



Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

Offices: Room 400 • Finance Building • Harrisburg • Tel: (717) 783-1600

Mailing Address: P.O. Box 8737 • Harrisburg, PA 17105-8737

Facsimile (717) 787-5487

SENATORS

ROBERT M. TOMLINSON

Chairman

GERALD J. LAVALLE

Vice Chairman

JAY COSTA, JR.

VACANT

ROBERT C. WONDERLING

JOHN N. WOZNAK

REPRESENTATIVES

RON RAYMOND

Secretary

VACANT

Treasurer

ANTHONY M. DELUCA

ROBERT W. GODSHALL

DAVID K. LEVDANSKY

T. MARK MUSTIO

EXECUTIVE DIRECTOR

PHILIP R. DURGIN

CHIEF ANALYST

JOHN H. ROWE, JR.

Performance Audit of the Pennsylvania Public Utility Commission

Conducted Pursuant to
House Resolution 695 of 2006

January 2007

Table of Contents

	<u>Page</u>
Summary and Recommendations	S-1
I. Introduction	1
II. Findings	3
A. The PUC Has Implemented Almost All the Recommendations From Recent LB&FC Reports.....	3
B. With One Exception (FirstEnergy), Pennsylvania’s Electric Distribution Companies Are Meeting or Exceeding Their Reliability Performance Standards.....	23
C. The PUC Has Made Good Progress in Implementing the Alternative Energy Portfolio Standards Act	33
D. Final POLR Regulations Have Not Yet Been Promulgated.....	37
E. The PUC’s Office of Trial Staff Continues to Serve an Important Function	40
F. The OALJ Has Reduced Backlogs and Has Taken Steps to Improve the Timeliness of ALJ Decisions	47
G. PUC Financial and Management Audits Provide Savings to Companies and Ratepayers, But Small Companies Should Be Exempt From the Code’s Routine Management Audit Requirement	51
H. At Least 58 Percent of Pennsylvania Access Lines Were Broadband Capable as of 2004, Substantially Ahead of the Aggregate Goal of 45 Percent.....	70
I. Although DEP Has Primary Responsibility to Ensure Drinking Water Is Safe, the PUC Also Plays an Important Role in Regulating Rates and Quality of Service	73
J. Additional Regulatory Initiatives May Be Needed to Address Wastewater Issues in Pennsylvania.....	87
K. Transferring the PUC Portion of the Motor Carrier Safety Enforcement Program to the Pennsylvania State Police, While Feasible, Could Undermine Other PUC Motor Carrier Responsibilities	91
L. The PUC Regulates Rates Charged by Movers of Household Goods and Certain Passenger Carriers, But Is Pre-empted From Regulating the Rates of Most Trucking Firms	100
M. Pennsylvania, Through the PUC’s Rail Safety Division, Is One of 30 States That Oversees Rail Safety Through the FRA’s State Rail Safety Participation Program.....	111

**Table of Contents
(Continued)**

	<u>Page</u>
N. PA Has a Relatively High Number of Natural Gas Incidents, But They Are Generally Caused by Factors Outside the Control of the PUC's Gas Safety Inspection Program	124
O. PA Utility Rates Compared to Selected Other States.....	134
P. The Bureau of Consumer Services Is Generally Doing a Good Job in Resolving Consumer Complaints	135
Q. Although One of the Nation's Largest Public Utility Commissions, the Size and Cost of Pennsylvania's PUC Appears Reasonable When Compared to PUCs in Other States	147
R. The PUC Is Implementing a Major New Document Management System	153
S. The PUC Cannot Assess Certain Regulated Entities for the Cost of Regulation, Which Increases PUC Assessments to Other Utilities	156
T. The PUC Should Develop a Long-Range Strategic Plan	159
III. Background	161
IV. Appendices	167
A. House Resolution 695 of 2006.....	168
B. Results of Adjustment Clause Audits Completed and Released	172
C. PUC Transportation Rate-Setting Process.....	173
D. Response to This Report.....	176

Summary¹

House Resolution 695 called on the Legislative Budget and Finance Committee to conduct a performance audit of the Pennsylvania Public Utility Commission. The resolution also identified several specific areas to be included in the audit.

We found:

- A. The PUC has implemented almost all the recommendations from recent LB&FC reports. (Page 3)** Between 2001 and 2005, the LB&FC conducted performance audits/reviews in four PUC program areas: (1) taxi and limousine services, (2) electric reliability, (3) Chapter 30 (broadband services), and (4) the filing and reporting requirements on local exchange carriers. The PUC has implemented, to at least some degree, virtually all of the recommendations from these prior reports. Specific information on the status of these recommendations is included in this report.
- B. With one exception (FirstEnergy), Pennsylvania's electric distribution companies are meeting or exceeding their reliability performance standards. (Page 23)** Act 1996-138, the legislation that deregulated electric generation in Pennsylvania, requires the PUC to ensure that levels of reliability that existed prior to the restructuring do not deteriorate. EDC reliability reports for 2003, 2004, and 2005 indicate that only one company, FirstEnergy (which has three subsidiaries: Penn Power, Penelec, and Met-Ed) has routinely failed to meet its performance standards. The PUC opened an investigation into FirstEnergy's reliability problems in 2004 and subsequently reached a settlement agreement that requires FirstEnergy to take several specific actions to reduce outages and improve service. However, FirstEnergy has not yet been able to meet the performance standards set in the settlement agreement. **Recommendation:** The PUC staff continues to monitor FirstEnergy's performance and will seek corrective action, if needed, to bring them into compliance with the settlement agreement.
- C. The PUC has made good progress in implementing the requirements of the Alternative Energy Portfolio Standards Act. (Page 33)** Act 2004-213, known as the Alternative Energy Portfolio Standards Act, requires that electric distribution companies and electric generation suppliers include a specific percentage of electricity from alternative resources in the electricity they sell to Pennsylvania retail customers. The amount of alternative energy required gradually increases according to a

¹This summary includes most, but not all, recommendations contained in the report.

15-year schedule identified in Act 213. Act 213 requires the PUC to adopt new regulations and programs in a number of new areas pertaining to alternative energy credits, demand side management, net metering, interconnection rules, cost recovery standards, and an alternative energy credit trading program. Given that Act 213 was not signed into law until November 2004, the PUC has made good progress in developing proposed regulations, with the regulations in two areas (net metering and interconnection rules), which went into effect upon publication on December 16, 2006.

- D. The PUC has not yet promulgated final POLR Regulations. (Page 37)** The Electricity Generation Customer Choice and Competition Act of 1996, the Pennsylvania act which deregulated the electric generation industry, placed price caps on the amount these suppliers could charge for electricity. For most major electricity generators, these price caps will expire in 2009 or 2010. To provide for an orderly market when the caps expire, the act required the PUC to promulgate regulations for “providers of last resort” (POLR) for those consumers who do not choose a competitive energy supplier. These regulations are critical because (1) fewer customers than anticipated have chosen a competitive electric supplier (less than 10 percent) and (2) recent steep increases in energy prices. The PUC has promulgated preliminary regulations to govern this transition, but final regulations are not expected until mid-2007.
- E. The Office of Trial Staff still serves an important function. (Page 40)** The PUC Office of Trial Staff is one of three organizations that can represent the public or consumer interest in rate cases or other filings before the PUC. The other two, the Office of Consumer Advocate and the Office of Small Business Advocate, have broad latitude to intervene in cases but are charged to represent somewhat narrower constituencies. Two other PUC bureaus, the Bureau of Fixed Utility Services and the Office of Administrative Law Judge, also have a role in rate cases, as do the PUC Commissioners. FUS reviews rate filings and makes recommendations to the Commission on whether to accept, reject or modify a rate request filing, and the ALJs who hear rate cases gather facts and issue recommended decisions to the Commission based on the information presented. Although multiple entities are involved in rate cases, the OTS is typically the only party that calls PUC employees as expert witnesses; without the OTS there would be no direct avenue for PUC concerns to be expressed during a hearing. Additionally, the ALJ and the PUC Commissioners must choose a position presented during the case (i.e., they cannot develop their own compromise recommendation). The OTS is charged to represent the broad public interest and is therefore in a much better position than the OCA, OSBA, or the utility to develop and argue for such a compromise position. We also note that, in response to the restructuring of the natural

gas, electric generation, and telecommunications industries, the OTS has significantly downsized its staff, from 49 in 1990 to 22 as of late 2006.

- F. The OALJ has reduced backlogs and is taking steps to improve the timeliness of OALJ decisions. (Page 47)** The Public Utility Code, regulations and internal ALJ policies contain time frames for the issuance of decisions in the cases before the ALJ. Although the vast majority of decisions are issued in a timely manner, in FY 2005-06, of the 948 initial decisions issued by the OALJ, 52, or approximately 5 percent, were issued late, with 14 being three or more months late. The OALJ has recently instituted new systems and procedures that have eliminated the office's backlog and reduced the number of late decisions.
- G. PUC financial and management audits provide savings to companies and ratepayers, but small companies should be exempt from certain audits. (Page 51)** We found that the PUC audits often do generate savings for consumers, and many utilities reported they find the PUC audits to be beneficial, although the PUC's projected cost savings may be overly optimistic. We also found Pennsylvania has more requirements for utility audits than any of the nine comparative states we contacted. In particular, Pennsylvania was the only state to statutorily require management audits every five to eight years of all fixed utilities whose plant-in-service is valued at \$10 million or more. The PUC is also statutorily required to conduct follow-up management efficiency investigations, which are generally initiated 2-3 years after each audit. The \$10 million threshold for requiring routine management audits has not been adjusted since 1984. Adjusted for inflation, the threshold would be \$20 million in 2006, which would remove six utilities from the management audit requirement. Finally, because some water companies generate relatively little revenue from their DSIC charges, it may not be cost effective to audit these revenues. **Recommendations:** (1) The General Assembly should amend the Public Utility Code to change the plant-in-service threshold for requiring routine management audits to \$20 million, (2) the PUC should refine its procedures for estimating cost savings that can be achieved from management audit recommendations, and (3) the PUC should implement alternative audit procedures for companies that generate less than \$200,000 in DISC revenues.
- H. At least 58 percent of Pennsylvania access lines were broadband capable as of 2004, substantially ahead of the aggregate goal of 45 percent. (Page 70)** Act 1993-67, known as Chapter 30, required local exchange carriers to accelerate full deployment of broadband capability (speeds of 1.544 mbps or higher) to the year 2015. Chapter 30 sunsetted (expired) on December 31, 2003, but was replaced by Act 2004-183. Act 183 retains the requirement that broadband be available throughout the

Commonwealth by 2015, and as early as 2008 in some areas. The most recent reports filed with the PUC show that 58 percent of access lines were broadband capable as of the report date (either 2002 or 2003). This is substantially ahead of the pre-Act 183 aggregate goal for these companies, which was for 45 percent of access lines to have such broadband capability. Updated reports on progress toward the Act 183 goals will not be available until FY 2007-08.

- I. Although DEP has primary responsibility to ensure drinking water is safe, the PUC also plays an important role in regulating rates and quality of service. (Page 73)** The safety of drinking water in Pennsylvania is primarily the responsibility of the Department of Environmental Protection, which is charged to enforce state and federal water quality regulations. The PUC's role—to ensure reasonable rates and the continued viability of privately held water companies—is also important. The PUC has established various programs to achieve these ends, several of which are recognized as models and best practices at the national level.
- J. Additional regulatory initiatives may be needed to address Pennsylvania's wastewater issues. (Page 87)** Pennsylvania has substantial problems with wastewater, particularly overflowing sewage systems during periods of heavy rain. One suggestion for expanding capacity is to institute a Collection System Improvement Charge (CSIC), similar in structure to the successful DSIC program which now exists for water companies. A CSIC would allow a wastewater utility to add a surcharge to customer bills to quickly recover the fixed costs for certain system improvement projects placed in service between base rate cases. The Office of the Consumer Advocate has substantial concerns with allowing such increases between base rate cases, particularly for natural gas and electric distribution companies, but acknowledges that wastewater utilities are similar to water utilities and could be candidates for using a DSIC-model cost recovery device. **Recommendation:** The General Assembly amend the Public Utility Code to give the PUC authority to establish a CSIC program for wastewater companies. We also recommend wastewater companies, like water companies, be included in the Responsible Utility Customer Protection Act.
- K. Transferring the PUC portion of the Motor Carrier Safety Enforcement Program to the Pennsylvania State Police, while feasible, could undermine other PUC motor carrier responsibilities. (Page 91)** MCSAP is a federal grant program that provides financial assistance to states to reduce the number and severity of truck accidents. Prior to 2005, PENNDOT was the lead agency for this program, with additional assistance provided by the State Police, PUC, and local police. In October 2005, PENNDOT withdrew from the program, and the State Police was named as the state's lead agency. In 2005-06, the State

Police conducted 77 percent of all MCSAP inspections; the PUC, 14 percent; and local police, 10 percent. The State Police expressed concern that PUC inspectors may be at risk of bodily harm when conducting inspections. When the PSP conducts MCSAP inspections, it deploys teams consisting of two civilian enforcement officers and a Trooper. The PSP also noted that since September 11, 2001, new concerns have arisen over the possibility of commercial trucks being used to transport weapons of mass destruction and that PUC inspectors are not equipped to detect or deal with such a serious matter should it arise. In response, the PUC noted that its inspectors (1) have never been physically attacked during a truck inspection, (2) are almost always former police officers, (3) receive training on identifying possible terrorist cargos, and (4) can readily contact state or local police via radio should it be necessary. They also note that without MCSAP, the number of PUC inspectors would be cut by about half, from 35 to about 17. As these inspectors are located throughout the state (they operate from their homes), it would mean much greater travel times for the remaining inspectors who would need to continue to fulfill the PUC's non-MCSAP motor carrier responsibilities.

- L. The PUC regulates rates charged by movers of household goods and certain passenger carriers. (Page 100)** Although a 1994 federal law preempts the PUC from regulating rates and certain other aspects of the transportation of property by trucking firms, the PUC continues to regulate rates charged by movers of household goods and certain passenger carriers, such as paratransit carriers and taxicabs (other than in Philadelphia). Most transportation rate requests (40 of the 56 received by the PUC in FY 2005-06) are from household goods carriers. We found that many states allow household goods carriers to file a rate schedule rather than requiring them to go through a formal rate review process, which would greatly reduce the number of transportation rate requests the PUC would need to review. **Recommendation:** The PUC promulgate rules to allow movers of household goods to file rate schedules rather than undergo a formal rate review process.
- M. The PUC has regulatory oversight over rail crossings, tracks and certain other rail safety operations. (Page 111)** Pennsylvania is one of 30 states that participate in the Federal Rail Administration's Rail Safety Participation Program. Although the federal government contributes only minor funding toward this program, Pennsylvania's continued participation appears justified in that the Commonwealth has the largest number of railroad companies in any state (nearly 70) and a large number of both at-grade and below grade (railroad bridges) highway crossings. We found that almost half of the states participating in the FRA program conduct these responsibilities out of their Departments of Transportation. While PENNDOT currently has certain responsibilities for Common-

wealth railways, these responsibilities pertain primarily to providing financial assistance to rail freight and do not significantly overlap or duplicate the functions of the PUC.

N. Pennsylvania has a relatively high number of natural gas incidents. (Page 124) During the 3-year period 2003-2005, Pennsylvania averaged 14.7 natural gas line incidents annually, more than any of the seven other states we reviewed. Ohio, which has 8,340 more pipeline miles than Pennsylvania, averaged only 2.7 incidences annually. However, most of the incidences were due to pipelines being damaged during construction activities, non-gas related structure fires, vehicle accidents, vandalism and other causes generally beyond the gas utility’s control. In reviewing the PUC’s gas safety responsibilities, we also found that the PUC’s jurisdiction over the distribution of propane gas, a growing residential energy source, is unclear. **Recommendation:** The appropriate House and/or Senate committees should consider holding hearings to determine whether the PUC should have jurisdiction over propane and land-fill gas distribution systems that provide service to the public.

O. PA Utility Rates Compared to Other States. (Page 134) As the table below shows, electric and telephone rates in Pennsylvania are below the seven-state average, while natural gas and water rates are above average.

Comparative Utility Cost

State	Agency Name	Electric ^a	Natural Gas ^b	Water ^c	Telephone ^d
Pennsylvania	Public Utility Commission	9.60¢	\$16.93	\$492	\$22.50
New York	Public Service Commission	16.38	17.34	450	29.18
New Jersey	Board of Public Utilities	11.26	15.35	559	17.09
Illinois	Commerce Commission	7.54	13.64	426	26.36
Indiana	Utility Regulatory Commission	7.45	15.42	424	22.85
Michigan	Public Service Commission	9.41	12.26	420	26.61
Ohio	Public Utilities Commission	8.40	15.64	459	22.54
Wisconsin	Public Service Commission	9.99	13.19	399	33.71
7 Other State Average		10.06	14.69	448	25.48

^aAverage Residential Price in cents per Kilowatt-hour as of January 2006.

^bAverage Residential Price in dollars per thousand cubic feet as of January 2006.

^cAverage yearly rate from 2000 U.S. Census Data, also includes wastewater (sewer) costs.

^dAverage monthly residential rates as of October 2004. Based on FCC survey of monthly residential rates in sample cities within comparative states.

Source: Developed by LB&FC staff from information obtained from U.S. Census, FCC survey, and the US Department of Energy.

P. The Bureau of Consumer Services is generally doing a good job in resolving consumer complaints. (Page 135) The Bureau of

Consumer Services is one of the larger bureaus within the PUC, with an authorized complement of 77 and a Bureau budget of nearly \$7 million. Operations of the Bureau's call center have improved, and the Bureau receives good marks in resolving problems from consumers who contact the Bureau (80 percent rated the Bureau's services as good or excellent). We found, however, that between 2003 and 2004, there was a 111 percent increase in the number of gas complaints that took more than 60 days to close and a 36 percent increase in electric complaints that took more than 60 days to complete. The number of complaints requiring more than 60 days to resolve improved somewhat in 2005, but was still well above 2003 levels. The increase in the number of cases requiring more than 60 days to resolve is somewhat surprising given that the overall number of complaints received decreased markedly during this period, from 116,710 in 2003 to 81,910 in 2005. The PUC cited several factors as causing the increase in the length of time to resolve cases, including new Chapter 14 regulations which impacted the billing practices of electric and gas utilities.

Q. Given its responsibilities, the size and cost of Pennsylvania's PUC appears reasonable when compared to Commissions in other states. (Page 147) With a budget of \$47.0 million (FY 2004-05), Pennsylvania's PUC has a somewhat higher cost per capita (\$3.79) than the US average (\$3.05) for similar agencies, but is well below the per capita costs of the most expensive states. We noted that the budgets of the Public Service Commission in two other large states, Florida and Michigan, are only about half of the Pennsylvania PUC, \$27.7 million and \$25.0 million respectively. However, these Commissions have fewer responsibilities; neither has rail, truck, or other transportation responsibilities. Michigan also does not regulate water or wastewater companies, does not conduct management audits, and relies on the Office of Attorney General, rather than in-house counsel, to represent the public in rate cases.

R. The PUC is implementing a major new document management system. (Page 153) Until recently, the PUC's document management systems have been largely dependent on hard copy information and manual processes. This will change with the implementation of the PUC's \$6.6 million Information Management and Access Project (InfoMAP), scheduled for full implementation in spring/summer 2008. The PUC estimates InfoMAP will generate annual savings of \$500,000 to the Commission through the elimination of the PUC's share of a data warehouse contract. Other potential savings have not been quantified, but should include increased staff efficiency and reduced paper costs.

- S. The PUC cannot assess certain regulated utilities for the cost of regulation, which results in increased assessments to other utilities. (Page 156)** Virtually all of the PUC's operating budget comes from assessments on the utilities regulated by the Commission. A recent Pennsylvania Supreme Court decision, however, ruled that electric generation suppliers are not public utilities, and therefore the PUC has no authority to assess them. Courts have previously found that natural gas suppliers are exempt from assessments and the costs to regulate them must be borne by natural gas distribution companies. Unless the General Assembly enacts new legislation, the costs the PUC incurs to regulate these electric and natural gas suppliers will have to be borne by traditional public utilities. **Recommendation:** The General Assembly consider amending the Public Utility Code to allow the PUC to assess electric and natural gas suppliers for the cost of regulating these industries.
- T. The PUC does not have a formalized, long-range strategic plan to guide its operations. (Page 159)** Although the Commission identifies its strategic goals in its annual budget materials, it does not develop a long-range strategic or operational plan. The last such plan was developed in 1993 and covered a five-year period. PUC has one of the oldest workforces among Commonwealth agencies, and such a plan could be valuable in ensuring continuity and orienting new employees that join the Commission as older employees retire. It could also serve to stimulate innovative thinking among top PUC management as to the opportunities this infusion of new staff might present for organizational change. **Recommendation:** The PUC develop a long-range (e.g., five-year) strategic plan.

I. Introduction

House Resolution 695 directs the Legislative Budget and Finance Committee to conduct a performance audit of the Pennsylvania Public Utility Commission.

Objectives

The resolution identifies 17 issues the audit is to consider. Because the resolution was so specific, we did not develop separate audit objectives, but rather considered the items cited in the resolution as the objectives. House Resolution 695 is included as Appendix A of this report.

Methodology

In addition to interviewing and obtaining information from PUC staff, we also solicited input from:

- members of the House Consumer Affairs and Senate Consumer Protection and Professional Licensure Committees
- members of the Public Utility Commission
- state utility associations and consumer groups
- Office of Consumer Advocate
- PUC Consumer Advisory Council members
- Office of Small Business Advocate
- PENNDOT and the Pennsylvania State Police (as pertains to the PUC's transportation functions)
- public utility and public service commissions in other states, particularly those we identified as "comparative states" (New York, New Jersey, Ohio, Maryland, Michigan, Illinois, Indiana, and Wisconsin)
- the National Association of Regulatory Utility Commissions

Acknowledgements

LB&FC staff acknowledges and appreciates the excellent cooperation and assistance provided by the Public Utility Commission and its staff during the audit. We also thank the Office of Consumer Advocate and Office of Small Business Advocate for the assistance provided during this study.

Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as indicating that the Committee's members endorse all the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.

II. Findings

A. The PUC Has Implemented Almost All the Recommendations From Recent LB&FC Reports

Between 2001 and 2005, the LB&FC conducted performance audits/reviews of four PUC programs as follows:

- *Commonwealth Regulation of Taxicabs and Limousine Services* (December 2001)
- *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems* (June 2002)
- *Pennsylvania Public Utility Commission's Implementation of Chapter 30* (June 2003)
- *PUC Filing and Reporting Requirements on Local Exchange Carriers* (November 2004)

As part of this current performance audit, we sought to determine the status of recommendations from these reports that required PUC action. Exhibits 1, 2, and 3 show the recommendations made to the PUC, the PUC's assessment of the implementation status, a brief description of the actions taken, and an LB&FC staff comment regarding our assessment of the implementation status. Recommendations directed to organizations other than the PUC (e.g., recommendations for legislative change) are not included in these tables.

The PUC has implemented, to at least some degree, virtually all of the recommendations included in these four prior reports. The recommendations in our June 2003 report regarding Chapter 30 were legislative recommendations for the General Assembly to consider, and therefore the status of these recommendations are not included in the following pages.

Exhibit 1

Commonwealth Regulation of Taxicab and Limousine Services

Release Date: December 2001

Relevant Recommendation	Implementation Status	
<p><i>Recommendation 1a:</i></p> <p><i>The PUC should require that limousines have an age limit, perhaps six years, and that the PUC consider imposing higher standards for what constitutes a "luxury-type" vehicle, such as establishing a minimum retail value. Limousines should also be included as part of an enhanced PUC inspection program. As part of this inspection, the limousine owner should provide proof of insurance.</i></p>	<p>PUC Comment:</p> <p><u>Agree and implementing the recommendation on modified basis.</u></p> <p>The Commission initiated a rulemaking in September 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revises its regulations for passenger carriers in 52 Pa. Code Chapter 29. The final regulations were published on August 5, 2006, and are now in effect.</p> <p>A revision to Section 29.333, vehicle and equipment requirements, would prohibit vehicles from being operated in limousine service that are more than eight (8) years of age. The rulemaking does not include a provision that would impose a higher standard for defining a luxury-type vehicle. However, it is expected that other steps taken within the rulemaking for limousines will promote fair competition with taxicabs. For instance, the pending rulemaking prohibits the direct solicitation of passengers by a limousine driver, and it also requires tariffs to be based on time rather than distance. Both of these provisions discourage limousine services from providing call and demand service.</p> <p>In regard to an enhanced inspection program, the Commission's Motor Carrier Services and Enforcement Division systematically inspects 20 percent of the limousine carriers each year. The inspections not only provide for vehicle examinations but also include a status check of each of the carriers' drivers' operating license. In addition, the Division has developed criteria for identifying limousine carriers with unsatisfactory violation histories for the purpose of subjecting that carrier to a compliance audit. The final rulemaking, at Section 29.333, also requires each limousine carrier to provide a vehicle list to the Bureau during December of each year. Once this information is collected, it may prove useful to enhance the Motor Carrier Division's identification of carriers and/or their vehicles for scheduling inspections.</p>	<p>LB&FC Comment:</p> <p><u>Agree in part.</u> <i>The provision to prohibit vehicles that are more than 8 years old will provide some distinction between a limousine and a taxicab. However, we still believe that a higher standard for what constitutes a "luxury vehicle" is an implicit difference between limousines and taxicabs and should be made explicit and enforceable through regulations.</i></p>
<p><i>Recommendation 1b:</i></p> <p><i>Limousines are permitted to charge based on time and mileage; and we received reports that, at least in Philadelphia, limousines have begun installing meters. Such meters facilitate limousines' providing "call or</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>The Commission initiated a rulemaking in September 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revised its regulations for passenger carriers in 52 Pa. Code Chapter 29. A revision to Section 29.334, Tariff Requirements, would prohibit the use of meters in limousines and also prohibit limousine carriers from basing tariffs on mileage. The final regulations were published on August 5, 2006, and are now in effect.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 1 (Continued)

<p><i>demand” services and further blur the lines between limousines and taxicabs. The PUC should issue an order prohibiting the use of meters in limousines. If the PUC decides to permit meters in limousines, we recommend the meters be regulated by the PUC, as is done for taxis.</i></p>		
<p>Recommendation 1c:</p> <p><i>Some states and municipalities, such as Houston and Detroit, do not allow limousines to park in front of hotels or at airports unless the limousine has a charter or a manifest to pick up a customer. Such a restriction would reduce the ability of hotel employees to offer a patron “call or demand” access to a limousine. It would also reduce the ability of limousine drivers to solicit customers at other locations such as airport terminals, a PUC prohibited activity.</i></p>	<p>PUC Comment:</p> <p><u>Disagree and do not plan to implement the recommendation.</u></p> <p>In evaluating this recommendation, it was determined that any such prohibition would be more appropriately established by local municipalities who are best able to evaluate vehicle parking issues in consideration of the municipality’s unique circumstances. Therefore this prohibition was not included in the rulemaking for passenger carriers.</p>	<p>LB&FC Comment:</p> <p><u>Agree in part.</u> <i>This was largely, though not exclusively, an issue in Philadelphia. As the regulation of taxicabs and limousines is now under the Philadelphia Parking Authority, the importance of PUC action in regard to this recommendation has diminished.</i></p>
<p>Recommendation 1d:</p> <p><i>Limousines are to provide services only through an advance reservation, but the PUC has never clarified what constitutes an advance reservation. Although enforcing such a requirement would be difficult, the PUC needs to clarify</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>The Commission initiated a rulemaking in September 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revises its regulations for passenger carriers in 52 Pa. Code, Chapter 29. The rulemaking would revise Section 29.332, Method of operation, to prohibit the direct, in-person solicitation of passengers by a limousine driver or a representative of the driver or carrier. This provision is expected to adequately discourage limousine services from offering call and demand transportation without</p>	<p>LB&FC Comment:</p> <p><u>Agree in part.</u> <i>Although this regulation is intended to discourage limousines from offering call and demand services, it still</i></p>

Exhibit 1 (Continued)

<p><i>the requirement and disseminate it to all appropriate parties if there is to be a meaningful distinction between taxi and limousine services.</i></p>	<p>creating a burdensome pre-arrangement time period for customers. The final regulations were published on August 5, 2006, and are now in effect.</p>	<p><i>does not define the term "advance reservation, which is a key distinction between taxis and limousine services. We also understand, however, how such a regulation would place an inconvenience on consumers.</i></p>
<p>Recommendation 1e:</p> <p><i>The PUC should develop an informational brochure and meet with hotel and restaurant managers and appropriate airport officials to inform them of limousine requirements. If the PUC clarifies the advance reservation requirement, we recommend that this information also be disseminated to all interested parties.</i></p>	<p>PUC Comment:</p> <p><u>Agree and have fully implemented the recommendation.</u></p> <p>The Bureau of Transportation and Safety, in conjunction with the Commission's Office of Communications, recently revised the Bureau's informational brochure that highlights the Commission's regulation of limousine carriers. The brochure is designed as a customer assistance or consumer protection document, rather than an informational brochure for the industry. Although the Bureau has not conducted systematic meetings with representatives from hotels, restaurants and airports in all of Pennsylvania's small cities, the Motor Carrier Services and Enforcement Division's District Office enforcement staff were recently tasked with distributing this brochure at facilities where they can be made available to the public. In addition, the Bureau established an ad hoc Group in the City of Pittsburgh in 2001 whose meetings are attended by representatives from hotels, restaurants, the airport, the Visitor's Bureau, etc. This group currently meets on a quarterly basis throughout the year to discuss issues and problems associated with taxi and limousine transportation in the Greater Pittsburgh area.</p>	<p>LB&FC Comment:</p> <p><u>Agree in part.</u> This, too, was largely an issue in Philadelphia, where taxis and limousines are now under the authority of the Philadelphia Parking Authority.</p>
<p>Recommendation 1f:</p> <p><i>The PUC should establish a graduated fine/penalty structure of sufficient severity to discourage repeat violations. A special effort should be made to ensure that out-of-state limousines comply with all pertinent PUC and PENNDOT requirements.</i></p>	<p>PUC Comment:</p> <p><u>Agree and implementing the recommendation on modified basis.</u></p> <p>The Bureau of Transportation and Safety has established a fine schedule to be utilized as its penalty guidelines for the initiation of Bureau complaints. The Bureau believes its penalty of \$250 fine for a certified limousine carrier illegally providing call and demand service is sufficiently severe to discourage these offenses when compared to likely revenue anticipated from the average "illegal taxi" trip. If an uncertified carrier provides either limousine or taxi service, the penalty to be instituted is \$1,000. The Bureau believes this penalty is also sufficiently severe to encourage persons to obtain operating authority from the Commission.</p>	<p>LB&FC Comment:</p> <p><u>Disagree.</u> We believe that the \$250 fine should be increased for repeat offenses.</p>

Exhibit 1 (Continued)

	In regard to limousines being operated by carriers domiciled outside of Pennsylvania, these vehicles must be registered with the Department of Pennsylvania, and the vehicles must meet the Department's vehicle equipment standards, as well as the PUC's equipment and service requirements.	
<i>Recommendation 1g:</i> <i>If by December 2003 the above recommendations prove insufficient, we recommend the PUC (or the General Assembly) establish a mandatory certification program for limousines providing point-to-point service within the City of Philadelphia that incorporates these provisions.</i>	PUC Comment: <u>Agree and in the process of implementing the recommendation.</u> A determination about the effectiveness of each recommendation cannot be made at this time because the Commission's final rulemaking is still pending with the legislature's standing committees. In addition, since the regulation of limousines that provide transportation within Philadelphia now resides with the Philadelphia Parking Authority, the mandatory certification program for these limousine vehicles is no longer applicable to the Commission.	LB&FC Comment: <i>The PUC no longer has jurisdiction over limousine service in Philadelphia.</i>
<i>Recommendation 6a:</i> <i>The PUC issues certificates of public convenience to taxicab and limousine companies, but does not systematically maintain records on the number or types of vehicles that operate under the certificate. Thus, PUC records do not show whether the company has one or one hundred taxis or limos operating under its certificate. In addition to providing basic management information on Pennsylvania's taxis and limousines, individual vehicle records will be necessary if the vehicles are to be systematically inspected as recommended below.</i>	PUC Comment: <u>Agree and in the process of implementing the recommendation.</u> The Commission initiated a rulemaking in September 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revises its regulations for passenger carriers in 52 Pa. Code, Chapter 29. Through a revision to Section 29.333, the Commission would impose an additional requirement for limousine carriers to annually provide the Bureau of Transportation and Safety with a list of vehicles that are currently within the carrier's fleet. If the final rulemaking is approved, the Bureau will be able to use the annual vehicle lists to help identify vehicles for its systematic inspection programs. The final regulations were published on August 5, 2006, and are now in effect.	LB&FC Comment: <u>Agree.</u>

Exhibit 1 (Continued)

<p>Recommendation 6b:</p> <p><i>Medallion taxicabs are inspected at least twice a year; once as part of the PENNDOT-required safety inspection and a second time by PUC enforcement officers in the spring or early summer. Limousine and nonmedallion taxis are only required to undergo an annual PENNDOT-required state inspection. Rather than require that all taxis and limousines undergo a PUC inspection every year, we recommend the PUC develop a methodology and collect the information necessary to target the large majority of its inspections to those vehicles and company vehicle fleets that have done poorly in prior PUC inspections or that could be predicted to do poorly based upon mileage, age, and other factors.</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>The Commission initiated a rulemaking in September of 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revises its regulations for passenger carriers in 52 Pa. Code, Chapter 29. In the rulemaking the Commission approved revisions to Sections 29.314, Vehicle and Equipment requirements (for taxicabs), and 29.333, Vehicle and Equipment requirements (for limousines), requiring taxicab and limousine certificate holders to file a list of vehicles that are utilized under its certificate. This information will be available for the management of the Motor Carrier Services and Enforcement Division to utilize in targeting vehicles during its annual systematic inspections of taxicab and limousine operators. The final regulations were published on August 5, 2006, and are now in effect.</p> <p>Currently the Bureau's motor carrier enforcement staff conducts annual systematic inspections of all taxicab carriers. Inspections are also conducted on 20 percent of the limousine carriers, as well as any new limousine carriers. All vehicles placed out of service during an inspection of a taxicab or limousine carrier's vehicles are re-inspected to ensure that defects are corrected. The enforcement staff also conducts repeated inspections of carriers that do poorly in its annual systematic inspections. In addition, the Motor Carrier Services and Enforcement Division conduct compliance audits of those taxicab and limousine carriers whose violation history is not satisfactory. Finally, District Office Managers have the flexibility to schedule inspections/investigations of taxicab and limousine carriers for whom the manager has obtained information that safety and/or service violation may exist.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u> <i>The proposed rules should allow the PUC to do selective inspections.</i></p>
<p>Recommendation 6c:</p> <p><i>We recommend that taxi and limousine drivers be required to undergo a driver history and criminal background check, as is currently required of medallion taxicab drivers and voluntarily conducted by some private taxi companies. Although taxi and limousine companies may conduct</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>The Commission initiated a rulemaking in September of 2002 to enhance its regulatory requirements for taxicabs and limousine carriers. The Commission adopted a final rulemaking on August 11, 2005, which revises its regulations for passenger carriers in 52 Pa. Code, Chapter 29. In the rulemaking the Commission approved a revision to the passenger regulations that adds a new Subchapter F, Driver Regulations. Through this new subchapter, the Commission would require its carriers operating vehicles with seating capacities of 15 passengers or less, including the driver, to conduct driver history and criminal background checks. At Section 29.504, each carrier would be required to conduct an initial driver history check for new drivers, as well as an annual driver history check for</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 1 (Continued)

<p><i>their own driver history and criminal background checks before hiring a driver, the PUC does not require companies to make such checks. As a public protection measure, we recommend such checks be mandatory for all taxi and limousine drivers.</i></p>	<p>all other drivers. At Section 29.505, passenger carriers would be required to conduct a criminal background check of drivers prior to employment, and every two years thereafter. The final regulations were published on August 5, 2006, and are now in effect.</p>	
---	---	--

