permits states to adopt intrastate telemarketing requirements that are more restrictive than the federal do-no-call rules, while state regulations on interstate telemarketing calls may be subject to preemption. The FCC has indicated that its ability to preempt the state laws may be limited or ambiguous, and it would consider any alleged conflicts on a case-by-case basis.

Furthermore the FCC's classification of Vonage's Voice over Internet Protocol ("VoIP") service as an interstate service not subject to state regulation has many states very concerned. They fear that the inability to tax VoIP services and providers may lead to a reduction in revenues earmarked for services such as 911, universal service, and telephone access for the handicapped, all of which are funded by the states. States further argue that they are not proposing to impose new telecommunications taxes on VoIP services, they are only interested in preserving the taxes and fees they are currently collecting from telephone providers who rely on the public switched telephone network ("PSTN") to provide their services. State commissions who routinely assess utility companies are also concerned that as deregulation of telecommunications continues, telecommunication companies may seek to reduce regulatory assessments that in most states support the utility commissions' operations.

Details of some of the more important federal and state proceedings that affect telecommunications services in New Jersey follow. These include wireless services, internet access and the costs of premium cable television services. The Ratepayer Advocate's involvement in other related matters is also discussed below.

## **A. FCC DEVELOPMENTS IN 2005**

### **FCC REPORTS DATA ON LOCAL TELEPHONE COMPETITION**

On July 8, 2005 the Federal Communications Commission (FCC) released data on local telephone service competition in the United States. Twice a year, telecommunications carriers must report the number of lines in service and mobile

wireless telephone subscribership pursuant to FCC's local competition and broadband data gathering program.

Statistics reflect data as of December 31, 2004, filed by providers in the Commission's local competition and broadband data gathering program. For purposes of the report, carriers with at least 10,000 switched access lines, or at least 10,000 mobile wireless telephone service subscribers, in a state were required to file.

### **Summary Statistics**

- At the end of 2004, end-user customers obtained local telephone service by utilizing approximately 145.1 million incumbent local exchange carrier (ILEC) switched access lines, 32.9 million competitive local exchange carrier (CLEC) switched access lines, and 181.1 million mobile wireless telephone service subscriptions.
- Local telephone service by CLECs was provided over 3.7 million coaxial cable connections. These lines represent about 44% of the 8.5 million switched access lines that CLECs reported providing over their own local loop facilities.
- Nationwide, mobile wireless telephone subscribers increased 8% during the second half of 2004 from 167.3 million to 181.1 million. For the full twelve-month period ending December 31, 2004, mobile wireless subscribers increased by 15%.
- At least one CLEC was serving customers in 78% of the nation's zip codes at the end of 2004. About 97% of United States households resided in these zip codes. Moreover, multiple carriers reported providing local telephone service in the major population centers of the country.
- Total CLEC end-user switched access lines increased by 3% during the second half of 2004, from 32.0 million to 32.9 million lines.
- About 18.5% of the 177.9 million total end-user switched access lines (or 32.9 million lines) were reported by CLECs at the end of December 2004, compared to 17.8% (or 32.0 million lines) in June 2004.
- CLECs reported 19.8 million (or 15%) of the 132.1 million lines that served residential and small business end users and 13.1 million (or 29%) of the 45.9 million lines that served medium and large business, institutional, and government customers.
- CLECs reported providing about 26% of switched access lines over their own local loop facilities. To serve the remainder, CLECs resold the services of other carriers or used unbundled network element (UNE) loops that they leased from other carriers.
- ILECs reported providing about 3% fewer UNE loops with switching (referred to as the UNE-Platform) to unaffiliated carriers at the end of December 2004 than they reported six months earlier (16.5 million compared to 17.1 million) and also about 3% fewer UNE loops without switching (about 4.2 million).

This report can be downloaded from the **FCC-State Link** Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

## **FCC 2005 TELEPHONE SUBSCRIBERSHIP REPORT**

The Federal Communications Commission (FCC) released its latest report on telephone subscribership levels in the United States. The report presents subscribership statistics based on the Current Population Survey (CPS) conducted by the Census Bureau in July 2005. The report also shows subscribership levels by state, income level, race, age, household size, and employment status.

### **STATISTICAL SUMMARY**

In July 2005:

- The telephone subscribership penetration rate in the U.S. was 94.0%.
- The telephone penetration rate was 79.8% for households with annual incomes below \$5,000, while the rate for households with incomes between \$75,000 and \$99,999 was 98.5%.
- By state, the penetration rates ranged from a low of 87.4% in Arkansas to a high of 97.5% in North Dakota.
- Households headed by whites had a penetration rate of 94.7%, while those headed by blacks had a rate of 89.7% and those headed by Hispanics had a rate of 89.1%.
- By age, penetration rates ranged from 87.6% for households headed by a person under 25 to 95.8% for households headed by a person over 70.
- Households with one person had a penetration rate of 90.6%, compared to a rate of 95.3% for households with two to five persons.
- The penetration rate for unemployed adults was 93.0%, while the rate for employed adults was 95.3%.

This report can also be downloaded from the Wireline Competition Bureau Statistical Reports Internet site at <http://www.fcc.gov/wcb/stats>.

## **FCC REPORTS STATISTICS OF COMMUNICATIONS COMMON CARRIERS**

Each year since 1939, the FCC has published the *Statistics of Communications Common Carriers*, a reference work widely used by academics, consultants, and other researchers in the field of telecommunications. This report includes a wealth of data on telecommunications costs, revenues, prices, and usage.

To expedite release of the information, the FCC makes all of the data available electronically, before the report's formal publication in December 2005.

The electronic version of the publication is available to the public free of charge. The 160-page volume is divided into five sections:

- Part 1 contains general information on industry structure.
- Part 2 contains financial and operating data relating to telephone carriers.
- Part 3 contains data on international communications.

- Part 4 contains historical financial and operating statistics.
- Part 5 contains data on industry trends.

The publication also may be downloaded from the Wireline Competition Bureau's Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

## **FCC REPORTS DATA ON HIGH-SPEED SERVICES FOR INTERNET ACCESS**

On July 7, 2005 the Federal Communications Commission (FCC) released data on high-speed connections to the Internet in the United States. Twice a year, facilities-based broadband providers must report the number of high-speed connections in service pursuant to the FCC's local competition and broadband data gathering program.

For reporting purposes, **high-speed lines** are connections that deliver services at speeds exceeding 200 kilobits per second (kbps) in at least one direction, while **advanced services lines** are connections that deliver services at speeds exceeding 200 kbps in both directions.

For the purposes of the report, the FCC collected data from providers with at least 250 high-speed lines in a state. Statistics released reflect data as of December 31, 2004 filed by providers on FCC Form 477 in the Commission's local competition and broadband data gathering program.

### **1) High-Speed Lines**

- During the year 2004, high-speed lines serving residential, small business, larger business, and other subscribers increased by 34%, to 37.9 million lines. The increase was 17% during the second half of 2004, from 32.5 million to 37.9 million lines, compared to a 15% increase, from 28.2 million to 32.5 million lines, during the first half of the year.
- High-speed lines serving residential and small business subscribers increased by 36% during 2004, to 35.3 million lines. The increase was 17% during the second half of the year, from 30.1 million to 35.3 million lines, compared to a 16% increase, from 26.0 million to 30.1 million lines, during the first six months.
- During the year 2004, asymmetric digital subscriber line (ADSL) high-speed lines increased by 45%, to 13.8 million lines. They increased by 21% during the second half of 2004, from 11.4 million to 13.8 million lines, compared to a 20% increase, from 9.5 million to 11.4 million lines, during the preceding six months.
- High-speed coaxial cable connections (cable modem service) increased by 30% during 2004, to 21.4 million lines. They increased by 15% during the last

six months of 2004, from 18.6 million to 21.4 million lines, compared to a 13% increase in the first half of the year, from 16.4 million to 18.6 million lines.

- The remaining 2.7 million high-speed connections in service at the end of 2004 were satellite or terrestrial wireless connections, fiber or powerline connections, or wireline connections other than ADSL. During 2004, satellite or terrestrial wireless connections increased by 50%, to 0.5 million, and fiber or powerline connections increased by 16%, to 0.7 million.

## **2) Advanced Services Lines**

- Advanced services lines of all technology types increased by 42%, to 28.9 million lines, during the year 2004. They increased by 23% during the second half of 2004, from 23.5 million to 28.9 million lines, compared to a 15% increase during the first half of the year, from 20.3 million to 23.5 million lines.
- About 26.4 million of the 28.9 million advanced services lines served residential and small business subscribers.
- ADSL advanced services lines increased by 88% and cable modem advanced services lines increased by 36% during 2004. ADSL advanced services lines increased by 51% during the last six months of 2004, compared to a 19% increase for cable modem advanced services lines. During the first half of the year, ADSL advanced services lines increased by 24% and cable modem advanced services lines increased by 15%.

## **3) Geographic Coverage**

- At the end of 2004, the service providers that report to the Commission had at least one high-speed service subscriber in 95% of the nation's zip codes. FCC analysis indicates that 99% of the country's population lives in these zip codes.

This report can be downloaded from the **FCC-State Link** Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

## **FCC ADOPTS ANNUAL REPORT ON STATE OF COMPETITION IN THE WIRELESS INDUSTRY**

On September 30, 2005 the Federal Communications Commission (FCC) adopted its Tenth Annual Report to Congress on the state of competition in the mobile telephone – or Commercial Mobile Radio Services (CMRS) – industry. This report examines the conditions prevailing in the CMRS marketplace as of the end of 2004 and

the first half of 2005.<sup>4</sup> The FCC concluded that there continues to be effective competition in the CMRS marketplace based on its analysis of several measures of competition, including: the number of competing carriers providing service in an area, the extent of service deployment, prices, technological and product innovations, subscriber growth, usage patterns, churn, and investment. Although consolidation during the period covered by the report has reduced the number of nationwide mobile telephone carriers, the FCC found that none of the remaining carriers has a dominant share of the market and that the market continues to behave and perform in a competitive manner.

The report reviews competitive market conditions by grouping indicators of the status of competition into four categories: (1) market structure, (2) carrier conduct, (3) consumer behavior, and (4) market performance. The report also examines a number of related topics, including urban-rural and international comparisons.

Regarding market structure, the FCC report cites several indicators to support its conclusion that there is effective competition in the CMRS marketplace. For instance, the report notes that 97 percent of the total U.S. population lives in counties with three or more different operators providing mobile telephone service, the same level as in the previous year, and up from 88 percent in 2000, the first year for which these statistics were kept. Furthermore, 93 percent of the U.S. population lives in counties with four or more different mobile telephone operators, and 87 percent lives in counties with five or more; both figures are roughly the same as in the previous year.

The report's analysis of carrier conduct shows that competitive pressures continue to incite carriers to introduce innovative pricing plans and service offerings, and to respond to the pricing and service innovations offered by rival carriers. Examples of price rivalry over the past year include the proliferation of "family plan" offerings, the introduction of a variety of new prepaid plans, and the launch of entirely new brands targeted at previously-untapped segments of the market. One result of these offerings has been a significant increase in the percentage of wireless users who subscribe to prepaid plans; this figure rose from 6 percent in 2003 to between 8 and 11 percent in 2004.

In addition, non-price rivalry among wireless carriers is illustrated by their continued deployment of next-generation networks and their pursuit of product differentiation based on attributes such as network coverage and service quality. Over the past year, several wireless carriers deployed CDMA 1xEV-DO networks, which allow typical download speeds of 400-700 kilobits per second, in markets across the country. Many have announced plans to launch or expand these networks, as well as UMTS (Universal Mobile Telecommunications System, or Wideband CDMA) with HSDPA (High Speed Data Packet Access) technology, in the future.

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<sup>4</sup> Consequently, while the Report acknowledges that the Sprint-Nextel and ALLTEL-Western Wireless mergers have occurred, these transactions concluded too recently for their effects to be reflected in the indicators of market structure, carrier conduct, and market performance portions of the Report.

Consumer behavior metrics provide further evidence that mobile telephone carriers have an incentive to compete on price and quality of service. For example, churn rates, or the percentage of customers who switch providers each month, averaged 1.5 to 3.0 percent per month during 2004, a slight decline from the previous year. The implementation of local number portability (LNP) beginning in November 2003 has lowered consumer switching costs by enabling wireless subscribers to keep their phone numbers when changing wireless providers. While the advent of LNP has not resulted in an increase in churn, evidence continues to suggest that LNP has put added pressure on carriers to improve service quality in order to retain existing customers and to avoid increased churn.

Indicators of market performance show that competition continues to afford many significant benefits to consumers. During 2004, the number of mobile telephone subscribers in the United States rose from 160.6 million to 184.7 million, increasing the nationwide penetration rate to approximately 62 percent at the end of 2004. The amount of time mobile subscribers spend talking on their mobile phones has also increased, with the average minutes of use per subscriber per month rising to more than 580 in the second half of 2004, up from 507 in 2003 and 427 in 2002. Two indicators of mobile pricing – revenue per minute (RPM) and the cellular Consumer Price Index (Cellular CPI) – showed a continued decline in the price of mobile telephone service during 2004. The RPM, which can be used to measure the per-minute price of mobile telephone service, fell 12 percent during 2004, and the Cellular CPI declined 1.0 percent during 2004 while the overall CPI increased 2.7 percent. Finally, the volume of text messaging traffic grew to 4.7 billion messages per month in December 2004, more than double the 2 billion messages per month reported in December 2003.

See *Tenth Report* (FCC 05-173) which is available on the FCC web sit at [www.fcc.gov](http://www.fcc.gov).

## **FCC RELEASES STUDY ON TELEPHONE TRENDS**

On June 21, 2005 the Federal Communications Commission (FCC) released its *Trends in Telephone Service* report, which summarizes in one reference source information published in various reports over the course of the past year. The report provides answers to some of the most frequently asked questions about the telephone industry coming from consumers, members of Congress, other government agencies, telecommunications carriers, and members of the business and academic communities.

This report can be downloaded from the **FCC-State Link** Internet site at: [www.fcc.gov/wcb/iatd/trends.html](http://www.fcc.gov/wcb/iatd/trends.html).

## **FCC REPORTS ON TELEPHONE RATES AND HOUSEHOLD EXPENDITURES**

On May 25, 2005 the Federal Communications Commission (FCC) released its annual report, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*. The report contains information on local and long distance rates paid by residential and business consumers, household expenditures, and price indices. Highlights include the following:

### **Toll Service Rates**

- During 2004, the consumer price index for interstate toll service fell 8.7% and the consumer price index for intrastate toll service fell 6.6%, while the overall consumer price index rose 3.3%.
- The average revenue per minute of long distance calling, which reflects rates paid by residential and business consumers, has fallen from 15 cents in 1992, when discount and promotional long distance plans were introduced, to 7 cents in 2003, a decrease of 53%.

### **Rates for Local Service**

- The average rate paid by residential customers for unlimited touch-tone calling was \$24.31 in 2004, compared to \$24.52 in 2003, a decrease of 0.9%. Connection charges for residential customers rose from \$42.54 to \$42.59 during the same period, an increase of 0.1%.
- The Lifeline universal service program subsidizes the monthly phone charges for low-income households, while the Link-Up program subsidizes charges for the connection of a phone line. Based on a sample of cities, Lifeline conferred an average monthly benefit of \$13.82, and Link-Up conferred an average benefit of \$28.51.
- The average rate paid by business customers for a single phone line was \$43.75 in 2004, compared to \$41.96 in 2003, an increase of 4.3%. Connection charges for single-line business customers fell from \$74.18 in 2003 to \$74.17 in 2004, a decrease of 0.01%.

### **Consumer Expenditures for Telephone Service**

- According to Bureau of Labor Statistics (BLS) surveys, telephone service continues to comprise approximately 2% of household expenditures. Monthly expenditures for telephone service by households with telephone service fell from \$79.75 in 2002 to \$79.67 in 2003, a decrease of 0.1%.

- Also, according to BLS surveys, urban households continue to spend more on telephone service than rural households. During 2003, annual expenditures for urban households were \$967, as compared to \$875 for rural households.
- According to data for the year 2003 provided by TNS Telecoms, households annually spent \$441 on local service (compared to \$436 in 2002), \$122 on long distance service (compared to \$149 in 2002), and \$492 on wireless service (compared to \$417 in 2002), for a total annual expenditure of \$1,055 on telephone services (compared to \$1,001 in 2002).