Exhibit 2

**Assessing the Reliability of Pennsylvania's Electric
Transmission and Distribution Systems**
Release Date: June 2002

Relevant Recommendation	Implementation Status	
<p><i>Recommendation 1:</i></p> <p><i>The PUC should designate a lead unit responsible to assess, monitor, and conduct ongoing and continuous follow-up with companies on the reliability of their transmission and distribution systems.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>The Bureau of Conservation Energy & Economic Planning has been designated as the lead bureau with primary responsibility for ongoing and continuous monitoring and follow-up concerning electric distribution system reliability. This has replaced the prior handling of electric reliability responsibilities by an ad hoc working group comprised of the Bureaus of Conservation, Energy & Economic Planning, Fixed Utility Services, Audits, Law and Consumer Services. Nonetheless, other bureaus continue to perform specific roles to assist the Bureau of CEEP.</p> <p>Within the Bureau of CEEP, the Commission has created and filled the position of Supervisor of Electric Reliability. The purpose of this position is to ensure the reliability of the Commonwealth's electric power grid, primarily as it relates to the distribution grid.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p><i>Recommendation 2a:</i></p> <p><i>The PUC should revise and enhance its reliability reporting requirements and performance monitoring standards. To accomplish this recommendation, the PUC should: (a) Review all reliability plans for conformity with regulatory requirements and reject plans that do not provide all the required data.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>The Commission initiated a proposed rulemaking at Docket No. L-00030161, in June 2002, to enhance its regulatory requirements concerning electric reliability. The Commission adopted a final rulemaking on May 7, 2004, which revised its regulations for electric reliability in 52 Pa. Code Chapter 57. The revised final regulations became effective on September 18, 2004.</p> <p>Additionally, in an Order entered May 11, 2004, at Docket No. M-00991220, the Commission tightened its performance standards for reliability in the electric distribution industry and reiterated the Commission's electric reliability regulations in conjunction with its Final Rulemaking Order at Docket No. L-00030161.</p> <p>These regulations and orders require the filing of numerous items in support of a company's reliability plans. Most items are required to be filed as part of a company's quarterly or annual reliability report, while some items are filed as stand alone requirements. For instance, as part of a company's annual report, it is required to file quantified transmission and distribution inspection and maintenance goals/objectives for the calendar year detailed by system area (that is, transmission, substation and distribution), while major event exclusion requests are submitted on a stand alone basis, as necessary.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

	<p>Each of the items filed in compliance with either the regulations or orders are reviewed for conformity with the requirements. Companies are contacted and given guidance on deficiencies when items are submitted that do not conform to the requirements. Then, the company is directed to refile the documentation in the proper format and with the required data.</p> <p>Since the quarterly reliability reports are a fairly new regulatory requirement, such interaction has regularly occurred between staff and the companies, and to date, all companies have resubmitted any documentation deemed deficient in a timely manner.</p>	
<p><i>Recommendation 2b:</i></p> <p><i>The PUC should require submission of summary monthly and year-to-date information on the causes of all service interruptions. Such information is essential to interpret the information reported in the annual reliability reports and to follow up with companies on the performance they report. (Current regulations authorize the PUC to require submission of such information.)</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>The Commission initiated a rulemaking in June 2002 to enhance its regulatory requirements concerning electric reliability. The Commission adopted a final rulemaking on May 7, 2004, which revised its regulations for electric reliability in 52 Pa. Code Chapter 57. The revised regulations became effective on September 18, 2004.</p> <p>In the revised regulations, the Commission required the filing of reliability information on a quarterly basis. Such filings include summary data on the causes of all services interruptions. A quarterly, and not monthly, submission of data was required because the utilities stated that it took some time to manually ensure that the data compiled from their reliability data collection systems was being collected and presented accurately. For example, ensuring that a customer outage associated with two distribution system devices was counted as only one outage. It was determined that trends toward poor performance could be detected timely with quarterly reporting.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p><i>Recommendation 2c:</i></p> <p><i>The PUC should request additional information from companies on their performance whenever it deviates from historic performance levels (e.g. 20 to 25 percent), not when performance has diminished by 40 to 50 percent from historic levels.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>Since the Commission tightened the performance standards, which are no longer in the “40 percent to 50 percent of historic levels” range, staff views performance within the standard as appropriate. Once a standard is violated, Commission staff carefully review all information presented in the EDC’s quarterly and annual reliability reports including the EDC’s causal analysis, inspection and maintenance goal data, expenditure data, staffing levels and other supporting information and section 67.1 reports (unscheduled service interruptions) to determine appropriate monitoring and enforcement actions.</p> <p>When an EDC’s reliability performance is found to not meet the Commission’s established performance standards, as defined in §57.194(h) (relating to distribution system reliability), staff would require a report to include the following: (1) the underlying reasons</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

	<p>for not meeting the established standards; and (2) a description of the corrective measures the EDC is taking and target dates for completion.</p> <p>This has been addressed by Commission regulations at 52 Pa. Code §57.194(h)(1) and its subsections and 52 Pa. Code §57.195(g).</p>	
<p><i>Recommendation 2d:</i></p> <p><i>The PUC should require companies to identify the specific equipment that failed, the cause of the failure, and plans to address such failures.</i></p>	<p>PUC Comment:</p> <p><u>Agree and implementing the recommendation on modified basis.</u></p> <p>The Commission initiated a rulemaking in June 2002 to enhance its regulatory requirements concerning electric reliability. The Commission adopted a final rulemaking on May 7, 2004, which revised its regulations for electric reliability in 52 Pa. Code Chapter 57. The revised regulations became effective on September 18, 2004.</p> <p>In the regulations, the Commission required the filing of reliability information, including outage causes, on a quarterly basis. Equipment failure is a type of outage cause reported within the quarterly reports. Specifically, the regulation requires: A rolling 12-month breakdown and analysis of outage causes during the preceding quarter, including the number and percentage of service outages, the number of customers interrupted, and customer interruption minutes categorized by outage cause such as <u>equipment failure</u>, animal contact, tree related, and so forth. Proposed solutions to identified service problems also must be reported.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p><i>Recommendation 2e:</i></p> <p><i>The PUC should require that companies advise the PUC of any problems with their reliability data gathering systems and immediately report to the PUC all changes to such systems that affect the PUC's historic performance levels.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>The Commission initiated a rulemaking in June 2002 to enhance its regulatory requirements concerning electric reliability. The Commission adopted a final rulemaking on May 7, 2004, which revised its regulations for electric reliability in 52 Pa. Code Chapter 57. The revised regulations became effective on September 18, 2004.</p> <p>In the regulations at 52 Pa. Code §57.195(h) the Commission requires that an EDC shall, within 30 calendar days, report to the Commission any problems it is having with its data gathering system used to track and report reliability performance.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p><i>Recommendation 2f:</i></p> <p><i>The PUC should require companies to document all changes to their data gathering systems and provide detailed</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>The Commission initiated a rulemaking in June of 2002 to enhance its regulatory requirements concerning electric reliability. The Commission adopted a final rulemaking on May 7, 2004, which revised its regulations for electric reliability in 52 Pa. Code Chapter</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

<p><i>documentation on the extent to which such changes affect the performance levels established for the company.</i></p>	<p>57. The revised regulations became effective on September 18, 2004.</p> <p>In the regulations, the Commission required that when an EDC implements a change in its system for gathering and analyzing reliability performance, which has the potential to affect reliability index values, the EDC shall conduct parallel measurement and analysis to isolate and quantify the influence that the measurement change exerts on reliability index values. The length of the parallel measurement period shall be sufficient to isolate and quantify the independent effects of the measurement change.</p>	
<p>Recommendation 3a:</p> <p><i>The PUC should clarify that when companies exclude data for major events for other affected operating areas, they may only exclude service interruption data for customers in other operating areas where the customers themselves have directly experienced the event.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented on modified basis.</u></p> <p>In its Order Entered May 11, 2004, the Commission revised its initial position such that companies now report reliability data using a <u>system-wide operating area</u>. Since each company now reports reliability data, including major events, by a single operating area, the issue of a company requesting exclusions for multiple operating areas no longer exists.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p>Recommendation 3b:</p> <p><i>PUC should enforce the regulatory requirement that companies report the time a major event begins and ends.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>In an Order entered May 11, 2004, at Docket No. M-00991220, the Commission tightened its performance standards for reliability in the electric distribution industry and reiterated the Commission's electric reliability regulations in conjunction with its Final Rulemaking Order at Docket No. L-00030161.</p> <p>The Order reiterates that there are regulations that define the designated starting and ending times of major events according to 52 Pa. Code §57.192 and that these shall be followed by all EDCs. Additionally, by the Order, the Commission stressed that the designated starting and ending time of major events should be enforced according to the regulations.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p>Recommendation 3c:</p> <p><i>The PUC should clarify that when companies exclude service interruption data for a</i></p>	<p>PUC Comment:</p> <p><u>Agree recommendation implemented on modified basis.</u></p> <p>In its Order entered May 11, 2004, the Commission implemented a process by which the EDC must submit a formal request for</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

<p>major event, only service interruptions associated with the event itself may be excluded (i.e., not interruptions due to factors other than the major event).</p>	<p>exclusion of service interruptions for reporting purposes, accompanied by data that demonstrates that a service interruption qualifies as a major event as defined by regulations. The form that a company shall utilize when making the exclusion request was attached to the Order as Appendix D. The request may be granted or denied based on the facts provided. Commission staff provides the company a decision on the request within 20 days of the filing.</p>	
<p>Recommendation 3d:</p> <p><i>The PUC should establish criteria that must be met (such as minimum numbers of customers or the geographic units company management uses to monitor reliability) for company designation of an operating area for reliability performance reporting.</i></p>	<p>PUC Comment:</p> <p><u>Agree recommendation implemented on modified basis.</u></p> <p>In its Order Entered May 11, 2004, the Commission revised its initial position such that companies will now report reliability data using a <u>system-wide operating</u> area.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p>Recommendation 3e:</p> <p><i>The PUC should require completion of a PUC service outage report for all major events companies plan to exclude from their reliability performance data.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>In its Order entered May 11, 2004, at Docket No. M-00991220, the Commission implemented a process by which the EDC must submit a formal request for exclusion of service interruptions for reporting purposes, accompanied by data which demonstrates that a service interruption qualifies as a <u>major event</u> as defined by regulations.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p>Recommendation 3f:</p> <p><i>The PUC should require companies excluding major events from their reported performance to provide additional justification whenever the company time for customer restoration substantially differs from that of other companies experiencing the same event.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented on modified basis.</u></p> <p>The Commission has taken several steps to assure that there is a “level playing field” among companies, including examination of restoration times for major events. The primary focus for this examination is a review of a utility’s specific response times and restoration efforts rather than a comparison to another utility’s performance for the same event.</p> <p>There are many reasons why one company may take more or less time for full restoration of customer service than another; e.g., number of customers out of service, urban versus rural, terrain, localized severity of a widespread storm, etc.</p> <p>The Bureau of Fixed Utility Services (FUS) has been delegated the</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

	<p>responsibility of reviewing and ruling on major event exclusion requests. At times, when the major event exclusion request is weather-related, FUS will request a chart containing an hourly depiction of the number of customers remaining out of service. This chart is useful in determining whether the pace of service restoration is appropriate given the nature of the event and the affected service territory.</p> <p>FUS also bears the responsibility for coordinating the Commission's emergency response activities. As part of its emergency response activities, FUS receives and reviews reports filed by utilities with respect to 52 Pa. Code §67.1. The data filed as part of the §67.1 reports should mirror the data provided in the major event exclusion request. Thus, while utility restoration times are not benchmarked against each other, the appropriateness of a utility's response during a major event is evaluated by scrutinizing detailed company specific information throughout the process whereby the Commission must approve major event requests.</p>	
<p><i>Recommendation 4:</i></p> <p><i>The PUC should issue an order setting forth all waivers granted to companies in their reporting to the PUC on their reliability performance. All companies are not now able to report on their reliability in conformity with the Commission's regulations, and may need to formally seek a waiver from the Commission. If the Commission agrees to allow such companies to report differently, it should formally provide waivers to such companies, and the companies should disclose the reasons they are not in full conformity with PUC reliability regulations in the documents they submit to the PUC.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented on modified basis.</u></p> <p>In the Commission's Order at Docket No. M-00991220, entered May 11, 2004, the Commission ordered EDCs to request, in writing, any waivers of reliability reporting requirements necessary to fulfill their obligations under 52 Pa. Code Chapter 57, Subchapter N (Electric Reliability Standards).</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

<p>Recommendation 5:</p> <p><i>The PUC should annually prepare a report for the General Assembly and the public on the reliability performance of individual companies. The report should provide information on performance trends using as many years of performance data as are available, the causes of customer hours of service of interruption, and information on all major events associated with data excluded from the company's reported reliability performance. The information reported for major events should be similar to that reported by companies on PUC service outage reports, and a company's current performance should be compared to past performance during such events.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>An annual reliability report, entitled <u>Electric Service Reliability in Pennsylvania 2005</u>, was issued by the Commission in August 2006. 52 Pa. Code §57.195(j) requires that the report be released to the public. The report trends reliability performance from 1994 to 2005 by company and includes the causes of outages, by percentage, and information on all major events.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
<p>Recommendation 6:</p> <p><i>The PUC should complete its inspection and maintenance study, which is currently underway, and establish regulations regarding inspection, maintenance, repair, and replacement standards for electric distribution systems as required by statute.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented on modified basis.</u></p> <p>The Commission initiated an Inspection & Maintenance Standards rulemaking by issuing an Advance Notice of Proposed Rulemaking Order adopted on November 18, 2004, and published in the Pennsylvania Bulletin at 34 Pa.B. 6550, on December 11, 2004. By Order entered April 21, 2006, the Commission issued a proposed rulemaking order for the purpose of establishing inspection and maintenance standards for EDCs. The Commission is holding a meeting on January 22, 2007 for interested parties to give presentations regarding their initial comments and to answer questions posed by Commission staff. The deadline for public comment on the Proposed Rulemaking Order is April 16, 2007. The proposed regulation requires an EDC to have a plan for the periodic inspection and maintenance of poles, overhead conductors and cables, wires, transformers, switching devices, protective devices,</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 2 (Continued)

	<p>regulators, capacitors, substations and other facilities critical to maintaining an acceptable level of reliability. The regulation also sets forth minimum inspection and maintenance intervals for vegetation management, poles, overhead lines and substations.</p>	
<p><i>Recommendation 7:</i></p> <p><i>The PUC should work more closely and continuously with companies whose reliability may be diminishing to assure that they are taking aggressive steps to prevent degradation of their transmission and distribution systems, and it should closely monitor company implementation of improvement plans.</i></p>	<p>PUC Comment:</p> <p><u>Agree and recommendation implemented.</u></p> <p>Once a performance standard is violated, Commission staff will carefully review all information presented in the EDC's quarterly and annual reliability reports including the EDC's causal analysis, inspection and maintenance goal data, expenditure data, staffing levels and other supporting information and §67.1 reports to determine appropriate monitoring and enforcement actions. Depending upon the findings of this review, we may consider a range of compliance actions including engaging in additional remedial review, requiring additional EDC reporting, conducting an informal investigation, initiating a formal complaint, requiring a formal improvement plan with enforceable commitments and an implementation schedule, and assessing penalties and fines.</p> <p>While overall system performance trends that fall in the range between the benchmark and the standard will not be subject to compliance enforcement, we will keep EDCs whose performance is within the standard, but trending away from the benchmark, under review as a precautionary measure.</p> <p>Since the original 2002 LB&FC recommendations were made, there was an investigation initiated into the electric reliability of the FirstEnergy companies at Docket No. I-00040102. Additionally, staff does work closely with companies on an informal basis to address reliability concerns that are identified through the reliability monitoring process.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 3

PUC Filing and Reporting Requirements on Local Exchange Carriers*

Release Date: November 2004

Relevant Recommendation	Implementation Status	
<p><i>Recommendation 1:</i></p> <p><i>Update and modernize its computer capability as a way of streamlining reporting requirements. The PUC acknowledges that its management information systems are not currently sufficient to allow its employees to extract data for separate analysis. As a consequence, some reports, such as the Annual Access Line report and certain depreciation reports, duplicate at least some of the information contained in other PUC reports.</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing recommendation.</u></p> <p>In December 2004, the Commission amended its budget request for fiscal year 2004-05 to again request \$3.85 million to upgrade its computer system, through a project now known as Information Management and Access Project, or InfoMAP. In that amendment, the Commission explained that its request for \$3.85 million in the prior fiscal year had been granted only in the amount of \$660,000, which was insufficient funding to initiate the project.</p> <p>In July 2005, the General Assembly and Governor approved the Commission's budget request, including \$3.85 million for InfoMAP. In July, the Commission contracted with Intellimark to revise and finalize a Request for Proposal. In August, the Commission hired a Project Manager for InfoMAP through a staff augmentation contract. The RFP was issued on September 16, 2005, and a pre-proposal conference was held on October 3, 2005. Four bids, representing a total of 21 vendors (including prime and subcontractors) were submitted on November 30, 2005.</p> <p>The Commission approved the Evaluation Committee's selection of Unisys as the preferred vendor on January 12, 2006. Unisys was found to be the most qualified bidder, scoring the most points before costs were considered. Unisys was also the lowest cost bidder. Contract negotiations began immediately and a contract was finalized on March 15, 2006. Unisys began working on site the following week.</p> <p>Unisys is currently reviewing workflows in preparation of overhauling our case management system. Through FileNet, Unisys will automate our workflow and provide for electronic sharing of information throughout the Commission. We hope to have this capability by June 2007. In a subsequent phase of InfoMAP, external users will be able to electronically file and electronically access information maintained by the Commission. The entire project is expected to be completed by March 2008.</p> <p>Presently, our 2005-06 budget request is pending in the General Assembly. Within that request is \$2.75 million for InfoMAP, which represents the balance of our \$6.6 million estimate for this project. With this level of funding, we are confident that we will be able to successfully deploy InfoMAP.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

*Subsequent to releasing our report on LEC filing and reporting requirements, the General Assembly passed Act 2004-183. Section 3015(e) of that act lists the eight reports ILECs must continue to file with the PUC. A ninth report is allowed for companies with a bona fide retail request program. Act 183 provides that no other report or filings shall be required unless ordered by the Commission and meeting other criteria specified in the act.

Exhibit 3 (Continued)

<i>Recommendation 2:</i>	PUC Comment:	LB&FC Comment:
<p><i>Consolidate similar information into the Annual Financial Report (AFR). The most time-consuming report for the LECs to produce is the AFR. In addition to statements such as the balance sheet, statement of income and retained earnings, and cash flow statement, the companies must attach other schedules to the AFR, some of which duplicate information contained in part or in whole in other PUC reports. We recommend the PUC consolidate the information it needs from these various reports (particularly the Annual Report on Certified Interexchange Transporter, Annual Access Line Report, Annual Residential Account Information Report, Annual Earnings Report, and the Annual Depreciation Report) into the AFR. The need for the information contained in many of these reports dates prior to Chapter 30 when the PUC established telephone rates using a rate base/rate of return methodology, and we recommend that the PUC waive or delete information and schedules that are no longer needed (e.g., for companies that are no longer subject to rate base/rate of return regulation).</i></p>	<p><u>Agree and recommendation implemented on modified basis.</u></p> <p>In reviewing Chapter 30, as well as the Legislative Budget and Finance Committee's (LB&FC) report, the Commission entered a tentative order in April 2005 directing the continuation, consolidation and/or elimination of the general filing and reporting requirements presently imposed on LECs operating in Pennsylvania. In that order, the Commission solicited comments to determine what reporting requirements remain for LECs in light of the statutory changes and the LB&FC's recommendations.</p> <p>The Commission entered a final implementation order on October 5, 2005, at Docket No. M-00041857 that eliminated or modified nine reporting requirements. In that order, the Commission also adopted an agreed-to format for the annual financial report. The revised annual financial report was reduced from approximately 50 pages to only 8 pages. However, the Commission did not consolidate information from various other reports mentioned in Recommendation #2 since the information in those other reports was being eliminated or was not directly related to financial information. The annual financial report for calendar year 2005 was due on March 31, 2006.</p>	<p><u>Agree.</u></p>

Exhibit 3 (Continued)

Recommendation 3:	PUC Comment:	LB&FC Comment:
<p><i>Specify the nature of the Service Records reporting requirement. PUC regulations (at 52 Pa. Code §63.22) require LECs to maintain records on activities such as tests and inspections conducted, service complaints, and the length of time required to respond to trouble reports. The regulations further require that “records pertaining to reasonableness and adequacy of utility service, as required by this chapter, shall be filed with the Commission”</i></p> <p><i>The exact nature of these records, however, is not defined and has become an issue as a result of recent requests. The LECs estimate that the potential cost to provide these records could exceed \$350,000. We recommend the PUC clarify the meaning of the language of the records requirement in §63.22(c), and that the PUC additionally establish a requirement that a reasonable basis exist for such a records request.</i></p>	<p><u>Agree and recommendation implemented on modified basis.</u></p> <p>In its December 6, 2005, Order, the Commission determined that section 63.22(c) permitted public access only to service data and service surveillance exception reports filed with the Commission. The Commission found that the utility records to which section 63.22(c) refers, and to which it grants public access, are those records pertaining to the reasonableness and adequacy of utility service that are required by Chapter 63 and are filed with the Commission. The Chapter 63 service quality records filed with the Commission are: the service data for a standard not met pursuant to section 63.53(b), and the service surveillance exceptions reports pursuant to 52 Pa. Code §63.55(b) and (c).</p> <p>The Commission recognized that, in reality, telecommunications companies are obligated to file service quality data with the Commission only on an irregular basis. For example, section 63.55(b) requires a company to file service surveillance exception reports with the Commission when the company’s level of operation fails to meet a stated average level of operation for a continuous three month period. If a service surveillance exception report is filed, a company must monitor that standard and at the end of one month, must file an updated status report with the Commission in accordance with 52 Pa. Code §63.55(c).</p> <p>At the same time, the Commission acknowledged that a company’s extensive internal business records regarding service quality, such as records of complaints at 52 Pa. Code §63.15(b) and performance records of central offices at 52 Pa. Code §63.56(f), are not filed with the Commission on a regular basis. Therefore, section 63.22(c) does not apply to these records and the companies are not required to make them available for public access upon request. Indeed, OCA’s contrary interpretation of section 63.22(c) would require the companies to provide more extensive information to the public (all service records) than it does for the Commission (certain service records if below standard). We rejected this interpretation of section 63.22(c) as unreasonable and contrary to its express terms.</p> <p>As a practical matter, the Commission indicated that requiring companies to identify, copy and transport internal company records to the Commission not only would place a heavy financial, administrative and logistical burden on the companies, but also would impose similar burdens on the Commission, and staff would be required to assume a custodial role in the warehousing, protecting and facilitating access to these records. Interpreting section 63.22(c) as permitting public access only to service data and service surveillance exception reports that have already been filed with the Commission avoids these burdensome results. Moreover, the Commission is constrained to observe that this interpretation, contrary to the initial staff interpretation, is more consistent with the clear legislative</p>	<p><u>Agree.</u></p>

Exhibit 3 (Continued)

	<p>intent expressed in Act 2004-183 to minimize the level of required reporting. See 66 Pa.C.S. §3015(e).</p> <p>Accordingly, the Commission directed staff to make these service data and reports available to OCA. Also, the Commission directed staff to provide OCA with access to those service data and service surveillance exception reports filed with the Commission pursuant to sections 63.53(b) and 63.55(b) and (c) for the period of December 3, 1999, to December 3, 2003.</p>	
<p><i>Recommendation 4:</i></p> <p><i>Unless circumstance change, within three years eliminate the reports which are currently waived, suspended, or otherwise no longer required. The Commission has waived, suspended, or otherwise no longer requires eight reports affecting some or all LECS. The PUC is re-evaluating the necessity of a ninth report, the monthly Collocation Report. In some cases, the Commission does not want to eliminate the reports entirely in case Pennsylvania reverts back to a rate base/rate of return methodology for establishing telephone rates. We recommend that the PUC eliminate the report requirement within three years for those reports that continue to be unnecessary and that are within its jurisdiction to eliminate. For unnecessary reports required by regulation, we recommend the Commission begin the process of rescinding the regulation.</i></p>	<p>PUC Comment:</p> <p><u>Agree and in the process of implementing the recommendation.</u></p> <p>As mentioned in the response to Recommendation #2, the Commission entered a final implementation order on October 5, 2005, that eliminated or modified nine reporting requirements. The following reporting requirements are eliminated or modified:</p> <ol style="list-style-type: none"> 1. Financial Earnings Report (52 Pa. Code §71.3) - eliminate 2. Annual Depreciation Report (52 Pa. Code §73.3) - eliminate 3. Interest Rate on Deposits Report (52 Pa. Code §64.41) - modify 4. Service Life Study Report (52 Pa. Code §73.5) - eliminate 5. Capital Investment Report (52 Pa. Code §73.7) - eliminate 6. Quarterly Cramming Report (52 Pa. Code §64.23) - eliminate 7. Quarterly Slamming Report (52 Pa. Code §64.23) - eliminate 8. Residential Account Information (52 Pa. Code §64.201(a) and (b)) - modify 9. Accident Reports (52 Pa. Code §63.11) - eliminate <p>Note that although eliminated as a separate reporting obligation, depreciation data is still required in support of NMP biennial reports in accordance with 66 Pa.C.S. §3014(e), and that companies remain obligated to maintain internal service records regarding customer allegations of slamming per 52 Pa. Code §64.23 (b)(7). Note also that the Commission confirmed its earlier determination that the Collocation Reports previously required by Commission order at Docket No. R-00994697 (September 4, 2001) should be eliminated.</p> <p>On December 15, 2005, a proposed rulemaking order at Docket No. L-00050176 was approved by the Commission to eliminate or modify the above-referenced reporting requirements.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>

Exhibit 3 (Continued)

<p><i>Recommendation 5:</i></p> <p><i>Explore the feasibility of obtaining information from other sources, where available. The surcharge submittals to the Telecommunications Relay Service Fund are maintained by the fund administrator, and information on slamming and cramming could be obtained from long distance carriers. The PUC has, however, waived its reports on slamming and cramming for all but the Commonwealth's CLECs and largest ILECs, many of which are also long distance carriers.</i></p>	<p>PUC Comment:</p> <p><u>Agree and have fully implemented the recommendation.</u></p> <p>In the October 5, 2005 final implementation order previously referenced in responses to Recommendations #2 and #4, the Commission also determined that the Annual Tracking Report of Telecommunications Relay Service Surcharges as required by 52 Pa. Code §69.513(a) and pursuant to §3015(e)(3) should remain in place in accordance with Chapter 30.</p> <p>In the December 15, 2005 proposed rulemaking order previously referenced in response to Recommendation #4, the Commission determined that the quarterly cramming report required by 52 Pa. Code §64.23 can be eliminated. Also, in that same order, the Commission proposes to eliminate the quarterly reporting obligation for both long distance and local slamming required by our regulations at section 64.23(b)(7). However, the three-year maintenance requirement for all records of customer allegations of slamming in section 64.23 (b)(7) is a record keeping requirement and not a reporting requirement and, as such, remains in effect for all LECs pending further regulatory action.</p>	<p>LB&FC Comment:</p> <p><u>Agree.</u></p>
--	--	---

B. With One Exception (FirstEnergy), Pennsylvania’s Electric Distribution Companies Are Meeting or Exceeding Their Reliability Performance Standards

Act 1996-138, the legislation that deregulated electric generation in Pennsylvania, also imposed requirements on the PUC to ensure that levels of reliability that existed prior to the restructuring would continue in the future. To this end, the PUC requires quarterly and annual reliability reporting by all electric distribution companies (EDC).¹ The reports require specific data elements from each distribution company, including an overall assessment of the reliability for EDC’s service territory, descriptions of major events that occurred in the service territory, and tables showing the actual values on industry standard reliability indices. The annual reports are due April 30 of each calendar year and reflect reporting of the previous calendar year’s reliability for each EDC’s service territory.

Of particular importance in the reliability reports are the EDC industry standard performance measures. These measures allow the PUC to monitor reliability using quantified data provided by the EDCs. The PUC-approved measures are based on reliability performance indices that have been adopted by the Institute of Electrical and Electronic Engineers (IEEE). This nonprofit organization sets standards for a number of industries including power and energy, information technology, and telecommunications. The measures are used to calculate performance in three areas of electric reliability: restoration, frequency, and duration. Each of these indices is discussed further below.

Restoration: *(CAIDI) Customer Average Interruption Duration Index (pronounced kay-dee)*

CAIDI is defined as the average duration of sustained interruptions² for those customers who experience interruptions during the analysis period. It is calculated by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. A more common understanding of this measure would be to think of it as, “on average, how long does it take the EDC to restore power?”

¹Electric Distribution Companies are divided into two categories: large and small. Large EDCs have customers >100,000, while “small” EDCs have <100,000. This report only focuses on large EDCs as that was specified in HR 695 and was the basis of our 2002 report on *Assessing the Reliability of Pennsylvania’s Electric Transmission and Distribution Systems*. The small EDCs which operate in Pennsylvania include UGI, Citizens’, Pike County, and Wellsboro.

²An “interruption” is the loss of electric service by one or more customers for a period greater than 5 minutes. The term does not include “major events” or the authorized termination of service to a customer.

Frequency: *(SAIFI) System Average Interruption Frequency Index (pronounced safe-ee)*

SAIFI measures the average frequency of sustained interruptions per customer occurring during the analysis period. It is calculated by dividing the total number of sustained interruptions by the total number of customers served. A more common understanding of this index would be, “how many times did the power go out?”

Duration: *(SAIDI) System Average Interruption Index (pronounced say-dee)*

SAIDI is the average duration of sustained interruptions per customer occurring during the analysis period. It is calculated as the product of CAIDI x SAIFI. This result is a figure which measures the average time all customers were without power for the analysis period (as opposed to just those customers who experienced an outage in the CAIDI index). In other words, among all the EDC’s customers, “how long was the power out?” Since this index measures outages across all customers, some of whom may or may not have experienced a service interruption, it is the least important of the three indices.

Performance Benchmarks and Standards

The reported data is then reviewed by Commission staff to evaluate reliability measures for each EDC. The measures use the three indices listed above (CAIDI, SAIFI, and SAIDI). The PUC establishes two separate thresholds—performance benchmarks and performance standards—to assess reliability.

Performance Benchmark. An EDC’s “performance benchmark” is calculated by averaging the EDC’s annual, system-wide reliability performance indices over the five-year period directly prior to the implementation of electric restructuring (1994 to 1998). The benchmark is the level of performance that the EDC should strive to achieve and maintain. It is the reference point for comparison of future reliability performance in the post-restructuring environment.

Performance Standard. An EDC’s “performance standard” is a numerical value that represents the minimal performance allowed for each reliability index for a given EDC. Performance standards are based on a percentage of each EDC’s historical performance benchmarks. The PUC uses two performance standards—long-term and short-term. The long-term standard, also known as a “rolling three-year standard,” is used to determine if the EDC is trending toward the benchmark. The short-term standard, also known as a “rolling 12-month standard,” is used to evaluate quarterly and annual performance. If an EDC does not meet either standard, it must either justify its poor performance or provide information on corrective measures it will take to improve performance.

In 1999, the PUC established standards and benchmarks for each EDC. The standard for each EDC was set at two standard deviations from the benchmark (the five-year average). In response to an earlier LB&FC report in June 2002, in which we criticized the two standard deviation minimum performance standard as too lenient, the Commission formed a working group to reevaluate the process for monitoring EDC reliability.

Effective November 1, 2004, the standard deviation approach was dropped and newly created values for each EDC were established. The value for short-term (annual) performance was set at 120 percent of the benchmark. The long-term standard (using three years of data) is set at 110 percent of the benchmark. The 120 percent (one year) and 110 percent (three year) performance standards only apply to CAIDI and SAIFI. The SAIDI performance standard is the product of these two indices multiplied together (CAIDI x SAIFI). The Commission is to begin enforcing the three-year standard on April 30, 2007, using 2004, 2005, and 2006 annual data.

Three Year Historical Review

Table 1 presents the reliability indices for each of the Commonwealth's major EDCs over the past three calendar years (2003, 2004, and 2005).

As shown in the table, while most companies have been meeting their standards, FirstEnergy's companies (Penelec, Penn Power, and Met-Ed) have generally failed to meet their standards—often by a wide margin—and appear to be trending away from their historic benchmarks.

FirstEnergy's Reliability Problems

The PUC initiated an investigation into FirstEnergy's reliability problems in January 2004. In an investigatory order filed by the PUC with an administrative law judge, the PUC sought to collect evidence and hold hearings in order to determine "the root causes for any deficiencies and what corrective actions, if any, should be taken." A series of legal proceedings and hearings were held on this matter, and in November 2004 a settlement was reached between the PUC and FirstEnergy that closed the investigation.

As part of the settlement agreement, FirstEnergy agreed to take specific actions to help reduce outages and improve service. As part of the settlement agreement, FirstEnergy agreed:

- To clear vegetation around distribution lines on a four-year cycle and around transmission lines on a five-year cycle. In 2006 it will perform trial inspections on a select number of rights-of-way to see if additional

Table 1

Reliability Indices for PA Major Electric Distribution Companies

CAIDI (Restoration)

<u>Electric Distribution Company</u>	<u>Benchmark^a</u>	Performance			
		<u>Standard^b</u>	<u>2003^c</u>	<u>2004^c</u>	<u>2005^c</u>
Duquesne.....	108	130	85	92	98
<i>FirstEnergy</i>					
Penn Power.....	101	121	127	120	151
Penelec.....	117	141	149	140	151
Met-Ed.....	117	140	114	128	122
PP&L.....	145	174	121	159	125
PECO.....	112	134	103	106	99
Allegheny.....	170	204	216	190	195

SAIDI (Duration)

<u>Electric Distribution Company</u>	<u>Benchmark^a</u>	Performance			
		<u>Standard^b</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Duquesne.....	126	182	110	95	97
<i>FirstEnergy</i>					
Penn Power.....	113	162	192	172	236
Penelec.....	148	213	239	248	284
Met-Ed.....	135	194	140	197	209
PP&L.....	142	205	107	173	121
PECO.....	138	198	103	104	100
Allegheny.....	179	257	270	216	224

SAIFI (Frequency)

<u>Electric Distribution Company</u>	<u>Benchmark^a</u>	Performance			
		<u>Standard^b</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Duquesne.....	1.17	1.40	1.30	1.03	0.98
<i>FirstEnergy</i>					
Penn Power.....	1.12	1.34	1.51	1.43	1.56
Penelec.....	1.26	1.52	1.60	1.77	1.87
Met-Ed.....	1.15	1.38	1.23	1.54	1.70
PP&L.....	0.98	1.18	0.88	1.09	0.96
PECO.....	1.23	1.48	1.00	0.98	1.02
Allegheny.....	1.05	1.26	1.25	1.13	1.15

^a 5 year average performance (1994 to 1998). This is the reliability level EDC should strive to attain.

^b 12 month rolling average. This is the minimum acceptable performance as established in November 2004.

^c Outlined numbers indicate minimum performance was not met.

Source: Developed by LB&FC staff from information obtained from PUC Electric Reliability Reports.

clearing is necessary. The Commission does not currently require companies to follow specific trimming cycles, but has relied on the companies to establish schedules appropriate for their respective territories.

- To provide better insulation against outages, the company will install at least 3,000 additional “cutouts,” or circuit protection devices, by the end of 2005 and at least 1,000 more each year from 2006 through 2008. Cutouts act as emergency stops and prevent outages from spreading to other parts of the system. The additional equipment is reportedly part of FirstEnergy’s goal of spending at least \$255 million in each year from 2005 through 2007 on its transmission and distribution system.
- To ensure that it has an adequately-trained staff to work on its system, FirstEnergy will establish at least one linemen training school, with enrollment beginning in fall of 2005.
- To improve its education programs and to better inform customers about how to use the automated power outage line and how to reach a live service representative, it will implement semi-annual bill inserts and meetings with customers and local emergency responders.
- At its call center in Reading, Pennsylvania, FirstEnergy will maintain a staff capable of handling at least 340,000 live calls a year. It pledged to answer 80 percent of all calls within 30 seconds, which would bring it in line with the commonly accepted standard for the call center industry.
- Establish SAIDI improvements for each company. Specifically, by 2007 Penelec will have at least a 25 percent improvement over 2003 achieved SAIDI; Penn Power will have at least a 30 percent improvement over the 2003 achieved SAIDI; and Met-Ed will have a 5 percent improvement over 2003 achieved SAIDI. FirstEnergy also committed that its companies’ SAIDI for calendar years 2005 and 2006 will reflect values that are equal to or better than its achieved SAIDI for 2003.

FirstEnergy Petition to Adjust Benchmarks. In a separate, but closely related matter, in May 2004, following the Commission’s order which assigned new computed benchmarks and standards based on percentage bandwidths and not standard deviations, FirstEnergy filed a motion to have its companies’ benchmarks re-computed. The basis for this argument was that during the 1994-1998 review period in which the benchmark (average) was developed, there were data quality issues that comprised the respective companies’ metrics, and therefore erroneous benchmarks (and, subsequently, standards) were being applied to the companies.