The report can be downloaded from the **FCC-State Link** Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

## **FCC ORDERS E911 SERVICE FOR VoIP CONSUMERS**

On May 19, 2005 the Federal Communications Commission took steps to protect consumers by requiring that certain providers of voice over Internet protocol (VoIP) phone service supply enhanced 911 (E911) emergency calling capabilities to their customers as a mandatory feature of the service.

The IP-enabled services marketplace is the latest new frontier of the nation's communications landscape, and the Commission is committed to allowing IP-enabled services to evolve without undue regulation. But it says E911 service is critical to our nation's ability to respond to a host of crises. The Commission hoped to minimize the likelihood of situations like recent incidents in which users of interconnected VoIP dialed 911 but were not able to reach emergency operators. The FCC Order represents an approach that it claims takes into consideration the expectations of consumers, the need to strengthen Americans' ability to access public safety in times of crisis, and the needs of entities offering these innovative services.

The Order places obligations on interconnected VoIP service providers, similar to traditional telephone providers, in that they enable customers to receive calls from and terminate calls to the public switched telephone network (PSTN). It does not place obligations on other IP-based service providers, such as those that provide instant messaging or Internet gaming services, because although these services may contain a voice component, customers of these services cannot receive calls from and place calls to the PSTN. This Order reaches the following conclusions:

- Interconnected VoIP providers must deliver all 911 calls to the customer's local emergency operator. This must be a standard, rather than optional, feature of the service.
- Interconnected VoIP providers must provide emergency operators with the call back number and location information of their customers (i.e., E911) where the emergency operator is capable of receiving it. Although the

customer must provide the location information, the VoIP provider must provide customers a means of updating this information, whether at home or away from home.

- By the effective date, interconnected VoIP providers must inform their customers, both new and existing, of the E911 capabilities and limitations of their service.
- The incumbent LECs are required to provide access to their E911 networks to any requesting telecommunications carrier. They must continue to provide access to trunks, selective routers, and E911 databases to competing carriers. The Commission will closely monitor this obligation.

Interconnected VoIP providers must comply with these requirements, and submit to the Commission a letter detailing such compliance, no later than 120 days after the effective date of the Order.

## **FCC REPORTS TELEPHONE PENETRATION LEVEL BY INCOME**

On March 10, 2005 the Federal Communications Commission (FCC) released a report presenting data on telephone penetration levels on a state-by-state basis for various income categories. The report presents penetration statistics based on individual household data from the Current Population Survey (CPS) conducted by the Census Bureau in March 2004.

The report provides more detailed information on telephone penetration to complement the information available in *Telephone Subscribership in the United States*, which is published three times a year. Specifically, this report is designed to track the effects of federal and state Universal Service Fund Lifeline and Linkup support mechanisms that defray the cost of telephone service for low-income consumers.

### **Report Highlights**

- In March 2004, penetration among low-income households nationwide was 88.0%. This contrasts with an overall nationwide penetration rate of 94.2% in March 2004.
- Since 1985, when the Federal Communications Commission (Commission) first established Lifeline to help low-income households afford the monthly cost of telephone service, penetration rates among the lowest income households (under \$10,000 annual income in 1984 dollars) have grown from 80.0% to 88.0%.
- States that have taken full or nearly full advantage of federal universal service support for telephone service for low-income consumers saw an average growth in penetration for low-income households of 3.0% from March 1997 to March 2004. In

contrast, states that did not provide any lifeline support beyond the basic federal support saw an average decline in telephone penetration rates for low-income households between March 1997 and March 2004 of 2.1%.

- Penetration rates among low-income households ranged from a high of 94.6% in Connecticut to a low of 79.9% in Arkansas in March 2004.

This report can be downloaded from the FCC-State Link Internet site at <http://www.fcc.gov/wcb/iatd/stats.html>.

## **FCC RELEASES REPORT OF TELECOMMUNICATIONS INDUSTRY REVENUES**

On March 1, 2005 the Federal Communications Commission released its annual report providing a general overview of revenues in the U.S. telecommunications industry, entitled *Telecommunications Industry Revenues*.

According to the report, the industry in 2003 reported \$291 billion in revenues — a decrease of less than 1% from 2002's \$292 billion. The report also shows dramatic shifts in the way universal service support is funded, reflecting the changing level of revenues reported by various sectors of the industry.

Other findings include:

- Wireless industry revenues grew 10% during 2003, from \$82 billion to \$90 billion.
- Revenues of competitive local telephone companies increased 10% during 2003, from \$15.3 billion to \$16.9 billion. These revenues accounted for about 13% of the \$126 billion of local telephone service provider revenues.
- Total toll service revenues continued to decline during 2003 — from \$84 billion to \$77 billion.
- Revenues for incumbent local exchange carriers decreased to \$109 billion in 2003, down from \$115 billion, or 5% from the previous year.

The report, including spreadsheets containing the statistical tables and figures, can be downloaded from the **FCC-State Link** Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

## **FCC ISSUES 11<sup>TH</sup> ANNUAL ASSESSMENT OF COMPETITION IN DELIVERY OF VIDEO PROGRAMMING**

On February 4, 2005 the Federal Communications Commission (FCC) released its 11<sup>th</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*. The report examines the status of competition in the market for the delivery of video programming, changes that have occurred in the market over the past year, and factors that have facilitated or impeded competition among video programming providers.

The FCC report found that consumers today have viable choices in the delivery of video programming. Almost all U.S. consumers have the choice between over-the-air broadcast television, a cable service, and at least two direct broadcast satellite (DBS) providers. In some areas, consumers also can choose to receive service via one or more emerging technologies, including digital broadcast spectrum, fiber, and video over the Internet.

In addition, the report finds that as a result of system upgrades and increased competition from DBS services, cable subscribers are enjoying a broad range of advanced services, such as digital tiers and video on demand, as well as more channels of video programming.

Specifically, the report states that overall cable subscribership remained relatively stable over the past year, as the multichannel video programming distribution (MVPD) market grew. In contrast, DBS subscriberships continued to increase at double-digit rates of growth, which is due in part to the continued increase in the number of markets where local broadcast television stations are distributed by DBS under the authority granted to them by the Satellite Home Viewer Improvement Act of 1999 (SHVIA). In addition, other delivery technologies continue to serve small numbers of subscribers in limited areas.

As of June 2004, 92.3 million households subscribed to an MVPD – with 71.6 percent subscribing to a franchised cable operator, 25.1 percent receiving their video programming from a DBS operator, and 3.3 percent of subscribers choosing service from other types of providers (e.g., broadband service provider (BSP), wireless cable operator, private cable operator).

The report offers analysis of other potential competitors to cable television and discusses the transition of traditional over-the-air broadcasting to digital technology, emerging technologies such as Internet Protocol television, and developments in foreign markets. In addition, the report examines horizontal concentration in the MVPD marketplace, vertical integration between cable television systems and programming services, competitive issues in small and rural markets, and technical advances.

The report is the Commission's 11<sup>th</sup> annual report to Congress on the status of competition in the market for the delivery of video programming. Section 628(g) of the Communications Act of 1934, as amended, requires the Commission to report annually

to Congress on the status of competition in the market for the delivery of video programming.

A full copy of the report is available at [www.fcc.gov/mb](http://www.fcc.gov/mb).

## **FCC ISSUES REPORT ON CABLE INDUSTRY PRICES**

On February 4, 2005 the Federal Communications Commission (FCC) released its annual report on cable industry prices. The report shows that the overall average monthly rate for cable service -- including basic and expanded basic cable programming services and equipment -- increased by 5.4 percent over the 12-month period ending January 1, 2004, from \$42.99 to \$45.32. This was a slower rate of increase than the 7.8 percent increase recorded over the 12-month period ending January 1, 2003.

Specifically, the average monthly charge for basic and expanded basic services increased by 5.4 percent, from \$38.95 to \$41.04, and the average charge for equipment increased by 5.9 percent, from \$4.04 to \$4.28, over the same period.

The report also provides information on the number of channels offered in each tier of service, the average capacity of cable systems, and the percentage of cable subscribers that are offered advanced services such as digital service, Internet access, and telephone service. In addition, the report compares the prices charged by cable operators that face effective competition, referred to in the report as the "competitive group", with the prices charged by operators that do not face such competition, referred to as the "noncompetitive group." The determination of whether a cable operator is eligible for effective competition status is based on an objective statutory test.

The report finds that for the 12-month period ending January 1, 2004, the average monthly rate for basic and expanded basic cable programming services and equipment increased by 3.6 percent for the group of cable operators that face effective competition and by 5.6 percent for the group of operators that do not face effective competition. As of January 1, 2004, cable operators facing effective competition charged an average of \$42.48 per month for programming and equipment, while those not facing effective competition charged \$45.56.

The difference in average monthly rates between the competitive and noncompetitive groups (referred to in the report as the "competitive differential") was 7.3 percent as of January 1, 2004. The degree of difference, however, varied by competitive subgroup. The highest percentage differential -- 15.7 percent -- was associated with wireline overbuild competition.

Cable operators in both groups increased the number of channels provided on their basic and expanded basic service tiers over the period studied. The competitive group, for example, increased the number of channels offered on their basic and expanded basic tiers by 4.0 percent over the 12-months ending January 1, 2004, to an average of 72.5 channels. Over the same time period, the noncompetitive group increased their channel offerings by 4.2 percent to an average of 70 channels. As a

result, rates increased at a much slower pace or declined when measured on a per-channel basis. The average rate per channel charged by operators in the competitive group fell by 0.3 percent, from 60.1 cents to 59.9 cents per month, while the rate charged by operators in the noncompetitive group increased by 1.2 percent, from 65.7 cents to 66.5 cents.

The report also shows that most cable subscribers are now offered advanced services. As of January 1, 2004, 97 percent of all cable subscribers were served by systems that offered digital video service, and 95 percent of all cable subscribers were served by systems that offered Internet access. In addition, 28.5 percent of subscribers were offered telephone service by their cable operator. Approximately 85 percent of all cable subscribers were served by systems that had been upgraded to a capacity of at least 750 MHz. There was very little variation between the competitive and noncompetitive groups in terms of system capacity or the percentage of subscribers offered advanced services.

A full copy of the report is available at [www.fcc.gov/mb](http://www.fcc.gov/mb).

## **B. TELECOMMUNICATIONS - STATE PROCEEDINGS**

### **IN THE MATTER OF THE JOINT PETITION OF SBC COMMUNICATIONS INC. AND AT&T CORP., TOGETHER WITH ITS CERTIFICATED SUBSIDIARIES FOR APPROVAL OF MERGER. DOCKET NO. TM05020168**

On February 28, 2005, SBC and AT&T filed a Joint Petition with the Board for approval of a merger of the two companies in accordance with the statutory criteria. The Board is statutorily required to consider the impact of the merger on competition; how ratepayers are affected by the acquisition of control; the impact on employees of the affected public utility or utilities; and whether safe and adequate utility service at just and reasonable rates will result. A pre-hearing conference was held on April 14, 2005 and a Prehearing Order was subsequently issued on April 20, 2005 setting forth a schedule.

The Ratepayer Advocate filed initial testimony on May 4, 2005 and rebuttal testimony on June 1, 2005. The Ratepayer Advocate testified that the proposed merger would lead to unwarranted market concentration and expose residential and small business consumers to the possibility of excessive rates, lower service quality, and diminished opportunities for service innovation. The Ratepayer Advocate opposed the merger unless certain commitments were made by SBC and AT&T to preserve competition and confer additional consumer benefits.

The Ratepayer Advocate's recommendations included requiring SBC (1) to commit to compete with Verizon NJ in local markets in New Jersey; (2) to commit to a rate freeze for AT&T's residential and small business consumers; (3) to invest \$750 million in infrastructure in New Jersey to serve residential and small business consumers; (4) to offer DSL at basic voice grade service rates to mass market

consumers; (5) to commit to a smooth transition for those AT&T customers that are now served with UNE-P and that SBC does not choose to continue to serve; and (6) to commit to increase funding for AT&T Labs by 20 percent.

Evidentiary hearings commenced on June 14, 2005 and concluded on June 15, 2005. Initial briefs were filed on July 8, 2005 and reply briefs on July 22, 2005. On August 17, 2005, the Board voted to approve the merger and grant the Joint Petition. In deciding this case the Board applied a standard of review that was a combination of the positive benefits and no harm standard. The Petitioners only had to demonstrate that some positive benefit would result from the merger with respect to at least one of the four criteria, and that no harm would result with respect to the other three. By Order dated October 4, 2005 the Board ruled that based on the evidence in the record, the proposed merger was in the best interest of the state that the merger would not result in adverse impact to any of the four criteria under the Board's statutory review. The Ratepayer Advocate has asked the Board to reopen its Order and consider additional conditions based in part upon the FCC's decision to approve the merger with conditions.

**I/M/O THE JOINT PETITION OF VERIZON COMMUNICATIONS, INC., AND MCI, INC., FOR APPROVAL OF MERGER, BPU DOCKET NO. TM05030189**

The Joint Petition was filed on March 3, 2005 and hearings were conducted in September 2005 and briefs filed in October 2005. The Ratepayer Advocate opposed the merger unless certain conditions were imposed.

The Ratepayer Advocate's proposed conditions were that:

- The Board should allow parties to review the FCC's decision in WC Docket No. 05-75 and any DOJ rulings who should be permitted to supplement their testimony to address the implications of the federal regulators findings and directives for New Jersey.
- The Petitioners should provide merger synergies to customers of non-competitive services because such rate reductions will not occur where effective competition does not yet exist.
- As a counter-balance to Verizon's pursuit of business enterprise customers and high-revenue mass market consumers, and also as a way to provide tangible benefits for households and small businesses, Verizon should commit to offer broadband access at basic local exchange service rates.
- Regardless of the legal ramifications of the FCC's recent decision, which eliminates incumbent local exchange carriers (ILECs) obligations to share

digital subscriber line (DSL) access, Verizon should commit to offer naked DSL at reasonable terms and conditions throughout the state.

- The ubiquitous access of broadband and DSL at “Plain Old Telephone” (POTS) rates might enable the Board to forgo a detailed examination of Verizon’s costs and revenues for its advanced services, which would otherwise be necessary to detect whether cross-subsidization is occurring.
- The service quality data that Verizon submits to the Board should be more detailed, to recognize the disparate economic incentives that Verizon provides in different regions of the state and among different customers. Also, financial service quality incentives should exist to encourage compliance with Board-established standards.
- The Board should conclude an intrastate access charge review within six months of the merger closing.
- Verizon should commit to meet at least the same level and mix of employees as existed as of July 2005 for three years after the merger consummation.

On December 9, the Board announced its decision approving the merger with conditions that mirrored the conditions imposed by the FCC. The Board’s written order is not available as of December, 2005.

**I/M/O THE JOINT PETITION OF UNITED TELEPHONE COMPANY OF NEW JERSEY, INC., D/B/A SPRINT AND LTD HOLDING COMPANY FOR APPROVAL PURSUANT TO N.J.S.A. 48:2-51.1 AND N.J.S.A. 48:3-10 OF A CHANGE IN OWNERSHIP AND CONTROL. BPU DOCKET NO. TM05080739**

Joint Petitioners filed its petition in August 2005 and the Board set a schedule for hearings in January with a decision in March 2006. The Ratepayer Advocate filed testimony on November 29, 2005 opposing the transfer unless conditions are imposed to protect ratepayers. Specific concerns raised are:

- **Incomplete information:** There are many unanswered questions and numerous outstanding data requests that bear directly on the Board’s assessment of the merits of the proposed transaction. As demonstrated below, it is premature for many reasons for the Board to deliberate on the merits of the proposed spin off of Sprint’s local operations. The Ratepayer Advocate reserved the right to supplement testimony based on further review of responses to outstanding data requests.