Specifically, FirstEnergy held that during the review period data was submitted using manual processes which were prone to inconsistency. Manual systems rely on estimates in the field on outage time and number of customers affected. With the new automated outage systems in place, the companies are now collecting more accurate outage statistics which do not rely on estimates.

The two parties reached a settlement agreement which allowed a change in the FirstEnergy companies' metrics. Although the indices were negotiated and not derived from a specific calculation, the FirstEnergy companies are still required to maintain levels of reliability that were present prior to the restructuring of the electric utility industry; and thus, in compliance with the Competition Act. The new negotiated standards and benchmarks were approved by the Commission in February 2006 and are shown in Table 2.

Table 2 shows the previous benchmarks and standards. While in most cases the values were adjusted upward (i.e., made more lenient), in the case of Met-Ed, the value for their CAIDI was adjusted downward. This was reportedly done so as to maintain Met-Ed's SAIDI value. Since SAIDI is the product of CAIDI x SAIFI, the parties agreed to allow a higher frequency of outages (SAIFI), but in return required a shorter restoration period (CAIDI); thus, resulting in the same SAIDI value.

In July 2006, Allegheny Power also had its benchmarks and standards adjusted as a result of what they contended were artificially low computed metrics. These new benchmarks and standards are reflected in Table 2 and now result in Allegheny Power within acceptable limits in both 2004 and 2005.

FirstEnergy Compliance With Settlement Agreement

The following graphs (see Exhibit 4) show FirstEnergy's individual company trends for each of the three reliability indices. Each company's score should fall within the standard and the benchmark as depicted on the graph by the two steady horizontal lines. As can be seen in the charts, the companies' performance frequently does not meet the revised standards and has not been trending toward their respective benchmarks. In particular, under the settlement agreement, FirstEnergy was to have SAIDI values for each of its companies in 2005 that were equal to or better than the achieved 2003 values. As can be see in the table, the 2005 SAIDI values were actually below the 2003 values.

Table 2

FirstEnergy Adjusted Benchmarks and Standards

CAIDI

	Previous Benchmark	New Benchmark	Previous Standard	New Standard	Percentage Change
PennPower	92	101	110	121	10%
Penelec	115	117	138	141	2%
Met-Ed	127	117	152	140	-8%

SAIDI

	Previous Benchmark	New Benchmark	Previous Standard	New Standard	Percentage Change
PennPower	94	113	135	162	20%
Penelec	132	148	190	213	12%
Met-Ed	135	135	194	194	0%

SAIFI

	Previous Benchmark	New Benchmark	Previous Standard	New Standard	Percentage Change
PennPower	1.02	1.12	1.22	1.34	10%
Penelec	1.15	1.26	1.38	1.52	10%
Met-Ed	1.06	1.15	1.27	1.38	9%

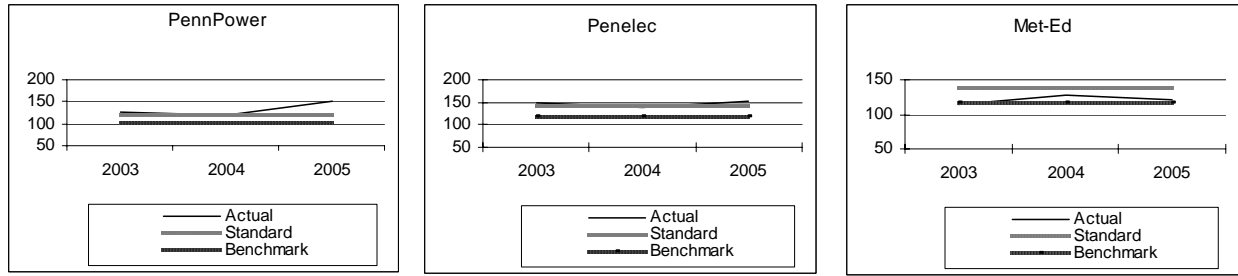
Source: Developed by LB&FC staff from information obtained from information provided by the PUC.

The PUC staff is continuing to monitor FirstEnergy's performance and reported it will seek corrective actions, if needed, to bring them into compliance with the settlement agreement. FirstEnergy did establish the training school as required. One school was created at Clarion University-Venango Campus and a second was created at Reading Area Community College. FirstEnergy also reportedly met its requirement for installing cutouts for 2005. However, FirstEnergy failed to meet the requirement of answering 80 percent of call center calls in 30 seconds. The PUC Law Bureau has notified FirstEnergy, as well as the administrative law judge and other parties, regarding non-compliance with the settlement agreement.

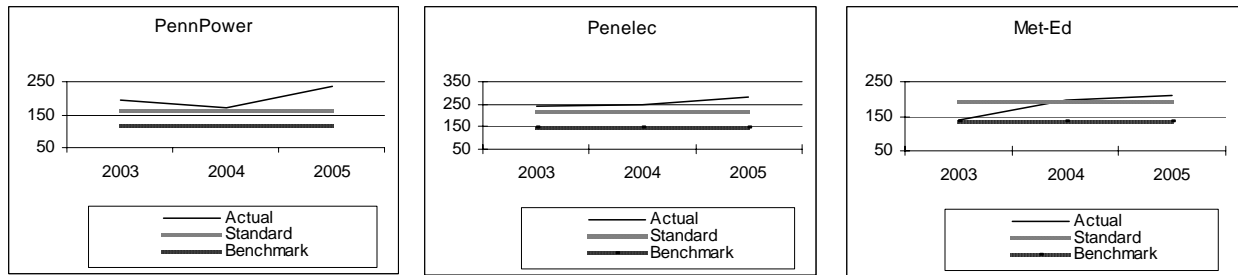
Exhibit 4

FirstEnergy Three Year Performance

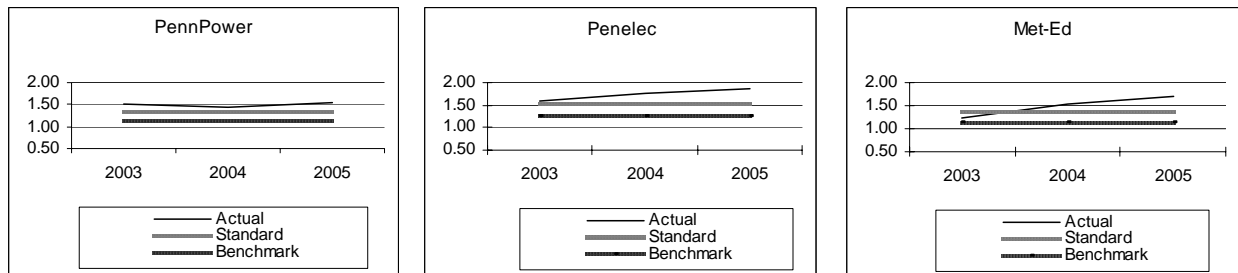
CAIDI



SAIDI



SAIFI



Source: Developed by LB&FC staff from information obtained from PUC Electric Reliability reports.

In FirstEnergy’s *2005 Annual Reliability Report* to the PUC, they recognize that performance was disappointing and offer several explanations. In particular, they note that their performance was impacted by several significant, but non-excludable, storms under the definition of “major events.”³ FirstEnergy reported 22 storm events, yet only 4 of these were eligible for exclusion. FirstEnergy presented evidence that if the remaining 18 storms had been excludable that only PennPower’s CAIDI and Met-Ed’s SAIFI would have been outside of PUC established thresholds. FirstEnergy also contends that because one of their companies, Penelec,

³A “major event” is any occurrence affecting at least 10 percent of the EDC’s customers and resulting in a loss of service of five minutes or more. The loss of service must be due to conditions beyond the EDC’s control (e.g., a severe storm) or as a result of an unscheduled interruption by the EDC to maintain the adequacy and security of the electrical system. Loss of service during such events can be excluded when calculating reliability metrics.

covers such a large territory, with a relatively low customer density that impacts fewer customers during a widespread event, it is increasingly difficult for them to meet the criteria of a “major event.”

FirstEnergy also reports that many of its efforts to improve reliability were not implemented until the latter part of 2005, so their impact will not be fully realized until 2006.

- Distribution Automation/Adaptive Relaying. This technology seeks to reduce overall outage frequency by installing adaptive relaying together with a storm detection technology. Storm detectors placed at substations will detect storm conditions and automatically switch to “storm mode.” In storm mode, adaptive relaying automatically initiates instantaneous tripping of a breaker thereby reducing the number of sustained outages caused by lightning and wind. FirstEnergy has a patent pending on this new technology.
- Premise Reliability Database. In October 2005, this technology was implemented to proactively identify pockets of poor performance at the customer level. This mapping technology allows engineers, by way of color coding, to identify areas where a circuit that may be an acceptable performer is still having pockets of poor performance.
- Customers Experiencing Multiple Interruptions. This mapping technology allows interruptions to be studied at the customer level and allows regional engineers to develop the root cause and associated corrective work needed to address outages to these customers.
- Outage Website. FirstEnergy updated the Customer Care website to include a current “system outage map,” as well as additional information on number of customers affected and area-specific messaging about restoration activities.
- Voice-Enabled IVR. In 2005, upgrades were made to the call center to include an interactive voice response system (IVR). This technology reduces the amount of time customers need to spend on the phone reporting problems or service interruptions. The system is also reverse IVR enabled, meaning that FirstEnergy can place specific messaging on reliability improvements such as tree trimming or cable replacement to those affected customers.
- Inspection and Maintenance. FirstEnergy reports that they are working to implement an aggressive inspection and maintenance plan. Included in this plan are inspections of nearly 100,000 poles for the companies.

Where warranted or unfixable, the poles are replaced. Aerial patrols using helicopters are also done on transmission circuits to ensure their integrity. Lastly, as part of the reliability settlement agreement, FirstEnergy has implemented thermal scanning equipment to be used on substation equipment. These scans are conducted to identify and repair equipment prior to failure since equipment condition has a direct effect on reliability. FirstEnergy reports the companies conducted a review of 788 substations in 2005.

In its Joint 3rd Quarter 2006 Service Reliability Report to the PUC, FirstEnergy reported reliability performance metrics as follows:

	Q3 2006 Rolling 12-month Actual Performance			Commission Established Reliability Indices					
				Benchmark			Rolling 12-month Standard		
Company	SAIFI	CAIDI	SAIDI	SAIFI	CAIDI	SAIDI	SAIFI	CAIDI	SAIDI
Penn Power	1.27	118	150	1.12	101	113	1.34	121	162
Penelec	1.62	121	197	1.26	117	148	1.52	141	213
Met-Ed	1.67	118	198	1.15	117	135	1.38	140	194

The reported reliability indices of the FirstEnergy companies has shown improvement since the Commission issued its Electric Service Reliability in Pennsylvania 2005 report. At that time, the FirstEnergy companies were reporting reliability indices above the standard (poor performance) for 8 of 9 metrics. As detailed in its 3rd Quarter 2006 Service Reliability Report to the Commission, FirstEnergy reported reliability indices above the standard for only 3 of 9 metrics. Met-Ed and Penelec's SAIFI and Met-Ed's SAIDI remain above the prescribed standard.

FirstEnergy has agreed to perform a reliability audit of Met-Ed. Field work related to the audit is expected to commence in February 2007, with final audit recommendations expected in July of 2007.

Recommendation

- 1. The PUC continue to monitor FirstEnergy's performance and seek corrective action, if needed, to bring them into compliance with the Commission's 2004 settlement agreement.**

C. The PUC Has Made Good Progress in Implementing the Alternative Energy Portfolio Standards Act

Act 2004-213, known as the Alternative Energy Portfolio Standards Act, requires that electric distribution companies (EDCs) and electric generation suppliers include a specific percentage of electricity from alternative resources in the electricity they sell to Pennsylvania retail customers. The amount of alternative energy required gradually increases according to a 15-year schedule identified in Act 213. While Act 213, does not mandate exactly which resources must be utilized and in what quantities, certain minimum thresholds must be met for the use of Tier I, Tier II, and solar photovoltaic resources. Compliance with the portfolio standard is excused in a service territory for the duration of existing generation rate caps. Accordingly, five of the seven largest electric distribution companies will not have to comply with this requirement until January 1, 2011. The act also requires EDCs to permit retail customer-generators to interconnect to the utilities distribution system.

The act was signed into law on November 30, 2004, and took effect on February 28, 2005. In January 2005, the Commission opened an administrative proceeding¹ to develop the necessary rules and procedures to implement Act 213. The Commission also established a compliance schedule for the percentage of electricity that is to be generated by Tier I (e.g., solar, wind power, geothermal) and Tier II (e.g., waste coal, demand side management, and coal gasification) sources.

The Commission presided over a technical conference on implementing the act in January 2005. Subsequently, the Commission convened an Alternative Energy Portfolio Standards Working Group, comprised of state agencies, environmental groups, generation companies and others, to provide a public forum to discuss issues and assist in the development of regulations. Together with the Commission and others, the Work Group, which was a requirement of Act 213, has identified a number of issues that need to be resolved. The status of certain key issues is described below:

Alternative Energy Credits. Act 213 assesses compliance with the act in terms of alternative energy credits, each of which equal one megawatt hour of generation from a qualified alternative energy system. The Commission proposed standards and processes for qualifying alternative energy systems and certifying alternative energy credits in January 2006 and issued a proposed rulemaking in July 2006. This regulation addresses many alternative energy credit issues not addressed in the net metering and interconnection regulations.

¹Docket M-00051865, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*.

Pending adoption of final standards, the Pennsylvania Department of Environmental Protection and the PUC began an interim alternative energy system qualification process that has allowed generators to earn alternative energy credits during the period February 28, 2005, through January 20, 2006. DEP and the Commission have qualified approximately 170 alternative energy systems under this process, which have produced over 1 million Tier I and over 25 million Tier II alternative energy credits.

The Commission and the Department of Environmental Protection have examined past retail sales data and made estimates of future sales through 2021, assuming retail sales growth of 1.4 percent per year. Based on this data, Tier I required generation in Year 5 (2011) will be approximately 5.5 million credits, substantially higher than the 1 million credits generated in 2005.

Tier II credits, however, are estimated at only 9.8 million, well below the 25 million credits generated in 2005. According to the PUC projections, Year 15 (2021) Tier II requirements will only be 18.1 million credits. The PUC notes, however, that some of these Tier II credits may be purchased by EDCs and EGSs in other states that have similar renewable energy portfolio requirements, so it cannot be assumed that there will be enough Tier II credits available for Year 15 compliance.

Litigation recently concluded on the ownership of the alternative energy attributes² for existing contracts where the contract is silent on this matter. By motion adopted on December 21, 2006, the PUC concluded that electric distribution companies owned the attributes in dispute. The order incorporating the motion is currently being prepared and is expected to be entered in January 2007.

Demand Side Management. Act 213 allows demand side management (DSM), energy efficiency (EE), and load management programs and technologies to be counted as alternative energy sources. In September 2005, the PUC issued a final order and technical manual to govern the tracking and verification of DSM/EE measures. The order and manual include the depreciation schedules for alternative energy credits created through demand side management, energy efficiency and load management technologies as required by Act 213.

Act 213 requires that these interim standards be subsequently established through formal regulations. The Commission intends to monitor the effectiveness of the interim DSM standards for several years before it prepares a formal rulemaking.

Net Metering. Net metering refers to the business rules that govern billing and compensation of customer-generators who are interconnected with the local EDC distribution system. The PUC issued final form regulations in June 2006.

²Act 213 provides for alternative energy “attributes” to be separated from the actual electricity.

These regulations were approved by the IRRC in November 2006 and became effective upon publication in the Pennsylvania Bulletin on December 16, 2006. Under these rules, net metering customers will be compensated for excess generation as early as January 2007.

Interconnection Rules. Act 213 requires the Commission to develop uniform, statewide rules for the interconnection of customer-generators. Interconnection refers to the technical standards governing the physical connection of a customer-generator's system with the EDC's distribution infrastructure. The Commission issued final form regulations in August 2006. The regulations were approved by the IRRC in November 2006 and became effective upon publication in the Pennsylvania Bulletin on December 16, 2006. The PUC is currently working on a fee schedule for interconnection studies and requests.

Cost-Recovery Standards and Processes. Act 213 provides that EDCs may fully recover compliance costs through an automatic adjustment clause. The Commission proposed cost recovery standards in a rulemaking order in July 2006. The public comment period ends on December 13, 2006. The Commission anticipates final regulations will be effective by June 2007.

Resource Qualification Considerations. Electric generation facilities must satisfy certain requirements pertaining to such issues as environmental, health, safety, and facility location for their electricity to qualify for alternative energy credits. In January 2006, the Commission released for public comment an order proposing certain standards for these requirements, and included its determinations in the proposed rulemaking order of July 2006 (cited above). The Commission anticipates final regulations will be effective by June 2007.

Alternative Energy Credit Trading Programs. To help implement the act, Act 213 allows the Commission to establish an alternative energy credit trading program. The act also permits the Commission to contract with an independent administrator to operate the program. In April 2006, the Commission issued a Request for Qualifications for parties interested in serving as the program administrator. A Request for Proposal was issued to six qualified parties on September 1, and the Commission selected Clean Power Markets as the alternative energy credits program administrator at its Public Meeting on November 30, 2006.

Act 213 Reporting Requirements. Act 213 has two reporting requirements:

- Section 3(f)(5) of the act requires the PUC to "provide for, at least annually, a review of the alternative energy market within this Commonwealth and the service territories of the regional transmission organizations that manage the transmission system in any part of this Commonwealth. The commission will use the results of this study to identify any needed

changes to the cost associated with the alternative compliance payment program.

- Section 7(c) requires an annual report to the House and Senate Environmental Resources and Energy Committees that includes, at a minimum:
 - (1) The status of the compliance with the provisions of this act by electric distribution companies and electric generation suppliers.
 - (2) Current costs of alternative energy on a per kilowatt hour basis for all alternative energy technology types.
 - (3) Costs associated with the alternative energy credits program under this act, including the number of alternative compliance payments.
 - (4) The status of the alternative energy marketplace within this Commonwealth.
 - (5) Recommendations for program improvements.

The PUC reported it has not yet done a Section 3(f)(5) study because the first milestone to assess alternative compliance payment has not yet arrived. The act's first reporting period will not end until May 31, 2007, therefore no EDC or EGS will actually have to demonstrate compliance until May 31, 2007.

Similarly, the PUC reports that the information to be provided in the Section 7(c) annual report will not be available until after the conclusion of the first reporting year and the subsequent 90-day true-up period. Therefore the Commission will not have any data on EDC and EGS compliance until September 2007. The Commission plans to deliver its first annual report to the General Assembly during the fourth quarter of 2007 and every 12 months thereafter.

D. Final POLR Regulations Have Not Yet Been Promulgated

The Electricity Generation Customer Choice and Competition Act, Act 1996-138, requires the PUC to promulgate regulations defining the obligation of electric distribution companies to serve retail customers who are not receiving their electric generation through the competitive retail market at the end of the restructuring transition period. Since the vast majority (over 90 percent) of Pennsylvania consumers have not selected to receive electric generation through the competitive retail market, this regulation will affect the electricity rates paid by virtually all Pennsylvania consumers.

As of September 2006, approximately ten years after the enactment of this act, the PUC has not yet promulgated final POLR regulations. While not having such regulations has had some effect on the litigation of rate cases for two utilities whose rate caps have expired (Pike Electric and UGI), final regulations—which the PUC anticipates will be completed by the end of 2006—will be critical as rate caps expire in 2009 and 2010 for Pennsylvania’s major electric generation suppliers.

Requirements of the Electricity Generation Customer Choice and Competition Act

Under the act, the PUC is required to issue regulations to “define the electric distribution company’s obligation to connect and deliver and acquire electricity” at prevailing market prices for consumers who do not choose an alternative electric generation supplier. At the time the act was passed, it was assumed that a significant portion of Pennsylvania customers would choose a competitive electric supplier, in much the same way as consumers now choose a telephone company.

For those customers who do not choose an electric supplier, the act mandates that electricity is to be provided by the incumbent electric distribution company or a Commission-approved alternative provider. The electricity provided to these customers is to be acquired at prevailing market prices, and the provider may fully recover all reasonable costs associated with this service. This duty is referred to as the “provider of last resort” (POLR) obligation.

The significance of POLR regulations was demonstrated in Pike County when 4,400 customers of Pike County Light and Power Company experienced a 70 percent increase in their electricity bill in early 2006. This increase, as well as similar increases in Maryland and Delaware, was the result of the expiration of long-term electric generation price caps, which have protected consumers from price increases. Once these caps expired, the electric companies purchased electricity at then-current—and much higher—wholesale energy prices. Most Pennsylvania

consumers will continue to pay capped generation charges until the end of 2009 or 2010.¹

PUC Actions to Address the POLR Requirements

The Commission entered an order establishing interim POLR guidelines approximately two years after the passage of the act.² Subsequent to the order, the Commission convened a working group to solicit input from interested stakeholders. The POLR workgroup received position papers on the scope of the regulations and met periodically through late 2003. In 2004, the Commission established the POLR Roundtable to discuss all relevant POLR issues, including the consideration of operational models in other jurisdictions. The Roundtable met between April and June 2004. On December 16, 2004, the Commission issued a Notice of Proposed Rulemaking that formally commenced the rulemaking process, and in February 2005 the proposed rulemaking was published for public comment.

The proposed rulemaking uses the term “default service” to focus on the service provided rather than the provider. The rulemaking reserves the role of the default service provider to the incumbent electric distribution company (EDC) within each service territory.

The proposed rulemaking also requires default service implementation plans to be filed with the Commission 15 months prior to the conclusion of the rate cap for that particular EDC service territory unless the Commission authorizes another filing date. Due to the length of time for the rulemaking process, some of the service plans may expire prior to the effective date of the regulations. The Commission, therefore, plans to approve interim default service plans for certain EDCs until the final regulations become effective.

The proposed rulemaking establishes standards for the competitive procurement process to be used by a default service provider to acquire electricity. This process is to include, for example, a bidding schedule, bid evaluation criteria and relevant load data. In developing the proposed rulemaking, the Commission noted that it was guided by one of the key policy declaration of the act—markets are superior to economic regulation in determining the cost of electric generation.

Independent Regulatory Review Commission Comments

The Independent Regulatory Review Commission (IRRC) issued comments on the proposed rulemaking on July 27, 2005. The PUC has two years from this date

¹The generation rate cap of PPL Electric expires at the end of 2009. The generation rate caps of PECO Energy, West Penn Power, Met Ed, and Penelec are due to expire at the end of 2010. Combined, these five companies provide electricity to over 4.7 million Pennsylvania customers.

²Interim Guidelines Addressing Electric Distribution Companies’ Activities Relating to Their Provider of Last Resort Functions, Docket No. M00960890F0017.

to deliver a final form regulation or the regulation is deemed to be withdrawn. IRRC comments questioned the need for rulemaking at this time, noting:

1. as acknowledged by the PUC, the retail and wholesale energy markets will continue to evolve between now and the expiration of the last EDC rate caps in 2010;
2. according to the PUC, changes to federal and state law could affect this rulemaking as evidenced by the Alternative Energy Portfolio Standards Act (AEPS), which became law in 2004 and whose implementing regulations will have a dramatic affect on how energy companies acquire electricity;
3. knowledge could be gained from the experience of other states that are making the transition from a regulated to a competitive electric market;
4. the experiences gained by both the PUC and the EDCs, whose rate cap periods have ended and are operating under interim guidelines, could be useful when crafting regulations at a future date; and
5. the continuing use of interim guidelines would provide the PUC an opportunity to consider various pilot programs before it finalizes these regulations.

The PUC reopened the public comment period for the POLR rulemaking on November 10, 2005, in order to address the recovery of costs incurred to comply with the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. § 1648.1, et seq. The reopened period closed on April 7, 2006. On May 8, 2006, IRRC sent a letter to the PUC advising that the due date for a final form POLR regulation had been extended to April 7, 2008. IRRC had no additional comments at that time.

As of September 2006, the PUC was responding to IRRC's comments and analyzing the activities in other states. One approach under discussion is using "laddering" in issuing requests for proposals for the acquisition of electricity. This would allow the cost to reflect the market over time rather than at a point in time that may result in an unusually low or high cost. The PUC has decided to issue an Advance Notice of Final Rulemaking (ANOFR) before delivering a final form POLR rule to IRRC for its review and approval due to the significant changes to the proposed rulemaking. The PUC reported it consulted with IRRC about the use of an ANOFR, and the IRRC had no objections. Accordingly, the PUC expects the POLR rulemaking process to be completed around mid-2007.

E. The PUC's Office of Trial Staff Continues to Serve an Important Function

The PUC's Office of Trial Staff (OTS) is charged with representing the public interest in rate and certain other cases before the Commission. The Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) are also charged to represent the interests of consumers in cases that appear before the Commission, although their constituencies are somewhat narrower. The PUC's Bureau of Fixed Utility Services (FUS) also provides advice to the PUC Commissioners on all significant rate requests.

Since our 1991 audit, the Commonwealth has enacted major legislation to restructure and deregulate telecommunications (1993), electric generation (1996), and natural gas (1999) companies. Under deregulation, telecommunications rates are to be set largely by market competition rather than through PUC hearings and rulings. Regarding the electric generation and natural gas industries, only the rates charged by the distribution components are set by the PUC, while the commodity prices of electricity and natural gas are generally established by the market.

Given this changed regulatory environment and the multiple offices that provide input on rate cases, we examined the continued need for the PUC's Office of Trial Staff.

Office of Trial Staff (OTS)

The OTS was created by Act 1986-114 primarily to serve an independent prosecutorial role in major rate cases. Prior to this statute, the function was carried out by the Law Bureau. The separation of the OTS from the Law Bureau was deemed necessary because at the time Law Bureau attorneys were involved in both original rate cases and their subsequent appeals. This resulted in PUC attorneys being placed in situations where, upon the appeal of a PUC decision, they could be required to argue against positions that they had previously argued for when serving as a prosecuting attorney.

Under Act 114, the OTS is responsible for representing the public on all proceedings of public interest before the Commission, except those involving transportation, safety, eminent domain, siting, service issues having no impact on rates, and ability to pay. The OTS is specifically required by the Public Utility Code to produce a report, known as a "60-day report," to the Commissioners in cases that would increase rates for existing customers. The 60-day report is to recommend whether or not the PUC should accept the proposed rate or open an investigation into the rate request. If an investigation is opened, the OTS is then to represent the public interest when the case is brought before an Administrative Law Judge.

The Director of Trial Staff may also petition the Commission or may be directed by the Commission to intervene in other cases that do not necessarily involve a rate increase. As a result of Lyness concerns,¹ the Commission has also delegated authority to the OTS to initiate excessive earnings complaints against fixed utilities.

The OTS has a 22-staff complement, including the director, five attorneys and 16 other technical and administrative staff. The estimated budget for FY 2006-07 is \$1.9 million.

Bureau of Fixed Utility Services (FUS)

FUS, a bureau within the PUC, serves as a principal advisor to the Commission on technical and policy issues regarding a variety of rate, tariff and regulatory matters. As part of this role, FUS also produces a 60-day report (similar to the 60-day report done by OTS) and makes recommendations as to whether to accept or challenge utilities in the same general rate cases as the OTS. The FUS review is not required by law, but FUS has been assigned as the advisory bureau responsible for reviewing all tariffs filed pursuant to 66 Pa.C.S.A. §1308, and it is part of the PUC’s written procedures for the review of general rate cases.

As shown on Table 3, the recommendations of FUS and the OTS are frequently the same. Where they differ, in the last two years the PUC has tended to adopt the FUS recommendation.

Table 3

FUS and OTS Rate Cases Before the PUC*				
Fiscal Year	Number of Times FUS/OTS		PUC Adopted	
	<u>Made Same Recommendation^a</u>	<u>Made Different Recommendation</u>	<u>FUS Recommendation</u>	<u>OTS Recommendation</u>
2004-05	14	7	5	2
2005-06	22	7	5	2

*These cases came before the PUC for final decisions at its public meetings during FY 2004-05 and FY 2005-06. The cases may have been filed in a different fiscal year.

^aIn all these cases, the PUC adopted the FUS recommendation and also adopted the OTS recommendation to the extent it was consistent with the FUS recommendation.

Source: Developed by LB&FC staff using information obtained from the PUC website, OTS and FUS.

¹In Lyness, 529 Pa. 535, 605 A.2d 1204 (1992), the Pennsylvania Supreme Court held that a licensing board’s involvement in making the decision to prosecute and then acting as the adjudicator in the case “created an unconstitutional intermingling of the prosecutorial and adjudicatory functions in a single agency.”

The Commissioners preference for the FUS recommendation may be, at least in part, because the OTS is restricted in the type of recommendation it can make. By statute, the OTS can only recommend whether the Commission should approve the rate increase in its entirety or that the filing be suspended and investigated. FUS does not have these restrictions, and therefore can recommend compromises or alternatives, such as to seek a change in the amount of the rate request or how the increase is to be distributed among utility customers. For example, in four of the cases cited on the table above, FUS recommended an adjustment to the rate increase (OTS recommended an investigation), and the Commissioners adopted the FUS recommendation.²

However, unlike OTS, FUS cannot be a party in a case before an Administrative Law Judge, although FUS staff can appear as expert witnesses if called by the OTS.

The Office of Consumer Advocate (OCA)

The Office of Consumer Advocate was established by statute in 1976 in the Office of Attorney General to represent the interest of utility consumers before the PUC and other state and federal agencies and courts.³ Although the language of the act is broad, the focus of the OCA is on the residential consumer. The thought at the time of the legislation was that the larger consumers, e.g., commercial users, had enough at stake that they could hire their own lawyers, but smaller customers did not. Therefore, in a rate case, the OCA initially represents all consumers in the effort to reduce rates; however, in the part of the case where the allocation of costs is determined, the OCA focuses on the residential consumer.

By practice, the OCA reviews all PUC filings and participates in all rate cases over \$500,000, all 1307(f) cases, all merger cases involving those utilities designated as “major” by the PUC, and general rate cases involving smaller amounts where there is a significant issue or where it will have a major impact on customers.

The OCA employee complement consists of 37 persons including the Consumer Advocate, 15 attorneys and 21 other professional, administrative and clerical

²Conceivably, the PUC Code could be amended to give the OTS the ability to recommend compromises and alternatives, as is now done by FUS. However, that is probably unworkable as it would give the OTS an advisory responsibility which might then interfere with its role as an independent prosecutor.

³As provided in its enabling legislation, the consumer advocate may exercise discretion in determining the interests of consumers that will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and, in so determining, shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interest of consumers. The consumer advocate may refrain from intervening when in his judgment such is not necessary to represent adequately the interest of consumers. The consumer advocate is authorized to represent an interest of consumers that is presented to him for his consideration upon petition in writing by a substantial number of persons, who make direct use or are ultimate recipients of a product or service supplied by a person, corporation, or municipal corporation subject to regulation by the PUC.

personnel. Its budget for FY 2006-07 is \$4,899,000, which is funded through utility company assessments.

The Office of Small Business Advocate (OSBA)

The Office of Small Business Advocate, created by Act 181 of 1988, is administratively located within the Department of Community and Economic Development. The OSBA is charged to represent the interests of small business consumers before the PUC.⁴ The statute defines “small business consumer” as a person, sole proprietorship, partnership, corporation, association or other business entity that employs fewer than 250 employees and that receives public utility service under a small commercial, small industrial or small business rate classification.

The OSBA participates before the PUC in major base rate cases, purchased gas cases, telephone rate rebalancing cases and other non-rate proceedings that have a significant impact on small business consumers. The OSBA’s employee complement consists of seven persons, including the Small Business Advocate, three Assistant Small Business Advocates and three support staff personnel. Its budget for FY 2006-07 is \$1,159,000, with utility company assessments funding 85 percent of the budget.⁵

OTS, OCA, and OSBA Involvement in Rate Cases

As shown on the Table 4, OCA and OSBA are involved in fewer cases than the OTS. This is because the OTS is required to file a report (the 60-day report) making recommendations in virtually all rate cases that increase tariffs to existing customers, whereas the OCA and OSBA have discretion as to when they intervene.

As a result, during FY 2004-05 and FY 2005-06, the OTS was the only one of these three organizations formally involved in 125 cases. However, the vast majority of these cases were small, non-general rate cases, typically involving telephone and electric companies.

Although the OTS and OCA frequently represent similar interests in the cases in which they are involved, their arguments in cases are not necessarily the same, and OTS and OCA often recommend different adjustments to the proposed

⁴Pursuant to its enabling statute, the small business advocate may exercise discretion in determining the interests that will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and, in so determining, shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interest of small business consumers. The small business advocate may refrain from intervening when in his judgment such is not necessary to represent adequately the interest of small business consumers. The small business advocate is authorized to represent an interest of small business consumers that is presented to him for his consideration upon petition in writing by a substantial number of small business consumers.

⁵The remaining 15 percent of the budget is funded through assessments on workers’ compensation insurers since the OSBA also has responsibility for representing employers’ interests in certain proceedings before the Insurance Department.

Table 4

Representation in PUC Cases*

		2004-05				2005-06			
		Water/ Wastewater	Gas	Electric	Telephone	Water/ Wastewater	Gas	Electric	Telephone
General Rate ^a	OTS	13	3	2	0	17	6	3	1
	FUS	13	3	2	0	15	3	0	0
	OCA	9	2	1	0	12	4	3	1
	OSBA	2	2	1	0	7	4	3	1
Non-General Rate	OTS	5	12	11	50	7	7	15	20
	FUS	0	1	1	0	1	1	1	0
	OCA	0	3	2	6	1	1	0	2
	OSBA	0	2	2	6	0	1	1	3
Petitions	OTS	2	10	10	0	2	12	8	0
	FUS	0	0	0	0	0	0	0	0
	OCA	2	4	7	0	1	7	3	0
	OSBA	1	4	3	0	0	7	5	0
Mergers/Acquisitions	OTS	0	1	0	2	2	5	0	1
	FUS	0	0	0	0	0	0	0	0
	OCA	0	1	0	2	2	5	0	1
	OSBA	0	1	0	2	1	4	0	1

*In addition to the cases listed, ten gas utilities are required to file §1307(f) cases, which involve a determination of whether each utility is purchasing gas consistent with a least-cost procurement policy. In all ten cases each year, the OTS, OCA, and OSBA participated.

^aIncludes those cases that were filed during the indicated fiscal year. The cases were not necessarily decided in the same year.

Source: Developed by LB&FC staff from information contained on PUC meeting agendas, and provided by OTS, OCA, and OSBA.

rates and in other cases take different approaches. For example, in a recent case, Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, the utility sought to expand its senior citizen's discount program. The OSBA signed a Stipulation and Settlement because its clients were not paying for the program, and the OCA did not oppose the Stipulation and Settlement.

The OTS, however, took the position that the discount was not in the public interest for several reasons, including that there were existing programs for low-income seniors and the utility was in a financial crisis. Both the Commission and later the Commonwealth Court of Pennsylvania agreed with the OTS. In the absence of the participation by OTS, this program may have been implemented since no other entity challenged it.

PUC officials noted that the OTS's participation in a case helps ensure that a complete record of the public interest is made. Although the Administrative Law Judge has a responsibility to develop a complete record and may therefore question the parties regarding the public interest in any case, such questioning is at the discretion of the ALJ. As the chief ALJ explained, the ALJ does not necessarily know what has come out in discovery, and therefore may not be aware of all the aspects of the case that should be pursued.

According to the director of the OTS, the OTS strives to balance what is best for the customers, company and the welfare of the Commonwealth, whereas the consumer interest focuses solely on the cost to the consumers of that particular utility. This is important because when making a recommendation an ALJ can only choose one of the rate increases advocated by one of the involved parties. Thus, if a utility argues for a five percent increase and the OCA argues for a two percent increase, the only way an ALJ could recommend a compromise position, such as a three percent increase, is if another party, such as the OTS, had argued for that rate during the hearing. The Commission is in a similar position: if it does not adopt the ALJ recommendation, it must choose one of the other advocated positions.

Additionally, the OCA and the OSBA often rely on the expertise of OTS witnesses. These include PUC technical staff. PUC officials pointed out that without OTS, other PUC bureaus would no longer have an avenue for introducing evidence that may be relevant to a rate proceeding, such as reliability, quality of service, or issues that may have been discovered during an audit, since that information may not be available to other parties. Even if the information is available, such as through an audit report, the PUC stated that the OCA and OSBA typically do not call a PUC employee as an expert witness; they would have to present the information with their own in-house staff or contract with an independent expert witness.⁶

⁶If outside parties such as the OCA and OSBA would call PUC employees as witnesses, they could not request or direct an analysis; nor could they control their testimony or their work. If the decision was appealed, it could place a PUC employee in the untenable position of arguing against a Commission ruling.