- **Absence of S-1:** The Joint Petitioners have yet to provide a copy of their S-1 either in final or draft form. It is important for regulators to be able to compare the analysis prepared for *regulatory* purposes with that prepared for *investment* purposes.
- **Sale of Assets:** Sprint Nextel's proposed divestiture of its local operations represents a "reverse merger." Indeed, the divestiture constitutes a sale of assets with proceeds that should be shared with consumers. The Board should consider this to be a sale of assets, and, therefore, require the Petitioners to credit ratepayers, or, in the alternative, to commit to specific levels of investment in New Jersey's infrastructure. As the transaction is presently structured, consumers do not share in the proceeds from the sale of assets.
- **Adequate Compensation to consumers:** The filing does not address the post spin-off treatment of such key issues as (1) Yellow pages, (2) the use of the name of Sprint by Sprint Nextel (*e.g.*, will Sprint Nextel compensate the local spun-off company for the use of the name?); (3) the cost of rebranding the local operations that are spun off (*e.g.*, what is the rationale for the local company being obliged to rebrand rather than Sprint Nextel?). In 2003, Sprint sold its highly profitable directory publishing for \$2.3 billion, yet has not yet compensated New Jersey consumers. New Jersey consumers are entitled to \$65,000,000 as a result of the sale.
- **Inter-company transactions:** The Joint Petitioners do not explain adequately the treatment of shared assets and the transaction services agreements that relate directly to the relationship between Sprint Nextel and the spun-off local company, and the ability of LTD to succeed.
- **Capital Structure:** The reduction in dividend payments and increase in interest expenses that the Joint Petitioners have planned may alter investors' view of the financial attractiveness of the spun off company, which, in turn, would affect the financial soundness of the spun-off company.
- **Declining Capital Expenditures:** The Joint Petitioners' fail to explain adequately the rationale for the projected trend of declining capital expenditures. Other than a "keeping up with the Joneses" approach to mimic the capital expenditure patterns of other incumbent local exchange carriers ("ILECs"), the Joint Petitioners fail to justify their plan to dramatically decrease investment in their network.
- **Declining Service Quality:** The trend of declining service quality in United Telephone's New Jersey territory, particularly when considered in the context of the Joint Petitioners' plans for reducing their capital investment, jeopardizes consumers of basic local exchange service.

- **Declining Subscribership:** Recently released data from the Federal Communications Commission (“FCC”) shows a declining trend in subscribership in New Jersey, which the Joint Petitioners have not yet addressed.
- **Absence of showing of positive benefits:** The complex transaction could harm consumers and yet would fail to yield positive benefits.
- **Risk to New Jersey consumers:** By jeopardizing the financial viability of LTD, the divestiture could jeopardize the reasonableness of the rates and the adequacy of the service quality of United NJ’s local telecommunications services.
- **High executive compensation coupled with uncertain outcome for employees and pension:** Executives clearly would be compensated generously, but the impact of the transaction on employees’ pensions and on employment levels is less certain.
- **Payphones:** Sprint Payphone has not yet submitted a cost analysis that demonstrates that its revenues exceed its expenses, and, therefore, the Board cannot determine whether Sprint Payphone has complied with various FCC orders.
- Sprint Nextel should guarantee the debt obligations that LTD assumes and should also guarantee all pension obligations for LTD.
- The debt instruments should be modified to specify that any profits are first used for payments of any LTD debt obligations

**I/M/O THE APPLICATION OF VERIZON NEW JERSEY, INC., FOR RECLASSIFICATION OF DIRECTORY ASSISTANCE AS A COMPETITIVE SERVICE, BPU DOCKET NO. TT97120889**

On September 14, 1999, the Board released an Order finding that directory assistance/411 services were competitive, which would result in deregulated directory assistance and higher rates for customers. The Board made this decision without notice and the opportunity for a hearing on the matter in violation of N.J.S.A. 48:2-21.19(b). The Ratepayer Advocate successfully appealed the Board’s Order to the Appellate Division which subsequently remanded the matter to the Board for reconsideration on July 13, 2001. In supplemental proceedings, the Ratepayer Advocate urged the Board to reclassify directory assistance as non-competitive so that the Board could maintain oversight of 411 directory assistance. In a negotiated settlement reached in 2004, that closely reflected the Ratepayer Advocate’s proposals in its post-hearing brief, the Board approved the continuation of four free directory assistance calls per subscriber per month for the next three years. Rates for calls beyond the no-charge allotment are set at \$0.50 per call; two numbers can be obtained

on a single call. This result represented a victory for state ratepayers valued at \$96 million. Directory Assistance (DA) will be considered by the Board in 2006 and the Ratepayer Advocate will urge that free call allowances continue and that DA be declared non-competitive.

**I/M/O VERIZON NEW JERSEY, INC. FOR A REVISION OF TARIFF B.P.U.- N.J.- NO. 2 PROVIDING FOR A REVENUE NEUTRAL RATE RESTRUCTURE INCLUDING A RESTRUCTURE OF RESIDENCE AND BUSINESS BASIC EXCHANGE SERVICE AND ELIMINATION OF \$0.65 MONTHLY CREDIT, DOCKET NOS. TT04060442**

On June 15, 2004 Verizon NJ filed a petition before the Board of Public Utilities to update rate group designations in all New Jersey exchanges which (1) would increase retail rates; (2) would create a single state wide rate for residential and business customers; (3) would eliminate the \$0.65 credit applied to residence and single line business. This represents a \$33 million rate increase for consumers.

The Ratepayer Advocate opposed the filing because it was inconsistent with the PAR-2 Order, and would result, in effect, a rate increase for ratepayers under the guise of a "revenue neutral rate restructure". The Board issued a Order on December 1, 2004 that scheduled evidentiary hearings February 7-9, 2005. On December 22, 2004, Initial Testimony was filed by the Ratepayer Advocate which opposed the petition unless additional consumer benefits are included. The Board issued an order on April 15, 2005 approving the rate increase. The Ratepayer Advocate will urge the Board to reconsider this matter in 2006.

**IN THE MATTER OF THE IMPLEMENTATION OF THE FEDERAL COMMUNICATION'S TRIENNIAL REVIEW ORDER - 9 MONTH PROCEEDING, BPU DOCKET NO. T003090705**

Commencing in 2003 and continuing into 2004, the Ratepayer Advocate submitted testimony in the 9 month proceeding conducted by the Board pursuant to the FCC's TRO Order. The testimony detailed the Ratepayer Advocate's positions as follows:

- Although the 1996 act was passed eight years ago, the market share that CLECs have acquired in local telecommunications markets in New Jersey is still minimal.
- An analysis of whether "customers are actually being served" should encompass *all* mass market consumers. If fewer than three CLECs serve residential *and* small business consumers with self-provisioned switches, CLECs continue to be impaired without access to the UNE platform.

- The FCC's *Triennial Review Order* provides general directives, but leaves substantial leeway to the administrative judgment and expertise of state regulators in their analysis of the structure of local telecommunications markets.
- Verizon NJ has failed to demonstrate that it has met the FCC-established self-provisioning trigger, whether the assessment is made based on appropriate geographic market boundaries (i.e., wire centers) or on the excessively broad (MSA) Metropolitan Statistical Area market basis that Verizon NJ proposes.
- The Board should find that CLECs are impaired without access to unbundled voice grade circuit switching throughout the relevant geographic market.
- The Board should not seek to predetermine CLECs' mode of entry into the local market, but rather should seek to ensure that regulatory decisions and inter-carrier practices permit the economically efficient evolution of local telecommunications competition.

The Board did not commence hearings in the 9 month proceeding because the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated significant portions of the FCC's TRO order, including the FCC's subdelegation to state commissions decision-making authority over impairment determinations.

Verizon subsequently filed an emergency motion for stay of the Board's 9 month proceeding and on March 17, 2004, the Board granted Verizon's motion for stay based on the uncertainty caused by the D.C. Circuit's decision that could affect the governing standard of review.

However, the Board's grant of the stay was conditioned upon Verizon agreeing that it would forbear seeking relief from the FCC on the basis that the Board did not timely complete its obligations in the 9 month proceeding. The Board also tolled the time period beginning March 5, 2004 up to and until July 2, 2004. The Board also requested that the parties submit comments on the impact of the D.C. Circuit's opinion and Verizon's obligation under both existing federal and state requirements on June 1, 2004. Comments were submitted by the Ratepayer Advocate. This stay continues as of December 31, 2005.

**HOT CUT PORTION OF TRIENNIAL REVIEW PROCEEDING, DOCKET NO. TO03090705**

This proceeding was intended to review Verizon NJ's batch hot cut proposal, large order process and single hot cut procedures and establish rates for hot cuts. Initial briefs were filed on July 2, 2004 and reply briefs were filed on July 16, 2004.

The Ratepayer Advocate urged the Board to:

- Reject Verizon's hot cut cost study for reasons discussed in the Ratepayer Advocate's brief.
- Adopt a hot cut rate of the magnitude supported by the CLECs' forward-looking cost studies.
- Establish metrics and incentive payments for hot cut performance for existing and new hot cut processes to establish accountability and address the "incentives" problem.
- Distinguish between the goal of achieving effective local competition in the mass market and the reality of the level of local competition that has actually materialized in order to ensure that residential and small business consumers are adequately protected.
- Direct Verizon NJ to improve its basic and batch hot cut processes.
- Direct Verizon NJ to submit quarterly reports to Board and to the Ratepayer Advocate on (1) Verizon NJ's success in implementing hot cut improvements; and (2) the volumes of hot cuts performed.
- Direct Verizon NJ to summarize the hot cut improvements sought by CLECs and Verizon NJ's proposed responses to the industry-recommended hot cut improvements.

The Board had not issued its decision in this proceeding as of December 2005.

**I/M/O THE BOARD'S INVESTIGATION AS TO WHETHER RATEPAYERS SHOULD SHARE IN THE PROCEEDS ARISING FROM THE SALE AND CONVEYANCE OF REAL PROPERTY BY VERIZON NEW JERSEY, INC., BPU DOCKET NO. TX04080749**

Pursuant to the Board's direction to Staff in the matter of Verizon's sale of property to Kenneth Esdale, the Board initiated an investigation to determine the extent

to which ratepayers should share in the proceeds that arise when the utility sells utility property. The Board noted that this question was not addressed in the PAR-2 Order and set forth a briefing schedule.

The Ratepayer Advocate submitted Initial and Reply briefs. The Ratepayer Advocate's position is that sharing with ratepayers should be consistent with over 60 years of Board precedent, that is, generally on a 50/50 basis after 100% of the depreciated value is recovered.

On August 12, 2005, the Board issued an order declining to require sharing of proceeds with ratepayers from the sale of Verizon assets. The Ratepayer will ask the Board to reconsider the issue in 2006.

### **AT&T'S REQUEST FOR INTRASTATE ACCESS CHARGE REDUCTIONS, DOCKET NO. TR03100767**

In October 2003, AT&T filed a petition asking that the Board initiate a proceeding to revise intrastate access charges and reduce them so that they are cost based. On May 24, 2004, AT&T asked that this petition be consolidated with the Selex proceeding then pending at the OAL. AT&T asked the Board to:

- Commence an expedited investigation of Verizon NJ's intrastate carrier access charges, including contested case proceedings permitting AT&T and other interested parties to be heard..
- Find that Verizon NJ's intrastate carrier access charges are unjust and unreasonable and unreasonably disadvantageous to competitors.
- Establish an interim reduction to the level of interstate access charges, pending reduction to cost based levels.
- Require Verizon NJ's long distance affiliates to establish per minute rates for each of their intrastate long distance calling plans that satisfy an imputation safeguard that requires that the per minute prices exceed Verizon NJ's tariffed intrastate access rates plus Verizon NJ's other non-access-related incremental costs.

As of December 2005 there has been no response from the Board.

## **BOARD'S ORDER ON MOTION FOR CLARIFICATION, DOCKET NO. TO03090705**

On August 21, 2003, the FCC issued its triennial review order ("TRO"), which adopted new and revised rules aimed at promoting local telephone and broadband competition in Docket Nos. 01-338, 96-98 and 98-147.

The TRO contained, *inter alia*, a presumptive nationwide finding that CLECs were (1) no longer impaired without access to ILECs switching serving DS-1 enterprise customers since CLECs would provide voice service on their own switch using DS-1 or above capacity loops and (2) that CLECs were impaired from providing telecommunications services without access to ILEC switches serving mass market customers.

State Commissions were mandated to approve within 9 months from the effective date of the TRO, June 16, 2004, a "batch" hot-cut process implemented by ILECs to address the costs and timeliness of the current hot-cut process thereby mitigating loop access barriers to competition. In the alternative, states would be required to explain why such a revised process was unnecessary in a given market.

On October 31, 2003, the Board received a joint petition requesting that the Board petition the FCC for a waiver of its national finding that CLECs are not impaired without access to unbundled local switching for enterprise customers served at the DS1 level. On January 23, 2004, the Board denied the waiver request and agreed with both the Ratepayer Advocate and Verizon NJ that petitioners had not met their burden and the data and analysis provided lacked substance.

On October 28, 2003, the Board initiated proceedings to ( 1) resolve the "9-month issues" in connection with CLECs impairment to provide telecommunications services to mass-market customers without access to ILEC switches; and (2) formulated a "batch" hot-cut process and rates to be used in the "hot-cut proceeding."

On March 2, 2004, the U.S. District Court issued its opinion in *USTA II* which vacated significant portions of the FCC's TRO, including the subdelegation to the states of decision-making authority over impairment decisions. The court's mandate was stayed until June 16, 2004.

On March 17, 2004, the Board affirmed Verizon's motion to stay the TRO proceeding.

On May 18, 2004, Verizon sent out two notices to CLECs which stated, *inter alia*, their intention to discontinue providing unbundled access to enterprise switching and/or switching subject to the four lines carve-out rule pursuant to FCC regulations as of August 22, 2004.

On June 18, 2004 the Board entered a standstill Order which encompassed Verizon's right to cease providing unbundled switching for enterprise customers to CLECs at tELRIC rates.

On July 20, 2004, in response to Verizon's May 18<sup>th</sup> notices, AT&T filed a petition for clarification of the Board's standstill order.

On July 28, 2004, the Board received joint petitions from CLEC "bridgecom" for clarification of the order, disputing (1) the methodology used by Verizon to calculate "reseller" rates, and (2) Verizon's attempt to change rates without prior Board approval.

On July 29, 2004, Verizon filed opposition papers with the Board and argued that (1) the 90-day freeze set out in the standstill order applied only to UNEs affected by the *USTA II* mandate; and (2) the order was not intended to limit Verizon's ability to alter the terms of existing interconnection agreements ("ICA") without Board approval if the ICAS themselves permitted such amendments and any such restriction by the Board would constitute not only a violation of the ICA itself but also of federal law.

Verizon also argued that no exception to the four line carve out was made in the standstill order, and that the rule is mandatory and the Board cannot disregard the rule and prevent Verizon from complying with it.

On August 20, 2004, the Board issued an order requiring the status quo that includes Verizon's current practice of providing unbundled access to switching that serves customers with an unlimited number of DSO loops as well as other unbundled elements constituting the UNE-P for mass market customers. No exception to the four-line-or-more carve-out was made in the standstill order.

Thereafter, Verizon filed a motion for reconsideration and the Ratepayer Advocate opposed the motion. On October 27, 2004, the Board issued an order denying the motion for reconsideration. Thereafter, Verizon filed suit in the Federal District Court in Newark seeking to enjoin the enforcement of this order. See discussion of this suit below in Federal Court Actions.

#### **AT&T VS. VERIZON NJ RECIPROCAL COMPENSATION FOR ISP TRAFFIC BPU DOCKET NO. TC99110838, OAL DOCKET NO. PUC 8336-01**

This is a dispute regarding payment of reciprocal compensation for delivery of internet service provider bound traffic. The liability phase of proceeding was heard at the Atlantic City OAL in June; the damages phase was to be heard in 2005, when the pending motions for reconsideration and interlocutory review was to be heard. This matter is valued at between \$14-\$63 million. The Ratepayer Advocate filed a post-hearing brief to introduce a relevant FCC decision that was released during the hearings. Thereafter, the ALJ's decision was consistent with the Ratepayer Advocate's recommendations.

AT&T subsequently filed a motion for reconsideration of the ALJ's order, and the Ratepayer Advocate filed comments on that motion on July 23, 2004. In its comments, the Ratepayer Advocate submitted that the findings of fact in the Order, as supported by the evidentiary record in the proceeding, were not consistent with historic facts as evidenced by tariffs dating back to 1984. The Ratepayer Advocate explained that revised findings of fact consistent with the 1984 tariffs would lead to a different legal conclusion on certain of the findings in the Order. AT&T, Verizon New Jersey, and the Ratepayer Advocate presented positions to the court during oral arguments that took place on September 8, 2004 at which time a procedural schedule for a damages phase of the proceeding was established. On October 6, 2004, the Administrative Law Judge (ALJ) issued an order which modified his Initial Decision as recommended by the Ratepayer Advocate. In 2005, the parties settled the damage portion of the case and the ALJ issued an Initial Decision dismissing the case with prejudice, a finding adopted by the Board which resolves this matter.