Changes in the Regulatory Environment

Since 1991, the Commonwealth has enacted major legislation to restructure and deregulate telecommunications (1993), electric generation (1996), and natural gas (1999) companies. Under deregulation, rates are to be set largely by market competition rather than through PUC regulation. (Water, wastewater, gas and electric distribution companies continue to be regulated through cost-based, rate-of-return regulation.)

In the period prior to electric restructuring (1987-1994) 21 total major electric company rate cases were filed compared with 12 post restructuring. Major gas company filings declined from 35 in the period prior to restructuring (1986-1998) to 15 cases post restructuring. During this period (1991 to 2006), the OTS scaled back its complement from 49 to 22 currently.

OTS also notes, however, that nongeneral rate cases have not declined, and that in 2006, 26 rate requests were filed by utilities for a total of almost \$718 million. OTS believes the number of general rate cases will begin to increase as the rate caps expire, and these cases may involve requests for large rate increases.

Other States

We contacted Indiana, Illinois, Michigan, Wisconsin, and the six contiguous states,⁷ to discuss how they ensure that consumer and public interests are represented before their public utility regulatory agencies. None of these states except Maryland had a separate office or bureau such as our OTS. In most of the states we contacted (Indiana, Michigan, New Jersey and Ohio) an entity similar to our Office of Consumer Advocate performs this function.

Several states (Delaware, New York, and West Virginia) also have staff in their regulatory agencies that perform a similar function to our OTS, but they are not separate statutorily created units like the OTS. In these states, the legal office serves that role as well as an advisory role.⁸ Maryland's Technical Staff, which is comprised of legal and technical personnel, was statutorily created and is therefore similar to OTS. Several of the states we spoke with also hire outside counsel to provide certain services including representing the public interest before their agency in specific cases.

⁷Delaware, Maryland, New Jersey, New York, Ohio and West Virginia.

⁸Given the Lyness decision, it is important that advisory and prosecutory functions are bifurcated within an agency in Pennsylvania.

F. The OALJ Has Reduced Backlogs and Has Taken Steps to Improve the Timeliness of ALJ Decisions

The Office of Administrative Law Judge is established to provide fair and prompt conflict resolution by independent administrative judges. ALJs preside at formal hearings, mediate cases through an alternative dispute resolution (ADR) process, gather facts relating to individual cases, prepare written decisions outlining the issues in the case, and recommend a resolution to the dispute.

The Public Utility Code, regulations and internal ALJ policies contain time frames for the completion of decisions in the cases before the ALJ. Although the vast majority of decisions are issued in a timely manner, in FY 2005-06, of the 948 initial decisions issued by the OALJ, 52, approximately 5 percent, were issued late, several by more than three months late and four that were more than six months late.

Function of the OALJ

The Office of Administrative Law Judge is established in the Public Utility Code at 66 Pa.C.S.A. §304 to provide fair and prompt conflict resolution by independent administrative judges. Administrative law judges must be attorneys in good standing before the Supreme Court of Pennsylvania, have three years of practice before administrative agencies or equivalent experience, and conform to such other requirements as shall be established by the Commission. ALJs preside over complaint cases, rate cases, investigations, ability to pay/billing disputes, and application cases.

When hearing a case, ALJs may:

1. Issue an initial decision that will become a final order of the Commission if no Commissioners request a review or if no exceptions to the decision are filed by the parties.
2. Issue a recommended decision that must be placed on the public meeting agenda. All rate cases and rail crossing cases are issued as recommended decisions.
3. Issue a certification of record at the Commission's request that does not include an ALJ decision. The Commission reviews the certified record and issues its own decision.

The OALJ is headed by a chief ALJ and employs 18 ALJs, two mediators, three legal division staff and 15 administrative support staff. The OALJ has four regional offices. In FY 2006-07, the OALJ had an estimated budget of \$4.1 million.

Time Frames for Decisions

The Public Utility Code sets out general time frames for all on-the-record proceedings. Specifically, 66 Pa.C.S.A. §332(g) provides that hearings shall begin within 90 days after the proceeding is initiated, and the ALJ is to render a decision within 90 days after the record is closed, unless the Commission for good cause by order allows an extension not to exceed an additional 90 days.¹

The Public Utility Code provides that any party to a proceeding may file exceptions to the administrative law judge's decision with the Commission. The Commission is required to rule on the exceptions within 90 days. Other statutory deadlines may apply to a specific case depending on the subject matter. For example, decisions in general rate increases must be issued within seven months, and those in other rate cases must be issued in six months. Automatic adjustment clause rate cases require a final order within 60 days of the hearing, and decisions in gas cost proceedings must be issued within six months of the filing.

The Commission has further defined the requirements for practice before the Commission with rules of practice and procedure at 52 Pa. Code Chapters 1, 3 and 5. These rules include, for example, time frames related to the filing of specific documents, e.g., petition to intervene, with the Commission. A comprehensive overhaul of these rules was adopted as final by the Commission on December 14, 2005. The goals of the rulemaking included:

1. updating the rules to more accurately reflect the practice as it exists;
2. adapting the rules to more closely parallel the Pennsylvania Rules of Civil Procedure; and
3. clarifying those rules that were too complex and confusing as written.

The changes did, in some cases, increase the amount of time parties have to submit filings. For example, parties now have 20 days, rather than 10, to file an answer or objection to a motion. In other cases time frames were reduced; briefs, for example, are now being filed in 20 days rather than the previous 30 days.

The OALJ also has internal deadlines, in addition to the statutory and regulatory deadlines discussed above, to control the timeliness of many decisions by an ALJ. Cases are monitored throughout the OALJ process through various reports from the Secretary's Bureau and through internal processes. For example, although not established in law or regulation, OALJ policy provides for decisions in rail crossing cases to be submitted within six months of the close of the record. Additionally, the internal guidelines require cases to be submitted to the OALJ prior to the date

¹The Commonwealth Court held in West Penn Power Company v. Pennsylvania Public Utility Commission, 521 A.2d 75 (Pa.Cmwlth. 1987), that the time limits in this section of the Public Utility code are directory only and do not deprive the Commission of authority to enter an order if they are not met.

required by statute or regulation to allow for internal review. Decisions with 90 day time frames are required to be submitted to the Chief ALJ no later than day 85.

Timeliness of the Decisions

In FY 2004-05, the OALJ issued 1,305 decisions, with 58 of those decisions being filed late.² These numbers do not reflect the number of days a decision was late. If the decision was one day late it is included in these numbers. As reported by the chief ALJ, no decisions in rate cases, Chapter 30 cases or merger cases were filed late. In FY 2005-06, the OALJ issued 948 decisions with 52 being filed late.³ The FY 2005-06 late filed decisions involved applications to provide service, allegations of violations by motor common carriers and customer complaints regarding billing disputes or utility service. No decisions in rate cases, Chapter 30 cases or merger cases were filed late.

As Table 5 shows, of the 52 late decisions in FY 2005-06, seven were late by seven days or less. Over half were late by less than 60 days, but 14 were late by three months or more. All the cases that were over 100 days late were consumer complaint cases.

Table 5

OALJ Cases Overdue* (FY 2005-06)	
<u>Days Overdue</u>	<u># of Cases</u>
1-7	7
8-30	10
31-60	15
61-90	6
91-150	8
151 Plus	<u>6</u>
Total	52

*Includes cases in which decisions are submitted to the Commission beyond the due dates as set out in statute. This does not reflect any internal deadlines.

Source: Developed by LB&FC staff based on information provided by the OALJ.

The vast majority of ALJs issued timely decisions during this period. The reasons for the overdue decisions (short-term staffing and workload issues) have

²The OALJ does not maintain specific information about the actual length of time a decision is late after the end of the fiscal year.

³Fewer decisions were issued this year in part because 200 more hearings were held in FY 2005-06 than in FY 2004-05. In addition, the OALJ Mediation Unit handled an additional 100 cases in FY 2005-06 than in FY 2004-05.

since been addressed and resolved. According to the Chief ALJ, the backlog in decisions will be completely gone by January 31, 2007.

OALJ Efforts to Improve Case Management

Approximately two years ago, the OALJ had a 1,000 case backlog. The OALJ resolved that backlog in seven months, and has initiated several actions to continue to improve the timeliness of OALJ activities. For example, the OALJ is in the process of implementing a new data tracking system that will tie into InfoMAP (See Finding R). Unlike the old data system, the new one will track documents throughout the process and will be able to tell the user where a document is at any given time. Prior to this, information was often outdated. This system will also provide information about an ALJ's workload to assist in case assignment. The new system is expected to be operational before the end of the year.

The OALJ has also recently changed to a "call of the docket" approach to scheduling cases for the larger utilities. Under this approach, all the cases involving a specific utility are scheduled in groups. Prior to this, a single case would be scheduled for a hearing date, and if the opposing party did not show, no hearing could be held. Now, 6-8 cases involving the same utility are scheduled for the same hearing date.

The OALJ has also implemented a policy to assign cases to an ALJ and schedule the initial hearing within two weeks of receiving the answer to the complaint (the statute requires the hearing to be scheduled within 90 days). Office policy also requires ALJs to give notice to the chief ALJ's office within 10 days of a decision due date if they are going to miss the deadline for the decision. This gives her the opportunity to reassign the case to another ALJ or send it to the legal division to draft an opinion for the ALJ to review.

G. PUC Financial and Management Audits Provide Savings to Companies and Ratepayers, But Small Companies Should Be Exempt From the Code’s Routine Management Audit Requirement

The PUC’s Bureau of Audits, with a staff complement of 45 and a budget of \$3.8 million, conducts both financial and management audits. Financial audits are conducted by the 26 staff in the Financial Audit Division and management audits are conducted by 14 staff in the Management Audit Division. Bureau staff estimates that about two-thirds of Bureau activities relate to mandated audits and one-third to discretionary or Commission-ordered activities. Table 6 summarizes the several types of Bureau and audit activities over recent years.

To assess the continued value of the various audits and projects conducted by the Bureau of Audits, we reviewed recent audit reports conducted by the Bureau of Audits, interviewed representatives of five utility companies that have recently been audited by the Bureau, sent survey questionnaires to 16 utility companies, and reviewed whether similar audits are conducted in other comparative states.

Financially Related Audits

As shown in the table below, the Financial Audits Division conducts Adjustment Clause Audits, Distribution System Improvement Charge (DSIC) audits, and other special audits and projects as assigned by the Commission.

Adjustment Clause Audits: Adjustment Clause Audits account for about 70 percent of the audits performed by the Financial Audit Division and about a third of all of the audits performed by the Bureau. According to the Director of the Bureau of Audits, about 30 staff work on these audits, more than on any other type of audit. The Bureau conducts several different kinds of adjustment clause audits (e.g., Purchased Gas Cost, Gas Cost Rate, Steam Cost Rate, Purchased Power Cost Adjustment, Pipeline Cost Rate, Competitive Transition Charge, Intangible Transition Charge, Non-Utility Generation Clause, and Distribution System Improvement Charge).

The adjustment clause allows utilities to increase or decrease customer bills for the difference between experienced fuel costs and the projected cost of fuel recovered through rates. The legislature has mandated that gas, steam-heat, and certain municipal electric utilities undergo an annual fuel adjustment clause audit.¹ The audits verify the energy costs incurred by a utility to determine if the utility

¹Sections 1307(d), fuel cost adjustment audits, and 1307(f), recovery of natural gas costs, of the Public Utility Code.

Table 6

**PUC Bureau of Audits
Audit Activity**

	<u>FY 2003-04</u>		<u>FY 2004-05</u>		<u>FY 2005-06</u>	
	<u>Initiated</u>	<u>Completed</u>	<u>Initiated</u>	<u>Completed</u>	<u>Initiated</u>	<u>Completed</u>
<u>Financial Audit Division</u>						
Adjustment Clause Audits	66	54	55	56	55	54
Financial Audits	0	0	0	0	0	0
Other Audits/Projects/Special Audits/Projects	<u>27</u>	<u>22</u>	<u>27</u>	<u>28</u>	<u>23</u>	<u>24</u>
Subtotal	93	76	82	84	78	78
<u>Management Audit Division</u>						
Management Operations Audit – PUC.....	2	1	5	3	4	2
Management Operations Audit – Consultant.....	0	0	3	0	1	0
MEI	3	3	4	4	0	6
Other Audits/Projects/Special Audits/Projects	<u>10</u>	<u>9</u>	<u>2</u>	<u>5</u>	<u>5</u>	<u>4</u>
Subtotal	15	13	14	12	10	12
<u>Technical Services Section</u>						
Adjustment Clause Rate Filings.....	117	117	134	134	112	112
Other Audits/Projects	<u>41</u>	<u>41</u>	<u>31</u>	<u>31</u>	<u>31</u>	<u>31</u>
Subtotal	158	158	165	165	143	143
Total	<u>266</u>	<u>247</u>	<u>261</u>	<u>261</u>	<u>231</u>	<u>233</u>

overbilled or underbilled customers for actual energy costs incurred. If the utility agrees with the audit report, customer rates are reduced or increased based on errors identified by the audits. If the utility disagrees with the audit report, the matter is assigned to the Office of Administrative Law Judge for ultimate disposition by the PUC.

During the three-year period from FY 2003-04 through FY 2005-06, the Financial Division released 95 adjustment clause audits identifying \$5.6 million in over collections, \$19.5 million in under collections, and \$3.6 million in other errors. The other errors identified included overstated costs, misstated sales volumes, understated revenues, misstated/ineligible costs, and overstated DSIC eligible plant. (See Table 7 and Appendix B.)

Table 7

Impact of Adjustment Clause Audits on Utility Rates (Statewide)				
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>Totals</u>
Over Collection.....	\$ 3,553,932	\$ 165,668	\$1,854,908	\$ 5,574,508
Under Collection.....	18,013,026	77,644	1,411,877	19,502,547
Other	1,277,917	1,506,102	766,380	3,550,399

Source: PUC Bureau of Audits *Summary of Quarterly and Year to Date Statistics and Results of Adjustment Clause Audits*.

Public hearings are conducted regarding the annual reconciliation of adjustment charge collections. Over and under collections identified during this reconciliation are to be refunded to or recouped from the rate payers over the next twelve months. Refunded over collection amounts also include an interest payment (as calculated by PUC staff); rate payers are not held responsible for interest on under collected charges, except in the case of customers of gas utilities with intrastate revenues of at least \$40 million and which employed a purchased gas cost rate. The net amount to be refunded or recouped becomes a factor in determining the new adjustment clause rate.

DSIC Audits. The Bureau also performs audits of certain water utilities that are authorized to charge ratepayers a Distribution System Improvement Charge (DSIC), a type of adjustment clause. The purpose of the DSIC is to recover fixed costs of certain system improvement projects completed and placed in service between base rate cases. The intent is to provide the company with the resources to accelerate the replacement of aging water distribution infrastructure, to comply with the regulatory requirements imposed by the Safe Drinking Water Act, and to develop and implement solutions to regional water supply problems.

The objective of the audit is to verify that the capital improvements included in the quarterly DSIC calculations comply with defining criteria of the approved DSIC tariffs and Uniform System of Accounts for Water Utilities, the accuracy of DSIC revenues, the capital structure used in the calculation of revenue requirement percentage, the accuracy of the cost rate percentages for debt and preferred stock used in the quarterly DSIC calculations, and the eligibility of additions for recovery through DSIC.

Over the past three fiscal years (FY 2003-04 – FY 2005-06), the DSIC audits identified \$236,000 in over collections; however, the audits also noted misstated costs, overstated DSIC eligible plant costs, and overstated revenues that totaled more than \$3.3 million for the same three years. (See Table 8.)

Officials from two water companies stated that the time required for DSIC audits is onerous and that auditors can be in their offices for months at a time. One official told us that DSIC audits are completed within two days in Delaware. We subsequently contacted a Delaware Public Service Commission Official who indicated that their auditors are physically at water companies, at most, four to five days to determine if funds are being spent for qualified uses and to reconcile funds. According to the PUC, the difference in the scope of the audits is significant, in that Pennsylvania auditors attest to the fairness and dependability of the issued financial information, while Delaware performs a more cursory verification of work orders and invoices.

We reviewed the actual audit hours expended by PUC staff for DSIC audits. The hours ranged from 75 hours to 486 hours per audited year. In one case, the DSIC audit averaged 296 hours per audited year. Assuming a cost of \$50 per audit hour, this equates to 16 percent of DSIC revenue generated (\$90,849). In another company, the audit cost 3.6 percent of the revenue generated (\$143,649). These costs do not include the time the audit requires of company officials.

Annual Reconciliation Statements. The Financial Audit Division is also responsible for auditing the annual reconciliation statements of certain electric utilities impacted by the Electricity Generation Customer Choice and Competition Act (Act 1996-138). Sections 2808 and 2812 of the act, 66 Pa.C.S. §§2808 and 2812, provide those electric utilities impacted by the act with authorization to recover a portion of their stranded costs (or competitive transition costs) from their customers using a Competitive Transition Charge. Stranded costs are an electric utility cost that would have been recovered in a regulated environment but may not be recoverable in a competitive electric generation market.

An Intangible Transition Charge is the amount collected from customers to cover Commission-approved stranded costs, including the principal and interest on certain bonds. The utilities are required to file annual reconciliation statements

associated with the application of these charges. The Bureau then audits these statements.

Special Audits and Projects: Thirty-one percent of the completed audits for the financial audit division were either special audits or other projects. Over the past three fiscal years these audits have included: three original cost studies, annual reviews of the gas cost rate filings of 11-12 small gas companies, an audit of the Telecommunications Relay Service Program, and five consumer education audits that disallowed about \$722,000 in local consumer education expenditures and found almost \$17 million in unexpended education funds. The Bureau of Audits looks at the local program expenditures of the Consumer Education Program to ensure that they are reported accurately and incurred only for items specified in the Commission-approved program.

Adjustment Clause Rate Filings: The Technical Service section is responsible for the analytical review of adjustment clause rate (ACR) filings. Most ACRs are subject to rate changes at least once a year; others change on a monthly or quarterly basis. Prior to the Commission's consideration of the utilities' proposed annual ACR changes, BOA staff review and prepare a report of the filing to the commissioners. Companies submit preliminary documents prior to their final filings and these documents frequently contain omissions or arithmetic errors. BOA staff works with the companies to correct these errors before the final filings are submitted. The type of error and how it impacts the proposed rate will dictate whether the company must resubmit a complete filing or just a page or two. The Technical Services section reviewed 134 ACRs in FY 2004-05 and 112 in FY 2005-06. ACR filings include Gas Cost Rate, Steam Cost Rate, Competitive Transition Charge, Intangible Transition Charge, Distribution System Improvement Charge, Collection System Improvement Charge, and Purchased Power Cost Adjustment.

Management Audit Activities and Follow-Up

Management Audits (MAs): The PUC is required under section 516 of the Public Utility Code to conduct audits of any electric, gas, telephone or water utilities whose plant in service has a value of \$10 million or more. There are currently 28 companies operating within Pennsylvania that have a plant in value of \$10 million or more (see Exhibit 5).²

²According to Section 516 of the Public Utility Code, telecommunication companies with a plant in value of \$10 million or more are also required to have audits conducted. According to the Bureau of Audits, however, audits and investigations of these companies have been suspended consistent with approved alternative regulatory plans.

Table 8

**Results of PUC Bureau of Audits Distribution
System Improvement Charge Audits**

FY 2003-04	Collections		Other	
	Over	Under		
Citizens Utilities.....	\$ 0	\$0	\$ 0	No adverse findings.
PA American	83,663	0	954,305	Overstated DSIC Eligible Plant
PA Suburban.....	49,312	0	123,184	Overstated DSIC Eligible Plant
United Water.....	11,591	0	0	Clerical Errors
York Water	<u>162</u>	<u>0</u>	<u>5,116</u>	Overstated DSIC Eligible Plant Overstated Costs
Subtotal.....	\$144,728	\$0	\$1,082,605	
<u>FY 2004-05</u>				
York Water	\$ 0	\$0	\$ 18,500	Overstated DSIC Eligible Plant
Aqua PA.....	60,131	0	464,944	Misstated Costs
PA American	0	0	970,938	Misstated Costs
Newtown Artesian.....	<u>0</u>	<u>0</u>	<u>0</u>	Procedural Findings
Subtotal.....	\$ 60,131	\$0	\$1,454,382	
<u>FY 2005-06</u>				
Newtown Artesian.....	\$ 0	\$0	\$ 0	No Adverse Findings
PA-American Water	<u>31,508</u>	<u>0</u>	<u>766,380</u>	Overstated DSIC Eligible Plant, Misstated Costs, Overstated Revenues
Subtotal.....	\$31,508	\$0	\$ 766,380	
<u>Collection System Improvement Charge</u>				
PA American				
Coatesville	\$ 0	\$0	\$ 0	No Adverse Findings
Lehman Pike.....	0	0	0	No Adverse Findings
Pocono County Place ...	<u>0</u>	<u>0</u>	<u>0</u>	No Adverse Findings
Subtotal.....	\$ 0	\$0		
Total All Years	\$236,367	\$0	\$3,303,367	

Source: Developed by LB&FC staff using information obtained from PUC documents.

Exhibit 5

**Companies Requiring a Management Audit Under
Section 516 of the Public Utilities Code**

(As of December 31, 2005)*

- Aqua PA, Inc.
- Citizens Electric Company^a
- Columbia Gas Company of PA, Inc.
- Columbia Water Company
- Duquesne Light Company
- Equitable Gas Company
- Metropolitan Edison Company^b
- National Fuel Gas Distribution Corporation-PA
- Newtown Artesian Water Company
- North Penn Gas Company
- PA American Water Company
- PA Electric Company^b
- PA Power Company^b
- PECO Energy Company
- Dominion Peoples Natural Gas Company
- PFG Gas, Inc.
- PG Energy, Inc.
- Philadelphia Gas Works
- Pike County Light & Power Company
- PPL Electric Utilities Corporation^c
- Superior Water Company
- T.W. Philips Gas & Oil Company
- UGI Utilities, Inc.
- United Water PA
- Valley Energy^a
- Wellsboro Electric Company^a
- West Penn Power Company
- York Water Company

*Section 516 requires a management audit every five years (eight with Commission approval) for companies with at least \$10 million in plant-in-service value.

^aSubsidiaries of C & T Enterprises, Inc.

^bSubsidiaries of FirstEnergy Corporation

^cSubsidiaries of PPL Corporation

Source: Developed by LB&FC staff using information obtained from PUC's Bureau of Audits.

These audits investigate the management effectiveness and operating efficiency of these utilities, including the extent that a utility has contained costs, developed long and short-term plans for continued operation and maintenance, and has provided the proper service to its customers. Although the Bureau of Audits relies on a basic outline for the MAs they conduct, the scope of the MAs is also based on the type of utility that is being audited and is further individualized to the specific company (see Exhibit 6).

PUC Standard Management Audit Scope Issues

All Utilities:

1. Diversity: Employee and procurement trends
2. Affiliated Interest/Cost Allocations: Cost effective organization structure; cost allocation methodologies and procedures used
3. Corporate Structure: Summarize details of any recent mergers, acquisitions or reorganizations
4. Corporate Governance
5. Customer Service: Review BCS report trends; acquire and summarize how the company provides meter reading and billing services
6. Line Hits/One-Call: Review recent trends; is company reporting incidents to PUC, PEMA, Labor, etc; review company's damage prevention program
7. Compliance with 52 Pa. Code §101-Security Planning and Readiness Requirements
8. Employee Safety Trends
9. Shareholder Proposals, if any
10. Recent Merger Impact, if any
11. Staffing/Compensation

Electric Utilities – Special Issues:

12. Distribution System Reliability
13. Code of Conduct Review

Gas Utilities – Special Issues:

14. Gas Distribution System Reliability
15. Code of Conduct Review

Water Utilities – Special Issues:

16. Quality of Service Reporting
17. Pipe Replacement Program: Status and trends of leaks and line breaks, etc.
18. Cross Connection Program Status
19. UFW and Leak Survey Practices
20. Compliance With Water Operator Certification Act 2002 Requirements

Source: Developed by LB&FC staff from PUC documents.

MAAs are statutorily required to be conducted once every five years for these utilities. More than five years can elapse between audits if the Commission finds that a specific audit is unnecessary, however, not more than eight years is to pass between these audits according to statute. The PUC releases, on average, an MA of a specific utility company every 7-8 years; only one MA was released beyond the 8-year cycle. During the time between MAAs, the Commission orders the utilities to file progress reports, and, as described below, the Bureau of Audits conducts a Management Efficiency Investigation of the company.

Management Efficiency Investigations (MEIs): Since 1986, Section 516 of the Public Utility Code also mandates the Commission to conduct management

efficiency investigations (MEIs) on utilities' progress in implementing the recommendations from their last MA. According to an official in the Bureau of Audits, MEIs are usually initiated between two and three years following an MA.

The MEIs can be considered to be more quantifiable than the MAs because they are based on the actual savings that were achieved from the audit recommendations. The Bureau of Audits reports the savings achieved by companies on behalf of ratepayers in their annual report for these audits, which is also required under section 516 of the Public Utility Code.

Discretionary/Special Audits: The Management Audit Division, together with PUC financial auditors, also audits utility companies on a discretionary basis. These audits are conducted on utility companies that are not audited on a regular basis by the PUC or to examine areas that are not regularly included in other audits. The PUC reports that these audits make up the largest number of all projects performed by the Management Audits Division (see Table 6).

Special audits are generally initiated at the request of the Commission and can be based upon complaints received or other issues. Examples of the focus of recent special audits include:

- Corporate Audit Survey, which examine a utility's corporate governance practices;
- Telecommunications Relay Service Audits;
- Consumer Education Audits; and
- Verizon Performance Metrics and Remedies Review.

Contracted Audits: Special audits and MAs are the only types of audits that the Bureau of Audits contracts out to independent auditing firms. According to an official with the Bureau of Audits, the majority of these audits were being contracted out until the mid-1990's. Since then, efforts to constrain costs resulted in a shift from that practice, with the Bureau only contracting for three MAs (Philadelphia Gas Works, PECO and FirstEnergy). According to statute, the utility company being audited is required to enter into a contract with the consulting firm and pay for the audit. Otherwise, companies are not specifically charged for PUC staff-conducted audits, although utilities are charged for the cost of PUC operations in general based on their particular industry's share of activity.

When the Bureau of Audits seeks to contract for an audit, the PUC issues an RFP for contractors to bid. Generally, seven to ten proposals have been received. The Bureau monitors audits being conducted by an outside contractor and has its own auditors work with the contractors throughout the audit process.

Scheduling of Section 516 Audits: Due to the time requirements set forth in statute for the frequency of MAs and MEIs, the Bureau of Audits is able to develop an approximate schedule for when a utility company will be audited. This enables them to provide the utility companies requiring MAs and MEIs with a tentative schedule of when the next audit will occur. The cyclical nature of the audits itself removes many of the concerns companies may have as to why these audits are being conducted. This schedule fluctuates based upon special audits that the Commission assigns to the Management Audit Section. For example, we were told by Bureau of Audit staff that should a priority request come from the Commission, staff resources may be pulled from an ongoing §516 audit to work on the Commission’s project, or staff may need to delay the start of a scheduled §516 audit until the Commission’s project is done.

Savings Generated by Recent MAs, MEIs, and Special Audits

Section 516 of the Public Utility Code requires that an annual report be released that details the findings of management audits and management efficiency investigations. This report is made public, usually in the fall of each year, and summarizes the results of all mandated section 516 audits that were conducted in the previous fiscal year.

For the four years from FY 2000-001 through FY 2004-05, the PUC reported potential annual savings of approximately \$80 million and about \$21.5 million in one-time savings as a result of 12 completed MAs for the period. The reports also note that up to \$68 million in annual savings and \$34 million in one-time savings were realized by companies enacting prior MA recommendations (See Table 9).

Table 9

Summary of Savings From Annual Report Findings of Section 516 (MA/MEI) Audits						
(\$000)						
FY	MAs (Potential Savings)			MEIs (Realized Savings)		
	# Audits	Annual	One-Time	# Audits	Annual	One-Time
2004-05.....	3	\$ 422	\$ 489	4	\$26,211	\$26,700
2003-04.....	1	74	325	3	5,210	289
2002-03.....	2	9,346	15,200	2	21,636	1,100
2001-02.....	5	13,177	4,576	1	5,100	865
2000-01.....	<u>3</u>	<u>56,867</u>	<u>790</u>	<u>3</u>	<u>10,304</u>	<u>4,900</u>
Totals	14	\$79,886	\$21,380	13	\$68,461	\$33,854

Source: Developed by LB&FC staff using information obtained from PUC Annual Reports.

For the 13 management efficiency investigations released between FY 2000-01 and FY 2004-05, the Bureau of Audits found that approximately 53 percent of

the recommendations it reviewed from prior management audits were effectively or substantially implemented.

PUC staff noted that these savings directly impact the prices that ratepayers are charged and lower operating costs, which can impact future company rate filings. Section 523(b)(1) of the Public Utility Code, added as part of the 1986 sunset legislation, specifically requires the PUC to consider management audits, to the extent they are introduced into evidence, in evaluating a utility's efficiency, effectiveness, and adequacy of service when determining "just and reasonable" rates.

Management audit recommendations do not, as a rule, impact the rate payer as specifically or as immediately as that of an adjustment clause audit. The nature of the recommendation or the length of time required to realize savings from the recommendations minimizes any immediate impact to the rate payer. However, by addressing operational inefficiencies, the amount allowed in future rate filings may be affected. Ensuring compliance with safety and other regulations may also benefit by preventing accidents or outages. The PUC's Director of the Bureau of Audits also points out that the mandated recurring management audits serve as a deterrent to adoption of ineffective or inefficient practices.

Examples of Management Audit Findings: The following are examples of the impact of several management audits and management efficiency investigations (for additional examples of realized savings reported in management efficiency investigations refer to Exhibit 7). PUC staff note that qualitative recommendations are also often included in these audits. Although such qualitative recommendations do not have a dollar value attached to them, they can provide a benefit to rate-payers by improving company management and service reliability.

Duquesne Light (April 2006). In April 2006, the PUC released its management audit of the Duquesne Light Company which identified numerous measures that would achieve cost savings for their ratepayers. Among those measures, \$22.8 million in interest was found to be owed to the company from Duquesne Light Holdings. The audit found that Duquesne Light had adjusted the interest rate on a \$250 million loan to a lower market-based interest rate without proper authorization.

Duquesne Light accepted this recommendation along with the 14 other recommendations for improvement. Duquesne Light reported it had already taken corrective action on two of the recommendations by May 2006, when it filed its implementation plan with the Commission.

United Water of Pennsylvania (April 2004). The management audit of United Water of Pennsylvania contained 18 recommendations for improvement and potential savings of approximately \$73,800 (annual savings) and \$325,000 (one-time savings). United Water accepted 14 of these recommendations in their entirety and 4

**Additional Examples of Cost Savings Reported Through
Recent PUC Management Efficiency Investigations**

2005 PGW MEI:

PGW has achieved cost savings of approximately \$24 million by limiting base wage increases for 2000 through 2003 to well below the rates of CPI increases.

PGW centralized its attendance policies, implemented an Attendance Tracking System, and significantly reduced its employee absenteeism from approximately 16 days per employee in 2000 to 7.5 days in 2003, resulting in an annual cost savings of approximately \$3.58 million.

PGW has taken steps to control IT costs and has made the IT Department and user departments accountable for IT costs resulting in cost savings of approximately \$4.2 million.

PGW conducted a cost/benefit study to determine which Customer Service Centers should be closed which resulted in the company reducing the number of weekdays each office is to remain open, while implementing partial years closings for the two least utilized offices. These measures resulted in annual savings of approximately \$876,000.

PGW improved turnover levels resulting in a one-time inventory reduction of \$2.7 million, with annual carrying cost savings of \$405,000.

PGW has controlled its workers' compensation costs and reduced the rate of accidents resulting in annual savings of approximately \$450,000.

2004 PECO Energy Company MEI:

PECO expended significantly more effort on its energy theft of service program resulting in additional retroactively billed revenues of \$4.2 million in 2001 and \$3.2 million through the first nine months of 2002.

2003 Metropolitan Edison/Pennsylvania Electric Company MEI

GPU Service Corporation revised its cost allocation methodology to allocate indirect costs to all applicable affiliates including its unregulated affiliates, resulting in reduced corporate service company charges to Metropolitan Edison of \$2.1 million and Pennsylvania Electric Company of \$2.3 million in 2001.

2003 Duquesne Light MEI

Reduction of supervisory positions within the organization to eliminate excessive layers of management resulted in annual cost savings of \$20.5 million.

2003 Pennsylvania Power MEI

Penn Power has fully achieved its system-wide inventory objectives resulting in a one-time inventory reduction of approximately \$1.1 million and annual savings of \$209,000.

2002 Columbia Gas of Pennsylvania, Inc. MEI

The implementation of monitoring Customer Service Center telephone activity diagnostics resulted in improved call center performance and annual cost savings of approximately \$3.7 million.

Outsourcing the procurement and warehouse function resulted in a one-time inventory reduction of \$865,000 and additional cost savings of approximately \$3 million from October 1997 through December 31, 2000.

Source: Developed by LB&FC staff using information obtained from PUC documents.

in part. A large portion of these potential savings were based on reducing the average excess inventory that the water company keeps on hand.

UGI Utilities, Inc. (February 2005). During the management audit of UGI Utilities, Inc. the Bureau of Audits made 23 recommendations for improvement. The company accepted 20 of these recommendations, partially accepted 2, and rejected 1. The audit noted potential cost savings of approximately \$59,000 (annual savings) and \$395,000 (one-time savings) that would be realized if the company successfully improved its inventory turnover ratio.

The recommendation that was rejected by UGI involved the development of an annual formal company-wide strategic plan. This recommendation was rejected in favor of what the company refers to as its “dynamic, proactive strategic planning process” that is more responsive to the changing energy market than the process recommended by the Bureau of Audits. The implementation plan noted that this was the second time that the company had considered and rejected this type of recommendation from the Commission.

Columbia Gas of Pennsylvania (June 2006). The management and operations audit of Columbia Gas contained 30 recommendations for improvement. The company accepted 25 of the recommendations, partially accepted four, and rejected one recommendation. The audit reported potential cost savings of \$9 million annually and a one-time savings of almost \$900,000 through the refinancing of debt, the further reduction of long-term arrearages, and the reduction of the amount of account receivables written off. The company rejected the recommendation that a minimum of two controllers are needed for system safety during the summer and overnight shifts in the gas control center. The matter is under further investigation by the PUC’s Law Bureau.

PPL Electric Utilities Corporation (February 2006). The management efficiency investigation found that PPL has achieved \$20.8 million in annual savings and \$1.3 million in one-time savings by effectively implementing 12 of 21 recommendations, as well as taking some action on the other 9 recommendations from the management audit conducted in 2002. The management efficiency investigation resulted in 10 additional recommendations that were based on the original recommendations from the management audit. According to the PUC, the implementation of these recommendations could result in \$1.6 million (annual savings) and \$10.9 million (one-time savings) in additional savings.

Philadelphia Gas Works (May 2005). The PUC reports that Philadelphia Gas Works (PGW) was able to save \$20.2 million (annual savings) and \$26.7 million (one-time savings) based on its efforts to implement the recommendations from the management audit that was conducted by an outside contractor and released in January 2001. The management efficiency investigation reviewed PGW’s efforts to

implement 48 of the original 76 recommendations from that audit. The PUC reports that PGW effectively or substantially implemented 19 of the 48 recommendations and had taken some action on the remaining 29. The MEI led to an additional 30 recommendations for PGW with an estimated potential annual savings between \$59.7 million and \$77.8 million, and potential one-time savings of \$22.6 million.

York Water Company (September 2005). The management efficiency investigations of the York Water Company examined the implementation of 9 out of 12 recommendations from the company's June 2001 management audit. The management efficiency investigation did not indicate whether or not any of the \$23,000 annual or \$90,000 one-time potential savings that were noted in the management audit were actually achieved by the company. The follow-up audit indicated that York Water Company substantially implemented 2 of the 9 recommendations from the previous audit that were examined and had taken some action on the remaining recommendations.

The management efficiency investigation issued 8 additional recommendations for York Water Company. From these recommendations, a potential annual savings of \$54,400 and one-time savings of \$362,600 were identified. According to the PUC, these savings would be realized if York Water Company would increase its turnover ratio.

PUC Follow-Up on Audit Recommendations: For the 12 management efficiency investigations released between FY 2000-01 and FY 2004-05, the Bureau of Audits found that approximately 53 percent of recommendations suggested in management audits examined were effectively or substantially implemented. The MEIs reviewed approximately 65 percent of the originally proposed recommendations, leaving the implementation status of the remaining 35 percent unverified. According to PUC staff, recommendations are chosen for examination based on such factors as priority, degree of completion, and relative importance to the PUC, companies and ratepayers. (See Table 10).