**CAT COMMUNICATIONS INTERNATIONAL, INC. (CAT) V. SPRINT COMMUNICATIONS CO., BPU DOCKET NO. TC0108526, OAL DOCKET NO. PUC 8139-01**

CAT is a CLEC that provides pre-paid local telephone service to credit-impaired customers. Certain of these customers were found to be completing "dial around (10-10-xxx)" long-distance calls over Sprint's long-distance network. Since CAT's customers pre-pay for their telephone service, it was difficult for Sprint to collect the long-distance charges. Sprint filed for and was granted a federal injunction that compelled CAT to order from Verizon New Jersey ("VNJ") toll-blocking that would prevent customers from accessing the Sprint network. Although the injunction was subsequently dissolved, and the lifting of the injunction is now being appealed, CAT accrued bills for the toll-blocking of approximately \$5 million. The Ratepayer Advocate is seeking historic cost data to determine whether Verizon rates for toll-blocking are proper and non-discriminatory. Hearing were conducted in February and March 2005 and briefs filed in April and May. An Initial Decision, was issued in June 2005, and all parties filed exceptions. The Board issued a decision on October 27, 2005 accepting and modifying the Initial Decision. Subsequently, CAT filed an appeal with the Appellate Division on December 12, 2005. The Ratepayer Advocate supports setting aside several portions of the order and will participate in the appeal.

**WORLDCOM TECHNOLOGIES, INC. V. SPRINT COMMUNICATIONS. BPU DOCKET NO. TO02070394, OAL DOCKET NO. PUCOT 9940-03**

This matter involves a dispute regarding the payment of reciprocal compensation for internet service provider traffic ("ISP traffic"). The Ratepayer Advocate intervened in

this case in 1999 to monitor the case for public interest issues since no formal state or federal standards had been established for such matters. In April 2001, the FCC issued new ISP compensation rules. This proceeding now involves relief for historic harm only, as opposed to a decision that would have prospective and general applicability for other carriers. The Ratepayer Advocate will continue to monitor this case, with an option to respond to public interest issues. Motions for summary disposition were denied, and the matter is in the discovery stage in anticipation of hearings. The matter was decided by the Administrative Law Judge on July 21, 2005. Cross exceptions were filed with the Board and the Board announced at its Public Agenda Meeting on December 2, 2005, its decision to modify the Initial Decision to implement a rate reduction from the date fixed by the filing of the Bankruptcy as opposed to the 2004 date set by the Initial Decision. The Board issued its written Order on December 5, 2005.

**I/M/O THE APPLICATION OF VERIZON NEW JERSEY, INC. FOR APPROVAL (1) OF A NEW PLAN FOR AN ALTERNATIVE FORM OF REGULATION AND (ii) TO RECLASSIFY MULTI-LINE RATE REGULATED BUSINESS SERVICES AS COMPETITIVE SERVICES , AND COMPLIANCE FILING, BPU DOCKET NO. TO01020095**

On September 3, 2004, Verizon New Jersey, Inc requested the Board to make available the survey study undertaken by the Board and additionally requested reclassification of 2-4 business lines as competitive. On December 23, 2004, the Board established a procedural schedule for this matter with an accelerated schedule calling for completion by the end of March 2005. The Ratepayer Advocate opposes the reclassification because Verizon still maintains monopoly power. The Board in an Order dated September 22, 2005 granted the petition. The Ratepayer Advocate intends to ask the Board to reconsider this issue in 2006.

**FEDERAL COMMUNICATION COMMISSION (FCC) PROCEEDINGS**

**I/M/O RULES AND REGULATIONS IMPLEMENTING MINIMUM CUSTOMER ACCOUNT RECORD EXCHANGE OBLIGATIONS ON ALL LOCAL AND INTEREXCHANGE CARRIERS, CG DOCKET NO. 02-386**

On June 18, 2004, the Ratepayer Advocate submitted comments supporting proposals to create an industry-standard for the recording and exchange of customer information. A uniform method would assist in transferring subscriber information when a customer selects a new telecommunications provider, alleviating billing disputes and other difficulties often encountered when consumers switch carriers. As the Ratepayer Advocate explained, “[a] reduction in errors or mis-communications should encourage more ‘problem free’ shopping by consumers, which should in-turn continue to promote the emergence of competition.” A decision by the FCC on this matter was issued in 2005 that imposed new requirements that will benefit ratepayers.

**I/M/O PRESUBSCRIBED INTEREXCHANGE CARRIER CHARGES, CC DOCKET NO. 02-53, CCB/CPD FILE NO. 0112, RM 10131**

On June 15, 2004, the Ratepayer Advocate commented on a current FCC inquiry on whether the rates for selection/change of a long distance carrier should be reviewed and cost support provided. The federal rate for changing long distance carriers was set in 1984 at \$5.00. The Ratepayer Advocate submitted for the FCC's information and review the briefs submitted by the Ratepayer Advocate in a 1999 state proceeding addressing this issue as it relates to rates for the selection/change of intraLATA toll providers in New Jersey. The Ratepayer Advocate negotiated one of the lowest rates in the nation related to charges for selecting/changing toll providers. The rates in New Jersey were set through a successful negotiated settlement among the parties. In 2005, the FCC reduced rates for automated changes and left manual rates unchanged. The lower automated change rates will further lower PIC rates in New Jersey. The Ratepayer Advocate will be negotiating with Verizon and United Telephone on lowering PIC charges under the prior stipulations in 2006.

**I/M/O REVIEW OF THE COMMISSION'S RULES REGARDING THE PRICING OF UNBUNDLED NETWORK ELEMENTS AND RESALE OF SERVICES BY INCUMBENT LOCAL EXCHANGE CARRIERS, WC DOCKET NO. 03-173 ("TELRIC")**

In December 2003 and January 2004, the Ratepayer Advocate filed comments in this proceeding. In keeping with its pro-competition positions which urged the FCC to maintain total element long run incremental cost ("TELRIC") as the most appropriate and reasonable approach to pricing unbundled network elements ("UNEs"). The Ratepayer Advocate premised its argument on two assumptions: (1) the competitive market is young, and time, rather than changes to a US Supreme Court-affirmed mechanism, is necessary for healthful competition to emerge, and (2) the Telecommunications Act of 1996 does not embrace a preference for facilities-based competition; rather, resale and UNE-based competition meet the act's goals, and TELRIC should therefore be maintained in order to provide rational pricing guidelines. A decision by the FCC on this matter is pending as of December 2005.

**TRUTH-IN-BILLING, FCC DOCKET NO. 98-170**

In 2004, the National Association of State Utility Consumer Advocates (NASUCA) filed a petition with the FCC to clarify and enforce Federal Truth-in-billing requirements. On July 14, 2004, the Ratepayer Advocate filed comments in support of the NASUCA petition, citing independent research into local billing practices that obscure rates and hamper emergence of meaningful competition in the telephone marketplace. The FCC issued its decision on March 18, 2005 requiring that wireless

billing descriptions be brief, clear, non-misleading, and in plain language. The FCC also held that it was misleading to represent discretionary line item charges in a manner that suggests that such line items are taxes or government mandated charges. However, the FCC's decision also held that state regulations requiring or prohibiting the use of line items for wireless bills constitutes rate regulation which are preempted. The FCC's decision is being appealed in the 11<sup>th</sup> Circuit as of December, 2005.

**PETITION OF VERIZON FOR DECLARATORY RULING OR, ALTERNATIVELY, FOR INTERIM WAIVER WITH REGARD TO BROADBAND SERVICES PROVIDED VIA FIBER TO THE PREMISES, FCC DOCKET NO. 04-242**

Verizon has requested a declaratory ruling from the FCC that any Verizon broadband service offered via fiber to the premises on a nationwide basis can be offered in the same manner as cable operators offer cable modem service. In the alternative, Verizon also asked the Commission to issue a waiver from its *COMPUTER II/III* rules. Verizon also asks that to the extent the Commission does not grant the declaration or waiver, the Commission should exercise its forbearance authority and decline to enforce Title II requirements as they relate to Verizon's broadband offerings.

On July 20, 2004, the Ratepayer Advocate filed comments opposing the petition filed by Verizon, asking that the FCC deny and dismiss the petition as being premature, contained inadequate and insufficient support on which to make any determination, and lacking empirical evidence to otherwise support any exercise of the FCC's forbearance authority under Section 10 of the 1996 Act.

The FCC issued its Order on September 23, 2005, reclassifying Digital Subscriber Line ("DSL") service from a telecommunications service to an information service, thereby removing the service from the purview of state regulation.

**FCC interim rules for UNE-p pending completion of new rules.**

The FCC issued its Interim Order and Notice of Proposed Rulemaking (NPRM) on August 20, 2004, with comments due 21 days after publication in the federal register and reply comments within 36 days after publication in the federal register. A brief summary of the interim order follows.

The Commission established a comprehensive 12-month plan consisting of two phases to stabilize the market. The objectives of the plan are to stabilize the market and thereby promote competition and protect consumers. The commission believes that the moderate price increases suggested during the 12-month plan are both reasonable and necessary because they will mitigate the rate shock that could be suffered by competitive LECs in the first several months after the commission's final rules are adopted. At the same time, the time limitations applicable to these transitional limits on

price increases will protect the interests of incumbent LECs in those situations where unbundling is not ultimately required.

- **The twelve-month interim period**

Incumbent LECs like Verizon shall continue to provide unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place during the interim period, except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening commission order affecting specific unbundling obligations (e.g., an Order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission Order raising the rates for network elements.

- **Transition period**

This period is the six months following the interim period, in the absence of a Commission ruling that switching, dedicated transport, and/or enterprise market loops must be made available pursuant to section 251(c)(3).

In the absence of a Commission ruling that switching is subject to unbundling, an incumbent LEC shall only be required to lease the switching element to a requesting carrier in combination with shared transport and loops (*i.e.*, as a component of the “UNE platform”) at a rate equal to the higher of (1) the rate at which the requesting carrier leased that combination of elements on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after Federal Register publication of this Order, for this combination of elements plus one dollar.

In the absence of a Commission ruling that enterprise market loops and/or dedicated transport are subject to section 251(c)(3) unbundling in any particular case, an incumbent LEC shall only be required to lease the element at issue to a requesting carrier at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for that element on June 15, 2004, or (2) 115% of the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after federal register publication of this Order, for that element.

With respect to all elements, this transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers at these rates.

During the transition period, carriers shall remain free to negotiate alternative arrangements (including rates) superseding state rules (and state public utility commission rates). Subject to the comments requested in response to the above NPRM, the commission intends to incorporate this second phase of the plan into final rules.

- **Post-transition period:**

After the transition period expires, incumbent LECs shall be required to offer on an unbundled basis only those UNEs set forth in the Commission's final unbundling rules, and subject to the terms and conditions set forth. The specific process by which those rules shall take effect will be governed by each incumbent LEC's interconnection agreements and the applicable state commission's processes.

The Commission ordered incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the commission or six months after federal register publication of this Order.

The Commission asked for comments on how to respond to the D.C. circuit's *USTA II* decision in establishing sustainable new unbundling rules under sections 251(c) and 251(d)(2) of the Act.

The Commission asked for comments on the following:

- 1) What changes to the commission's unbundling framework are necessary, given the guidance of the *USTA II* court?
- 2) How various incumbent LEC service offerings and obligations, such as tariffed offerings and BOC section 271 access obligations, fit into the commission's unbundling framework?
- 3) How best to define relevant markets (e.g., product markets, geographic markets, customer classes) to develop rules that account for market variability and to conduct the service-specific inquiries to which *USTA II* refers?
- 4) How to respond to the D.C. Circuit's guidance on other threshold factors, including the relationship between universal service support and UNEs?

- 5) Are there circumstances in which particular final rules would necessitate additional transition mechanisms apart from or beyond this second six-month phase?

The Ratepayer Advocate filed comments in this proceeding and met with representatives of the Wireline Competition Bureau in October 2004 to discuss comments and concerns. The FCC announced its decision on December 15, 2004. See Federal Section of this Report for a summary of the decision. The Ratepayer Advocate appealed the FCC order. All such appeals were consolidated in the D.C. Court of Appeals. Oral argument is scheduled for March 21, 2006.

**VERIZON NJ'S REQUEST FOR WAIVER AND/OR FORBEARANCE WITH RESPECT TO PRICING FLEXIBILITY FOR PACKET SERVICES.  
FCC DOCKET NO. WC 04-246**

On June 25, 2004, Verizon filed a petition requesting to be relieved of a restriction resulting from the waiver granted to Verizon regarding its advanced services group. Specifically, Verizon was granted a waiver by the Commission of section 61.42(g) of the rules so that Verizon would not be required to incorporate its advance services into annual access tariff price cap filings.

As a result of this waiver and under applicable rules, Verizon was prevented from placing these fast packet services within the pricing flexibility portion of the tariff filings according to paragraph 173 of the pricing flexibility order. Verizon sought the initial waiver because it voluntarily chose to undo the transfer of its advance services to a separate affiliate. Thereafter, Verizon sought and was granted additional waivers for the annual access filing for 2002, 2003, and 2004. Each of these waivers was premised on preserving the *status quo* pending resolution of the commission's *wireline broadband classification proceeding*. Verizon is now asking the commission to jettison the restrictions associated with the initial waiver grant and subsequent grant of additional waivers so that it can be treated as if it provided fast packet services through a separate affiliate or as if it made rate caps filings for the period from 2002 thru 2004. In fact, Verizon has done neither.

According to Verizon, Bellsouth has pricing flexibility because it complied with the applicable rules and SBC has pricing flexibility because they offer its services through a separate affiliate. But, Verizon ignores the fact that Bellsouth and SBC fully complied with the commission's rules without waivers. As a result, Verizon wants the commission to relieve it of its business decisions while at the same time, it exempts Verizon from making market-by-market showings for the advance services in question under the claim that there is undue administrative burden. Such claims are not supported by any evidence, but only by arguments contained in its *memorandum* filed in support of the petitions. Due to substantive deficiencies, the Ratepayer Advocate recommended that the Commission deny and dismiss the petitions for lack of proof and find that the

granting of the petitions are inconsistent with the public interest. An FCC decision is pending as of December, 2005.

### **BELL SOUTH'S EMERGENCY PETITION FOR DECLARATORY RULING AND PREEMPTION OF STATE ACTION , FCC DOCKET NO. WC-04-245**

In July and August 2004, the Ratepayer Advocate filed comments opposing the petition filed by BellSouth on July 1, 2004, and asked that the FCC deny and dismiss the petition for the following reasons.

- Bellsouth has failed to exhaust its administrative remedies by appealing the state commission decision in accordance with section 252e)(6) of the Act.
- In addition, Bellsouth's legal arguments regarding section 271(c)(2)(b) raised in support of the petition are flawed, and do not represent the Commission's policies as to the role of state commissions under section 271(c)(2)(b) of the Act. The Commission should exercise its discretion and proceed by rulemaking if it wants to clarify what role state commissions have under section 271(c)(2)(b) of the act so that a full and complete record is developed.
- The Commission should defer consideration of the petition until it otherwise rules on the pending petition for forbearance filed by the Verizon telephone companies ("Verizon") in CC Docket 01-338 wherein Verizon asks that the commission forbear from applying items four through six and ten of the competitive checklist contained in section 271 of the Act.

The Ratepayer Advocate argued that:

- Bellsouth is requesting that the Commission decide the roles of state commissions under section 271 of the act because the Tennessee Regulatory Authority (TRA) issued an order in the context of a 252 arbitration that Bellsouth disagrees with.
- Bellsouth is asking the Commission to short circuit the processes established by sections 251 and 252 of the Act prior to completion of the scheme authorized by the Act before the matter is appealed and Bellsouth has exhausted its administrative remedies.
- The concerns raised by Bellsouth are questions of law which are subject to *de novo* review by appellate courts. Prudence and past practice suggest that the Commission should allow the appeal process to continue so that a final decision on the merits can be rendered.