Company Perspectives on Audits

We spoke to representatives of five utility companies required to undergo management audits under section 516 of the Public Utility Code to obtain their perspective on the audit process. In general, these companies note that the management audits have not necessarily produced the types of benefits, both qualitative and quantitative, that the PUC has reported. Although beneficial in certain aspects, the companies believed the savings the PUC reports are often overly optimistic and difficult to track. One company noted that it believes the reported savings “uncovered” serve in part as a means of justifying these audits, and that the potential savings are not necessarily attainable. Another company commented that, while there is no question savings will be generated in areas the PUC audit identified as needing improvement, it took exception to the level of savings reported in the audit.

Table 10

Rate of Implementation for Management Audit Recommendations

(All MEIs Released Between FY 2000-01 and FY 2004-05)

Company	Recommendations			Reviewed Rate	Implementation Rate
	Proposed	Reviewed	Implemented ^a		
	During MA	During MEI			
PECO Energy Company	11	11	9	100.00%	81.8%
PA American Water Company	14	13	3	92.9	23.1
Philadelphia Gas Works.....	76	48	19	63.2	39.6
West Penn Power Company.....	15	13	9	86.7	69.2
Metropolitan Edison. Co. & PA Electric Co.	14	11	8	78.6	72.7
PA Suburban Water Co.....	40	29	9	72.5	31.0
Duquesne Light Co.	46	28	18	60.9	64.3
PA Power Co.....	19	16	12	84.2	75.0
Columbia Gas Of PA, Inc.	23	18	11	78.3	61.1
Columbia Water Co.....	32	21	16	65.6	76.2
National Fuel Gas Distribution Co....	57	24	14	42.1	58.3
UGI Utilities	<u>44</u>	<u>22</u>	<u>6</u>	50.0	27.3
Totals.....	391	254	134	65.0%	52.8%

^aThe BOA uses the terminology "effectively or substantially implemented" when reporting on the status of recommendations from management audits.

Source: Developed by LB&FC staff using information obtained from the PUC.

The companies also indicated that some of the cost savings indicated in PUC audits are savings the company has already identified through its own initiatives. Yet, because they have not yet been realized, the PUC may include them in their audit findings as newly identified cost savings (PUC audit staff agreed that this does sometimes occur if companies are not moving quickly enough to implement important changes). At least two companies reported that recommendations from the PUC management audits are accepted because the issues are not significant enough to spend time refuting or negotiating.

Another company viewed management audits as beneficial in justifying the initiatives that they have already taken; however, they noted that the audits typically do not bring to light major issues that the company is not already aware. Several companies mentioned that these audits are statutorily mandated but that they are still useful because they examine areas that other required audits do not.

Questionnaire Responses From Utility Companies: In addition to the five utility companies discussed above, we also submitted questionnaires to 16 utility companies that had either a management audit or management efficiency investigation completed between FY 2003-04 and FY 2005-06.

All of the 11 companies that responded to this questionnaire reported that their management audit was conducted in a fair and professional manner.³ All also indicated that both the company and the ratepayers benefited from the management audit. One company pointed out that the management audit process provided a different perspective on operational areas and practices and helped the company to streamline processes and reduce costs.

When asked if the cost savings projected in the management audit were reasonable to attain, the responses were mixed. Seven of the companies responding to the questionnaire reported that cost savings in their audit report were only projected savings. Of these, 4 believed that the cost savings would be reasonable for the company to attain. Three other companies indicated the identified cost savings would not be reasonable to attain. However, two of these companies went on to explain that, while most of the cost savings could be attained, some of the recommendations were already in place or were outside the authority of the company to implement. Four of the responding companies also commented that the auditor's estimates of projected savings were overly optimistic.

Of the nine companies that responded to a question regarding whether the PUC audits duplicated the work of internal or other external auditors, only one company believed that the work was repetitive of other recent audit activities. This company cited duplicative interviews and data requests. Most respondents indicated that the PUC management audits provide a different perspective and focus on management and operations practices and productivity.

Many of the respondents' comments reflected a positive relationship between the utility companies and PUC's management audit process. For example, one company stated that "The PUC management audit process has always been a collaborative effort between the regulator and the regulated to ensure best operating practices at reasonable costs to benefit all stakeholders." Another company noted "The majority of the audit's recommendations helped to reduce costs and improved efficiencies"

Some of the smaller companies, in particular, expressed concern at the commitment of resources needed for this audit process. One water company commented that "We are a small company and the man-hours and money spent to complete the audit and implement the recommendations are far greater than the benefits received."

\$10 Million Company Value as Threshold to Conduct a 516 Audit: The \$10 million plant-in-value threshold for a required Section 516 Management Audit was established by Act 1984-234. There has been no adjustment for inflation since that

³Of the 11 companies that responded to our questionnaire, 9 had their management audit performed by PUC staff while only 2 had the audit contracted out to an independent auditing firm. For 2 of the 11 companies the audit field work phase of their management audit was completed but they were awaiting the final audit report.

time. When adjusting for inflation, \$10 million in 1984 would be equal to \$19.6 million in 2006.

If Section 516 of the Public Utility Code is adjusted to account for inflation, six utility companies (three electric, two gas, and one water) would no longer be mandated to have these audits performed (See Table 11).

Table 11

Number of Utilities by Type of Utility With Plant In-Service at \$10 Million and at \$19.6 Million						
Plant In-Service Equal or Greater Than \$10 Million				Plant In-Service Equal or Greater Than \$19.6 Million		
Type	Number	Utility Type Total	Percent of Utility Type Total	Number	Utility Type Total	Percent of Utility Type Total
Electric.....	11	11	100%	8	11	73%
Gas.....	13	27	44	11	27	37
Water.....	7	84	8	6	84	7
Total ^a	28	119	23%	22	119	18%

^aTotal does not add because three utilities provide both electric and gas service.

Source: Developed by LB&FC staff using information provided by the PUC from 2004 Utility Annual Reports.

A PUC official noted that exempting small utilities from the routine audit requirement would not exempt them from Commission-ordered special audits and investigations. This official also noted that, to the extent that such special audits and investigations can be included as part of a regularly scheduled 516 audit, efficiencies can be achieved by both the PUC and the companies by maintaining the current audit requirement.

Audit Activities in Other States

We contacted public utility regulatory agencies in nine states that are either contiguous or similar in size to Pennsylvania to determine whether these agencies conduct financial and/or management audits of the utilities they regulate.

Exhibit 8 shows that five of the nine states surveyed reported doing financially related audits of utilities, but these audits were generally only associated with rate cases. Only one surveyed state reported that such financially related audits are required by statute.

Exhibit 8

Comparative State Public Utility Commission Audit/Review Activities

<u>State</u>	<u>Financial (e.g., Adjustment Clause-Type) Audits</u>	<u>Management Audits</u>	<u>Other</u>
Pennsylvania	Statutorily required annual adjustment clause audits for utilities with \$40 million or more in intrastate revenues, e.g.; Purchased Gas Cost, Steam Cost Rate, Gas Cost Rate, Pipeline Cost Rate	Statutorily required every 5 years for utilities with plant in-service valued at \$10 million or more. Management efficiency investigations conducted as follow-up to audit after 2 to 3 years.	Consumer education; Competitive and/or Intangible Transition Charge; Distribution System Improvement Charge; Original Cost; Non-Utility Generation; Telecommunications Relay Service
Illinois	Fuel adjustment clause; purchase gas clause; coal/tar clause; purchase water clause; purchase sewer clause	Upon recommendation of staff and approval of Commission	
Indiana	Generally associated with a rate case; Fuel adjustment clause; gas cost adjustment	No management audits	
Maryland	Rely on independent and internal audits of utility but will conduct audit when there is a rate case; Fuel adjustment	Generally no, but will conduct audit for a major re-organization	Developing audit program for affiliate relationships
Michigan	When there is a rate case; statutory authority to examine books and records of utilities Statutorily mandated annual gas cost recovery audits and Purchase supply cost recovery audits.	No management audits	
New Jersey	Fuel adjustment clause (try to do annually)	Statutory mandate for audits to be done every six years on gas and electric companies only.	Special reviews done at the direction of the Board of Public Utilities.
Ohio	Statutorily required and performed during rate cases.	Does not currently do management audits. Reports that they work close with utilities to know the issues.	Customer service audits on two largest companies done annually. Approximately 40 other companies are audited every 3 to 5 years.
West Virginia		Allows management audits of only water utilities; however, this occurs infrequently and usually as a result of a customer complaint or request from Bureau for Public Health or Division of Environmental Protection. Conducted in-house as part of regular case duties.	
Wisconsin	Rate Case Audits	None - Some of the traditional management audit functions are achieved during other audits however.	Holding Company Audits (regarding compliance with regulations, orders, statutes, etc.)

Source: Developed by LB&FC staff using information obtained from the PUC.

Only one other state has a statutorily mandated cyclical management audit function, but only of gas and electric companies, while another state performs management audits upon recommendation from staff and approval from the Commission. A third state has authority in their regulations to conduct management audits of water utilities, but staff report this occurs very infrequently and generally as the result of a complaint from a customer or other state regulatory agency. Staff in one state noted that oftentimes issues identified in a traditional management audit are identified during other audits of the utilities. Staff in another state reported that management audits are not conducted because their close working relationship with the utilities keeps them aware of any issues.

Other audits performed in the states surveyed include adjustment clause-type audits, cyclical customer service audits, holding company audits, and special reviews at the request of the Commissions.

Recommendations

- 1. The General Assembly should amend Section 516 of the Public Utility Code to raise the threshold of the value of plant in service required for management audits to \$20 million.** Set in 1984, the current \$10 million threshold equates to nearly \$20 million in 2006 dollars.
- 2. The PUC should refine its procedures for estimating the cost savings that can be achieved from its management audit recommendations.** While nearly all companies we contacted agreed that the PUC audit recommendations could result in cost savings, many stated that the estimated dollar amounts are sometimes not realistic for them to attain, in part because they believe the PUC tends to underestimate the feasibility and cost to implement the recommendations and because proposed recommendations can become moot over time. We recommend the PUC use the information collected during the MEI on actual savings achieved to refine its procedures for estimating future savings.
- 3. The PUC should establish alternative procedures for reviewing companies that generate less than \$200,000 in DSIC revenue.** For small DSICs, the cost of the PUC audit may consume 3 percent or more of the amount generated by the DSIC. We recommend that in these cases, the PUC consider alternative procedures—perhaps a mail-in report with appropriate management attestations—rather than an on-site audit. If this recommendation were implemented, two of the five DSIC audits conducted since 2003 would not have been necessary.

H. At Least 58 Percent of Pennsylvania Access Lines Were Broadband Capable as of 2004, Substantially Ahead of the Aggregate Goal of 45 Percent

Act 1993-67, known as Chapter 30, amended the Public Utility Code to provide for an alternative, streamlined form of regulation as part of a transition to an open, competitive telecommunications market. Chapter 30 also required local exchange carriers to accelerate their full deployment of broadband capability (speeds of 1.544 mbps or higher) to the year 2015. Without the incentives provided in Chapter 30, a PUC consultant estimated that full deployment of broadband capability would not occur until 2030.

Chapter 30 sunsetted (expired) on December 31, 2003, but was replaced by Act 2004-183. Act 183 retains the requirement that broadband be available throughout the Commonwealth by 2015, and as early as 2008 in some areas. Act 183 also created several programs designed to help businesses and communities aggregate the demand for broadband service and require local telephone companies to provide these services in a more timely fashion.

Act 183 also resulted in a change in the date for most companies to report the progress they are making on their network modernizations plans from FY 2005-06 to FY 2007-08. As a result, the most recent information available on broadband deployment is between 2002 and 2004, depending on when the ILEC was required to file its report.

Table 12 shows the percent of access lines with broadband service (within five days of a request) as compared to the company's goal as of the report date. This data shows that, Commonwealth-wide, 58 percent of access lines were broadband capable as of the report date. This is substantially ahead of the pre-Act 183 aggregate goal for these companies, which was for 45 percent of access lines to have such broadband capability.

Table 12

ILEC Broadband Status Report

Company Name	Data Date	Total Access Lines	Broadband 5 Day Objective (%)	Broadband 5 Day Actual (%)
Windstream Pennsylvania, Inc. Fka ALLTEL PA	12/31/2002	250,631	8%	25%
Armstrong Telephone Company - North	11/30/2002	592	10	99
Armstrong Telephone Company - PA	11/30/2002	1,790	15	100
Bentleyville Telephone Company	NA	NA	30	NA
Buffalo Valley Telephone Company	12/31/2002	22,219	30	25
Citizens Telephone Company of Kecksburg	NA	NA	22	NA
Commonwealth Telephone Company	9/30/2003	330,463	10	59
Conestoga Telephone & Telegraph Company	12/31/2002	60,855	30	25
Denver and Ephrata Telephone & Telegraph Company	9/30/2002	59,990	30	80
Frontier Communications of Breezewood, Inc	3/7/2003	NA	70	65
Frontier Communications of Canton, Inc.	3/7/2003	NA	70	65
Frontier Communications of Lakewood, Inc.	3/7/2003	NA	70	65
Frontier Communications of Oswayo River, Inc.	3/7/2003	NA	70	65
Frontier Communications of Pennsylvania, Inc.	3/7/2003	NA	70	65
Hickory Telephone Company	12/31/2002	1,388	10	75
Ironton Telephone Company	12/31/2002	4,300	27	45
Lackawaxen Telephone Company	11/1/2002	3,852	5	40
Laurel Highland Telephone Company	12/31/2002	6,166	10	10

Table 12 (Continued)

Company Name	Data Date	Total Access Lines	Broadband 5 Day Objective (%)	Broadband 5 Day Actual (%)
Marianna and Scenery Hill Telephone Company	12/31/2002	2,719	30%	30%
North Penn Telephone Company	12/31/2002	5,656	83	86
North Pittsburgh Telephone Company	12/31/2002	76,641	80	70
North-Eastern Pennsylvania Telephone Company	12/31/2002	13,003	30	30
Palmerton Telephone Company	12/31/2002	12,925	50	50
Pennsylvania Telephone Company	12/31/2002	1,409	10	10
Pymatuning Independent Telephone Company	12/31/2002	2,558	92	97
South Canaan Telephone Company	12/31/2002	3,264	15	85
TDS Telecom - Mahanoy and Mahantango Telephone Co.	10/31/2004	4,169	NA	46
TDS Telecom - Sugar Valley Telephone Company	12/31/2004	1,249	NA	62
United Telephone Company of Pennsylvania fka Sprint - dba Embarq Pennsylvania	12/31/2002	413,750	53	54
Venus Telephone Corporation	12/31/2002	1,407	10	10
Verizon North Inc. ^a	12/31/2004	648,652	35	50
Verizon Pennsylvania Inc. ^b	4/29/2004	5,253,771	50	61
Yukon - Waltz Telephone Company	12/31/2002	1,026	10	20
Totals With Verizon North, Verizon PA, and United		6,457,905	45% ^c	58% ^a
Totals Without Verizon North, Verizon PA, and United		868,272	21% ^c	47% ^a

^aThe 5 day objective in the fourth column is now a 10 day objective for Verizon North Inc., pursuant to 66 Pa.C.S. §3014(b)(5).

^bThe 5 day objective in the fourth column is now a 10 day objective for Verizon Pennsylvania Inc., pursuant to 66 Pa.C.S. §3014(b)(5).

^cWeighted averages. Includes only companies that provided information on number of access lines, 5 day objective percentages, and 5 day actual percentages.

Source: Provided by PUC Bureau of Fixed Utility Services.

I. Although DEP Has Primary Responsibility to Ensure Drinking Water Is Safe, the PUC Also Plays an Important Role in Regulating Rates and Quality of Service

As in most states, the Pennsylvania PUC regulates the rates and quality of service provided by private, investor-owned water companies. State PUC regulation of public water companies is more varied: in Pennsylvania the PUC regulates municipal water companies, but only insofar as they serve customers outside the municipality's jurisdiction. The PUC does not regulate most water authorities.¹

PUC Role and Authority

The PUC's Bureau of Fixed Utility Services (FUS) is responsible for the Commission's day-to-day activities regarding the regulation of water companies. Commissionwide, the PUC spends about 7.5 percent of its time on issues related to the water industry, which translates to \$3.8 million. Within FUS, 21 percent of its time is allocated to the water industry.

Regulatory functions of the PUC with regard to water include:²

- rates and rate setting,
- aesthetic quality of water and service (i.e., taste, color, and odor),
- water pressure,
- customer billing and service,
- customer metering, and
- financial viability of water companies.

Table 13 shows the number of PUC-regulated, investor-owned companies based on their revenues. PUC-regulated water companies serve approximately 26 percent of Pennsylvania's population.

The rationale for the PUC regulating private, but not municipal, water companies is that if customers of municipal water companies have issues with their water service, they have recourse through local elected officials. Additionally, municipal companies are not seeking to make a profit. Regulation of investor-owned water companies allows customers to have a similar avenue of recourse through the PUC. As with local elected officials, the PUC can serve to balance the interests of both ratepayers and investors and acts as a substitute for competitive markets for utility service.

¹The PUC does have some limited jurisdiction over certain "lease back" authorities.

²An additional function of the PUC is to perform management audits of utility companies whose plant in service has a value of \$10 million or more (See Finding G). Water companies responding to our questionnaire to those utilities in that category generally agree that management audits benefit their companies, some commenting that the audits highlight issues and practices that could be improved.

Table 13

PUC Jurisdictional Water Systems

<u>Revenues</u>	<u>Systems</u>
"A" - \$1 Million and Over.....	8
"B" - \$200,000 to \$999,999.....	13
"C" - Less Than \$200,000.....	<u>73</u>
Total IOUs ^a	94
Municipals Serving "Outside" Customers	<u>31</u>
Total Jurisdictional.....	125 ^b

^aInvestor-Owned Utilities ("IOUs").

^bAs of July 21, 2006.

Source: Developed by LB&FC staff using information obtained from the PUC.

With some limited exceptions for “lease back” authorities, the PUC does not have regulatory authority over water authorities. Water authorities are created by municipalities under authority of the Municipality Authorities Act, 53 Pa.C.S. §5601 *et seq.* Under the Public Utility Code, municipal corporations—this includes authorities—are exempt from the definition of a public utility and are, therefore, not regulated by the PUC. The general exception to this is that under Section 1301 of the Code, the PUC regulates the rates of public utility service provided by a municipal corporation outside its corporate limits. But even though the Public Utility Code includes authorities as part of municipal corporations, the Municipality Authorities Act provides that primary recourse for all water authority customers is through the court of common pleas.³

Customers of water authorities may have some recourse through local officials, given that authority members are appointed through a municipality. According to the Center for Local Government Services, as of August 2005, Pennsylvania has 490 water authorities and 843 sewer authorities. If water authorities were regulated by the PUC, it would significantly increase the PUC’s work load and create a need for additional staff, given that the agency currently regulates only 125 water companies and 74 waste water companies.

Although it does not regulate authorities, the PUC does occasionally receive complaints about them. According to a PUC official, the volume of these complaints is small, on the order of one per month. Both PUC and DEP officials indicated they are not aware of any significant issues with the current regulatory approach to

³The Pennsylvania Commonwealth Court has looked at the PUC statutory provision granting the PUC limited authority over municipal authorities as well as the MAA statutory provision granting jurisdiction to the courts of common pleas and has determined that the MAA statute implicitly modifies the PUC section such that the PUC no longer has regulatory authority over water authorities. *See, Bor. of Sewickley Water Authority v. Mollica*, 544 A. 2d 1122 (Pa. Cmwlth. Ct. 1988); and *Graver v. Penna P.U.C.*, 469 A. 2d 1154 (Pa. Cmwlth. Ct. 1984).

authorities. Approximately ten years ago, the Local Government Commission, with input from the PUC, studied the 50 largest authorities and found that there were no major service problems and that rates were generally lower than those charged by investor-owned companies.⁴ Even so, an attorney in the PUC stated that water authority customers only have recourse before the courts of common pleas, unlike other water customers who have recourse either administratively through the PUC or directly through a local elected official.

Department of Environmental Protection's and the PUC's Shared Role in Regulating Drinking Water

Regardless of whether they are regulated by the PUC, all water companies must be in compliance with PA Department of Environmental Protection (DEP) regulations.⁵ Whereas the PUC is responsible for certain quality of service and financial viability issues, DEP has regulatory responsibility for enforcing the federal Safe Drinking Water Act (SDWA). Under this act, the U.S. Environmental Protection Agency (EPA) sets limits on allowable contaminant levels in drinking water to ensure that the water is safe for human consumption. Under Pennsylvania's Safe Drinking Water Act, 35 P.S. §§721.1, *et seq.*, DEP assumes "primacy" to monitor and enforce the EPA standards.

Under the Public Utility Code, the PUC has authority to regulate the rates and services of a public utility. In making a determination regarding a public utility's provision of safe, adequate, and reasonable water service, the PUC may inquire into the utility's compliance with DEP's standards under the SDWA.

Both the PUC and DEP view their respective jurisdiction over drinking water to be concurrent. The concurrent nature of PUC and DEP jurisdiction over water quality issues was questioned, however, in a recent case, *Redstone Water Co. v. Pa. PUC*. On October 30, 2001, the Commonwealth Court vacated an order of the PUC that required Redstone Water Company to perform an engineering study for the purpose of addressing its water quality. The PUC had determined that the utility's water service was inadequate and in violation of Section 1501 of the Public Utility Code due to poor water quality. The court decided the case in favor of Redstone on the basis that the PUC did not have jurisdiction over water quality, citing *Rovin v. Pa. P.U.C.*

The Office of Consumer Advocate and the PUC, with amicus support of both DEP and the National Association of Water Companies – Pennsylvania Chapter, petitioned for reargument of the case on the basis that the PUC has jurisdiction over water quality issues for public utilities under the Public Utility Code, which

⁴Areas that the report addresses include personnel, compensation, bidding and contracting, customer complaints and ratemaking.

⁵DEP regulations pertaining to water quality standards are located at 25 Pa Code §§ 93.1 – 93.9z and DEP safe water drinking regulations are at 25 Pa Code Chapter 109.

obligates the PUC to ensure that the water provided to consumers is suitable for all household purposes. In response to the petition, the Commonwealth Court granted reargument en banc and simultaneously withdrew its panel decision. The company later withdrew its appeal, and moved forward with a PUC-ordered engineering feasibility study. Due to the initial order remaining in effect, the PUC believes the framework for the PUC's concurrent jurisdiction with DEP continues to prevail.⁶

DEP and the PUC also work together on areas where the PUC has primary responsibility, particularly the financial viability of small water companies. On December 2, 1993, the PUC and DEP entered into a Memorandum of Understanding to help coordinate their work to support the continued viability of these systems. The MOU sets forth numerous activities the agencies agreed to coordinate on, including:

- enforcement actions; and
- exchange surveillance, compliance and enforcement information.

DEP agreed to:

- coordinate with the PUC on all technical assistance provided through its Small System Outreach Program; and
- coordinate with the PUC on all other small water system initiatives.

And the PUC agreed to:

- provide DEP with notice of pending rate cases and other requested information on PUC regulated water suppliers;
- provide DEP with complaint referrals and information on compliance actions;
- provide DEP with information regarding the classification or index of viability, of small water systems; and
- refer small water system candidates for technical assistance and training to DEP's Small Systems Outreach Program.

PUC Activities to Ensure Safe and Available Drinking Water

As noted above, the PUC is charged by statute to ensure the water companies it regulates provide safe, adequate, and reasonable service. The Commission does

⁶On December 16, 2004, the PUC issued an order requiring Redstone to take immediate steps to file an application with PennVEST to obtain funding to make the improvements described in the engineering report or, in the alternative, to divest its water system by selling it to a viable entity. Ultimately, in May of 2006, the PUC approved the sale of Redstone's three divisions to Pennsylvania American Water Company and the North Fayette County Municipal Authority.

this through a variety of means, mainly through physical inspection, various regulatory tools, and rate case determinations.

Inspections

Inspections of water and wastewater companies are carried out by FUS to monitor the Commission's water regulations and orders. A total of 157 inspections were performed between June 17, 1997, and May 5, 2006. Table 14 below shows the number and types of inspections that FUS had completed within that time frame. FUS uses a standard checklist for all of its inspections, which includes questions regarding a variety of issues, including water supply and capacity, treatment, complaints, billing and records, pressure, maintenance, and consumption. There are five main types of reviews/inspections:

Rate Case: FUS may undertake a plant inspection when a company requests a rate increase. If violations are discovered during such inspections, staff either works with the company to remedy the problems, recommends that a lesser increase be approved, or recommends that conditions be attached to any approval.

Example: Through a rate-case inspection, Commission staff verified the existence of the plant-in-service claimed by the company in its rate filing. Staff, in conjunction with DEP, assisted the company in selection of a source meter to measure both the amount of water obtained from its water sources and the amount of unaccounted-for water.

Application: Five types of applications may be filed by a water company for certificates of public convenience. These include applications for new company service, additional territory, transfers of ownership (assets), abandonments and mergers (stock). The emphasis of an inspection will vary according to which kind of application is being made. For example, for a new company applicant, the PUC ensures that the new owner will be able to comply with financial, technical, and managerial regulations.

Example: An application inspection conducted in conjunction with DEP verified the existence of two well houses and a 500,000 gallon storage tank in poor physical condition. This, among other factors, led the Commission to disapprove the water company's application.

Compliance: FUS performs compliance inspections to ensure that directives in PUC orders are followed or that rate case claims are completed. Addition-

ally, an inspection may be done related to a complaint,⁷ or at the Commission's requests.

Example: The PUC reports that there are no recent examples of a compliance inspection that uncovered a matter that required enforcement action.

Random: FUS performs random inspections of water companies that have not been recently inspected for other reasons. The purpose is to ensure the companies' understanding and compliance with PUC and DEP rules, regulations and procedures.

Example: A random inspection found that one water company was not aware of new regulations that established requirements for physical and cyber security as well as emergency response plans. The company is now in compliance.

Investigative: FUS performs investigative inspections when informal complaints are filed by consumers or violations are discovered during other types of inspections. An investigative inspection might result in the filing of a formal complaint by the Law Bureau; however the PUC reports that an informal resolution with the water company is a more common outcome.

Example: An investigation of a Lancaster County water company took place as a result of informal complaints from a homeowners' association. Follow-up inspections found pressure-related problems. Although the inspection found that the company was meeting minimum pressure requirements, the company agreed to make significant capital investment to increase water pressure to better meet customer needs.

According to a FUS official, the four main findings resulting from their investigations include: meter issues, non-compliance with DEP regulations, lack of affiliated interest statements, and operational problems. If an inspection results in a deficiency, the PUC can order that it be corrected prior to granting the company's request, for example, before approving a rate increase. Although FUS does not order fines from companies stemming from inspections, the Commission has this authority and has done so, most often for failure to submit their annual reports. Of the 46 fines issued to water companies for the period of July 2003 to February 2006, 42 were for failure to file an annual report.

⁷A complaint may be a formal one stemming from an administrative law judge action or an informal one from the Bureau of Consumer Services.

Table 14

**Fixed Utility Services
(Water Inspections/Reviews)**
(June 17, 1997 – May 6, 2006)

<u>Type</u>	<u>Number</u>
Random.....	41
Rate Case	24
No Type.....	23
Application.....	22
Compliance	17
Investigative	11
Security	8
Press Check.....	3
Meeting.....	2
Service	2
Tour	2
BCS	1
Complaint	<u>1</u>
Total.....	157

Source: Developed by LB&FC staff using information obtained from PUC documents.

Distribution System Investment Charge (DSIC)

Pennsylvania was the first state to implement a Distribution System Investment Charge (DSIC). A DSIC allows for water companies to recover funds spent on certain non-revenue producing investments to improve aging infrastructure. It is an automatic adjustment charge that allows water companies to recover costs with its regular billing cycle rather than waiting for its next base rate increase. Because costs are more spread out, ratepayers also do not receive as large an increase in their bills when a company next receives a base rate increase.

Table 15 below shows DSIC revenues for the last three calendar years. DSIC adjustments are typically used by the larger companies. With a large customer base, a company is able to spread the costs further, making a DSIC a more viable option.

The PUC must approve the DSIC and the associated tariff. The surcharge is capped at 5 percent and is reset to zero when new base rates are approved. Average monthly residential DSIC charges range from five cents to \$1.50.

Table 15

Distribution System Improvement Charge (DSIC) Revenues*

(For the Three Years Ended December 31, 2005)

Company	Twelve Months Ended:			Total
	12/31/2003	12/31/2004	12/31/2005	
Aqua Pennsylvania, Inc.	\$ 7,298,525	\$ 7,144,397	\$ 9,611,882	\$24,054,804
Columbia Water Co.	42,453	28,755	4,293	75,501
Newtown Artesian Water Co.	86,457	165,215	179,274	430,946
PA – American Water Co.....	4,850,696	1,698,729	6,879,054	13,428,479
United Water Company	935,429	1,080,874	1,122,555	3,138,858
York Water Co.	<u>90,849</u>	<u>0^a</u>	<u>0^a</u>	<u>90,849</u>
Total	\$13,304,409	\$10,117,970	\$17,797,058	\$41,219,437

*Revenues as reported by the water utilities on the annual reconciliation statement submitted in accordance with approved DSIC Rider and Section 1307(e) of Title 66.

^aYork Water Company did not bill a DSIC in 2004 because its actual rate of return (ROR) exceeded that used for calculating the DSIC. This is in accordance with the approved DSIC rider which states that whenever the actual ROR reported in the utilities' most recently submitted annual or quarterly earnings report exceeds the ROR rate used in calculating the DSIC rate, the DSIC rate is reset to zero.

Source: Developed by LB&FC staff using information obtained from PUC documents.

A DSIC may only be granted for certain uses. These include:

- main/valve replacement,
- main cleaning and relining,
- fire hydrant replacement,
- main extensions to eliminate dead ends,
- solutions to regionalization projects, and
- meter change outs.

Pennsylvania has received national recognition for its DSIC program. A National Association of Water Companies policy forum recognized the DSIC as a best practice in promoting capital investment and cost effective rates. The National Association of Regulatory Utility Commissioners called the DSIC “an example of an innovative regulatory tool that other Public Utility Commissions may consider to solve infrastructure remediation challenges in their states.” Other states have implemented DSICs, and still others are considering implementation.

Officials from two water companies with whom we spoke commented on the DSIC program. Both companies have used DSICs and have found the program to be very useful in helping them undertake major infrastructure improvements. Through DSIC, one company was able to bring its infrastructure replacement cycle down to a 200 year cycle from a 1,000 year cycle; generally, the infrastructure requires replacement every 100 years. The other company has avoided base rate

increases because of the DSIC. Both, however, commented on the extensive filing process required by the PUC.⁸

Flexible Rate Tariffs. A flexible rate tariff may be offered to a large industrial customer to prevent it from building its own water system and taking its business away from its current water utility company. Specially approved tariffs or agreements may be negotiated directly between the utility and customer to provide a better rate than is charged to the regular customer base. The Commission requires that the negotiated rates be such that they cover at least a portion of the utility's fixed costs.

Small Utility Rate Filing Alternatives. Because small utility companies may not have the resources to provide all necessary information for a formal rate filing, the Commission allows an abbreviated process that lowers the costs for the company and its customers. PUC staff also provides informal counseling to small companies to help them organize their expenses and revenues, in addition to providing guidance on regulatory requirements, record-keeping, and customer notification.

Operating Ratios for Small Systems. While rates for most water companies are based on a reasonable rate of return on plant assets, the PUC can allow rates for certain small water companies (with less than \$250,000 in revenues) to be based on a specified operating ratio. Rates based on operating ratios ensure that a company can cover expenses. Ratios are calculated as ratios of operating expenses to operating revenues based on several factors, including operating ratios of comparable companies, current market conditions, rate case history, and financial resources.

Purchased Power or Water Cost Adjustments (Pass-Throughs). Qualified small water companies may pass through increased costs of power or water purchased from municipal authorities or unaffiliated entities to their customers. Reductions in these costs must also be passed through to customers. Another type of pass-through is for PENNVEST, the Commonwealth's low-interest loan program for infrastructure remediation of water and wastewater utilities. This pass-through allows a utility to request an increase in revenues in the amount of the annual principal and interest payment for the PENNVEST loan.

PUC Regulatory Policies Encourage Regionalization and Acquisitions

The PUC has recognized that smaller water companies⁹ encounter issues and problems that larger companies do not. According to the PUC, many of these issues resulted from the requirements set forth in the Safe Drinking Water Act, including

⁸The PUC audits the DISC program as discussed in Finding G.

⁹The U.S. Environmental Protection Agency defines small as having fewer than 3,300 customer connections.

stringent monitoring and treatment requirements. Some of the constraints under which small water companies operate include:

- few economies of scale,
- limited technical and managerial expertise,
- compliance problems,
- aging and deteriorating infrastructure,
- undersized mains,
- deferred maintenance,
- high levels of unaccounted-for water,
- lack of capital for improvements,
- limited ability to borrow at reasonable rates, and
- minimal source of supply/storage.

Because of these issues, which can lead to high levels of customer complaints, the PUC issued a policy statement in 1995 regarding “Incentives for the Acquisition and Merger of Small, Nonviable Water Utilities.” This policy statement was issued in addition to the MOU between the PUC and DEP, in which both agencies advocated discouraging the creation of new nonviable systems and encouraging the restructuring of existing nonviable small systems.

In its policy statement, the PUC permits the use of several regulatory incentives to encourage the acquisition of water companies. These incentives include:

- rate of return premiums – may be awarded for certain acquisitions and/or for certain improvement costs;
- acquisition adjustment – in cases where the acquisition costs are greater than the depreciated original cost, the excess may be included in the base rates of the acquiring utility and amortized as an expense over a ten year period;
- deferral of acquisition improvement costs – in cases where plant improvement costs are too great to be absorbed by ratepayers at one time, these costs may be deferred, to be recovered in phases;
- plant improvement surcharge – collection of a surcharge from customers of the acquired utility upon connection to offset extraordinary improvement costs; and
- operating ratios – in cases where little or no rate base exists, rates based on operating ratios may be allowed as an interim measure.

Single Tariff Pricing is another regulatory tool, generally utilized by larger water companies. It allows companies to have a single rate structure within the company for all of its customers across the state. This allows the company to utilize economies of scale and avoids “rate shock.” For example, if the larger company acquired a smaller one needing infrastructure improvements, the cost would be

spread among all the company’s customers, not just the minority of customers whose infrastructure needs to be upgraded.

One water company official with whom we spoke expressed support for the single tariff pricing program, and stated that it worked very well when the company acquired two smaller companies and physically connected them to the company’s plant. Additionally, NARUC has recognized single tariff pricing as a “best practice.”

The Commission considers all incentive requests on a case-by-case basis, and will also consider alternate incentives provided they meet the requirements of the PUC’s policy. The number of companies regulated by the PUC has gone from 437 in early 1990s to 125 in 2006, due in large part to these and other Commission acquisition and regionalization policies.

In 2006, the PUC took further steps to encourage regionalization and acquisitions by amending its policy statement. The new policy also contains detailed data submission requirements for acquisition adjustments when a company requests one as part of its next rate case filing and sets forth additional guidelines specifically applicable to the acquisition of non-viable companies.

Complaints

The PUC tracks complaints through its Bureau of Consumer Services for water companies. The Bureau’s complaint tracking data captures both consumer complaints and payment arrangement requests (PAR), the majority of which come from Class A water companies, which are those that have annual revenues of over \$1 million. Complaints can be made in a variety of categories, including billing disputes, metering, service quality, personnel problems, scheduling delays, rates, and service interruptions, among others (see Finding P for additional information regarding the Bureau of Consumer Services).

Table 16 below shows the total number of complaints and PARs received in CY 2003 and 2004. Both the number of complaints and PARs dropped between 2003 and 2004, with fewer coming from the Class A companies.

Table 16

Consumer Complaints – Water Companies		
(CY 2003 and 2004)		
	<u>2003</u>	<u>2004</u>
Total Complaints.....	1,228	1,189
% From Class A Companies.....	91%	84%
Total PARs.....	4,012	3,806
% From Class A Companies.....	95%	90%

Source: Developed by LB&FC staff using information obtained from the PUC.

Protecting Infrastructure and Water Utility Security

House Resolution 2001-361 required the PUC, in conjunction with the Pennsylvania Emergency Management Agency (PEMA), to review, analyze, and evaluate utility infrastructure in the context of security and emergency issues. Five areas were addressed with all types of utility companies, including water companies: emergency operations plans, contingency planning, business continuity, cyber security, and insurance and security-related costs.

As a result of these reviews, the PUC now requires water companies, as well as all other regulated utilities, to have four written plans in place, which are to be reviewed and updated as necessary and tested annually. These plans are not to be submitted to the PUC,¹⁰ but companies are to self-certify that these plans are in place when annual reports are filed with the PUC. The four plans required include:

- Physical Security Plan
- Cyber Security Plan
- Emergency Response Plan
- Business Continuity Plan

The PUC reviews the plans when an on-site inspection occurs, and a criterion has been added to the audit process that will help to ensure that these plans are in place in each utility company.

Other States

We also reviewed how nine other states regulate their water utilities. Exhibit 9 below shows what kinds of water utilities are regulated and policies that are in place that aid in financial viability and system enhancement. All comparison states, with the exception of Michigan, regulate water utilities. Although all states regulate investor owned companies, four – Illinois, Maryland, New York, and Ohio – regulate only investor-owned water utilities. All of the other states regulate municipal water companies in some form.

Four of the nine comparative states – Illinois, Indiana, New York, and Ohio – have either a DSIC in place or a similar program that allows companies to collect infrastructure improvement surcharges. As of summer 2006, New Jersey was considering implementing a similar program. All of the states we contacted, with the exception of Michigan, have informal or formal policies in place to encourage the financial viability of their state's water companies.

In comparing other states, we also reviewed the average annual combined water and wastewater bills. Table 17 below shows these data from all fifty states, plus the District of Columbia. Annual averages range from \$334 in Nebraska to

¹⁰Plans are not submitted to the PUC because they would then be subject to public view through the Freedom of Information Act.

\$721 in Hawaii. Within the continental United States, the highest state average is California. At \$492 per year, Pennsylvania is on the higher end of average bills, with only ten states having higher averages. According to the PUC, a reason for this is the infrastructure remediation and replacement that occurs more rapidly than in other states due to the availability of DSIC and PENNVEST.

Table 17

Average Water/Wastewater Bill

<u>State</u>	<u>Amount</u>	<u>State</u>	<u>Amount</u>
Alabama.....	371	Montana.....	417
Alaska.....	603	Nebraska.....	334
Arizona.....	552	Nevada.....	472
Arkansas.....	418	New Hampshire.....	410
California.....	591	New Jersey.....	559
Colorado.....	465	New Mexico.....	470
Connecticut.....	442	New York.....	450
Delaware.....	456	North Carolina.....	378
District of Columbia.....	505	North Dakota.....	450
Florida.....	573	Ohio.....	459
Georgia.....	426	Oklahoma.....	443
Hawaii.....	721	Oregon.....	489
Idaho.....	413	Pennsylvania.....	492
Illinois.....	426	Rhode Island.....	420
Indiana.....	424	South Carolina.....	419
Iowa.....	421	South Dakota.....	418
Kansas.....	419	Tennessee.....	380
Kentucky.....	387	Texas.....	555
Louisiana.....	385	Utah.....	439
Maine.....	429	Vermont.....	357
Maryland.....	432	Virginia.....	465
Massachusetts.....	519	Washington.....	569
Michigan.....	420	West Virginia.....	465
Minnesota.....	390	Wisconsin.....	399
Mississippi.....	372	Wyoming.....	442
Missouri.....	390		

Source: Developed by LB&FC staff from 2000 U.S. Census Data.

Recommendation

1. The General Assembly should consider amending the Municipality Authorities Act to authorize the Public Utility Commission to regulate water and water treatment authorities when they serve customers outside the authority’s appointing districts. Except in a few specific situations, the PUC has no jurisdiction over water authorities, even for customers that live outside the bounds of the municipality that appoints the authority members. The PUC regulates municipal corporations when operating outside their municipality; this would seem appropriate for authorities as well.

Exhibit 9

**Comparative State Public Utility Commission
Water/Wastewater Activities**

<u>State</u>	<u>Scope of Regulation</u>	<u>System Enhancement Activities</u>	<u>Promotion of Viable Companies/Regionalization</u>
Pennsylvania	Investor-owned companies and municipalities outside of their boundaries	Allows companies to utilize a distribution system improvement charge	Formal acquisition policy outlining regulatory tools a company may use in cases of mergers and acquisitions
Illinois	Regulate investor-owned companies only	Qualifying Infrastructure Plant Surcharge allowed to improve mains, services, meters and hydrants	No formal policy, but the Commerce Commission encourages and promotes acquisition of smaller companies
Indiana	Full regulation of all companies; rates and charges only for municipals; companies may opt out of regulation if they have less than 300 customers.	Allows companies to utilize a distribution system improvement charge.	Acquisition adjustment permissible Net Operating Income Premium serves to encourage regionalization
Maryland	Regulate for-profit water and sewer.		
Michigan	No regulation of water companies	N/A	N/A
New Jersey	Regulate privately-held companies and municipal systems with over 1000 billed customers outside boundaries.	As of summer 2006, reviewing implementation of new distribution system improvement charge.	Through Small Water and Sewer Takeover Act; Receivership for small water companies.
New York	Regulates all non-municipal owned water companies.	Allows companies to utilize a distribution system improvement charge.	Policy in place that encourages companies to regionalize and acquire other less-viable companies.
Ohio	Regulates all investor owned water companies.	In 2004 legislation was enacted that created an infrastructure improvement surcharge for water and wastewater companies.	Larger companies are encouraged to acquire smaller, less-viable companies but they are not required to do so and there is no official policy.
West Virginia	Regulate all investor-owned utilities, public service districts, homeowner associations, and municipalities. Regulation of municipality rates occurs <u>only</u> after a valid protest is received (within thirty days from passage of ordinance).	Do not have a DSIC program. After discussions with PUC, determined that only one system large enough to benefit from such a program.	Encourages regionalization through policy. PSC has a seat on the Infrastructure Council which reviews all applications for funding on water and sewer projects and is a member of the Council's consolidation committee which seeks to find projects where consolidation is an appropriate means to provide service.
Wisconsin	All municipal and investor owned water utilities are regulated. Regulations cover rates and rules, practices and procedures, plant additions, service quality, etc.	Does not have a DSIC program.	Encourages regionalization but cannot require companies to do so. The Dept. of Natural Resources does have the ability to require mergers and consolidations of utilities.

Source: Developed by LB&FC staff from information obtained from state officials in the various states.

J. Additional Regulatory Initiatives May Be Needed to Address Wastewater Issues in Pennsylvania

PUC Role and Authority

Regulation of wastewater companies is carried out by the PUC’s Bureau of Fixed Utility Services (FUS). The Commission regulates the rates and services of 74 wastewater companies, 67 of which are investor-owned. Table 18 below shows the number of investor-owned companies based on their revenues. As with water companies, the PUC regulates and monitors rate increases, applications for new companies or expansions of existing ones, service issues, customer complaints, affiliated interest agreements, inspections, audits and annual report filings.

Table 18

PUC Jurisdictional Wastewater Systems	
<u>Revenues</u>	<u>Systems</u>
“A” – \$1 Million and Over	1
“B” – \$200,000 to \$999,999	8
“C” – Less Than \$200,000	<u>58</u>
Total IOUs ^a	67
Municipals Serving “Outside” Customers	<u>7</u>
Total Jurisdictional	74 ^b

^aInvestor Owned Utilities (“IOUs”).

^bAs of December 31, 2006.

Source: Developed by LB&FC staff using information obtained from the PUC.

Most of the same incentives and regulatory programs pertinent to water companies (see Finding I) are also available for wastewater companies. These programs and policies encourage acquisitions and mergers, regionalization, and financial viability. Through the use of acquisition adjustments, single tariff pricing, and additional rate of return basis points, among others. As discussed below, there is, however, no comparable program to the DSIC for wastewater.

Issues in Pennsylvania’s Wastewater Industry

Numerous reports and testimonies in recent years have identified serious deficiencies in Pennsylvania’s wastewater systems, including overflow issues that impact directly on the environment.

- IssuesPA, an initiative of the Pennsylvania Economy League, notes that adequate water and sewer infrastructure is essential to the growth and

development of communities and businesses. IssuesPA also cites a 2000 Clean Watersheds Needs survey that found that Pennsylvania needs a capital investment of over \$8 billion in publicly owned wastewater systems to keep them running effectively.

- Various individuals testified before the House Environmental Resources and Energy Committee in 2004 pointing out the importance of water and sewer infrastructure to Pennsylvania's economy, environment and public health. Also noted in the testimony were the number of aging and outdated water treatment systems which allow sewage to enter the environment from overflowing sewers and poorly functioning systems.
- A 2001 Joint Legislative Air and Water Pollution Control and Conservation Committee report found that Pennsylvania has a significant number of aging water treatment systems that have deteriorated to the point of being unsafe or unreliable. These systems can cause problems with public health, the environment, and financial viability of wastewater companies. At the time of the report, Pennsylvania was first in the nation in the number of combined sewer overflow (CSO) outfalls. CSOs contain storm water along with untreated human and industrial waste and other toxic substances.
- A *Pittsburgh Business Times* article states that Southwestern Pennsylvania has had problems with water quality for decades. The issues stem from sewer systems overflowing during wet weather causing untreated wastewater to flow into rivers and tributaries resulting in potential health problems and waterways being closed for recreational purposes. These problems have also kept some businesses from expanding because new development has been prohibited where wastewater infrastructure is at capacity.
- Penn State's Pennsylvania Program to Improve State and Local Government issued a report entitled *Rural Pennsylvania's Water and Wastewater Infrastructure* which examined the capacity of a sample of water and wastewater systems. Systems were assessed for the technical, managerial, and financial ability to achieve, maintain, and plan for compliance with applicable standards. In a survey of wastewater operators, 45 percent named infrastructure as a key issue, followed by growth and development, financial issues, and regulatory burdens. The study offered nine suggestions for consideration by policy makers:¹
 - Enhance operator skills to help reduce infrastructure costs
 - Plan for the future: requires coordination between local, state, and federal governments as well as strategic planning
 - Enhance data collection

¹The considerations listed in this report apply to both water and wastewater systems.

- Improve information flow
- Devote more attention to training for plant operators
- Consider alternative strategies for capacity building
- Provide assistance with capital improvement planning to communities
- Encourage conservation

Water and Wastewater Treatment Project Bond Act. In February 2004, the \$250 million Water and Wastewater Treatment Project Bond Act was approved by the General Assembly, and in April 2004, voters approved incurring the debt. The funds generated through this act will be used to finance grants and loans for economic development-related projects that construct, expand or improve water and wastewater infrastructure. Projects, for example, that:

- repair/rehabilitate existing sewer/water systems;
- address existing CSOs and SSOs (sanitary sewer overflow);
- construct sewer and/or water systems where there are compelling public health issues that can only be resolved by providing such systems; and
- provide support for alternative approaches to address CSO and SSO problems.

Collection System Improvement Charge. Pennsylvania's chapter of the National Association of Water Companies (NAWC) recommends that the PUC be given specific statutory authority to approve a cost recovery device for wastewater utilities. NAWC advocates the creation of a Collection System Improvement Charge (CSIC), similar in structure to the DSIC program which now exists for water companies. A CSIC would allow a wastewater utility to recover the fixed costs for certain revenue-neutral system improvement projects completed and placed in service between base rate cases. NAWC recommends the CSIC be capped at 5 percent of the amount billed to customers for wastewater service under otherwise applicable rates and charges. As with the DSIC, the CSIC would be subject to an audit at intervals determined by the PUC, as well as to an annual reconciliation.

The issue of a CSIC was addressed by Pennsylvania's Commonwealth Court in 2005.² The court held that the PUC did not have statutory authority under either Section 1307(a) or 1307(g) of the Public Utility Code to authorize rate increases via the CSIC model. Section 1307(g) only permits water utilities to recover certain infrastructure improvement costs through a DSIC. It does not, held the court, apply to wastewater utilities. The Pennsylvania Supreme Court decided not to hear an appeal on this matter. The court suggested that the issue of a CSIC was an important matter to be addressed by the General Assembly.

The NAWC believes the enactment of a CSIC will provide an incentive to speed up the reconstruction of wastewater infrastructure by reducing the lag in

²See, Popowsky v. Penna. Public Utility Commission, 869 A. 2d 1144 (Pa. Cmwlth. Ct. 2005).

wastewater utilities recovering the costs of system improvements, by providing for small, gradual increases to avoid “rate-shock,” and by enabling wastewater utilities to address, in an orderly and comprehensive manner, the problems presented by aging wastewater collection systems, including overflows from sanitary sewer systems and from combined sewer systems.

The Office of the Consumer Advocate has substantial concerns with allowing rate increases between base rate cases, but acknowledges that wastewater utilities are similar to water utilities. The main concern of the OCA relating to expanding the DSIC beyond its present limited use with water utilities is that the DSIC not be expanded for use with natural gas and electric distribution companies.

Responsible Utility Customer Protection Act

The NAWC also maintains the position that Chapter 14 (the Responsible Utility Customer Protection Act, 66 Pa.C.S.A. §1401-1418) should be amended to include residential wastewater service under its provisions. The RUCPA changed rules applicable to cash deposits, reconnecting and terminating service, payment arrangements, and the filing of termination complaints by consumers for electric, gas, and water. Chapter 14 does not, however, apply to wastewater utilities. Of the 125 water companies regulated by the PUC, 23 of them are also wastewater companies or have sister companies that are wastewater companies.

As a result, RUCPA governs the water portion of the customer account, with other PUC regulations applying to the wastewater portion of the account. This causes customer confusion and additional accounting complexity. The state Consumer Advocate agreed there could be consumer confusion caused by the two regulatory schemes, but noted that he had not heard of a consumer concerns or complaints in this area.

Recommendations

- 1. The General Assembly should consider providing specific statutory authority to the PUC to approve a cost recovery device for wastewater utilities, similar in structure to the Distribution System Improvement Charge (DSIC) available to water utilities.**
- 2. The General Assembly should consider amending the Responsible Utility Customer Protection Act to include residential wastewater services under its provisions.**

K. Transferring the PUC Portion of the Motor Carrier Safety Enforcement Program to the Pennsylvania State Police, While Feasible, Could Undermine Other PUC Motor Carrier Responsibilities

The PUC's Motor Carrier Services and Enforcement Division

The PUC's Motor Carrier Services and Enforcement Division (in the Bureau of Transportation and Safety) regulates intrastate motor carriers that transport property, passengers or household goods. The Division's primary responsibilities include processing applications of new motor carrier companies seeking entry and determining motor carrier compliance with transportation and safety regulations. Effective January 1, 1995, federal legislation prohibited states from regulating geographical service areas, rates, and services provided by motor carriers of property. A similar federal preemption pertaining to charter bus transportation took place in 1998. In both cases, however, the PUC retains authority to regulate safety and insurance.

These changes gave the PUC the opportunity to alter the way it verifies that new motor carriers entering the intrastate regulated system are in compliance with safety regulations. The Safety Fitness Review program, primarily a safety education program for new motor carriers, began in 1995 and is still in operation. In connection with the application process, this review is carried out at carrier terminal locations by PUC Enforcement Officers who interview motor carrier officials responsible for safety compliance and review pertinent policies and safety records.

PUC Enforcement Officers in the Motor Carrier Services and Enforcement Division also conduct other nonMCSAP activities designed to ensure continued safety compliance for intrastate certificated motor carriers. Such activities include vehicle safety inspections conducted in recognized "high crash corridor" locations, driver specific inspections of carriers operating on secondary highways, safety audits of carriers with poor safety records, random terminal inspections, complaint-related inspections, and other violation-specific roadside inspection activities.

While these various programs and activities have been designed by the PUC as means to ensure the safety compliance of intrastate motor carriers under its jurisdiction, the PUC has also been involved, during the last two decades, in a federally funded program involving other Commonwealth agencies called the Motor Carrier Safety Assistance Program (MCSAP). Performed on a part-time basis, PUC's participation in MCSAP broadens the scope of PUC's responsibilities to include interstate motor carriers otherwise outside the PUC's jurisdiction.

The Motor Carrier Safety Assistance Program

The Motor Carrier Safety Assistance Program (MCSAP) is a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMV).¹ The federal agency overseeing state administration of MCSAP is the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation. The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs.

In order to receive the basic program funds, a state must:

- adopt and enforce state laws that are compatible with the federal motor carrier safety regulations and federal hazardous materials regulations;
- prepare a complete Commercial Vehicle Safety Plan (CVSP)² which reflects a performance-based program and includes the items required in federal regulations;
- submit the CVSP and all required documentation, including the state Certification of Compliance, to the state director (FMCSA) by August of each year;
- obligate a state funding of 20 percent; and
- maintain a level of effort as specified in federal regulations.

Participating agencies are to be reimbursed, subject to receipt of federal funds, up to 80 percent of the allowable costs incurred. Allowable costs are for activities that fall within the scope of the CVSP and which meet other applicable state and federal requirements. Such activities and expenditures are subject to state and federal oversight.

PUC Involvement in MCSAP

Beginning in 1985, the PUC became a partner, along with two other Commonwealth agencies—the Department of Transportation (PENNDOT) and the State Police (PSP)—in administering the newly created MCSAP program. From 1985 to 2005 the lead agency in Pennsylvania for MCSAP was the Department of Transportation. Beginning in October 2005, lead agency responsibilities were transferred to the State Police. The Department of Transportation discontinued its participation

¹Federal regulations (49 CFR §350.105) defines the term CMV as a motor vehicle that has the following characteristics: (1) a gross vehicle weight, gross vehicle weight rating, gross combination weight, or gross combination weight rating of 4,537 kilograms (10,001 pounds) or more; (2) regardless of weight, is designed or used to transport 16 or more passengers, including driver; (3) regardless of weight, is used in the transportation of hazardous materials and is required to be placarded pursuant to 49 CFR Part 172, Subpart F.

²CVSP means the document outlining the state's CMV safety objectives, strategies, activities and performance measures.

in roadside inspection activities, and its enforcement officers were transferred to the State Police.

Roadside Inspection Activities. According to the Pennsylvania Commercial Vehicle Safety Plan (CVSP) for FFY 2006-07, MCSAP is a cooperative effort involving the PSP, the PUC and certain Commonwealth qualified municipal police officers. Together, a total of 683 trained/certified inspectors currently perform the state's MCSAP roadside inspections. (This number includes 368 State Troopers, and 35 and 278 trained/certified MCSAP inspectors in the PUC and municipal police departments, respectively.)

The PUC's involvement in MCSAP occurs through the Motor Carrier Services and Enforcement Division within the Bureau of Transportation and Safety. This Division has a staff complement of 64 positions. A total of 13 positions are located at headquarters in Harrisburg (10 positions are PUC Compliance Specialists). Three Public Utility Enforcement managers oversee the operations of five district enforcement offices, together with seven support staff. The remaining 41 positions on the complement are enforcement officers, including six enforcement officer supervisors (the Pittsburgh Office has two supervisors).³ The Division expended \$3.5 million for FY 2005-06 from the utility assessments source. The Division also received \$1.35 million in federal dollars for participation in MCSAP.

According to PUC's Motor Carrier Safety Coordinator, the Division's Enforcement Officers conduct MCSAP activities, including roadside inspections, for an average of two days a week (40 percent of their time), and conduct other nonMCSAP motor carrier activities (e.g., taxi inspections, investigations of consumer complaints, etc.) in the remaining time.

Table 19 provides information on the number of MCSAP inspections conducted in Pennsylvania from July 2001 through June 2006, by MCSAP involved agency.

³As of December 2006, three vacancies existed in the enforcement officer complement, reducing the total enforcement officer availability to 38 (32 enforcement officers and 6 enforcement officer supervisors).

Table 19

Number of MCSAP Inspections^a Conducted in PA, by Agency
(FY 2001-02 Through FY 2005-06)

<u>Fiscal Year</u>	<u>PSP</u>	<u>PENNDOT</u>	<u>PUC</u>	<u>Local Police</u>	<u>Total</u>
2001-02	24,315	21,266	15,104	6,898	67,583
2002-03	34,847	25,107	15,335	7,118	82,407
2003-04	31,567	27,287	10,028	9,486	78,368
2004-05	44,184	16,766	10,423	9,921	81,294
2005-06	<u>72,173</u>	<u>--</u>	<u>12,888</u>	<u>9,235</u>	<u>94,296</u>
Total.....	207,086	90,426	63,778	42,658	403,948

^aIncludes inspections of trucks, buses, and placarded vehicles transporting hazardous materials.

Source: Developed by LB&FC staff using MCSAP program information.

As shown, the total number of PUC-conducted MCSAP inspections over the five-year period was 63,778, or 15.8 percent of the statewide total for the five-year period. During the same period, the number of PUC-conducted MCSAP inspections declined by 14.7 percent.

We also examined the MCSAP statistics on safety violations detected and vehicles placed out of service. Table 20 shows comparison percentages among the four program participants (PENNDOT, PSP, PUC, and municipal police) for the five-year period FY 2001-02 through FY 2005-06.

Table 20

**Pennsylvania MCSAP Inspections and Vehicles
Placed Out-of-Service: Five-Year Totals, by Agency**
(FY 2001-02 Through FY 2005-06)

	<u>PSP</u>	<u>PENNDOT</u>	<u>PUC</u>	<u>Municipal</u>	<u>Total</u>
No. of Inspections ^a	207,086	90,426	63,778	42,658	403,948
No. of Safety Violations Found ^b	657,945	264,331	138,441	107,547	1,168,264
No. of Vehicles O-O-S ^c	58,247	23,831	14,754	13,043	109,875
O-O-S Vehicles as % of Inspections ^d	28.1%	26.4%	23.1%	30.6%	27.2%

^aIncludes inspections of trucks, buses, and placarded vehicles transporting hazardous materials.

^bIncludes all violations (vehicle and driver) for all trucks, buses, and placarded vehicles transporting hazardous materials.

^cNumber of vehicles declared "out of service." Does not include drivers declared "out of service."

^dPercentage calculated by dividing the number of vehicles declared "out of service" by the number of inspections.

Source: Developed by LB&FC staff using MCSAP program.

As shown on the bottom row of Table 20, the PUC O-O-S percentage (23.1 percent) is somewhat lower than the statewide average. PUC officials indicated that their method of inspection tends to utilize systematic (random selection) roadside checks. This method may tend to result in a lower vehicle out-of-service rate than the probable cause method. Either method is acceptable under federal guidelines.

Other PUC MCSAP Activities. As previously indicated, only about 40 percent of the PUC enforcement officers' time (i.e., two days per work week) is assigned to MCSAP duties. In addition to roadside inspections, these duties include terminal and destination bus inspections and new entrant safety audits. The current CVSP recognizes the role and contribution of the PUC in these specific components of the MCSAP.

Bus/Motor Coach Inspections. One of the MCSAP performance objectives is to "maintain a high level of passenger carrier compliance with the Commonwealth's safety regulations." The PUC is specifically cited in the CVSP in connection with its experience with bus/motor coach inspections, its provision of quarterly passenger inspection data for monitoring purposes to the MCSAP lead agency, and in the expectation that PUC's passenger inspections will increase by at least 5 percent in calendar year 2006 over the previous year. As stated in the CVSP, PUC's passenger carrier inspections "continue to be an important component of the Commonwealth's MCSAP effort." These are inspections conducted either at bus terminals or destination sites (such as amusement parks or other location frequented by motor coaches).

New Entrant Safety Audits. The Motor Carrier Safety Improvement Act of 1999 requires new, interstate property and passenger motor carriers to submit to a safety audit within 18 months of beginning transportation service. The purpose of the safety audit is to provide an opportunity for the new carrier to receive educational and technical assistance about the safety regulations. It also allows regulators to assess whether the carrier's safety management systems comply with the regulations.

Both the PUC and the State Police conduct new entrant safety audits. A total of 26 inspectors (including 8 PUC enforcement officers and 18 PSP inspection personnel) have been trained and have conducted more than 2,000 new entrant audits since April 2005.

Program Consolidation

As previously discussed, PENNDOT resources involved in the state's MCSAP effort were transferred to the State Police when the PSP assumed lead agency

responsibilities in 2005.⁴ This consolidation occurred as a result of internal study and consideration that occurred in the Governor's Office a number of years ago. These deliberations reportedly also included discussion of consolidating the PUC's MCSAP involvement in the PSP. Apparently, however, because the PUC is not an agency under the Governor's direct jurisdiction, a decision was made at that time to transfer only the PENNDOT portion of MCSAP to the PSP. Questions have again been raised as to whether the PUC's MCSAP function should also be consolidated in the lead agency. We considered this question as part of this audit.

The PUC has been a partner in the MCSAP since 1985, and its enforcement officers are fully trained and certified to conduct MCSAP inspections. As such, PUC enforcement officers are authorized to detain and inspect commercial motor vehicles, their contents and related documents, and to enforce any law or regulation pertaining to the driver or the vehicle. The Public Utility Code (66 Pa.C.S. §307) provides that inspectors employed by the Commission have "police powers," with respect to carriers under PUC jurisdiction, and authority to arrest on view, without writ, rule, order, or process, any person operating as a motor carrier without a required certificate or permit.

Additionally, PUC enforcement officers are regarded as police officers, under Rule 402 of the Pennsylvania Rules of Criminal Procedure, for purposes of instituting criminal proceedings by citation. However, the PUC enforcement officers do not have the full law enforcement powers that are held by other MCSAP inspectors (i.e., state troopers and municipal police officers). Also, PUC enforcement personnel are not authorized to be armed.

In discussions with PSP officials, concern was expressed that PUC inspectors, who often function independently of the State Police or local police, may be at some risk for bodily harm in the conduct of their duties. The 76 civilian motor carrier enforcement officers now employed in the PSP also operate under similar conditions of limited authority. However, when conducting MCSAP inspections, the PSP operationally deploys its inspectors in teams generally consisting of two civilian enforcement officers combined with one Trooper.

Also, since September 11, 2001, national concerns have been expressed regarding possible use of commercial vehicles for illegal purposes. The current CVSP, for example, discusses the potential for CMV safety/security problems that are associated with both homeland security as well as traditional truck safety concerns. As stated in the CVSP:

The Homeland Security cluster emphasizes post-9/11 apprehension about the transportation of hazardous materials, cargo tanks, inter-

⁴Operationally, PENNDOT MCSAP staff moved to the PSP and the consolidation occurred in January 2005. The PSP, however, did not officially become the MCSAP lead agency until October 1, 2005.

modal containers, and rental commercial trucks. The traditional cluster of concerns accents problems regarding narcotic trafficking, terrorist movement, transportation of stolen/counterfeit property, and the apprehension of illegal aliens.

PSP officials stated that civilian MCSAP inspectors—both the PUC’s motor carrier enforcement officers and the civilian PSP officers who transferred from PENNDOT—are skilled and competent in carrying out roadside inspections and in most other MCSAP-related activities. They believe, however, that they may not be adequately equipped to detect or deal with more serious matters that may arise, such as the presence of illegal drugs, contraband, or the potential for using commercial vehicles and their contents as weapons of mass destruction. The civilian officers are not armed (except with mace) and are limited in their authority to carry out law enforcement actions. For these reasons, PSP officials emphasize the importance of teaming civilian inspectors with state Troopers on motor carrier inspection details.

On the premise that MCSAP is essentially a public safety enforcement program, PSP officials have expressed interest in further consolidating MCSAP within their agency by discontinuing the PUC’s involvement with MCSAP and augmenting the PSP motor carrier enforcement staff through a transfer of personnel from the PUC. Such a transfer would focus the state’s motor carrier inspection activities in one agency (including bus/motor coach and terminal inspections and new entrant audits), thereby creating a uniformity of program direction and management. Such consolidation could also yield associated program efficiency, inspector safety, and homeland security benefits. If a transfer of personnel from the PUC to the PSP were to occur, it would involve only a portion of the current PUC staff (somewhere between 12 and 18 of the current inspector positions)⁵ rather than all enforcement staff, due to the other motor carrier inspection responsibilities the PUC would retain.

PSP officials observed that the PUC has a sound MCSAP program and experienced inspection personnel, and that the PUC and PSP have worked well together over the years. While for many years the PUC conducted the bulk of the bus safety inspections, both the PSP and local law enforcement personnel are now also conducting bus inspections. Over the years, the PUC has also conducted the Motor Carrier and Bus Safety Fitness Reviews which are conducted of all PUC-certificated carriers at their terminals (not roadside inspections). The Fitness Reviews are intended as a non-threatening educational tool designed to provide motor carriers, both truck and bus, with an opportunity to ensure that at least minimum safety

⁵Currently, an estimated 40 percent of the time of the PUC’s 31 motor carrier enforcement officers is spent conducting MCSAP inspections. In FY 2005-06, this level of activity resulted in the completion of nearly 13,000 inspections. The transfer of between 12 and 18 of the current PUC inspector positions would be necessary to achieve a comparable number of inspections, if MCSAP activities were conducted on a full-time basis.

management systems are in place. These activities are not funded as part of the MCSAP. Closely related to the Fitness Reviews, and also separate from MCSAP, are PUC Safety Fitness Audits. These are a more structured complaint follow-up investigatory tool to target motor carriers with poor safety and compliance records. The goal is to identify areas of non-compliance and to encourage the carrier to establish proper management controls to ensure future compliance.

Recently, the FMCSA has injected both of these types of activities into the MCSAP. MCSAP now funds “New Entrant Safety Audits” which are very similar to the PUC Safety Fitness Reviews and “Compliance Reviews” which are similar to the PUC’s Safety Fitness Audits. MCSAP funding and staff are being provided, e.g., for the New Entrant Safety Audit Program, for 26 inspectors (18 from the PSP and 8 from the PUC).

For comparison purposes, we determined the organizational location of the MCSAP program in a sample of six other states. We found that state police agencies are the lead agency in four of the six states. In New Jersey, for example, MCSAP is operated by a Commercial Carrier Safety Inspection Unit of the Transportation Safety Bureau of the Special Operations Section, located under the Homeland Security Branch of the New Jersey State Police. Among the sample states, only one (Indiana) involves its public utility commission in MCSAP. In Indiana, the state police functions as lead agency with support from the Motor Carrier Division of the Indiana Public Service Commission.

PUC officials suggested that if a transfer of functions and personnel were to occur, it would make more sense to transfer all their motor carrier-related responsibilities to another agency rather than divide their motor carrier safety functions between two agencies. This is because if the PUC lost approximately half of their MCSAP inspectors, who work out of their homes, it would be very difficult for them to cover the entire state for the other transportation functions performed by these inspectors, such as terminal inspections and inspections in response to complaints. The State Police, however, have indicated they have no interest in assuming these or other motor carrier safety related functions of the PUC (e.g., regulating taxis, limousines, and intrastate motor carriers). Because the State Police is a law enforcement agency, assumption of responsibilities that are more regulatory in nature would, in their opinion, unnecessarily dilute their primary and mandated role.

The PUC noted that because they conduct their inspections without involving a state trooper, this frees the trooper to perform other duties. They also reported that the PUC has not ever experienced a violent incident during one of their inspections, that their inspectors receive counter-terrorism training and are equipped with radios that can communicate directly with the state police if necessary, and that virtually all their inspectors are former police officers.

If PUC motor carrier inspectors were to be transferred to the PSP, the \$1.3 million in federal MCSAP funding now received by the PUC would presumably follow the inspectors to the PSP. Under this scenario, the 20 percent state match would either have to be transferred from the PUC or come from the PSP's budget (i.e., from a combination of General Fund and Motor License Fund monies).⁶

Valid points can be made for both consolidating the MCSAP function with the Pennsylvania State Police and for continuing the current bifurcated arrangement wherein MCSAP inspections are conducted by both PUC and PSP inspectors. Given that both parties (PUC and PSP) agree that the current arrangement is working well and that transferring the function to the PSP could result in additional demands on either the General Fund or the Motor License Fund, we are reluctant to recommend that the PUC's MCSAP function be transferred to the State Police.

⁶When Michigan transferred its MCSAP program to the State Police, it continued to collect assessments but reportedly transfers virtually all of the funds to the State Police.

L. The PUC Regulates Rates Charged by Movers of Household Goods and Certain Passenger Carriers, But Is Pre-empted From Regulating the Rates of Most Trucking Firms

The PUC's Transportation Rate-Setting Process

The Compliance Office. The Bureau of Transportation and Safety's Compliance Office, located in the Motor Carrier Services and Enforcement Division, is responsible for regulating motor carriers, certain brokers, and contract carriers that transport property, passengers, or household goods in use as well as brokers of passenger transportation between points in Pennsylvania on a "for hire" basis.

As of July 31, 2006, the Compliance Office had an authorized complement of 10, including seven Compliance Specialist 1 positions; two Compliance Specialist 2 positions; and one Compliance Office Manager (Transportation Financial Analyst Supervisor). All analysts are cross-trained to perform rate, tariff, and compliance activities. However, only a Compliance Specialist 2 may process rate increase requests submitted by motor carriers. Compliance Specialists have a variety of educational backgrounds, and are not necessarily trained in accounting. The current Compliance Office Manager is a Certified Public Accountant.

The Compliance Office has processed changes in transportation tariffs and rates exclusively since 1995. In that year, the Bureau of Transportation and the Bureau of Safety and Compliance were combined to form the Bureau of Transportation and Safety. The Bureau now administers both the compliance and enforcement functions related to motor carriers.

Motor Carriers Subject to Regulation. The Compliance Office regulates motor carriers licensed to operate in Pennsylvania. The PUC regulates the following types of carriers for rates, geographical area (zones of operation and service), customer service (reasonable service provided to the public as per law and regulation covering each carrier type), safety, and insurance:

1. *Movers of Household Goods in Use.* Moving companies in which both the origin and destination of shipments are in Pennsylvania.
2. *Scheduled Route Bus Service.* Common carrier bus service for passengers, rendered on either an exclusive or nonexclusive basis, wherein the vehicles delivering the service operate according to schedules along designated routes.
3. *Airport Transfer.* Common carrier service for passengers rendered on a nonexclusive basis which originates or terminates at an airport.

4. *Paratransit.*¹ Common carrier service for passengers which differs from service as described in any one of the five classes of common carriers of passengers, with seating capacities of 15 passengers or less, excluding the driver, unless otherwise specified in the certificate.
5. *Group and Party Service.* Seating capacity of 15 or less, including the driver; defined as common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a nonexclusive basis for tour or sightseeing service and special excursion service.
6. *Taxicabs (Except in Philadelphia).*² Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both. A call or demand service may be operated only in vehicles with seating capacities of eight passengers or less, excluding the driver.
7. *Limousines (Except in Philadelphia).*³ Local, nonscheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance. Limousine service may be operated only in luxury type vehicles with seating capacities of ten passengers or less, excluding the driver.

Through the Compliance Office in BTS, the PUC regulates the following motor carriers licensed to operate in Pennsylvania for Safety and Insurance only:

1. *Property Carriers (Trucking Companies)*⁴
2. *Group and Party Service* (Seating capacity of 16 or more, including the driver)

PUC-certificated motor carriers of property and/or passengers must comply with the Commission's safety regulations (52 Pa. Code Chapters 29 or 37) that are applicable to the size of vehicle being operated, and with other PUC regulations for the specific type of transportation being rendered, in either Chapter 29 (Passenger) or Chapter 31 (Property and Household Goods In Use), and the PUC's insurance requirements in 52 Pa. Code Ch. 32.

¹Except paratransit service offered by municipal authorities, which is exempt from PUC regulation.

²Act 2004-94 transferred oversight of Medallion taxicabs from the PUC to the Philadelphia Parking Authority (PPA). Medallion taxicabs provide service from, to and within Philadelphia. The PUC continues to regulate some Philadelphia Medallion taxicabs that to provide taxicab service between points outside of Philadelphia.

³Act 2004-94 also transferred oversight of limousines providing service between points within Philadelphia, and service from an airport, railroad station, or hotel located in Philadelphia, from the PUC to the PPA.

⁴The Federal Aviation Administration Authorization Act of 1994 preempted states' authority to regulate rates, geographical area, and service of motor carriers of property. PUC adopted this regulation in 1995.

An Overview of the Rate-Setting Process. Upon a motor carrier’s submission of a tariff and rate schedule (including all necessary financial data) to the Compliance Office, PUC compliance specialists analyze requests to determine whether they are:

- just and reasonable;
- in accordance with applicable laws and regulations governing the particular motor carrier type; and
- not discriminatory upon any person or groups of persons.⁵

Compliance Office Consideration of Rate Increase Requests. Compliance specialists examine motor carrier companies’ statements of income and expenses to determine the probable impact on revenues when making a decision as to whether proposals are just and reasonable.

Analysts examine revenue and expenses allocated to intrastate operations when processing rate increase requests. Use of a base year of operation is the starting point of comparison for this determination. Compliance Office staff indicated that less scrutiny is generally applied to motor carriers filing initial tariffs due to the lack of a base year for comparison.