- If necessary, the commission can assess whether rule changes are necessary or required. This is especially so in view of the fact that the commission has no rule in place which provides that it has the exclusive right and authority to price elements under section 271 of the Act.
- The fundamental flaw in Bellsouth's arguments is that they rely upon the exclusivity limitations of Section of 271 which pertain to approval of in-region long distance authority and extrapolate that it applies to all of section 271. Bellsouth ignores the fact that Section 271 has to be read in the context of section 2(b) of the act. The Supreme Court has clearly articulated the relationship that Sections 251/252 have with Section 2(b) of the Act and the appropriate role of state commissions in setting rates in *AT&T Corp. v. Iowa Utilities Bd*, 525 U. S. 366 (1999). However, the Supreme Court made no determination regarding Section 271 and the interaction with Section 2(b) of the Act.

The Ratepayer Advocate opposes this petition because BellSouth is asking the FCC to declare that a state commission has no authority over setting rates for network elements that are provided under Section 271 of the Act. This was an unwarranted attempt to eliminate the right of states to regulate intrastate services that has existed since 1934. Bell South withdrew its petition in July 2005.

**NOTICE OF PROPOSED RULEMAKING: VOICE OVER INTERNET PROTOCOL (“VOIP”) AND OTHER IP-ENABLED SERVICES, FCC DOCKET NO. 04-36**

The Ratepayer Advocate filed initial comments on May 28, 2004 and reply comments on July 14, 2004 in response to the FCC's notice of proposed rulemaking (NPRM). The Ratepayer Advocate made the following recommendations to the FCC:

- VoIP providers that market themselves as offering voice and facsimile services, do not require overly specialized Customer premises equipment (CPE) to place a telephone or facsimile call, allows calls according to the North America Numbering Plan Administration (“NANPA”), and transmits customer information without net change should be regulated like a telecommunications carrier.
- VoIP providers who offer blended services, i.e. telecommunications and information services, should be treated as telecommunications services subject to Title ii regulation.
- The Commission cannot deprive states of their authority to regulate intrastate VoIP services under section 2(b) of the Act. State regulation of VoIP services is crucial because states are obligated to ensure that consumers have ready and able access to telecommunications services and that these services meet certain quality standards.

- VoIP providers who are also providers of interexchange, local exchange, and cable services should be subject to separate affiliate requirements to discourage anti-competitive conduct and protect the public interest.
- The Commission must require VoIP providers to offer 911/E911 access to their customers to ensure that emergency services are protected as telecommunications transitions from a circuit –switched network to an integrated-services packet switched network. The Commission must also make certain that VoIP providers are technologically and operationally capable of complying with basic 911 services rules that ensure calls are directed to the appropriate public safety answering point (PSAP) as well as being capable of enhanced 911 functions such as delivering call-back and location information and should also set a deadline for the achievement of these necessary functions.
- The Commission must ensure that VoIP services and the Internet Protocol (IP) networks are capable of providing access to people with disabilities by subjecting VoIP providers to the directives of sections 255 and 251 of the Act and also of the disability access order.
- VoIP services that meet the criteria of telecommunications services and depend on the public switched telephone network (PSTN) should be subject to access charges and therefore VoIP providers must contribute in an equitable manner to the maintenance of the network.
- VoIP providers must contribute to the universal service fund to ensure affordable access to telecommunications service to all Americans. Unless universal service obligations are imposed on VoIP, the revenues upon which universal service relies will be unacceptably reduced.
- VoIP providers should be subject to the Commission’s rules restricting the use of customer proprietary network information (“CPNI”) as well as rules that afford consumer protections in the areas related to privacy, accuracy and clarity in billing, prohibitions on slamming, protections against discrimination, and the ability to file complaints with regulatory bodies.
- States should not be stripped of their right to impose taxes on VoIP services that rely on the PSTN because such an outcome would drastically reduce the revenue base that states and localities use to fund essential education, health care, and public safety services.

The regulation of VoIP and the role of state commissions are crucial to New Jersey consumers. While the FCC has not issued an Order in this proceeding, it has issued a decision in a case involving Vonage Holdings Corp. (Vonage) ruling that IP-enabled services similar to the service offered by Vonage are not subject to state public utility regulation. The Vonage decision is on appeal in the 8<sup>th</sup> Circuit Court of Appeals as of December, 2005.

## **FCC's E-911 Requirements for IP-Enabled Service Providers (04-36, 05-196)**

On June 3, 2005 the FCC released its Order and Notice of Proposed Rulemaking requiring interconnected VoIP providers that enable customers to receive calls and terminate calls to the public switched telephone network (PSTN) to supply enhanced 911 (E911) emergency calling capabilities to their customers as a mandatory feature of their service. The Order also required interconnected VoIP providers to provide emergency operators with the call back number and location information of their customers where the emergency operator is capable of receiving it. The FCC also sought further comments on devising a method for determining the customer's location without the customer having to report this information. VoIP providers were required to comply with the FCC's E-911 requirements by November 28, 2005, and they were also required to inform subscribers of any limitation of their 911 capabilities and obtain affirmative subscriber acknowledgment of receipt of the advisories.

On October 31, 2005 the FCC's Enforcement Bureau granted an extension for those VoIP providers who are unable to meet the deadline for obtaining customer acknowledgment of notices regarding the limits of their VoIP service's E-911 calling capabilities. Additional extensions have been granted through the end of 2005.

## **IN THE MATTER OF COMPREHENSIVE REVIEW OF UNIVERSAL SERVICE FUND MANAGEMENT, ADMINISTRATION, AND OVERSIGHT (05-195)**

On June 14, 2005 the Ratepayer Advocate filed initial comments with the FCC in response to a NPRM seeking comments with respect to its review of the management and administration of the Universal Service Fund ("USF") and the Commission's oversight of the USF and USF administrator.

The Ratepayer Advocate made the following recommendations in its comments to the FCC:

- The reasons for the growth of the Universal Service Fund should be examined. As the Ratepayer Advocate stated in recent comments to the Joint Board regarding this high cost fund, the Commission should "distinguish between the sources of growth in the high cost fund that are inevitable and appropriate, and those reasons which relate to inefficient economic incentives and/or improper cross-subsidization, which the Commission should remedy." This sentiment applies to all universal service programs. In this proceeding, the Commission should focus on the growth of the fund that is a direct result of mismanagement and fraud.
- Consider the impact of any proposed reform and performance measures on residential and business consumers, particularly those with low volumes, in rural areas, and/or with low incomes.

- Consider alternative arrangements for contracting with fund administrators.
- Consider the impact of the adoption of rules and procedures which make it more difficult for those most in need to apply for, and receive, appropriate funds.

The Ratepayer Advocate filed reply comments on December 16, 2005. The FCC had not acted on this matter as of December 31, 2005.

### **IN THE MATTER OF FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE (96-45)**

The Ratepayer Advocate filed initial comments on September 30, 2005 in response to the August 17, 2005 *Public Notice* seeking comments with respect to several proposals to modify FCC rules regarding high-cost universal service support mechanisms.

The Ratepayer Advocate made the following recommendations in its comments to the FCC:

- *The reasons for the tripling of the high cost fund between 1996 and 2004 should be examined.* A price increase of \$2.3 billion over an eight-year period during a period of declining costs in the telecommunications industry raises significant questions about the high cost fund. The Ratepayer Advocate urges the Commission to distinguish between the sources of growth in the high cost fund that are inevitable and appropriate, and those which relate to inefficient economic incentives and/or improper cross-subsidization, which the Commission should remedy.
- *Direct the industry to identify offsetting rate decreases:* the 1996 Act indisputably requires universal service support to become explicit, but this directive does not justify a revenue windfall for local exchange carriers: to the extent that high cost funds increased by \$2.3 billion, other rates should have declined by at least that amount.
- *Consider the merits of an audit.* Depending on the resources of the Commission, the Commission should consider engaging a third-party auditor to examine the reasons for the growth in the high cost fund to assist the Commission in ensuring that universal service payments (which, ultimately, consumers must pay) are being used in a way that is consistent with sound public policy.

Reply comments were filed on October 31, 2005.

## **ATA FCC PETITION CHALLENGING NEW JERSEY'S DO NOT CALL LAW**

In August 2004, American Teleservices Association ("ATA") filed a Petition with the FCC to eliminate the protections of New Jersey's Do Not Call law. ATA claimed certain provisions of the law were inconsistent with FCC rules. The FCC requested comments and the Ratepayer Advocate filed Initial Comments in November 2004 stating that: ATA lacks standing to raise these issues that their concerns are not ripe, there is no case or controversy and that the federal Telecommunications Act specifically permits states to adopt more stringent regulations.

In Reply Comments filed in December 2004, the Ratepayer Advocate reiterated these points and urged the FCC to reject the petition and preserve the rights of New Jersey ratepayers. A ruling from the FCC has not been issued as of December, 2005.

## **MERGER PROCEEDINGS AT THE FCC FOR SBC/ATT, VERIZON/MCI AND SPRINT/NEXTEL.**

The Ratepayer Advocate participated in all three merger proceedings at the FCC during 2005 and asked for imposition of various conditions on each of the mergers. The FCC issued orders in all three mergers and adopted several of the Ratepayer Advocate's recommendations for conditions. The Ratepayer Advocate opposed these mergers at both the state and federal levels.

## **FEDERAL COURT PROCEEDINGS**

### **VERIZON NEW JERSEY, INC. VS. THE NEW JERSEY BOARD OF PUBLIC UTILITIES, ET AL, CIVIL ACTION NO. 04-4438(WHW)**

Verizon filed an action in the U.S. District Court of New Jersey seeking preemption and declaratory relief regarding the Board's *status quo* clarification order discussed above. The Ratepayer Advocate intervened in the proceeding in support of the Board. The Board filed a Motion to stay the proceeding, seeking to refer the matter to the FCC. The Ratepayer Advocate filed in support of the BPU's Motion. Subsequently, the Board and Verizon entered into a stipulated settlement and the District Court dismissed the proceeding. The Ratepayer Advocate is in discussions with Verizon to address concerns that no CLECs are disconnected.

## C. CABLE TELEVISION

### Cable Television Proceedings Before the Board of Public Utilities

New Jersey is one of the few states in the nation that takes an active role in the regulation of cable television. In addition to local municipal review of franchises and service obligations, the Ratepayer Advocate is an active participant in Board of Public Utility review of cable television rate filings. In cases where the filings are complete and all inquiries are addressed to the satisfaction of the state, the Ratepayer Advocate, the cable company, and the Board will "expedite" the filing in order to approve the rates without the need for costly and time-consuming litigation. The Ratepayer Advocate plays an integral role in these cases. In fact, the rules provide that no filing can be approved in the expedited process without the express approval of the Ratepayer Advocate.

In certain cases, however, the Ratepayer Advocate determines that rigorous investigation of the cable rate filing is required including a detailed examination of costs and revenues incurred and earned by the company. The Ratepayer Advocate conducts these investigations by serving data inquiries on the company. Additionally, as these cases move to trial, the Ratepayer Advocate files expert testimony explaining why the rates proposed by the company exceed fair market value. The Ratepayer Advocate vigorous representation of consumer interests yielded positive results in 2005

A summary of proceedings concluded in 2005 and new cases filed in 2005 that will be resolved in 2006 follow:

In 2005, the Ratepayer Advocate filed testimony in a total of twenty seven Form 1240 cases and two Form 1205 cases. All of these cases filed in 2004, were litigated during 2005. Testimony was filed in the following cases in the months indicated.

#### Comcast of Central New Jersey 1240s (April 2005)

- East Windsor
- West Windsor
- East Brunswick
- Tom's River
- Crestwood
- Cedar Bonnet
- Long Beach Island

#### Comcast of South Jersey ( May 2005)

- Pleasantville East 1
- Pleasantville East 2
- Atlantic City/Brigantine
- Downbeach

- Vineland
- Salem
- Franklinville South

Comcast of Mercer County ( June 2005)

- Mercer
- Hopewell
- Lambertville

Comcast Consolidated Form 1205 (August 2005)

Cablevision 1240s (June 2005)

- Newark
- Mahwah
- Montvale
- West Milford
- Elizabeth
- Hamilton
- Morris
- Raritan Valley

Cablevision 1205 (June 2005)  
(Same communities listed above)

Patriot Cable 1240s (June 2005)

- Princeton
- All Other

Patriot Cable 1205 (June 2005)  
(Same communities listed above)

As a result of its litigation efforts, the Ratepayer Advocate provided the ratepayers with these estimated savings:

Comcast Form 1240	\$760,422
Comcast Form 1205	\$3,828,503
Cablevision Form 1240	\$417,887
Cablevision From 1205	\$2,192,099
Patriot Form 1240	\$893,704

In addition to the litigation of these cases, the Ratepayer Advocate also resolved the following cases filed during 2005 through the expedited rate procedures that also resulted in benefits to ratepayers:

#### Comcast

- Avalon
- Burlington
- East Windsor
- West Windsor
- East Brunswick
- Carney's Point
- Franklinville North
- Franklin Township
- Garden State
- Gloucester
- Hopewell
- Jersey City
- Lambertville
- Long Beach Island
- Maple Shade
- Meadowlands
- Mercer
- Monmouth - Freehold
- Monmouth-Other
- Northwest
- Ocean
- Plainfield
- Pleasantville
- Pleasantville West/Mullica
- Turnersville
- Union
- Wildwood

#### Cablevision 1240s

- Bergen
- Bayonne
- Hudson
- Lakewood
- Montvale
- Morris
- Newark
- Oakland
- Paterson

- Seaside
- Wall

Time Warner Form 1240

Time Warner Form 1205

Patriot Cable Form 1240

- Princeton
- Remaining Systems

Patriot Cable Form 1205

As of December 2005, the following cases filed in 2005, will be litigated during 2006:

Cablevision 1240s

- Elizabeth
- Hamilton
- Mahwah
- Raritan Valley
- West Milford

Cablevision 1205

Comcast 1240s

- Tom's River
- Crestwood/Cedar Bonnet
- Franklinville South/Salem
- Vineland

Comcast 1205

**I/M/O CABLEVISION PETITION FOR A DETERMINATION OF EFFECTIVE COMPETITION CABLEVISION OF BERGEN, OAKLAND, AND NEWARK SYSTEMS, FCC CSR NO. 6169-E; I/M/O CABLEVISION PETITION FOR A DETERMINATION OF EFFECTIVE COMPETITION CABLEVISION OF MONMOUTH, HAMILTON, AND RARITAN VALLEY, FCC CSR-6176-E; I/M/O PETITION OF CABLEVISION OF RARITAN VALLEY, INC. FOR A DETERMINATION OF EFFECTIVE COMPETITION IN ABERDEEN, NJ; BOUND BROOK, NJ; GREEN BROOK, NJ; OLD BRIDGE, NJ; RARITAN, NJ; SOUTH BOUND BROOK, NJ; SAYREVILLE, NJ; AND WARREN, NJ, CSR-5847-e**

The Media Bureau of the FCC ("Bureau") issued a decision on April 15, 2004 granting three petitions filed by Cablevision for revocation of the local franchise authority to regulate basic service tier rates in 49 New Jersey communities.

The Ratepayer Advocate opposed all three petitions and filed its opposition in each case. Forty Nine communities with approximately 200,000 subscribers were affected. Cablevision serves approximately 940,000 customers in all of New Jersey. The Board's authority was revoked in the respective systems as of the following filing dates:

Raritan Valley	January 31, 2003
Bergen and Oakland	May 6, 2003
Monmouth, Hamilton, and Raritan	June 2, 2003.

The Bureau did not address all the issues raised in the opposition filed by the Ratepayer Advocate but only discussed the use of 2000 census data and concluded in summary fashion that the Ratepayer Advocate's arguments were without merit. The Bureau offered no analysis or discussion of the other issues raised by the Ratepayer Advocate; no discussion of the merits of those other issues; or any discussion of the cases, rules and orders relied upon and cited in the Ratepayer Advocate's opposition.

In May 2004, the Ratepayer Advocate and the Board of Public Utilities filed a joint application for review with the FCC based on the FCC's Media Bureau decision of April 15, 2004 to grant three Cablevision effective competition petitions covering 49 communities in New Jersey. Those decisions revoke the Board's certification to regulate basic service tier ("BST") rates in the communities affected. The legal basis for the joint petition is that determination of effective competition should be founded upon reasonably contemporaneous data such as the "most recent census data" but that, in light of the ability to update this information through informational sources such as certificates of occupancy, census data consisting of simply the basic numbers from the last decade's census release does not satisfy the statutory requirements, the implementing regulations, and prior bureau decisions.

This matter is pending disposition by the FCC as of December, 2005.

**I/M/O PETITION OF SERVICE ELECTRIC OF NEW JERSEY FOR A DETERMINATION OF EFFECTIVE COMPETITION IN MORRIS COUNTY, NJ; SUSSEX COUNTY, NJ; WARREN COUNTY, NJ CSR-6404-E**

On September 30, 2004, Service Electric of New Jersey, the cable company in this matter, filed a petition with the Bureau covering communities in three counties for a determination of whether there is effective competition in the communities. The Ratepayer Advocate opposed the petition and filed opposition requesting that the Bureau dismiss or in the alternative, deny the petition as deficient and lacking reliable evidence to support a finding of effective competition.

The Ratepayer Advocate asserted that the petition was based on incongruous data because the underlying calculations lacked reliability. Therefore, no conclusive determination could be made based on that data as to whether the selected communities experienced effective competition at the time of the application. The Ratepayer Advocate also requested that the Bureau direct Service Electric to re-file a new petition with current census and correlative zip-plus four data, or in the alternative, to provide for a period of discovery for further disclosure and examination of the underlying data used by the company. On December 16, 2004, the cable company filed Reply Comments with the Bureau and supplied additional discovery data. Reply comments were filed in 2005. The FCC issued a decision in December 2005 granting the relief requested and dismissed the filing.

**APPLICATION FOR REVIEW OF MEDIA BUREAU DECISION TO DENY BOARD RIGHT TO REQUIRE CABLEVISION TO FILE A FINAL TRUE-UP**

On June 2, 2004, the Ratepayer Advocate filed an application for review with the FCC seeking to vacate and reverse the Media Bureau Order of May 4, 2004 that sustained Cablevision's objection to the Board's rate order of October 31, 2002 which required Cablevision to submit a separate final true-up for the period between the date that Cablevision filed a petition for effective competition and the date of the filing of the last true-up, a period of time during which the Board retained authority to regulate basic service tier rates.

Cablevision argued that the Board lacked authority to require it to file a final true-up since the Board's power to regulate had already expired. In opposition, the Board and the Ratepayer Advocate argued that the Board acted in conformity with Federal and state rules; the true-up is necessary because the BST rate in effect prior to the time of Cablevision's effective competition filing was based on projected costs, not actual costs; that the FCC form instructions specify both a projected period and a true-up period; that is imperative that final true-up costs be calculated to ensure that cable subscribers are paying rates based on Cablevision's actual cost of providing service during the projected period; and , that the grant of effective competition does not extinguish the obligation to true-up. This matter is pending disposition by the FCC as of December, 2005.

## **A LA CARTE PRICING OPTIONS FOR CABLE AND SATELLITE COMPANIES FCC DOCKET NO. 04-207**

The Ratepayer Advocate filed initial comments on July 15, 2004 and reply comments on August 13, 2004 urging the FCC to require cable operators to provide *a la carte* cable pricing to consumers in order to decrease their cable bills. *A la carte* pricing would allow consumers to purchase the channels viewed regularly instead of being forced into buying a tier of channels, some of which are never watched. The Ratepayer Advocate proposed that cable operators should provide consumers with information regarding the price for each component of the bundled service so that they can decide whether to purchase a bundled service or purchase channels on an *a la carte* basis. The FCC report, issued on November 18, 2004 in response to a congressional inquiry declined to adopt an *a la carte* requirement, citing higher monthly bills. Strong opposition to the report was made by members of Congress and consumer advocates.

In December, 2005 Chairman Martin announced that the FCC would reconsider this issue because *a la carte* offering could offer consumer benefits.

### **CONCLUSION**

2005 was a most busy and significant period for the FCC, State Commissions, and the New Jersey Division of the Ratepayer Advocate in matters affecting local competition, cable, and broadband deployment policies, including how voice over the internet protocol (VOIP) will be regulated and by whom. These decisions are vital for ratepayers throughout the nation and can enable them to participate in the digital migration and the benefits it offers to consumers. Unfortunately, as detailed in this report, many of the recent decisions of the FCC are leading to further controversy and litigation by all stakeholders. Ultimately such actions will reduce competition, result in less investment and in less innovative technology being available for the benefit of consumers. The Ratepayer Advocate will continue to work to protect the interests of all ratepayers at the state and federal level.

## **V. WATER AND WASTEWATER**

### **A. WATER QUALITY ISSUES**

The Ratepayer Advocate represents all consumers in water and wastewater matters before the Board of Public Utilities including any proceeding which may affect the rates that consumers pay for water, as well as corporate structure cases such as mergers and acquisitions which affect rates and services. The Ratepayer Advocate also evaluates the quality of services provided by water utilities, and has become increasingly active in protecting the supply of clean, safe, affordable drinking water for consumers. The Ratepayer Advocate works with water suppliers, municipalities and other state agencies to ensure that New Jersey's water companies provide consumers the highest quality water services possible.

While in New Jersey, water remains a plentiful and comparatively cheap resource, supplies of drinking water are finite and must be conserved and protected. New Jersey's rivers, lakes, reservoirs and aquifers, like those in many states around the country, are subjected to pollutants like acid rain, industrial and manufacturing effluent, fertilizers, pesticides, wastewater discharges, and storm water/roadway runoff. New Jersey's water sources, although still plentiful, supply clean drinking water to all residents; however, they face increasing environmental stress including isolated incidents such as well contamination, and widespread incidents like drought conditions that have resulted in warnings about aquifer depletion and reports of salt water encroachment up the Delaware River. These conditions highlight the need to take long-term steps to protect the potable water resources of the State.

Several major initiatives continued New Jersey's progress toward implementing the most comprehensive water protection measures in the country. Among these measures are the establishment of the Highlands Commission, and the continued work on stormwater rules that will encourage the recharge of groundwater supplies with rainwater, and set 300-foot "anti-degradation" development buffers around more than 6,000 miles of high quality waterways. These initiatives have been supported by environmentalists around the state, including the New Jersey Chapter of the Sierra Club, the Delaware Riverkeeper, and the Association of New Jersey Environmental Commissions.

The NJDEP has designated a special level of protection for a number of waterways in the State. This protection, known as Category One, targets water bodies that provide drinking water, habitat for endangered and threatened species, and popular recreational and commercial species, such as trout or shellfish. Waterways can be designated Category One because of their exceptional ecological significance, exceptional water supply significance, exceptional recreational significance, exceptional shellfish resource, or exceptional fisheries resource. The Category One designation provides additional protections to water bodies that help prevent water quality degradation and discourage development where it would impair or destroy natural resources and environmental quality. The storm water rules emphasize groundwater

recharge and special buffer-area protections for Category One water bodies. The maintenance of water quality resources is important for all New Jersey residents, particularly to the many communities that depend upon surface waters for public, industrial, and agricultural water supplies, recreation, tourism, fishing, and shellfish harvesting.

The Ratepayer Advocate supports these measures, which should help to dramatically decrease pollution of critical water bodies, and to stave off the degradation of waterways by soil and silt runoff from development in sensitive areas. They should also help ease the financial pressures on regulated water and wastewater utilities, providing relief to utility ratepayers while protecting precious water supplies.

Many of the water rate increases throughout the state are triggered by the costs companies must incur to comply with the Federal Clean Water Act ("CWA") and the Safe Drinking Water Act ("SDWA"). These two federal initiatives mandate that states adopt certain water treatment strategies, implemented in New Jersey, by the building of very expensive new water treatment plants. The costs of these new treatment plants are borne almost entirely by ratepayers. The Ratepayer Advocate works to contain these costs by scrutinizing the engineering plans and accounting methods used by the utilities to support their rate increase petitions. However, the best long-term options for maintaining clean, safe, affordable water supplies are to keep existing water sources clean and to conserve existing clean water sources.

According to projections, New Jersey's population is expected to rise from a current estimate of 8.1 million to about 9 million by 2020. More residents mean more development, greater demand for water and increased storm water runoff. These factors place continuous stress upon existing and future water supplies. The Ratepayer Advocate supports consultations among state officials, business people, environmentalists and residents working together to develop long-term policies to protect this priceless resource.

The Ratepayer Advocate also monitors and participates in the activities of several water supply and water quality organizations, including the NJDEP and the NJDEP sponsored Watershed Management Public Advisory Committees; the Delaware River Basin Commission; the New Jersey Water Supply Advisory Council; the New Jersey Water Supply Authority; and the Clean Water Council. Among the policy initiatives that are closely monitored by the Ratepayer Advocate is the NJDEP's Source Water Assessment and Protection program. This program is designed to evaluate the susceptibility of ground and surface water supply sources to current and future contamination. The NJDEP plans to integrate this information into all statewide watershed management planning. The Ratepayer Advocate tracks the progress of this program on a state and local level, and will use the information whenever appropriate to evaluate drinking water, and wastewater projects undertaken by utilities.

The need to protect New Jersey's water supply was emphasized by the publicity surrounding the passage of the "Highlands Preservation Act" and the continuing

discussion of Smart Growth rules for development in New Jersey. Much of the discussion about the Highlands concerned the need to protect the water supply in the Northern part of New Jersey in ways similar to the protections undertaken in the Pinelands. (Most of the Northern New Jersey's water supply comes from reservoirs while the Southern part of the state gets its supply from aquifers.) Water supply, and the fact that potable water is the most important asset for sustaining life, was further highlighted by the impact of the terrible hurricanes that hit states on the Gulf of Mexico. These events focused statewide attention on the issues of water supply and quality.

On October 28, 2005 the Division of the Ratepayer Advocate hosted its 2005 conference on utility issues in New Jersey that included a panel entitled: "New Jersey's Water Supply: An Emerging Crisis." Four experts offered their perspectives on New Jersey's ability to guarantee an adequate supply of clean potable water:

Senator Bob Smith spoke about legislative initiatives to protect watersheds such as the Highlands Preservation Act. He also spoke about a proposed water tax that would be placed in a trust fund to be used solely for water projects throughout the state. Finally, he spoke about initiatives to allow water reuse and recharge for rivers.

Commissioner Fred Butler of the Board of Public Utilities spoke from a regulatory perspective on New Jersey and national water issues. He discussed how the priorities of private companies and governmental water providers differed on the need for integrated water resource management and what constitutes sufficient return for private water companies to enable them to ensure the quality and supply of potable water. He also discussed increasing public awareness about conservation, implementation of service standards and the needs of economically disadvantaged customers.

Walter Lynch, President of American Water, Northeast, discussed water supply from a private water vendor's perspective. He discussed the company's treatment facilities and how it protects water supply.

Finally, Capt. Bill Sheehan, the Hackensack Riverkeeper, spoke on the need for a collaborative effort among various parties and stakeholders to reach productive consensus on ensuring water supplies and protecting the state's water resources.

## **B. BASE RATE CASES-WATER**

**I/M/O THE PETITION OF SEABROOK WATER CORPORATION FOR AN INCREASE IN RATES AND CHARGES FOR WATER SERVICE. BPU DOCKET NO: WR03010054**

**I/M/O ALLEGED VIOLATION OF LAW BY SEABROOK WATER CORPORATION ET AL., BPU DOCKET NO. WS04030175**

## **I/M/O THE TAKEOVER AND TRANSFER OF THE FRANCHISE AND THE ASSETS OF SEABROOK WATER CORPORATION, BPU DOCKET NO. WX04030214**

The Ratepayer Advocate is representing ratepayer interests in four related proceedings involving Seabrook Water Corporation, a troubled small water utility providing service to approximately 500 customers in a portion of Upper Deerfield Township, Cumberland County. The Ratepayer Advocate's participation focuses on advocating solutions that will bring proper service to Seabrook's customers at the lowest possible cost.

On December 16, 1998 the New Jersey Department of Environmental Protection ("DEP") notified Seabrook that the water being distributed to the Company's customers failed the DEP's newly revised, more stringent standards for radionuclide content. Seabrook's failure to achieve compliance with the revised standards resulted in serious financial and operational consequences for the Company.

Thereafter, Clement Pappas, Inc., a juice bottler, formerly Seabrook's largest customer, representing approximately 68% of the Company's revenues in 2002, left the Seabrook system and is currently taking water service from the Upper Deerfield Township municipal water system. Seabrook's other customers include approximately 500 residential customers, three public schools, the Township's municipal buildings, and a few commercial customers. In December 2003 the DEP ordered the Township to begin supplying water to these other customers.

The Township began complying with the DEP Order in March 2004 following the DEP's filing of an enforcement action in Superior Court. Although, Seabrook was still receiving payment from its other customers, it incurred large obligations to the Township for the water the Township is providing to serve these customers. Seabrook's financial and operational difficulties have given rise to the following administrative proceedings.

On January 24, 2003, Seabrook filed a petition seeking an overall rate increase of \$187,000 or approximately 280%, and an interim rate increase of \$125,000 or approximately 192%. Evidentiary hearings on the Company's request for interim rates were held on November 7 and 10, 2003. The Ratepayer Advocate opposed the Company's request for interim rates. Evidentiary hearings on the permanent rate increase were held on December 8, 11 and 15, 2003. The Ratepayer Advocate submitted expert testimony opposing the rate increase. The Ratepayer Advocate took the position that the rate increase request was the result of the Company's failure to take the steps necessary to retain its largest customer, Clement Pappas. On November 23, 2003 ALJ Douglas Hurd denied the Company's interim rate request. As of December, 2005 no decision has been issued on the Company's request for a permanent rate increase.

On February 23, 2004 Seabrook amended its rate petition to incorporate a Purchased Water Adjustment Clause ("PWAC") to cover Upper Deerfield's charges for the water the Township is providing to Seabrook. The Ratepayer Advocate filed

comments stating that, given the risk to the public health if Seabrook were to continue providing its own water to its customers, and the DEP's action requiring the Township to provide water to these customers, the Ratepayer Advocate could not oppose approval of a PWAC, but that the PWAC should be considered interim in nature, subject to further review as part of the base rate proceeding, and subject to refund on any revenues collected in excess of Upper Deerfield's actual charges for the purchased water. On September 26, 2004, the Board issued an Order approving implementation of a PWAC, subject to the conditions substantially recommended in the Ratepayer Advocate's comments.

On April 12, 2004 the BPU issued an Order to Show Cause, BPU Docket No. 04030175. The Order directed Seabrook and its officers and shareholders to show cause why the Board should not revoke Seabrook's operating authority and franchise and order other relief including financial penalties and appointment of a receiver. The Order to Show Cause was based on allegations that Seabrook had violated safe drinking water and other standards, and had violated provisions in an earlier BPU rate order requiring the company to enter into a management agreement and complete a meter installation program. The Order further alleged that the Company was in a deteriorated physical and financial condition, and was not a viable business. The Order also directed Clement Pappas and Upper Deerfield Township to show cause why Clement Pappas should not be considered as receiving service through Seabrook and be required to pay Seabrook for its water service. This matter was transferred to the OAL. Further proceedings were deferred pending developments in a joint BPU-DEP proceeding to compel the takeover and transfer of Seabrook's assets to Upper Deerfield Township, BPU Docket No. WX04030214.

On December 30, 2003 the DEP issued a Notice of Decision to Invoke and Initiate the Provision of the Small Water Companies and Small Sewer Companies Takeover Act, *N.J.S.A. 58:11-59 et seq.* This proceeding relied on Seabrook's continuing violations of federal and state requirements, including excessive levels of radionuclides in the water and failure to maintain adequate well and storage capacity to provide reliable water service.

The initial step of the Small Water Company Takeover Act process is a public hearing held jointly by the BPU and the DEP. Such a hearing took place Monday, August 2, 2004 in Upper Deerfield Township. The DEP made a presentation outlining the deficiencies in Seabrook's water system, and estimates of the costs of remedying the deficiencies for Seabrook as a "stand-alone" system and a part of a consolidated system with the Upper Deerfield Township municipal water utility. The Ratepayer Advocate and representatives of Seabrook and Upper Deerfield Township also made statements. On September 1, 2004 the Ratepayer Advocate submitted a report prepared by its water system engineering expert which analyzed the relative costs of various options for addressing Seabrook's operational and financial problems and concluded that a takeover by Upper Deerfield Township appeared to be the most cost-effective for Seabrook's customers. Seabrook filed comments asserting that the Company had taken "all appropriate steps" to bring its water in compliance with the

revised radionuclide standards. Upper Deerfield Township filed comments asserting that it should not be required to take over Seabrook's system or pay any compensation to Seabrook's owners.