The Compliance Office often must request additional financial data and supporting information to determine whether a request is just and reasonable. The Compliance Office Manager indicated that additional information is requested in approximately 90 percent of rate increase requests.

For a step-by-step description of the transportation rate-setting process, see Appendix C.

PUC Standards for Analysis of Rate Increase Requests. According to the Public Utility Code (66 Pa.C.S. §1311(d)), when fixing any rate of a public utility engaged exclusively as a common carrier by motor vehicle, the Commission may, in lieu of other standards established by law, fix the fair return by relating the following factors to operating revenues:

- the fair and reasonable operating expenses;
- depreciation;
- taxes; and
- other costs of furnishing services.

⁵Public utilities also may not “establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.” Many exceptions exist, however, for some common carriers or passengers. Examples include certain senior citizen discounts, “reasonable zone or group systems,” certain excursion tickets at special rates, and other discounts to certain public officials or employees of a common carrier.

Data Required in Filing Proposed Rate Changes. If a common carrier of passengers, other than railroad and aircraft, files a tariff or tariff supplement which will increase or decrease fares to any of its patrons, it must submit statements showing all of the following (accompanying tariffs or tariff statements):

- The changes in rates proposed, stating the effective and proposed fares.
- The specific reasons for each increase or decrease.
- The estimated effect of each rate increase or decrease on the carrier’s annual revenues.
- The calculations by which the above estimates were determined.⁶

Carriers must submit separate tariffs or tariff supplements for each form of transportation service provided. Additional data is required when a common carrier of passengers, other than a railroad or aircraft, files a tariff or tariff supplement which will increase the operating revenues of the carrier for the latest 12-month period. PUC regulations also stipulate additional required submissions for carriers of household goods in use when filing new tariffs or tariff supplements (52, Pa. Code Ch. 23).

State subsidies for motor carriers are one of many considerations applied by the Compliance Office when processing a rate increase request. An example identified by the Compliance Office is “shared ride” programs that provide free or reduced-rate rides to senior citizens. The Compliance Office Manager indicated that these subsidies have no direct impacts on rates since, for example, the motor carrier still recoups the entire cost of discounted passengers under the combination of the subsidy and the rate charged to the passenger.

Notification Timeframe. Motor carriers applying for a rate increase must provide at least 30 days notice both to the public and the Compliance Office. In practice, the Compliance Office Manager indicated that most motor carriers provide at least 60 days notice of a rate increase request.

Special permission must be secured from the Commission for carriers to file a tariff or supplement on less than 30 days’ notice. In such cases, “actual emergency and real merit” must be shown.

Every public utility must file with the Commission, tariffs showing all rates established by it and collected or enforced, or to be collected or enforced.⁷ All carriers are required to keep copies of such tariffs open to public inspection upon request. Additionally, as per PUC Regulations, all information submitted to the PUC

⁶52 Pa. Code §23.63.

⁷The tariffs of any public utility also subject to the jurisdiction of a Federal regulatory body must correspond, so far as practicable, to the form of those prescribed by such Federal agency (52 Pa. Code §2311(b)).

supporting changes in fares are considered to be public record and may be examined by the public upon request.

Upon receipt of a rate increase request from a transportation utility, a Suspension Letter is drafted which suspends the increase for 7 months from the effective date of the new tariff.

The Compliance Office acts on all rate increase requests within a maximum of 30 days. Variances in the amount of time required to process requests includes factors such as the need for further supporting information from the motor carrier service. Further, rate requests may not always be acted upon by the Commission in the fiscal year in which they are submitted due to the timing of PUC public meetings. There is no mechanism whereby motor carriers may enact “temporary” or conditional rates prior to approval by the Compliance Office.

If the Commission determines that a proposed rate increase is unjust, unreasonable, or in violation of the law, the Commission may determine the just and reasonable rate to be charged by the public utility in question.

Pursuant to a 1997 Commission Order, limousine and Group and Party Carriers (with seating capacities of 15 or less, including the driver) may submit rate increase requests within 24 hours of notice, and are not required to submit financial data to justify the rate increase. The rationale is that competition in these industries would permit market forces to better set rates.

By a majority vote of members of the Commission, a general rate increase may become effective. Before the expiration of the seven-month period, a majority vote of members of the Commission may grant, deny, or approve in an alternate form, in whole or in part, the requested rate increase.⁸ If no action is taken within the seven-month period, the rate increase may become effective, subject to a refund (plus interest) to affected consumers of the public utility, pursuant to Section 1308 of the Public Utility Code. Compliance Office officials do not believe this has ever occurred with motor carrier rates. .

Alternatively, if the rates were increased due to Commission inaction and, subsequently, the rates were deemed to be unjust or unreasonable, the affected motor carrier service would be obligated to refund all affected customers the difference (including interest) between the unjust/unreasonable rate and the Commission-approved rate.

⁸The Public Utility Code also empowers the Commission to reject, in whole or in part, a public utility’s request to increase its rates where the Commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet the quantity or quality for the type of service provided.

Compliance Office officials noted that refunds would be nearly impossible for many motor carriers as, especially in the cases of taxis and scheduled route bus services, the number of customers is large and there is not always a record of receipts from which to refund monies.

Appealing Motor Carrier Rates. If a customer of a motor carrier believes that a rate imposed by the carrier is unjust, unreasonable, discriminatory, or not in conformance with the tariff schedule, complaints may be registered at Commission headquarters or a PUC regional office. Upon receipt of a complaint, the case is assigned for investigation to an enforcement officer to ensure that the alleged rate charged is in conformance with the tariff filed with the Commission. Compliance specialists make this determination.

Upon the filing of a complaint to the Commission regarding unjust or unreasonable rates, the Commission conducts an investigation and holds hearings, as appropriate. If it is found that existing rates are unjust, unreasonable, or in violation of applicable law or regulation, the Commission is empowered to determine the just and reasonable rates (including maximum or minimum rates) and issue an Order fixing such rates. A refund (plus interest) may also be issued to all affected consumers, and the motor carrier may be fined.

Actions Taken on Recent Rate Increase Filings

The PUC reports that it received a total of 70 rate increase requests from regulated transportation utilities during FY 2003-04 (25 requests) and FY 2004-05 (45 requests). In this two-year period, an equal number of rate requests were processed. Also shown in Table 21, the number of transportation utilities regulated decreased from 6,826 in FY 2003-04 to 6,732 in FY 2004-05.

Table 21

Transportation Utility Regulation Statistics			
(FY 2003-04 and FY 2004-05)			
Fiscal Year	Transportation Utilities Regulated	Rate Requests	
		Received	Processed
2003-04	6,826	25	25
2004-05	6,732	45	45

Source: Developed by LB&FC staff using information provided by the PA Public Utility Commission.

Table 22 provides an inventory of the number of motor carriers regulated, by type, for FY 2005-06. In FY 2005-06, the number of motor carriers regulated by the PUC decreased by 37 to 6,695. As shown, the largest category of motor carriers regulated by the PUC was property carriers (trucking companies) in FY 2005-06.

Among the transportation utilities subject to regulation of rates, taxi carriers were the largest category regulated.

Table 22

Transportation Utility Regulation Statistics

(FY 2005-06)

<u>Transportation Utility</u>	<u>Number of Carriers Regulated</u>
Household Goods in Use.....	303
Taxi Carriers	538
Limousine Carriers.....	412
Paratransit Carriers.....	283
Airport Transfer Carriers	71
Group and Party Services.....	312
Scheduled Route Bus Carriers	61
Contract Carriers	7
Brokers.....	109
Property Carriers (Trucking Companies).....	<u>4,599</u>
Total Motor Carriers Regulated	6,695

Source: Developed by LB&FC staff using information provided by the PA Public Utility Commission.

Table 23 provides detail on rate request activity, by motor carrier type, for FY 2005-06. As indicated previously, the number of rate requests received by the Commission for the fiscal year does not match the number of requests disposed of due to some requests not being acted upon in the fiscal year in which they were received. This may be due to the timing of the filing, the need for additional analysis and receipt of information by the Commission, and the date of a public meeting of the PUC Commissioners.

The PUC reports that motor carriers of household goods in use submitted the most rate increase requests in FY 2005-06. Requests approved for carriers of this type were also the highest for the fiscal year, with no requests rejected (denied) and one alternative rate structure approved. Taxi carriers submitted the second-highest number of rate requests for FY 2005-06, with a total of eight requests received. This occurred while the PUC regulated 235 more taxi carriers than household goods in use carriers in FY 2005-06.

Table 23

Transportation Rate Requests

(FY 2005-06)

Scheduled Route Bus Carriers	
Rate Requests Received	0
Rate Requests Approved.....	2
Rate Requests Rejected (Denied).....	0
Alternative Rate Structures Approved	0
Total Dollar Value of Approved Rates	\$37,703
Airport Transfer Carriers	
Rate Requests Received	4
Rate Requests Approved.....	0
Rate Requests Rejected (Denied).....	1
Alternative Rate Structures Approved	0
Total Dollar Value of Approved Rates	N/A
Paratransit Carriers	
Rate Requests Received	4
Rate Requests Approved.....	3
Rate Requests Rejected (Denied).....	0
Alternative Rate Structures Approved	1
Total Dollar Value of Approved Rates	\$609,402
Taxi Carriers	
Rate Requests Received	8
Rate Requests Approved.....	6
Rate Requests Rejected (Denied).....	1
Alternative Rate Structures Approved	2
Total Dollar Value of Approved Rates	\$475,248
Household Goods in Use Carriers	
Rate Requests Received	40
Rate Requests Approved.....	52
Rate Requests Rejected (Denied).....	0
Alternative Rate Structures Approved	1
Total Dollar Value Of Approved Rates	N/A ^a

^aThe total dollar value of approved rate increases for household goods carriers cannot be accurately determined since approximately 50 percent of the requests were received from carriers with annual intrastate revenue of less than \$200,000 and operating ratios (operating expenses, excluding income taxes, divided by operating revenue) of no less than 93 percent. 52 Pa. Code §23.67(c) provides an exception for these carriers from reporting the increase in revenue from the new rate. The total revenue from household goods carriers that are required to report this amount was \$1,891,285 in FY 2005-06.

Source: Developed by LB&FC staff using information provided by the PA Public Utility Commission.

A Further Examination of PUC Regulation of Rates Charged by Movers of Household Goods

As previously discussed, PUC regulations (52 Pa. Code §23.67) require that certain carriers of household goods must file a tariff and must seek Commission approval for any change in rates. Because such carriers account for the vast majority of transportation rate requests received by the PUC, we chose to further examine

this aspect of Commission rate-setting and how this practice compares to state regulation of similar carriers in the sample states.

Currently, intrastate movers of household goods operating in Pennsylvania with gross annual intrastate revenues of less than \$200,000 only must submit a tariff or supplement with a statement indicating that both the revenue from the previous 12-month period did not exceed \$200,000 and that its operating ratio (operating expenses, excluding income taxes, divided by operating revenue) before income taxes for the same period is no less than 93 percent. All carriers applying for rate increases who do not meet these criteria must include with the tariff financial justification in support of the proposed rate increase. The PUC reports that “approximately 50 percent” of the movers requesting rate increases in FY 2005-06 were exempt according to these provisions.

We compared these requirements with the manner in which rates for household goods movers are regulated in the sample states. As Exhibit 10 shows, five of the seven sample states we examined do not require household goods movers to submit financial data to justify all rate increases prior to enactment. The two states that do require the submission of financial data, New York and Michigan, do so with qualification. Provisions exist in New York law for the submission of financial, statistical, cost, and other data to justify rates that increase an existing rate by more than 10 percent in a 12-month period. Michigan law prohibits a motor common carrier from charging a “predatory rate.”

All of the sample states but one, however, do require that intrastate movers of household goods in use file tariffs with the state agency responsible for oversight of the industry. In so doing, state oversight agencies may more readily determine carriers’ conformity to rates detailed in filed tariffs upon complaint by a consumer of an unjust or unfair rate.

To expedite and streamline this aspect of the PUC’s transportation rate-setting process, we considered the possibility of eliminating justified rate setting for intrastate movers of household goods but retaining the requirement that such carriers continue to file tariffs with the PUC.⁹ The Pennsylvania Moving and Storage Associates (PMSA), a state association comprised of companies both in the moving and storage industry in Pennsylvania and companies who service the moving and storage industry in Pennsylvania has expressed support for this change, citing problems that sometimes occur in obtaining PUC action on rate increase requests by the start of the peak moving season of May through October. The association

⁹Note: Federal law mandates that rates charged by interstate carriers of household goods are to be reasonable. The Department’s Surface Transportation Board (STB) is empowered to prescribe the reasonable rate for a carrier of household goods upon identification to the contrary. The STB also receives consumer complaints regarding the reasonableness of carrier rates. The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) is responsible for the consumer protection regulation of interstate movers of household goods in use.

Exhibit 10

State Rate-Setting Practices for Intrastate Carriers of Household Goods
(PA and Sample States)

State	Responsible Agency	Regulatory Provisions		
		Filing of Tariffs ^a	Justified Rate-Setting ^b	Oversight/Prescription of Just/Reasonable Rates ^c
Illinois	Illinois Commerce Commission	X		X
Indiana	Indiana Department of Revenue	X		X
Michigan	Michigan Public Service Commission	X	X ^d	X
New Jersey	Board of Public Movers and Warehousemen/Office of Attorney General	X		
New York	New York Department of Transportation	X	X ^e	X
Ohio	Public Utilities Commission of Ohio	X		
Pennsylvania	Pennsylvania Public Utility Commission	X	X^f	X
Wisconsin	Wisconsin Department of Transportation	Not applicable. Carriers of household goods are regulated in the same manner as general carriers of property.		

^aStates that require carriers to file tariffs reflecting rates charged for all types of service. These states do not necessarily require submission of financial data to justify changes in tariffs. In many states, regulatory agencies verify customer complaints concerning rates by checking carriers' filed tariffs. If rates charged to a customer are found to be inconsistent with filed tariffs, many states provide for civil penalties to be levied by the regulatory agency.

^bStates that review and approve, often with the use of submitted financial data, all changes in rates charged prior to their enactment.

^cStates that have provisions whereby a regulatory or oversight agency may, upon complaint, investigation, or both, prescribe the just and reasonable rates to be charged by a carrier of household goods.

^dMichigan law prohibits a motor common carrier from charging a "predatory rate" as defined in law.

^eProvisions exist in New York law for the submission of financial, statistical, cost, and other data to justify rates that increase an existing rate by more than 10 percent in a 12-month period.

^fMovers with gross annual intrastate revenues of less than \$200,000 only must submit a tariff or supplement with a statement indicating that both the revenue from the previous 12-month period did not exceed \$200,000 and that its operating ratio (operating expenses, excluding income taxes, divided by operating revenue) before income taxes for the same period is no less than 93 percent. All carriers apply for rate increases who do not meet these criteria must include with the tariff financial justification in support of the proposed rate increase. The PUC reports that "approximately 50 percent" of the movers requesting rate increases in FY 2005-06 were exempt.

Source: Developed by LB&FC staff using information obtained from state officials with regulatory oversight of household goods carriers, state laws, regulations, and regulatory publications from responsible state agencies.

spokesman stated that this could aid in advertising and enable movers to provide more accurate estimates to customers. PMSA suggests that this could be accomplished by raising the level of maximum gross intrastate revenues whereby financial justification must be submitted in support of proposed rate increases from \$200,000 to \$1 million. With this proposed change, PMSA also advocates the continued requirement that all intrastate carriers of household goods in use file tariffs with the PUC.

At the same time, PMSA supports the continuation of all other existing PUC regulations¹⁰ concerning movers of household goods. The Public Utility Code and PUC regulations currently provide many consumer protections against carriers engaged in deceptive or unlawful business practices, including a recent regulatory provision mandating criminal history background checks for carrier employees. S.B. 1355, introduced in the 2006 session, would provide further protections by authorizing the PUC to order the disconnection of phone lines of unlicensed household goods movers. Such regulations are viewed as necessary to prevent the proliferation of “bandit” or unlicensed movers of household goods.¹¹

Recommendation

- 1. The Public Utility Commission should reexamine the need for the regulatory requirement that intrastate carriers of household goods in use submit financial justification to the PUC in support of proposed rate increases.** Exceptions to this requirement already exist for a substantial portion of intrastate carriers of household goods. We recommend the PUC consider expanding this exemption to include all intrastate carriers of household good. These carriers would, however, continue to be subject to the Commission’s insurance and other consumer protection requirements.

¹⁰PUC regulations specify procedures that must be adhered to by PUC-certificated intrastate carriers of household goods in use. The regulations also dictate procedures whereby consumers (shippers) may file a complaint regarding service and procedures employed by carriers of household goods in use. The regulations cover the following areas: estimates, rates, inventory, bill/receipt, payment, loss and damage coverage, proof of damage/receipt, and complaints.

¹¹Of particular concern is the regulation of unlicensed/uncertificated, or “bandit” movers of household goods in use, as well as “bandit” practices used by licensed or certificated movers. This includes the practice of refusing to release household goods until a higher rate than was quoted is paid, unlawful misrepresentation of rates to be charged, or the confiscation of household goods.

M. Pennsylvania, Through the PUC’s Rail Safety Division, Is One of 30 States That Oversees Rail Safety Through the FRA’s State Rail Safety Participation Program

The FRA and the “State Rail Safety Participation Program”

The Role of the Federal Railroad Administration (FRA): The federal Railroad Safety Act of 1970¹ (Public Law 91-458) designated the United States Department of Transportation’s Federal Railroad Administration (FRA) as the primary federal agency to promote and regulate railroad safety.² In this capacity, the FRA exercises jurisdiction over all aspects of railroad safety.

The FRA's Office of Safety is responsible for the promotion and regulation of safety throughout the nation’s railroad industry. The Office employs more than 415 railroad safety inspectors, who operate out of eight regional offices nationally. The FRA also employs 16 grade crossing experts.

FRA safety inspectors are responsible for inspecting the nation’s over 140,000 miles of railroad track, as well as for ensuring that the approximately 550 railroads are in compliance with all other federal rail safety regulations. Annually, FRA inspectors conduct thousands of inspections, investigate train accidents, investigate complaints, develop recommendations for enforcement actions, and engage in a range of educational activities on railroad safety issues.

The State Rail Safety Participation Program: The federal Railroad Safety Act of 1970 authorizes the states to assist the FRA in enforcing federal railroad safety regulations through what is known as the FRA’s State Safety Participation Program. Currently, 30 states, including Pennsylvania, participate in the program, contributing approximately 160 safety inspectors in five rail safety disciplines.

The PUC first adopted formal enforcement responsibilities for FRA regulations in 1970 as part of this program. According to PUC Rail Safety Division officials, federal preemption of state regulations was largely due to intensive lobbying by interstate railroad carriers to establish uniform railroad safety standards nationwide. Prior to 1970, railroad safety regulations varied, sometimes significantly, among the states.

As provided by 49 U.S.C. Ch. 201, all laws, regulations, and orders related to railroad safety and security are to be nationally uniform, to the extent practicable. A state may adopt laws, regulations, or orders related to railroad safety and

¹49 U.S.C. Ch. 201-213 contains the federal railroad safety provisions.

²In addition, FRA administers a number of railroad development programs, such as the high-speed rail research and development program, the rail infrastructure programs, and federal oversight of Amtrak.

security until the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of the United States Department of Homeland Security (with respect to railroad security matters) prescribes a regulation or issues an order covering the subject matter of the state requirement.

FRA regulations serve as the mandatory minimum railroad safety regulations nationwide. States, as the PUC has done, are free to enforce more stringent laws, regulations, or orders related to railroad safety or security when the law, regulation, or order meets the following criteria:

- is necessary to eliminate or reduce an essentially local safety or security hazard;
- is not incompatible with a law, regulation, or order of the United States Government; and
- does not unreasonably burden interstate commerce.

All FRA regulations currently enforced by the Rail Safety Division are contained in 49 C.F.R. The FRA must certify all state rail safety inspectors, and federal regulations outline qualifications for state inspection personnel.

Prior to the beginning of each calendar year, each participating state must develop, in conjunction with the FRA Regional Director of the region in which the state is located, an annual work plan for the conduct of investigative and surveillance activities by the state agency. The plan is to include a program of inspections designed to monitor the compliance of the railroads, shippers, and manufacturers operating within the state (or portion thereof) with applicable federal railroad safety laws and regulations.

PUC Rail Safety Activities and Involvement in the State Safety Participation Program

According to the PUC, nearly 70 railroad companies presently operate in Pennsylvania, the largest number of railroad companies in any state. Moreover, the PUC indicates that approximately 9,000 miles of track, approximately 5,600 public at-grade crossings, approximately 1,500 public highway above grade crossings (highway bridges), and approximately 1,700 public highway below grade crossings (railroad bridges) comprise the rail system in Pennsylvania. Safety regulation on this rail system is a joint responsibility of the FRA and the Rail Safety Division of the Pennsylvania PUC. Pennsylvania is part of the FRA's Region 2, headquartered in Philadelphia.

PUC regulations³ indicate that federal safety regulations are to supplement state safety regulations, unless such federal regulations are in conflict with such

³52 Pa. Code §33.54.

provisions. A violation of the federal regulations which is not otherwise a violation of state regulations is not subject to additional penalty for the same violation if penalized by a federal tribunal.

The Rail Safety Division: The PUC's Rail Safety Division, located within the Bureau of Transportation and Safety, is responsible for the state's rail safety activities. As of August 2006, the Rail Safety Division had an authorized and filled complement of 15. All rail safety inspectors have civil service status.

Division positions include the following:

Railroad Safety (8)

- 1 Manager of the Rail Safety Division
- 2 Senior Civil Engineers
- 4 Civil Engineer Consultants
- 1 Railroad Communications Safety Inspector

Inspections and Compliance (7)

- 1 Federal Railroad Administration (FRA) Program Manager
- 6 Railroad Safety Inspectors

The Rail Safety Division has two main areas of responsibility:

- Inspection of the facilities of railroad companies for compliance with PUC railroad regulations and FRA regulations related to track, motive power and equipment, hazardous materials, and operating practices.
- Jurisdiction only over the abolition, alteration, construction, relocation, and suspension of public highway/railroad crossings “to effectuate the prevention of accidents and the promotion of safety to the public.”⁴ These modifications involve at-grade crossings (level, on-road crossings), highway above-grade crossings (highway bridges), and highway below-grade crossings (railroad bridges). It also includes applications for fixed utility service wire and pipe crossings; exemptions from the PUC's railroad clearance requirements; traffic pre-emption; the installation, removal, or substitution of warning devices; and bridge construction, rehabilitation, or replacement; and the allocation of costs associated with the above actions.

⁴Railroad crossings that traverse private roads and/or private property are not under the jurisdiction of the PUC. The Federal Highway Administration (FHWA) defines private grade crossings as, “An at-grade crossing where the highway is privately owned and is intended for use by the owner or by the owner's licensees and invitees. It is not intended for public use and is not maintained by a public highway authority.” In the case of private grade crossings, a land-use agreement typically exists with the respective railroad company for the use of the crossing.

In FY 2005-06, the Rail Safety Division expended \$1.3 million for all operations. This represents approximately 23 percent of the Bureau of Transportation and Safety's expenditures for FY 2005-06.

The Division receives federal reimbursement for rail safety inspectors' training, laptop computers, and some Division manuals. No federal reimbursement is currently received for any other operating expenses.

PUC Rail Safety Functions and Activities:

Overview Description. PUC railroad safety regulations are found at 52 Pa. Code Ch. 33. Rail Safety Division officials indicated that one of many differences between federal and state regulations is stipulated qualifications for rail conductors and engineers.⁵

The following are brief descriptions of the main areas of PUC safety regulatory enforcement.

Changes to Public Highway/Rail Crossings. The Rail Safety Division's involvement in the modification of public highway/rail crossings is usually in the form either of an application by a party to alter a public crossing or as the result of a complaint filed by a party alleging that a hazardous condition exists at a public crossing. Additionally, the Commission has the authority to institute an investigation into the matters pertaining to the safety of a public crossing if it is felt that potential hazards exist. In so doing, the Commission also makes a determination and assignment of costs, upon hearing, among parties as necessary. According to the Rail Safety Division, the most common applicants for alterations to public highway/railroad crossings are utility companies, railroad companies, PENNDOT, and municipal corporations (townships, cities, boroughs, and counties).

Processing Applications for Public Highway/Railroad Crossings. Upon receipt of an application for the modification of a public highway/rail crossing, the Division arranges for a field conference and investigation at the site of the crossing to discuss the application with all involved parties. Following the field conference and receipt of additional information, the Division can dispose of the application by either Secretarial Letter or by recommendation to the Commission for issuance of an order. If the matter is contested, it is assigned to the Office of Administrative Law Judge.

⁵"Street railways," such as trolleys, subways, and other "light rail" operations (often operated by transit authorities) are not regulated by the Rail Safety Division. However, regional rail public highway/rail crossings are regulated by the Division.

In some cases, there may be significant delays in the processing of public highway/railroad crossing applications due to the nature of the infrastructure involved (for example, bridge construction). Rail Safety Division officials noted that while approximately 100 applications are received per year, the “active” list of pending applications is approximately 600 in a given year.

Inspection of Rail Facilities.

Track. The Rail Safety Division employs two FRA-certified track inspectors, both headquartered at the Altoona District Office. Track inspectors are required to attend annual training to maintain FRA certification.

The Division’s FRA Program Manager indicated that the Rail Safety Division and the FRA have developed inspection territories for each respective agency to efficiently utilize personnel. Inspections are performed daily on “high-roller” machines (trucks equipped for rail travel).

Most track defects result in warnings to the railroad because they are minor and can be timely repaired (such as by adjusting the speed of a track segment). If the track defects are not corrected, violations are issued.

Motive Power and Equipment. The Division employs two equipment inspectors (one each in Harrisburg and Altoona) who work primarily in rail yards. Inspections are responsible for oversight of all applicable regulations governing locomotive and cars.

Operating Practices. The Division employs one operating practice inspector, based in the Altoona regional office. This inspector examines rail accident and incident reports, monitors “radio procedure” rules/regulations, oversees drug and alcohol policy compliance among rail workers (anyone in train/engineer service), and ensures proper dispatching protocols and hours of service by rail lines.

Hazardous Materials. The Division employs one full-time inspector who specializes in Hazardous Materials (HM) inspections. As of August 2006, this position was filled by a trainee. The HM inspector enforces all applicable federal regulations pertaining to the loading, unloading, and shipment of hazardous materials on Pennsylvania rail lines.

Certification for this position is renewed annually. The FRA covers the cost of annual recertification training, and the Division’s HM inspector works daily with FRA HM inspectors.

Railroads and shippers of hazardous materials have security and emergency plans. This is a requirement under 49 C.F.R. Part 172. The PUC HM Inspector, along with the FRA HM Inspector, review the plans and ensure employees are trained to effectively deal with an emergency event.

Issuance of Emergency Orders. Upon the Division's recommendation, following a rail safety inspection, the PUC may issue an Emergency Order to alter or close a highway/rail crossing that has been determined to present an immediate danger or hazardous condition to the safety and welfare of the public.

The Complaint-Handling Process. The PUC processes complaints concerning unsafe or hazardous conditions at public highway/rail crossings. Complaints are filed most often by PENNDOT, municipal corporations, or Pennsylvania residents.

Often, complaints consist of one of the following perceived problems:

1. Condition of crossing surface
2. Insufficient warning devices
3. Condition of grade separated crossings

The Rail Safety Division processes both *formal* and *informal* complaints concerning possible unsafe conditions at a public highway/railroad crossing or safety violations of any other provisions of PUC and FRA regulations. Formal complaints, "alleging that a dangerous or inadequate condition exists at a public crossing," are filed with the Secretary of the Commission. The Rail Safety Division may also be contacted directly when dangerous or unsafe conditions are noticed at a public highway/railroad crossing. Such informal complaints are usually in the form of a phone call either to the Secretary of the PUC, Rail Safety Division headquarters, or to any of the PUC regional offices. The Rail Safety Division does not maintain a statewide hotline for receiving complaints; however, the Bureau of Consumer Services does forward railroad complaints to the Division.

Upon receipt of informal complaints, the Rail Safety Division initiates investigations, as appropriate. For formal complaints, an "investigation docket" may be opened, which is a formal recommendation that the Commission open an investigation into the safety of the crossing. The Secretary's Bureau maintains a case management system for the Rail Safety Division. Upon opening an investigation, a docket number is assigned to each case. Informal complaints are considered to be "undocketed" investigations.

Upon completion of an investigation, the Division issues a recommendation for the rectification of the situation. This may involve the following actions:

1. A finding of no safety problem.

The investigation is closed.

2. Identification of a safety problem

- a. A corrective action is identified, and the party believed to be responsible (PENNDOT, a municipality, a railroad company, or any other party) is instructed as to how to correct the problem. If necessary, a hearing is held before an Administrative Law Judge, in which the Rail Safety Division and other parties (as necessary) provide testimony. The PUC then directs necessary safety repairs or upgrades.

The Rail Safety Division may also be notified of a possible condition related to track, motive power and equipment, hazardous material, and operating practice. For complaints of this type, the FRA Program Manager may be contacted directly.

Most deficiencies are corrected voluntarily by the offending party within 30 days of notice. Otherwise, a warning may be issued, followed by a formal notice of violation.

When a violation is issued, a monetary penalty is assessed against the party at fault. In most cases of Hazardous Materials violations, no deficiencies or warnings are issued prior to the violation. Accused parties may appeal the violation to the FRA. Additionally, all notices of violation found by rail inspectors are forwarded to the FRA's regional office for a technical review and possible assessment of penalties.

Accused parties may then appeal the violation to the Commission. Upon filing an appeal, a hearing is held before an Administrative Law Judge (ALJ), in which the Rail Safety Division and other parties (as necessary) provide testimony. The violation is then disposed of at a public meeting of the Commission.

If the violation is sustained, the party at fault is determined and an order is issued to correct the deficiency and/or pay fines that may be levied. The Division then recommends necessary safety repairs or upgrades. Additionally, all notices of violation found by rail safety inspectors are forwarded to the FRA's regional office in Philadelphia for a technical review and possible assessment of penalties.

Rail Safety Division Public Outreach Activities. The Rail Safety Division Manager and the FRA Program Manager also participate in the nonprofit railroad safety group Operation Lifesaver, a nonprofit, nationwide public education program dedicated to eliminating collision, deaths, and injuries at highway/rail intersections and on railroad rights-of-way. It is sponsored cooperatively by a wide variety of

partners, including federal, state and local government agencies, highway safety and transportation organizations, and the nation's railroads.

Rail Safety Division officials also conduct safety presentations at railroad worker union meetings and meetings of short-line railroad associations. The Division organizes Switching Operations Fatality Analysis (SOFA) meetings with railroad workers. These meetings are usually held prior to the shifts of railroad workers. Additionally, Rail Safety Division officials attend rail freight seminars organized by PENNDOT's Bureau of Rail Freight, Ports, and Waterways.

Measures of PUC Rail Safety Inspection Activity

The FRA compiles inspection summaries for the number of units inspected and defects identified by federal and state inspectors for each major safety discipline. As shown in Table 24, federal inspectors inspected more units than state inspectors in Pennsylvania each of the safety disciplines in CY 2005.

Table 24

Pennsylvania Inspection Summary (CY 2005)

	Defects ^a Identified by:			Units ^b Inspected by:			Ratio (D/U)
	Total	Federal Inspectors	PUC Inspectors	Total	Federal Inspectors	PUC Inspectors	
Track.....	4,295	1,486	2,809	29,582	15,626	13,956	0.1452
Signal.....	1,305	1,287	18	8,807	8,781	26	0.1482
Operating Practices.....	663	561	102	4,427	3,510	917	0.1498
Motive Power & Equipment	6,840	4,557	2,283	194,457	116,752	77,705	0.0352
Hazardous Materials.....	521	513	8	17,856	17,703	153	0.0292
Totals.....	13,624	8,404	5,220	255,129	162,372	92,757	

^aDefects are the number of units inspected that had conditions that did not meet federal standards.

^bUnits are the number of items inspected.

Source: Federal Railroad Administration.

Comparative Rail Safety/Accident Statistics

The FRA defines a train accident as an event involving on-track rail equipment that results in monetary damage to the equipment and track above a certain threshold. Lading, clearing costs, and environmental damage are not included. The figures do not include highway/rail crossing incidents. Tables 25 and 26 show the number of train accidents that occurred in Pennsylvania and each of the seven

sample states each year since 2000 and a breakdown of CY 2005 accidents, by type and causal factors.

Table 25

Number of Train Accidents, PA and Selected Sample States^a (CY 2000-2005)						
<u>State</u>	<u>CY 2000</u>	<u>CY 2001</u>	<u>CY 2002</u>	<u>CY 2003</u>	<u>CY 2004</u>	<u>CY 2005</u>
Illinois	231	229	241	262	274	239
Indiana	79	90	54	83	81	89
Michigan.....	47	35	41	34	32	35
New Jersey	56	52	71	84	89	77
New York.....	139	132	106	117	104	104
Ohio.....	120	97	82	150	115	114
Pennsylvania.....	127	92	101	117	144	107
Wisconsin.....	63	56	54	37	30	31

^aTotals do not include highway/rail crossing incidents.

Source: Federal Railroad Administration.

Table 26

Comparative Rail Accident Statistics and Causal Factors, PA and Selected Sample States (CY 2005)								
	<u>IL</u>	<u>OH</u>	<u>PA</u>	<u>NY</u>	<u>IN</u>	<u>NJ</u>	<u>MI</u>	<u>WI</u>
Total Train Accidents ^a	239	113	107	104	89	77	35	31
<u>Accidents, by Type:</u>								
Collisions.....	22	8	6	8	8	11	0	1
Derailments.....	154	87	80	58	68	31	33	24
Other Accidents.....	63	18	21	38	13	35	2	6
<u>Primary Causes of Accidents (%):^b</u>								
Human Factors.....	44.8%	32.7%	28.0%	40.4%	31.5%	48.1%	28.6%	32.3%
Equipment Defects.....	13.4	4.4	8.4	8.7	18.0	13.0	14.3	12.9
Track Defects.....	26.4	44.3	41.1	24.0	27.0	18.2	45.7	35.5
Signal Defects.....	1.3	2.7	2.8	2.9	5.6	3.9	0.0	0.0
Miscellaneous Causes.....	14.2	15.9	19.6	24.0	18.0	16.9	11.4	19.4

^aTotals do not include highway/rail crossing incidents.

^bTotals may not equal 100 percent due to rounding.

Source: Federal Railroad Administration.

In CY 2005, a total of 107 train accidents occurred in Pennsylvania, 80 of which were due to derailments. The primary cause in approximately 41 percent of these accidents was track defects, with human factors representing the second most common primary cause of accidents at 28 percent. Comparatively, Pennsylvania

had the third-highest number of train accidents among the sample states in CY 2005.

Consideration of Alternative Placement of the Rail Safety Function

In conjunction with reviewing the rail safety program as required by HR 695, we considered the appropriateness of the placement of this function in the PUC and the feasibility of combining the function with rail-related activities conducted in the Pennsylvania Department of Transportation (PENNDOT).

PENNDOT Rail-Related Activities: Within PENNDOT, the Bureau of Rail Freight, Ports and Waterways is responsible for the following rail matters, none of which relate directly to rail safety:

- preservation and improvement of rail freight infrastructure and service;
- promotion of economic development through the rail freight properties directory and the grant programs;
- provision of financial and technical assistance to railroads and businesses;
- integration of rail freight movement with other modes of transportation;
- and
- facilitation and resolution of issues between the railroads and the public.

Additionally, the Design Services Division located within PENNDOT's Bureau of Design has a Grade Crossing Unit that performs engineering and administrative liaison between PENNDOT's eleven engineering districts and the PUC. Occasionally, public complaints concerning hazardous conditions at grade crossings are received at PENNDOT district engineering offices.

This Unit provides guidance and direct support to the District Grade Crossing Engineers for performing functions that relate to formal PUC applications, complaints and petitions, and informal PUC proceedings. This includes, but is not limited to, coordinating with the Office of Chief Counsel to assure that the Department is adhering to required regulations, testifying at formal PUC Hearings, attending PUC field conferences held at crossing sites, and participating in rail-to-trail issues. The Unit also administers "Section 130" federal funds for the improvement of safety at grade crossings.

The Bureau of Rail Freight, Ports and Waterways is responsible for all engineering analyses and assessment of need for grant applications under the Rail Freight Assistance Program (RFAP) and capital budget grants. Eligible project areas are those covering maintenance, construction, or combination maintenance/construction. Railroad companies, municipalities, municipal authorities, and transportation organizations may apply for RFAP grants.