On November 1, 2004 the two hearing officers issued a joint report recommending a takeover of Seabrook by Upper Deerfield Township. This recommendation was based on findings that Seabrook lacked the "technical, managerial and financial capabilities that enable a water system to plan for, achieve, and maintain compliance with applicable drinking water standards." Upper Deerfield Township, which has been supplying water to Seabrook's customers and is the only established water utility in the immediate vicinity of Seabrook, was found to be the appropriate entity to take over Seabrook. Written comments on the report were due on or before December 1, 2004. According to the Notice accompanying the report, if parties with standing take issue with the findings and recommendations contained in the report, a contested case hearing will be held before the DEP and BPU, or an Administrative Law Judge. On November 29, 2004 the Ratepayer Advocate stated support for the hearing officers' recommendations. Upper Deerfield Township and the Company filed comments in opposition. A settlement meeting took place at the DEP's Trenton office on December 17, 2004. As of December, 2005, the Company and the Township remain in significant disagreement about the value of the Company's assets.

In early February 2005, the matter was transmitted to the Office of Administrative Law and assigned to ALJ W. Todd Miller. Evidentiary hearings were held on August 29 and 30, 2005, at which, the Township said it was willing to provide service to Seabrook's customers, but that it should not be required to take over and compensate Seabrook's owners for the Company's assets. Initial briefs were filed on October 31, 2005. The New Jersey Chapter of the National Association of Water Companies filed a brief as *amicus curiae* in support of the proposed takeover.

On December 5, 2005 Judge Miller issued an Initial Decision in which he found that the Township was the appropriate entity to provide service to Seabrook's customers, but that the Township should not be required to acquire Seabrook's entire system. The Initial Decision concluded that the Township should be required to acquire only those assets deemed useful to the Township. On January 12, 2006 the Ratepayer Advocate filed exceptions arguing that the partial takeover contemplated by the Initial Decision was not a remedy under the Small Water Companies and Small Sewer Companies Takeover Act, and would be impractical and contrary to the public interest, and that the Initial Decision should be modified to require the Township to take over the entire Seabrook system. The matter is unresolved as of December 2005.

**I/M/O THE PETITION OF LAKE LENAPE WATER COMPANY FOR APPROVAL OF AN INCREASE IN RATES FOR SERVICE, BPU DOCKET NO. WR03050354**

On April 30, 2003, the Lake Lenape Water Company which provides water service to approximately 347 residential and a few commercial customers in a portion of Andover Township, County of Sussex filed a petition with the BPU seeking approval for increases in water service rates and charges for public fire protection service. The Company sought an overall increase in annual revenues of \$24,030 or 21%.

The matter was assigned to ALJ Barry N. Frank as a contested matter. A public hearing was held on November 12, 2003, attended by approximately 35 customers. The Ratepayer Advocate's financial expert reviewed LLW's case and assisted with the investigation of the Company's claims. After extensive discovery and settlement negotiations, a stipulation was agreed to by the parties. ALJ Frank adopted the stipulation on March 8, 2004. The BPU issued an Order adopting the stipulation and the Initial Decision on April 2, 2004.

The settlement allowed the Company to implement a 10% rate increase in order to generate sufficient revenues to pay for system improvements and improve reliability. The Company also agreed to establish an emergency notification system to contact customers about water service disruptions. Progress on the implementation of the emergency notification system was reported to the Ratepayer Advocate and the BPU on a regular, ongoing basis throughout 2005.

**I/M/O THE APPLICATION OF THE FAYSON LAKE WATER COMPANY, A NEW JERSEY CORPORATION, FOR THE APPROVAL OF AN INCREASE IN RATES AND AN ALTERATION OF TARIFF, BPU DOCKET NO. WR03040278**

On May 8, 2003, Fayson Lake Water Company which serves 876 mostly residential customers within certain sections of the Borough of Kinnelon, County of Morris, filed a Petition with the BPU seeking approval for an increase in rates for water service and for tariff changes. Fayson Lake requested a 107.7% increase in its base rates for water service.

A public hearing was held on October 15, 2003 in Kinnelon, and about 30 customers attended. Most of the public comments concerned pressure and system reliability. Extensive discovery was conducted and evidentiary hearings were scheduled for November 24 and 25, 2003. The evidentiary hearings were adjourned prior to the filing of Ratepayer Advocate testimony to facilitate settlement discussions. After numerous meetings, a settlement was reached in the matter. ALJ Frank issued an Initial Decision adopting the stipulation on April 19, and the BPU issued an Order adopting the Initial Decision on May 12, 2004.

The settlement agreed to by the parties allowed the Company to implement a rate increase of approximately 30% in two phases. The average residential customer's rate would increase by a total of 28.2%. Phase One of the increase was implemented as of the effective date of the BPU's Order, and resulted in a rate increase of approximately 18% for residential customers. Phase Two of the increase was to be implemented by the Company no sooner than six months after Phase One. The Company was also permitted to make a supplemental filing seeking further rate relief for major pipe and pump upgrades necessary to ensure safe and adequate water service to all parts of its system.

The Company filed the supplemental proceeding on November 10, 2004 which stated that, due to certain exigencies, the Company had to devote a majority of its financial resources to replacing one of its wells. The petition sought recovery of \$93,069 in costs incurred to replace the well, \$3,155 for meter replacement, and 50% of the rate case expenses.

The Company's responses to Ratepayer Advocate discovery questions, received on December 17, 2004, stated that the well was not yet in service pending receipt of a water allocation permit from the DEP. The Company expected to receive the permit in late January or early February, 2005.

A meeting among the parties was held at the BPU on May 3, 2005. At the meeting, it was learned that the Company was having difficulty obtaining final approval from the DEP for the environmental Infrastructure Trust loan it was planning to use as permanent financing for this project. The Company was considering different financing options. On June 27, 2005 Staff stated that the Company had received a DEP water allocation permit for the well.

On September 16, 2005 the Company filed a letter with the Board withdrawing its requests for a Phase Three rate increase.

**I/M/O MIDDLESEX WATER COMPANY FOR AN INCREASE IN RATES FOR APPROVAL OF A MERGER OF BAYVIEW WATER CO. INTO MIDDLESEX WATER CO. BPU DOCKET NOS. WR05050451 AND WM05080728**

On May 18, 2005, Middlesex Water Company filed a base rate petition seeking additional annual revenues of \$6.4 million, or 13.1% over present revenues. The Company provides water service to residential and commercial customers in South Plainfield, Metuchen, Carteret, Woodbridge, Edison, South Amboy and portions of Clark; on a contract basis to the Township of Edison, the Borough of Highland Park and Sayreville, the Old Bridge Municipal Utilities Authority and the Marlboro Township Municipal Utilities Authority; and on a special contract basis for water treatment and pumping services to the Township of East Brunswick.

The parties to this matter included the Ratepayer Advocate, the Staff of the BPU, and the following Interveners: the Marlboro Township Municipal Utility Authority (MUA) the Old Bridge MUA, the Township of East Brunswick, and the Borough of Sayreville.

On August 19, 2005, Middlesex filed a petition to merge Bayview Water Company, formerly the Fortescue Water Company, into Middlesex. Bayview had been a wholly owned subsidiary of Middlesex since 2001. The Company proposed that the rates paid by Bayview customers would remain unchanged by the merger petition and by Middlesex' base rate filing. The parties agreed to consider both petitions simultaneously.

The Ratepayer Advocate's accounting, engineering, and economics experts reviewed these petitions. Staff and the Ratepayer Advocate conducted extensive discovery in the base rate case. Following the discovery period, the parties engaged in several settlement conferences. As a result of these negotiations, the parties entered into a stipulation of settlement, the terms of which called for an annual revenue increase of \$4.3 million per year, or 8.68% over present revenues. Intervenor Marlboro MUA and East Brunswick signed the stipulation, while Sayreville and Old Bridge submitted letters that they did not object to the settlement. The Ratepayer Advocate reviewed the proposal to merge Bayview into Middlesex, and ultimately did not oppose Middlesex' petition. Accordingly, the Bayview merger was incorporated into the base rate stipulation.

This stipulation was adopted by ALJ Barry Frank. The Board adopted Judge Frank's Initial Decision at its public agenda meeting of December 2, 2005 and issued an Final Order on December 8, 2005.

**I/M/O THE PETITION OF MONTAGUE WATER AND SEWER COMPANIES BPU  
DOCKET NOS. WR0312034 (WATER) & WR0312035 (SEWER)**

On December 31, 2003 Montague Water and Sewer Companies (collectively "Montague" or the Company) filed for an increase in rates for service. Montague's service territory is Montague Township within Sussex County. It has 712 water customers and 276 sewer customers. Montague increased revenues from water service by \$80,315 or 29.8% above test year revenues. The proposed Phase I increase in sewer rates was approximately \$275,212 or 265% above test year revenues and in proposed Phase II, Montague claimed it would expend \$525,000 to rehabilitate several of its leach fields.

Montague's parent, Utilities, Inc., claimed it has expended \$604,000 on combined improvements. They requested a two phase increase to mitigate the cost increases caused by the failure of two of its subsurface wastewater disposal beds during the winter of 2002-2003. Wastewater disposal costs the company an average of \$30, 000

per month. Montague Sewer proposed to accumulate the costs and amortize them over three years.

The parties conducted discovery and settlement meetings and the Board issued an order approving a stipulation on the water rate case on August 19, 2004. The average residential water customer would see an increase of about 14.88%. The parties could not reach settlement on the sludge hauling and phase II sewer issues, and evidentiary hearings were held on October 21, 22 and 25 before ALJ Michael Mehr. The Ratepayer Advocate presented financial expert and engineering testimony. A Memorandum of Understanding on Phase I sewer rates was executed on September 27, 2004 which became part of the record of the case. Briefs were filed November 19, 2004 and oral argument on November 22, 2004. After the filing of the Initial Decision, the parties negotiated a settlement which included an overall increase of only \$39,116 or 37.69%. The sludge hauling costs of \$28,516 are to be amortized over 20 years with no carrying costs. The Board issued an Order approving the settlement on September 15, 2005.

**I/M/O OF PETITION OF LAKE VALLEY WATER COMPANY FOR AN INCREASE IN RATES FOR WATER SERVICE AND OTHER TARIFF CHANGES, BPU DOCKET NO. WR04070722**

Lake Valley Water Company is a public water utility corporation of the State of New Jersey, subject to the jurisdiction of the Board of Public Utilities, and franchised to provide water service in a portion of the Township of Pemberton, Burlington County, New Jersey.

On July 28, 2004, Lake Valley filed a petition for emergent/interim rate relief in the amount of \$128,173, representing an annual increase over current rates of approximately 48%.

The Ratepayer Advocate's financial expert and a professional engineer helped in the analysis of the case and with discovery. The public hearing was held on November 5, 2004. Settlement negotiations were undertaken. As of December 31, 2005, a stipulation among the parties had not been finalized.

### **C. BASE RATE CASES- WASTEWATER (SEWER)**

#### **I/M/O THE PETITION OF APPLIED WASTEWATER MANAGEMENT, INC. (AWMI) FOR APPROVAL OF AN INCREASE IN RATES FOR SERVICE, BPU DOCKET NO. WR03030222**

On March 28, 2003, Applied Wastewater Management, Inc. filed a petition seeking an increase in rates. The Company asked for an overall increase in annual revenues of \$987,790 or approximately 43.92%. The Company serves approximately 3,000 customers in several different systems serving portions of municipalities in Somerset, Hunterdon, Burlington, Monmouth and Morris Counties. The Company's proposal included a two-tiered rate increase. The first portion of the rate increase would apply to the approximately 1,100 customers of the former Homestead Sewer Company service area in Mansfield Township who were paying a flat rate of \$440 per year for wastewater service. Under the AWMI proposal, these customers would experience a rate increase of nearly 100%, to approximately \$855 per year per customer. The second portion of the Company's proposal applied to the remaining 1,800 of AWMI's Community Onsite Wastewater Systems who were paying a flat rate of \$904 per year for wastewater service. AWMI proposed a rate increase of approximately 31% to approximately \$1,185 per year.

Public hearings were conducted by Administrative Law Judge ("ALJ") Douglas H. Hurd on September 29, 2003, in Holland Township, and on October 29, 2003, in Mansfield Township. Approximately 60 customers attended the October 29 hearing.

The Ratepayer Advocate met with various groups of customers throughout the AWMI system to explain the rate setting process and gather information on the customers' experiences and the effect the proposed rate increase would have on individual customers. AWMI has a large number of senior citizen customers. Among the issues the Ratepayer Advocate analyzed is whether or not the customers of AWMI should be charged a usage-based wastewater rate, as opposed to the Company's proposed flat rate.

Evidentiary hearings were held on January 12, 13, and 14, 2004, before ALJ Hurd at the Office of Administrative Law, Quakerbridge, New Jersey. After briefs were exchanged by the parties, ALJ Hurd issued an Initial Decision on May 26, 2004, awarding the Company a rate increase of approximately 17.6%, and staying the effective date of that rate increase until a usage-based rate study was completed by the Company and reviewed by the parties.

After reviewing the Initial Decision, the parties negotiated a two phase rate increase to keep the Company financially solvent during the rate study period. Some rate relief seemed warranted due to the significant and necessary justifiable investments in treatment plant upgrades made by the Company. The settlement permitted the Company to implement a Phase One rate increase of approximately 13%. The second phase of the rate increase will become effective on or about June 1, 2006.

Under the terms of the settlement, the Homestead customers will receive a Phase One increase of approximately 25% and a Phase Two increase of approximately 18.8%. The remaining wastewater customers will receive a Phase One increase of approximately 10%, and no increase in Phase Two. The Company must immediately commence a usage based rate study, and were to supply the results of the study to the Ratepayer Advocate and the BPU no later than June 30, 2005. However, as of December 31, 2005 the company has not filed the results of the study.

**I/M/O THE PETITION OF ATLANTIC CITY SEWERAGE COMPANY TO INCREASE TARIFF RATES AND CHARGES FOR SEWERAGE SERVICE, BPU DOCKET NO. WR04091064**

On September 29, 2004, Atlantic City Sewerage Company filed two petitions with the State of New Jersey, Board of Public Utilities ("BPU") requesting increases in the Company's base rates for sewer service as well as an increase in its Purchased Sewerage Treatment Adjustment Clause ("PSTAC"). ACSC requested a sewer rate increase of \$2,224,556 or 14.8%, which includes an increase of 3.3% in its PSTAC. The requested increases would result in an increase in the overall annual bill of a typical residential customer of \$80.96. ACSC's base rate case was based on a test year ending December 31, 2004. The Company requested a return on equity of 11.9% and a capital structure that contains 53.9% equity. ACSC requested that these petitions be handled on an expedited basis and not transferred to the Office of Administrative Law ("OAL").

The Ratepayer Advocate evaluated the application and issued discovery requests on October 25, 2004. Negotiations continued throughout 2005. As a result of an initial order decision and settlement order approved by the BPU on February 23, 2005, the Company will disburse refunds of approximately \$118 to each customer as a result of a sale of property to the State of New Jersey.

**D. MERGERS AND ACQUISITIONS**

**BOARD OF PUBLIC UTILITIES V. BERKELEY WATER COMPANY, BPU DOCKET NO. WS97060434**

The troubled Berkeley Water Company has a long and complex history of proceedings before both the Board and Courts of New Jersey. This particular matter was initiated by an Order to Show Cause as to why the Company should not be sold, issued by the BPU on July 11, 1997. However, a history of the Company is necessary to understand its current state. The BPU approved the Company's franchise in 1961, approving the issuance of 1,250 shares of stock to "James E. Johnson and Susanne E. Johnson t/a Johnson Lumber Company". In the 1980's, the BPU initiated enforcement

proceedings against Berkeley based on numerous customer complaints. On or about August 28, 1980, the BPU hearing examiner's report and recommendations stemming from the investigation was published. In it, the examiner found that the Company had committed numerous operational violations and had failed to provide safe, adequate and proper service to its customers, including, inter alia, the failure to comply with BPU regulations regarding service terminations, customer deposits, and billing procedures and had experienced serious service outages. Subsequently, on November 7, 1980, the BPU adopted the examiner's findings and ordered the appointment of a receiver to oversee Berkeley.

On December 16, 1980, a receiver was appointed to manage the day-to-day operations of the utility, and Johnson was restrained and enjoined from any activities dealing with the day-to-day operations of the Company, unless Johnson was instructed by the receiver to participate. Legal and administrative battles over control of the utility continued over many years. On June 10, 1992, the Chancery Division, Ocean County, New Jersey, in response to a motion filed by the receiver, ordered the sale of Berkeley. The Court remanded the issue of whether or not the shareholders should be permitted to regain control of the Company to the BPU. As a direct result, Bankshares, L.P., a Johnson-owned stockholder of Berkeley, filed an interlocutory appeal of the Order, seeking in part a summary reversal and stay of the Order, which was later denied.

On or about July 11, 1997, the BPU filed an Order to Show Cause, stemming from Johnson's refusal to implement the audit recommendations and for his failure to cooperate with the BPU to establish a Board of Directors and a managing director. On August 18, 2000, an ALJ granted the BPU a summary decision, which was adopted by the BPU on October 26, 2000. The BPU, in its Order, concluded that all issues respecting Johnson's debarment from managing Berkeley were now moot due to his death, and therefore dismissed, and ordered the sale of the Company. On January 10, 2001, Berkeley filed an appeal of the BPU's decision. The Appellate Division, on August 23, 2001, granted Berkeley's motion in part and denied it in part. On March 21, 2002, Berkeley filed another motion which was denied by the Court on April 10, 2002. Oral argument on the appeal occurred on May 29, 2002 and the Appellate Division issued its Decision affirming the Board of Public Utilities' decision on July 3, 2002 finding that. "The BPU's determination that Berkeley should be sold by its present custodial receiver is reasonably supported by evidence in the record and is not an abuse of discretion."

On February 13, 2004, Berkeley filed a motion with the Chancery Division seeking appointment of Robert Swain as co-receiver with the sole purpose of selling the Company. The Board and Ratepayer Advocate filed objections and the matter was heard March 5, 2004. The Chancery Division denied the motion to appoint a co-receiver. The receiver is attempting to sell the company. A bidders conference was held at the BPU on July 1, 2004 and five notices of intent to bid on Berkeley were received. The opening of bids was postponed from October 15, 2004 to November 17, 2004 due to requests from prospective bidders. As of December 31, 2004, bids were still being considered. As of December, 2005, the matter remains unresolved.

**I/M/O THE PETITION OF SEABROOK WATER CORPORATION FOR DECLARATORY AND RELATED RELIEF, BPU DOCKET NO. WC02060340**

In June 2002 Seabrook filed a Petition for Declaratory and Related Relief, BPU Docket No. WC02060340. The Petition asserted that it would be a violation of Seabrook's rights under its Board approved franchise for the Township to provide water service to Clement Pappas. The Ratepayer Advocate conducted discovery on engineering and financial issues, and worked with an expert water system engineer to assist the parties in working toward a settlement. Upper Deerfield Township and Clement Pappas filed motions to dismiss the petition for lack of jurisdiction, but the motions were denied by ALJ W. Todd Miller. To date, there has been no determination of the issues raised in Seabrook's petition. Further proceedings on Seabrook's Petition have been deferred pending developments in the other pending matters involving Seabrook, discussed above. The proceeding was transferred to the OAL under the Small Water Company Takeover Act in February, 2005. The remaining Seabrook matters will be held in abeyance pending the completion of the Takeover Act proceedings discussed elsewhere in this report.

**VALLEY ROAD SEWER (VRS) RECEIVERSHIP (NO CURRENT BPU OR SUPERIOR COURT DOCKET NO.)**

This troubled, small sewer utility has been the subject of a BPU docket in one way or another for many years. It is currently in receivership and negotiations between Valley Road Sewer, the Township of Tewksbury and Applied Wastewater Management (AWWM) have resulted in a settlement providing for the purchase of the remaining part of the Company by AWWM. The Company's franchise for the Valley Road system was approved by the Board. The franchise area consists of 75 single-family residences, 29 townhouse or condominium units, and one commercial establishment. The Pottersville System also collects and directs sewerage to the Company's on-site treatment plant through a system of laterals, mains and a conventionally configured pump station. This treatment plant is located in the service area. Treated sewerage is then discharged to the Lamington River. The treatment plant is designed to treat 48,000 gallons of sewerage per day. However, Petitioners state the plant does not "meet all current New Jersey Department of Environmental Protection (NJDEP) limits for Discharge to surface water." The NJDEP issued a report to VRS on November 17, 1999, rating its facilities "Unacceptable." Subsequent reports issued by the NJDEP on January 16, 2001, and December 4, 2001, identified aspects of the system either in "Noncompliance" or "Out of Compliance." Because of this and because the Township states that VRS is "unable to properly maintain, operate and repair" its system, AWWM proposes to make the following capital improvements to the system subsequent to its acquisition:

• Filter Rehab	\$16,500
• Return Sludge Pumps	12,000
• Alarm System	2,750
• Safety Railings	5,500
• Repiping (sludge return & filters)	12,000
• Flow Meter & Chart Recorder	5,500
• Site Cleanup / Repair	5,000
• Tank Cleanings	15,000
• Comminutor Rebuild / Replace	6,000
• Generator and Motor Control Center	<u>82,500</u>
TOTAL	<u>\$169,750</u>

A New Jersey Pollutant Discharge Elimination System Permit existed for the System but has expired. A renewal application for the Permit was filed with the New Jersey Department of Environmental Protection and is awaiting approval. Before AWWM can provide service to this service area, the NJDEP must also enter an Administrative Consent Order. This Order will allow AWWM to take corrective action at the plant, and will allow an updated NJDEP Permit to be issued.

VRS currently charges a rate of \$142.40 per quarter (\$569.00 per year) for providing sewer service to customers of the system. Should the Board approve the municipal consent and asset acquisition in this matter, the Company has requested that this rate be increased to \$226.00 per quarter (\$904.00 per year).

Issues relating to the rates to be charged have been consolidated in the most recent base rate case filed by AWWM for its other New Jersey operations. As a result of the settlement in that case, the VRS customers will be charged the existing \$904 rate. In addition, water service to the proposed franchise area will be provided by Elizabethtown Water Company. Wastewater service to that portion of the Township other than Pottersville is provided by two municipally owned wastewater treatment systems located in the Oldwick section of the Township.

This acquisition can move forward because AWWM's rates were approved by the Board. A meeting with the receiver, AWWM, the Board, RPA, DEP and the New Jersey Division of Taxation took place on October 1, 2004. At that meeting, the Receiver and AWWM worked towards signing an Asset Purchase Agreement while the DEP and Taxation took steps necessary to resolve their agencies' claims against the system. No further action on the acquisition or rate change can take place until the DEP and Division of Taxation issues are resolved. As of December 31, 2005, those issues remain unresolved.

## **E. PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSES (“PSTAC”)**

A PSTAC is an accounting mechanism by which the utility can recover only those costs for collecting and/or treating the sewerage it collects for its customers which are normally passed onto ratepayers. This is a limited total operations proceeding and not as comprehensive as a base rate case which examines all finances of a utility.

### **I/M/O OF THE PETITION OF ATLANTIC CITY SEWERAGE (ACSC) FOR AUTHORIZATION TO DISTRIBUTE CERTAIN FUNDS, BPU DOCKET NO. WM04050336**

On June 3, 2004 Atlantic City Sewerage Company filed a petition to distribute condemnation proceeds. The Company originally filed a Petition requesting approval for distribution of sale proceeds from the sale of 0.97 acre of land known as the “Huron Avenue” parcel. The Company owns approximately 12 acres of land at this site. The land in question was being sold through condemnation proceedings to the State of New Jersey, Department of Transportation. The original Petition requested approval to distribute pre-tax proceeds of \$1,947,986 which was based on the amount that the State was then willing to pay for the land. The proceeds were to be reduced by the original cost of the land and various legal and appraisal costs for total deductions of \$48,615.

The net sale proceeds are subject to federal income tax at a corporate capital gains rate of 34%. The Company proposed that the net proceeds be shared 50/50 between ratepayers and shareholders. This practice was approved by the BPU for land sales involving ACSC. The ratepayers’ share would be returned to each customer. The result would be that each residential ratepayer would receive the same bill credit as each casino. The proposed payout per customer was \$86.07.

When the Company filed its Petition, the sales price for the land was still being litigated and the Company was attempting to increase the price received from the State. It engaged Special Counsel and entered into a contingency agreement in which its attorneys would be paid approximately 22% of any additional amounts collected from the State.

The Company subsequently filed an amended Petition based on the final resolution with the State which increased the gross proceeds to \$2,883,653. After total costs including legal costs, the net proceeds available for distribution were \$2,624,980. After income taxes and an allocation between ratepayers and shareholders, the net credit to each customer was \$118.89.

The BPU delayed ruling on the Company’s revised Petition because there were two pending ACSC matters at the BPU: a base rate case and a PSTAC matter. The

base rate case petition sought an increase of approximately \$2.25 million, or 14.8%, which includes a 3.3% increase to the PSTAC charge, resulting in a residential increase of about \$81 per customer annually. The Company proposed making the effective date of the base rate increase, PSTAC and customer credit for the land sale all effective on the same date. If the Company received all of its requested rate increase, average residential customers would see net reductions of about \$55.00 in their annual sewer bills. After one year, the land sale credit would expire, and the customers' rates would return to the level set in the base rate and PSTAC proceedings currently before the BPU. An initial decision and settlement order to that effect was approved by the BPU on February 23, 2005.

**I/M/O THE PETITION OF ATLANTIC CITY SEWERAGE COMPANY TO CHANGE THE LEVEL OF ITS PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE, BPU DOCKET NO. WR04091063**

On September 29, 2004, the Company filed two Petitions with the Board of Public Utilities requesting increases in its base rates for sewer service as well as an increase in its Purchased Sewerage Treatment Adjustment Clause. ACSC is requesting a sewer rate increase of \$2,224,556 or 14.8%, which includes an increase of 3.3% in its PSTAC. The requested increases will result in an increase in the overall annual bill of a typical residential customer of \$80.96. ACSC's base rate case is based on a test year ending December 31, 2004. The Company requested a return on equity of 11.9% and a capital structure that contains 53.9% equity. ACSC also requested that these Petitions be handled on an expedited basis and not transferred to the Office of Administrative Law, stating that it requested this treatment because it believed that settlement was likely.

The Ratepayer Advocate issued discovery requests on October 25, 2004. The parties attended a discovery meeting at the offices of the Ratepayer Advocate on November 4, 2004, at which the Company provided the responses to discovery requests. The Ratepayer Advocate and Board Staff reviewed the information received from the Company. Negotiations continued throughout 2005. The parties agreed to offset the impact of any rate increase with the proceeds of the land sale (discussed in "Sales of Utility Property") above. An initial decision and settlement Order was approved by the Board on February 23, 2005.

## **F. MUNICIPAL CONSENT MATTERS**

### **PETITION OF APPLIED WASTEWATER MANAGEMENT, INC. FOR APPROVAL OF A MUNICIPAL CONSENT BY THE TOWNSHIP OF HILLSBOROUGH AND EXTENSION OF ITS EXISTING "COWS" SEWER TARIFF TO THE NEW SERVICE AREA BPU Docket No: WE04101349**

The Petition sought Board approval of a municipal consent granted to the Company to provide sewer service to a new single-family development in Hillsborough Township, Somerset County. The Petition also sought Board approval to extend the company's Community Onsite Wastewater Service ("COWS") tariff, with an annual charge per home of \$995.00, to the new service area.

The development's location in Planning Area 4 raised certain issues under the Board's main extension rules. However, recent amendments limiting utility-funded infrastructure investments outside of "Smart Growth" areas did not appear to apply to this project, as the utility became contractually committed to the project before the effective date of the Board's amendments to its main extension rules. A public hearing was held at the BPU on June 9, 2005. On June 30, 2005 the Ratepayer Advocate filed comments stating that it had no objection to the petition. The Board approved the petition on August 18, 2005.

## **G. OTHER WATER RELATED MATTERS**

### **AQUA NEW JERSEY, INC. NOTICE OF PLANNED CHANGE IN FUNCTION PURSUANT TO N.J.A.C. 14:3-5.1(a)(2) BPU Docket No: Pending**

On September 12, 2005 Aqua New Jersey, Inc. filed Notice of its Intention to implement a change in the functions performed at its three district offices effective October 1, 2005 in the Company's Phillipsburg, NJ and Hamilton, NJ offices, and effective November 1, 2005 in the Company's Erial, NJ office. The Company wished to no longer accept in-person bill payments from customers. The Notice further stated that the Company had negotiated an agreement with Western Union Commercial Services so that customers could pay their bills at two Western Union offices in Phillipsburg and Hamilton. After detailed review of the notice by the Ratepayer Advocate determined that the proposed changes were not in the best interests of ratepayers. The Company stated that it would bear the costs of the services to be provided by the Western Union office but the Notice did not specify what steps the Company planned to take to assure that customers receive timely credit for the payments. In addition, the Company did not intend to make bill payment services available at a location near the Erial NJ office, which serves the Company's Southern Division. In addition, at least one of the proposed bill payment locations is a check cashing store raising concerns for the

Company's low-income consumers, as check cashing stores typically charge substantial fees to convert customers' paychecks to cash.

It appears, based on discussions with the Board's Division of Customer Assistance that Board Staff had determined that Board's approval was not required for changes in functions handled by customer service centers. Board Staff seems to have requested the Company to take measures to assure that its customers will continue to have access to convenient locations at which to pay their bills. However, the Ratepayer Advocate was not included in the discussions between Aqua and Staff even though we notified the parties of our concerns about these changes.

On November 30, 2005, the Company's attorney advised the Ratepayer Advocate that the Company had found a location in the Southern Division, and that they would also be providing a location in the service territory of Berkeley Water Company, which Aqua recently acquired. The Ratepayer Advocate continues to monitor the impact of these changes in company practices.

#### **CHECK METERING WORKING GROUP**

This Working Group was formed after three Petitions were filed with the BPU seeking approval to "check meter," or submeter, water utility service. (The three Petitions still pending at the BPU at the end of 2005, include: Mystic Point Apartments; Studebaker Submetering, Inc.; and New Jersey Apartment Association.) The first meeting of this group was held in 2002. The group continued to meet to consider BPU policy on the practice of check-metering and to make recommendations to the Board on whether to allow water check metering when the basic characteristics of use is residential.

All group members were to prepare comments on the advantages, disadvantages and limitations, if any of allowing landlords to check meter water utility service in all new and existing residential apartment buildings. The draft comments were to form the basis of consensus recommendations. It was anticipated that the facilitator of the working group would rely on the draft comments to prepare recommendations from the Working Group to the Board for further action on this issue in 2005. Since the Ratepayer Advocate filed its comments with the Board on September 2005, no further action has been taken.

**I/M/O FAYSON LAKE WATER COMPANY \$720,000 ENVIRONMENTAL  
INFRASTRUCTURE TRUST LOAN BPU Docket No: WF04121547**

This petition sought the Board's authorization to obtain a direct loan in the amount of \$720,000 from the New Jersey Environmental Infrastructure Trust (NJEIT) stating that the proceeds of the loan were to be used as follows: \$290,000 to replace the Company's well No. 4 with a new well, and \$430, 0000 to replace an existing water tank.

The Company submitted its application for the loan to the NJEIT dated August 14, 2004 and December 6, 2004. On March 28, 2005, following receipt of the Company's responses to the Ratepayer Advocate's discovery requests comments stating that the Ratepayer Advocate had no objections to the Company's proposal. A Board Order approving the petition was issued on April 6, 2005.

**APPLIED WASTEWATER MANAGEMENT, INC. (AWWM) BPU DOCKET NO.  
WF05060555**

This matter concerns a request for approval of a Financial Services Agreement between Applied and American Water Capital Corp. was filed on June 23, 2005. The matter has finally completed discovery and the Ratepayer Advocate will file its comments on the application in early 2006.