At the PUC's request (upon the investigation of a complaint or when processing applications for the modification of grade crossings), the Bureau of Design's Grade Crossing Unit attends field conferences with all other interested parties (municipal authorities, counties, railroad companies, and others). The Unit's engineers then investigate the complaint and/or violations that have been identified.

The question of ownership for the purposes of determining liability and cost allocation upon identification of a regulatory violation is often a point of contention between PENNDOT, the PUC, and railroad companies. Ownership of bridges is an area of particular complexity. In some cases, PENNDOT may own the bridge surface and abutments, but not the remainder of the physical bridge structure. In some cases of regulatory violations involving bridges, railroad companies will attempt to divest ownership of the bridge before assessment of cost allocation for repairs and/or replacement have been determined. Such cases are referred to as "orphan bridges." When PUC orders replacement of a bridge due to safety regulations, violations of clearances, or other regulation, a PUC Administrative Law Judge (ALJ) determines ownership and cost allocation following testimony from all affected parties.

Bureau officials indicated that, in most cases, PUC attempts to spread the cost of necessary improvements to multiple parties, including PENNDOT, municipalities, and/or railroad companies. However, the PUC may not force PENNDOT to use state funds for repairs unless such repairs directly involve state-owned roads. Maintenance of crossings and the two-foot perimeter surrounding crossings are the responsibility of railroad companies.

The Bureau and the Grade Crossing Unit work collaboratively to plan for upgrades to warning devices at grade crossings. According to Bureau officials, the FRA has established an algorithm for accident prediction, which partially determines the allocation of Federal Highway Administration (FHWA) monies for the improvement of warning devices at grade crossings. PENNDOT's engineering districts, working cooperatively with municipal planning organizations (MPOs), prioritize projects for improvement according to the algorithm.

Bureau officials indicated that the reduction of unnecessary, or "redundant", at-grade crossings (a current initiative of the PUC and FRA) often encounters heavy resistance from municipalities, fire companies, EMTs, and other local government entities due to reasons of convenience, commerce, and safety. They cited the example of a "redundant" crossing believed to be an effective emergency route or a prime connector to a shopping center. In all cases of possible elimination of a grade crossing, a field conference is held.

As a result of such local pressure, formal proceedings initiated by PUC to reduce these crossings reportedly often fail. Bureau of Rail Freight, Ports and

Waterways officials added that the Grade Crossing Unit is not sufficiently staffed to devote much time to this effort.

Potential Consolidation of the Rail Safety/Rail Freight Functions: In Pennsylvania, rail safety functions have historically been performed by the PUC and PUC inspectors have been involved in the State Rail Safety Participation Program since its inception in 1970. PENNDOT, on the other hand, has rail-related duties but these are limited primarily to rail freight infrastructure matters.

When asked about the potential merger of the rail safety and rail freight assistance functions, officials of PENNDOT's Bureau of Rail Freight, Ports and Waterways cited the loss of focus on their rail freight infrastructure responsibilities as the most compelling reason not to merge PENNDOT and the PUC rail functions into one agency. Rather, they suggested that efforts be undertaken to establish a closer working relationship and more efficient communication between PENNDOT and the PUC.

Further, transfer of the rail safety function to PENNDOT would have state funding implications. Currently, the \$1.3 million annual cost of PUC rail safety activities is paid from assessments on regulated utilities. Moving rail safety activities to PENNDOT could result in the General and/or Motor License Funds having to cover these costs.

Placement of the Rail Safety Function in Other States: As shown on Exhibit 11, the 30 states that are part of the FRA's State Safety Participation Program are almost equally split in locating the rail safety function in either their state's public utility commission or a transportation department.

Exhibit 11

**State Agencies Involved in the FRA's
State Safety Participation Program**

<u>State Public Utility Commission (or Equivalent)</u>	<u>State Department of Transportation</u>	<u>Other</u>
Alabama	Florida	Maryland (Department of Labor, Licensing and Regulation)
Arizona	Iowa	South Carolina (Office of Regulatory Staff)
California	Maine	
Idaho	Mississippi	
Illinois	Missouri	
Massachusetts	New Hampshire	
Montana	New Jersey	
Nebraska	New York	
Nevada	North Carolina	
New Mexico	Oregon	
Ohio	Tennessee	
Pennsylvania	Texas	
Virginia	Utah	
Washington		
West Virginia		

Source: Federal Railroad Administration.

N. PA Has a Relatively High Number of Natural Gas Incidents, But They Are Generally Caused by Factors Outside the Control of the PUC's Gas Safety Inspection Program

Natural Gas and Its Use in Pennsylvania

Natural gas, a naturally occurring substance composed predominantly of methane, is extracted from underground wells. While much of the natural gas used in Pennsylvania is imported from other states (including Texas, Louisiana, Ohio, Oklahoma, and West Virginia), Pennsylvania does have a significant natural gas reserve located in the western part of the state. Overall, however, an estimated 60 to 70 percent of the state's natural gas supply is supplied from wells in other states.

The transportation of natural gas involves moving the commodity from the gas well through a series of mostly underground transmission pipelines to the natural gas distribution company, which sends the product to homes and businesses through another series of distribution pipelines. There are over 10,200 miles of natural gas transmission pipelines and about 46,350 miles of distribution pipelines in Pennsylvania.¹ The Public Utility Commission (PUC) regulates approximately 35 natural gas distribution companies, about ten of which are major corporations (i.e., annual revenues in excess of \$40 million). According to the PUC, there are about 3.6 million natural gas customers in Pennsylvania, including residential, commercial and industrial customers.

The PUC's Gas Safety Function

The Public Utility Commission regulates natural gas distribution service in regard to availability, rates, access and other conditions. The PUC also handles service complaints and conducts safety inspections. These latter activities are carried out by the Commission's Gas Safety Division (located in the Bureau of Transportation and Safety).

Overview of the Gas Safety Division: The primary function of the Gas Safety Division is to provide for the public safety as it relates to the natural gas distribution system in Pennsylvania. Specifically, this function is performed by checking the compliance of the natural gas utility operators (or local distribution companies) with federal and state natural gas pipeline safety regulations.

¹A gas transmission pipeline is a large-diameter line that transports gas from sources to communities. Recent statistics for natural gas transmission lines in Pennsylvania indicate 8,980 interstate miles and 1,240 intrastate miles. A natural gas distribution pipeline (generally intrastate) is a small-diameter line through which the local distribution company supplies the product to the ultimate user, such as a home or business.

The Gas Safety Division consists of a Division Chief and six Safety Inspectors. The inspectors, who work from their home locations, are each equipped with laptop, printer, and assigned vehicle. Currently, the Inspectors are geographically distributed in Pittsburgh, Beaver, Williamsport, Palmyra, Yardley and Philadelphia. The safety standards used in determining compliance apply to the design, installation, operation, testing, construction, replacement, and maintenance of the pipeline facilities. The inspectors investigate all documents and facilities of the gas companies, including the reports, records, properties, plants and offices. In addition to inspecting operator records, procedures and data, inspectors make field visits to physically examine critical pipeline equipment and observe operator personnel implementing required procedures and tests.

If an inspector finds evidence of a possible violation, a violation report is written. The Gas Safety Division will notify the gas utility of the results of the onsite evaluation, specifically citing the gas pipeline safety regulation the gas utility is apparently violating. The gas utility must answer with a written response to the PUC within 30 days of notification.

Whenever the Commission uncovers pipeline safety violations, it is empowered to direct the utility to take necessary steps to correct the violation. The gas utility and the Gas Safety Division work together to reach an agreement on how to correct the violation. If an agreement can not be reached, the Gas Safety Division can refer the problem to the PUC for formal resolution by issuing a complaint, setting a penalty, or seeking enforcement through the court system.

In FY 2004-05, gas safety inspectors conducted 935 total inspections. On a percentage basis, the most numerous inspections included “regulator” (25 percent), “drug and/or alcohol” (10 percent), “evaluation of distribution systems” (8 percent), “disconnect” (7 percent), and “miscellaneous” and “construction” inspections (each representing about 6 percent of the total number). Also included in the total inspections were 18 investigations of reportable incidents as well as 16 follow-up incident investigations. A gas safety reportable incident is an event which results in either the death of a person, a personal injury, and/or property damage, including the cost of lost gas of \$50,000 or more. During calendar year 2005, 27 inspections of natural gas distribution companies resulted in the discovery of 62 safety violations.

The Public Utility Code, 66 Pa.C.S.A. §3301(c), provides that any person or corporation that violates any pipeline safety provision in the transportation of natural gas (and other substances transported by pipeline) shall be subject to a civil penalty not to exceed \$10,000 for each violation for each day that the violation persists. The maximum civil penalty is not to exceed \$500,000 for any related series of violations. From July 2003 through April 2006, the PUC assessed fines in excess of \$911,000 in 21 separate actions, including violations of pipeline safety and other PUC regulations. These fines ranged from as little as \$100 to as high as \$750,000.

During mid-2006, the PUC introduced significant improvements to the gas safety inspection reporting and case tracking system. The inspectors perform 46 different types of gas safety inspections. Prior to June 2006, the results of the inspections were documented on paper forms and mailed to the Division headquarters, a process which averaged 30 days between the inspection and the form's submission. The purchase of laptop computers enables the inspectors to complete the forms electronically and transmit via email, reducing the reported turnaround time to about five days. The Division has also created several electronic databases permitting the tracking of caseloads, violations, inspection days and inspection types. Also, a statistical database has been created to help identify potential problems so as to better utilize the inspectors. Division officials report plans to further enhance the automated systems to further improve the efficiency and possibly the effectiveness of the inspection function.

The PUC reports that the FY 2005-06 costs of the Gas Safety Division was \$350,000 in state funds, plus \$375,000 from the federal gas pipeline safety program.

Relationship With the Federal Pipeline and Hazardous Materials Safety Administration: The PUC's Gas Safety Division is the primary agent in Pennsylvania for the federal Pipeline and Hazardous Materials Safety Administration (PHMSA). Through certification by the PHMSA Office of Pipeline Safety, the Division regulates and inspects intrastate gas pipeline operators. PHMSA (located in the U.S. Department of Transportation) administers the national regulatory program to ensure the safe transportation of gas and hazardous liquids (e.g., oil, gasoline, and anhydrous ammonia) by pipeline. The agency attempts to ensure the safe operation of pipelines through regulation, national consensus standards, research, education (e.g., to prevent excavation-related damage), oversight of the industry through inspections, and enforcement when safety problems are found.

While PHMSA retains full responsibility for inspecting and enforcing regulations on interstate pipelines, the agency certifies states to perform these functions for intrastate pipelines. Pennsylvania is one of 48 states participating in this program. To qualify for certification, a state must adopt the minimum federal regulations, and may adopt additional or more stringent regulations as long as they are not incompatible. A state must also provide for injunctive and monetary sanctions substantially the same as those authorized by the pipeline safety statutes.

The PUC is authorized to enforce safety standards for pipeline facilities and to regulate safety practices of intrastate utilities engaged in the transportation of natural gas by pipeline. Specifically, the Commission has directed that the minimum safety standards for all gas transmission and distribution facilities in the

Commonwealth shall be those issued under the federal pipeline safety laws and regulations (49 CFR Parts 191-193 and 199).²

The PUC Gas Safety Division's inspectors have all received certification training in federal inspection requirements at the Transportation Safety Institute (TSI) located in Oklahoma City, OK. PHMSA requires new inspectors to complete all applicable training courses in a three-year period. Refresher training is also required to maintain certification.

State partners in the natural gas pipeline safety program receive reimbursement for up to 50 percent of the actual cost for carrying out its pipeline safety program, including the cost of personnel and equipment. The actual amount of federal reimbursement depends upon the availability of appropriated funds and state program performance.³ The formula used to allocate funds includes performance factors, such as the extent to which the state asserts safety jurisdiction over pipeline operators, whether the state has adopted all federal requirements, and the number and qualifications of state pipeline safety inspectors. PHMSA monitors the performance of the state agencies participating in the pipeline safety program through its regional offices. The regional office for the Eastern Region is located in Washington, D.C. As of September 2006, the reimbursement rate for Pennsylvania was approximately 47 percent.

Need for Continued Regulation

Natural gas is distributed to homes and businesses through underground pipelines, which may at times rupture with potentially catastrophic results. On the morning of August 24, 2004, in DuBois, PA, a natural gas explosion destroyed a residence and killed the two elderly persons in the home. In the National Transportation Safety Board's (NTSB) post-accident investigation report, the explosion and subsequent fire was determined to have been caused by a leak from a fracture in a defective joint. The NTSB also noted the failure of the natural gas distribution company to have an adequate program to inspect and replace the joints.

According to the federal Government Accountability Office (GAO), "the number of pipeline incidents is relatively low when compared with those involving other forms of freight transportation." However, occasional pipeline failures can and do occur. The cause of pipeline failures includes various factors, such as construction errors, material defects, corrosion, operational errors, equipment malfunctions, and excavation damage. The potential consequences of pipeline failures include injuries

²On March 16, 2006, the PUC adopted a final rulemaking order amending 52 Pa.Code §59.33(b) (relating to safety) so that future amendments to 49 CFR Parts 191—193 and 199 are automatically adopted by the Commission.

³Pennsylvania's performance is reviewed annually by PHMSA state program assessors in connection with the grant renewal process. The results of this onsite review are converted to points which are used in calculating the grant amount.

and death, costly property and environmental damage, and disruptions in energy supply to consumers.

Nationally, from 1986 through 2005, a total of 2,750 reportable incidents occurred in relation to the natural gas distribution system (i.e., intrastate pipelines) resulting in a total of 336 fatalities, 1,444 injuries, and \$834.7 million in property damage. The property damage dollar value total was greatly increased due to Hurricane Katrina in 2005. Approximately 94 percent of the property damage for gas distribution incidents in 2005 was caused by flooding in New Orleans. The \$466.5 million associated with this event (which is equal to about 56 percent of the total dollar value of property damage for the prior 20 year period) represents lost gas and operator property damage, but does not include damage to public and private property caused by the flooding.

Table 27 shows that the national average number of fatalities and injuries associated with gas distribution operator incidents has declined in the past 20 years, although the average annual number of incidents has increased.

Table 27

National Average Annual Number of Fatalities and Injuries Associated With Gas Distribution Operator Incidents			
<u>Year Range</u>	<u>Number of Events</u>	<u>Fatalities</u>	<u>Injuries</u>
20 year average (1986-2005)	137	16.8	72.2
10 year average (1996-2005)	133	17.3	60.8
5 year average (2001-2005)	142	12.2	45.8
3 year average (2003-2005)	162	15.3	46.3

Source: PHMSA Pipeline Safety Program: National Safety Statistics Report, Gas Distribution: Incident Summary Statistics, 1986-2005, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

PHMSA also provides information on the incidents attributed to all major causes in its “National Failure Cause Report.” These statistics suggest that outside forces/human activity (rather than the condition of the pipeline itself) is responsible for the vast majority of pipeline events. A total of 589 events occurred during the 3-year period (2002-2005). On a percentage basis, the largest category of cause was “excavation damage” (39.5 percent), followed by “all other causes,” which includes *unknown* and *various* (20.7 percent), “other outside force damage” including *fire/explosion as primary cause, car, truck or other vehicle not related to excavation activity*, and *vandalism* (15.1 percent), “natural force damage” (14.6 percent), “material failure” (4.9 percent), “human error” (3.7 percent), and “corrosion” (1.3 percent).

We examined the detailed incident listing and reporting for the gas distribution line incidents in Pennsylvania for a ten-year period (1996 through 2005). Table

28 shows the number of gas distribution line incidents, and the associated fatalities and injuries for each of the ten years.

Table 28

Pennsylvania Natural Gas Distribution Line Incidents*
(CYs 1996-2005)

Calendar Year	Number of		
	Incidents ^a	Fatalities ^a	Injuries ^a
2005.....	8	1	4
2004.....	20	3	3
2003.....	16	4	8
2002.....	12	1	6
2001.....	7	0	0
2000.....	10	0	4
1999.....	10	1	21
1998.....	5	1	0
1997.....	8	0	1
1996.....	<u>10</u>	<u>0</u>	<u>6</u>
Total.....	106	11	53

*A distribution line is a line used to supply natural gas to the consumer. As used in pipeline safety regulations, an incident is an event occurring on a natural gas pipeline for which the operator must make a report to the Office of Pipeline Safety. An incident includes an event involving a release of gas from a pipeline that also results in either a death, or personal injury necessitating in-patient hospitalization, or estimated property damage, including cost of gas lost, of \$50,000 or more.

^aThe PUC Gas Safety Division questions the accuracy of the federal incident, fatality, and injury data for at least 2003, 2004, and 2005. The Division Director stated that it appears that PHMSA does not revise its data following the receipt of incident information subsequent to the filing of the initial incident report. The PUC, therefore, believes that the number of fatalities resulting from the reportable incidents should be adjusted to 5 rather than 8 for the period 2003 through 2005, and the correct number of injuries is increased to 18 rather than 15.

Source: PHMSA Pipeline Safety Program—Pennsylvania Incident Listing, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

As shown on Table 28, during the ten-year period 106 events (nearly 11 per year) were reported, resulting in 11 fatalities and 53 injuries. In regard to the injuries and fatalities attributed to the reportable incidents, PUC staff examined the incidents in 2003 through 2005, and provided the following observations. In 2003, two of the three fatalities resulted from an alleged murder-suicide, and the remaining fatality resulted from carbon monoxide poisoning due to a failure of piping inside the dwelling. The twelve injuries occurring in 2003 resulted from three separate incidents, one incident involving an automobile accident, one incident involving a pipeline leak caused by corrosion, and the final incident due to an excavation accident. In 2004, two fatalities resulted from alleged material failure, while two of the three injuries resulted from two separate incidents related to flooding, and the third injury occurred during an incident from an outside force. The PUC states that there were no fatalities from reportable incidents in 2005. The injuries reportedly resulted from an excavation accident and human error.

Regulation of Natural Gas Distribution Systems in Other States: For comparative purposes, we also examined the programs for natural gas safety in seven sample states (Illinois, Indiana, Michigan, Ohio, New Jersey, New York, and Wisconsin) (see Exhibit 12). In each case, a gas safety function is carried out by a public service or public utility commission which, like Pennsylvania, is a partner in the federal/state natural gas safety program. However, there are a few differences among the states. New York, for example, regulates and inspects both the interstate and intrastate gas and liquid pipeline operators. Michigan and Ohio inspect both interstate and intrastate gas pipelines. The remaining states, including Pennsylvania, inspect only intrastate gas pipelines.

We also specifically compared line incidents in Pennsylvania with seven comparative states. Table 29 shows the number of gas distribution pipeline miles in each state. Also shown for each state is the number of incidents, fatalities, and injuries for 2005, and the average number for the recent three-year period (2003-2005).

Table 29

Natural Gas Distribution Line Incidents:[*]							
Pennsylvania Compared with Sample States							
State	Gas	2005	3-Year	2005	3-Year	2005	3-Year
	Distribution						
	Pipeline Miles ^a						
Illinois.....	45,620	18	11.7	0	0.3	4	2.7
Indiana.....	38,003	5	4.3	2	1.7	2	1.7
Michigan.....	54,065	5	6.3	0	0.0	2	2.0
New Jersey.....	32,301	7	4.3	3	1.3	8	3.3
New York.....	36,925	3	4.3	0	0.7	5	2.7
Ohio.....	54,688	0	2.7	0	0.7	0	0.7
Pennsylvania.	46,348	8	14.7^c	1	2.7	4	5.0
Wisconsin.....	33,605	1	2.0	0	0.0	0	0.7

^{*}A distribution line is a pipeline used to supply natural gas to the consumer. As used in pipeline safety regulations, an incident is an event occurring on a natural gas pipeline for which the operator must make a report to the Office of Pipeline Safety. An incident includes an event involving a release of gas from a pipeline that also results in either a death, or personal injury necessitating in-patient hospitalization, or estimated property damage, including cost of gas lost, of \$50,000 or more.

^aMileage figures represented are approximate and are subject to frequent change. The mileage figures shown are as reported by the Office of Pipeline Safety and derived from the Calendar year 2005 Gas Distribution Annual Reports from pipeline operators, as of August 17, 2006.

^bCalendar years 2003-2005.

^cThe Chief of the PUC's Gas Safety Division believes that this three-year average should be 13 rather than 14.7 because the federal PHMSA statistics used to calculate the 14.7 figure are unadjusted data. The Division Director stated that it appears to the PUC that "PHMSA did not revise their reportable incident data after receipt of information that became known subsequent to the initial report and that would classify the incident as non-reportable." The PUC believes, therefore, that the number of reportable pipeline incidents in Pennsylvania for the period 2003 through 2005 should be as follows: 2005-8 (PHMSA-8), 2004-19 (PHMSA-20), and 2003-12 (PHMSA-16). Further, the PUC believes the total reportable pipeline incidents should be 39, rather than the PHMSA total of 44 making the 3-year average 13, rather than 14.7. The PUC also noted that, in 2004, 9 reportable incidents were caused by flooding or landslides, most related to Hurricane Ivan.

Source: PHMSA Pipeline Safety Program—State Incident and Mileage Data, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation (as reported on PHMSA website).

Gas Safety Functional Descriptions for Pennsylvania and Sample States

State	Agency Name	Division	Description of the Federal Office of Pipeline Safety (OPS) and State Functions
IL	Illinois Commerce Commission	Pipeline Safety Div.	<p>OPS regulates, inspects, and enforces interstate gas pipeline safety requirements in IL, and regulates, inspects, and enforces both intra- and interstate liquid pipeline safety requirements in IL.</p> <p>Through certification by OPS, the state of IL regulates, inspects, and enforces intrastate gas pipeline safety requirements.</p>
IN	Indiana Utility Regulatory Commission	Pipeline Safety Div.	<p>OPS inspects, regulates and enforces interstate gas pipeline safety requirements in Indiana, and inspects, regulates, and enforces both intra- and interstate liquid pipeline safety requirements in IN.</p> <p>Through certification by OPS, the state of IN regulates, inspects, and enforces intrastate gas pipeline safety requirements.</p>
MI	Michigan Public Service Commission	Gas Safety Office	<p>OPS regulates, inspects, and enforces both intra- and interstate liquid pipeline safety requirements in MI. OPS also regulates and enforces interstate gas pipeline safety requirements in MI.</p> <p>Through certification by OPS, the state of MI regulates, inspects, and enforces intrastate pipeline safety requirements. By signed agreement with OPS, MI inspects interstate gas pipeline safety requirements.</p>
NJ	New Jersey Board of Public Utilities	Bureau of Pipeline Safety	<p>The OPS regulates and inspects both the gas and hazardous liquid “interstate” transmission operators in NJ.</p> <p>Through certification by OPS, the state of New Jersey regulates and inspects the intrastate gas pipeline operators in NJ.</p>
NY	New York State Department of Public Service	Office of Gas and Water	Through certification by OPS, the state of NY regulates and inspects both the intrastate and interstate gas and liquid pipeline operators in NY.
OH	Public Utilities Commission of Ohio	Gas Pipeline Safety Section	<p>OPS regulates, inspects, and enforces both intra- and interstate liquid pipeline safety requirements in OH. OPS also regulates and enforces interstate gas pipeline safety requirements in OH.</p> <p>Through certification by OPS, the state of OH regulates, inspects, and enforces intrastate gas pipeline safety requirements. By signed agreement with OPS, OH also inspects interstate gas pipeline safety requirements.</p>
PA	Pennsylvania Public Utility Commission	Bureau of T&S, Gas Safety Div.	<p>The OPS regulates and inspects the intrastate and interstate hazardous liquid pipeline operators and interstate gas transmission operators in PA.</p> <p>Through certification by OPS, the state of PA regulates, and inspects the intrastate gas pipeline operators.</p>
WI	Wisconsin Public Service Commission	Natural Gas Division	<p>OPS regulates, inspects, and enforces interstate gas pipeline safety requirements in WI. OPS also regulates, inspects, and enforces both intra- and interstate liquid pipeline safety requirements in WI.</p> <p>Through certification by OPS, the state of WI regulates, inspects, and enforces intrastate gas pipeline safety requirements.</p>

Source: Developed by LB&FC staff from PHMSA State Pipeline Safety Regulatory Fact Sheets, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

As the table indicates, Pennsylvania's averages for the recent three-year period are higher than each of the other sample states. Pennsylvania averaged nearly 15 events per year; the second highest among the sample states was Illinois, with an average of almost 12 incidents per year.

Pennsylvania also had much higher incidences of fatalities and injuries. For the sample states, the three-year average number of fatalities ranged from 0 to 1.7 per year, whereas Pennsylvania's average was 2.7 fatalities per year. For injuries, the range for the sample states was 0.7 to 3.3, with Pennsylvania averaging 5 injuries per year over the three-year period.

In order to better understand the nature of the gas distribution line incidents in Pennsylvania, we analyzed the reported causes of the incidents over the recent five-year (2001 through 2005) period. The results of this analysis were similar to the analysis on the national level described earlier. A total of 63 gas distribution line incidents occurred during these five years. Of that number, 20 were due to excavation damage⁴ and another 20 were due to "all other causes" (these two highest categories were also noted in relation to the national data). Natural force damages was responsible for 11 incidents, corrosion for 4, human error and "other outside force damage" were associated with 3 incidents each. "Material failure" was deemed to be the cause in only two of the 63 gas distribution line incidents.⁵

Propane and Landfill Gases

According to PUC officials, the definition of natural gas does not clearly include propane or landfill gases, and therefore, the PUC has not exercised jurisdiction to regulate these gases for rates or consumer protections.⁶

⁴Pennsylvania, as is the case with all states in the U.S., has enacted a law requiring the establishment of a central communications point for anyone planning to dig or excavate. Pennsylvania's Underground Utility Line Protection Law (Act 1996-187), better known as the "PA One Call Act," establishes the PA One Call System, which is intended to protect the underground lines (e.g., electricity, communications, gas, oil delivery, sewage, water, etc.) before anyone begins to disturb the earth, and thus minimizes service interruptions to the public. The PA One Call System is a non-profit corporation that receives requests from excavators, contractors, plumbers, builders, designers, and the general public to find out where underground lines are located. PA One Call notifies member underground facility owners of the intent to excavate. The facility owner then marks where the lines are located. The One Call System is governed by a board of directors that includes the Chairman of the PUC or designee (currently, the Chief of the PUC Gas Safety Division is the designated member).

⁵Notwithstanding its position that the reportable incident numbers represent unadjusted data, the PUC agrees with the PHMSA reportable incident data that indicates the most frequent causes of reportable incidents are excavation, natural forces, and corrosion.

⁶In a recent case involving landfill gas distribution, Petition of Granger, Docket No. P-00032043, the Commissioners determined that landfill gas can reasonably be considered a public utility service under the definition in the Code, but were concerned that regulation of the service may slow the growth of an evolving landfill gas market. Due to the small number of customers being served and that those customers were sophisticated industrial customers, the Commissioners held that this service was not "service to or for the public" as required by the definition of public utility.

The definition of “public utility” includes several different definitions applicable to gas. In the definitions section, these terms are used:

- Producing, generating, transmitting, distributing or furnishing natural or artificial gas . . .
- Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

In a later section, “natural gas” and “gas” are defined as including natural gas, liquefied natural gas, synthetic natural gas and any natural gas substitutes.

Propane is reportedly the fastest growing gas service in Pennsylvania. In some new housing developments, large propane tanks are being used to store propane near the development with individual lines running into the homes. Currently, these lines are not regulated for safety compliance and are not inspected by PUC or federal inspectors. In a recent case concerning the abandonment of natural gas lines and the conversion of those customers to propane, the Fire Chief of the City of Harrisburg advised against the installation of propane tanks (in this case an individual tank was being installed for each residence) due to the safety hazards that would be created.⁷

According to PUC officials, a change to the definition of natural gas to clearly include propane and landfill gas would ensure that safety and consumer protections are applicable to these companies. PUC staff is currently developing a report for the Commissioners due to be completed in January 2007 that addresses these and several other issues related to gas safety.

Recommendation

1. The House Consumer Affairs and/or Senate Consumer Protection and Professional Licensure Committees consider holding hearings to explore the need for Public Utility Commission regulation of the distribution of propane and landfill gases.

⁷OTS of the PUC v. UGI Utilities, Inc. – Gas Division, Docket No. C-20042659.

O. PA Utility Rates Compared to Selected Other States

We compared utility rates Pennsylvania consumers pay for electric, natural gas, water, and telephone to rates paid by consumers in seven comparable states. As Table 30 below shows, electric and telephone rates in Pennsylvania are below the seven-state average, while natural gas and water rates are above average. In no case did Pennsylvania have either the highest, or lowest, rates.

Table 30

Comparative Utility Cost

State	Agency Name	Electric ^a	Natural Gas ^b	Water ^c	Telephone ^d
Pennsylvania	<i>Public Utility Commission</i>	9.60¢	\$16.93	\$492	\$22.50
New York	Public Service Commission	16.38	17.34	450	29.18
New Jersey	Board of Public Utilities	11.26	15.35	559	17.09
Illinois	Commerce Commission	7.54	13.64	426	26.36
Indiana	Utility Regulatory Commission	7.45	15.42	424	22.85
Michigan	Public Service Commission	9.41	12.26	420	26.61
Ohio	Public Utilities Commission	8.40	15.64	459	22.54
Wisconsin	Public Service Commission	9.99	13.19	399	33.71
7 Other State Average		10.06	14.69	448	25.48

^aAverage Residential Price in cents per kilowatt-hour as of January 2006.

^bAverage Residential Price in dollars per thousand cubic feet as of January 2006.

^cAverage yearly rate from 2000 U.S. Census Data, also includes wastewater (sewer) costs.

^dAverage monthly residential rates as of October 2004. Based on FCC survey of monthly residential rates in sample cities within comparative states.

Source: Developed by LB&FC staff from information obtained from U.S. Census, FCC survey, and U.S. Department of Energy.

P. The Bureau of Consumer Services Is Generally Doing a Good Job in Resolving Consumer Complaints

House Resolution 695 specifically requests information on the length of time for complaint resolution, assessment of consumer satisfaction with the complaint process, and the system the PUC uses to receive complaints. Within the PUC, these responsibilities fall under the jurisdiction of the Bureau of Consumer Services (BCS). While the Bureau receives good marks for resolving complaints, the number of complaints taking more than 60 days to resolve has increased markedly since 2003.

Bureau of Consumer Services

The Bureau of Consumer Services is one of the larger bureaus within the PUC, with an authorized complement of 77 and a budget of nearly \$7 million.¹ The Bureau consists of two divisions, the Division of Customer Assistance and Complaints and the Division of Policy (see Exhibit 13).

Division of Customer Assistance and Complaints. This division is the primary contact for consumer complaints. The division also handles Payment Arrangement Requests (PARs). PARs are consumer requests for assistance in working with a regulated utility in paying their utility bill. Customers are required by Commission regulations to attempt to resolve problems directly with their utilities prior to filing a complaint or requesting a PAR with the Commission.

Within the division are four units:

- **Informal Complaint Unit:** Responsible for consumer contacts on electric, gas, and water informal complaints.
- **Telecommunications Unit:** Responsible for all telecommunication industry informal complaints.
- **Residential Termination Unit:** Responsible for all electric, gas, and water service terminations by utilities.
- **Informal Complaint Unit 2 (Competition Unit):** All electric and gas competition related inquiries, as well as assisting in processing of other electric, gas, and water informal complaints. This unit was initially assigned to just handle competition related inquiries; however,

¹Exact expenditure information is reportedly unavailable on a Bureau basis.

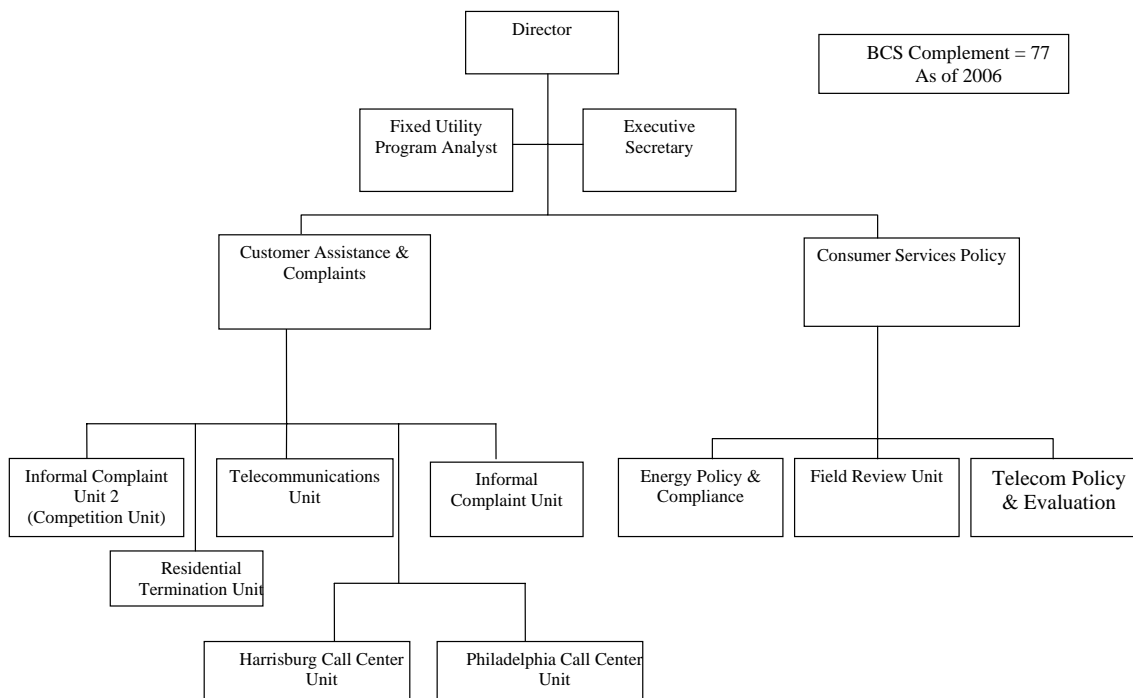
because of the limited volume of inquiries, workloads were reassigned within the division.

The division is also responsible for operating the PUC's call center. This function was recently returned as an in-house responsibility of the BCS. The call center had previously been outsourced through a contract with the PA Industries for the Blind and Handicapped (PIBH).

Policy Division. The Policy Division monitors and evaluates utility company customer service practices and programs. Policy Division staff monitors utility operations and advises the Commission regarding issues of interest and concern to utility consumers. The Division also works to ensure that utilities comply with PUC customer service regulations and provides oversight of universal service programs that assist low income customers. As shown below there are three units within the Division with specific responsibilities for energy, telecommunications and field enforcement.

Exhibit 13

PUC Bureau of Consumer Services Organization Chart



Source: Public Utility Commission

Complaint Handling Process

The PUC can receive consumer complaints by phone, email, postal mail, or by personal visit. The vast majority of complaints are received by one of the PUC's toll free hotlines. In 2004, 97 percent of informal complaints were received via a call to one of the three toll free numbers².

Although there are three distinct toll free numbers, they are all answered by a single automated call distributor which, through a series of prompts to the caller, routes the call to the appropriate party. Each toll free number is described in Exhibit 14 below:

Exhibit 14

PUC Toll Free Telephone Access

Number	Purpose	Consumer Notification
Informal Hotline 1-800-782-1110	<ul style="list-style-type: none"> ▪ Telephone payment arrangement requests. ▪ All other consumer complaints or inquiries from customers of electric, gas, water, telephone, sewer and steam heat utilities. ▪ All questions or complaints about moving companies, buses, taxis, trucks, limousines or railroad highway crossings. 	Utilities may notify consumers on billing statements.
Payment Arrangement Requests 1-800-692-7380	<ul style="list-style-type: none"> ▪ Payment arrangement requests from customers of gas, electric, water, sewer and steam heat utilities. 	All termination notices must include instructions on how to contact PUC.
Utility Choice Hotline 1-888-782-3228	<ul style="list-style-type: none"> ▪ All questions or complaints related to electric, natural gas or telephone competition/choice. 	Utility notification on inserts and statements. PUC web site, PUC informational materials.

Source: Developed by LBFC from PUC materials.

All calls are classified into one of three categories: consumer complaints, requests for payment arrangements, or inquiries. Contacts to the PUC regarding

²Informal complaints are those complaints which are initiated by consumer action to the Bureau of Consumer Services. They are distinguished from "formal" complaints which are filed at the Secretary's Bureau and generally involve an administrative law judge who holds hearings to gather evidence and then renders a decision. This finding deals only with the PUC's handling of the informal complaint process.

complaints about utilities' actions related to billing, service delivery, repairs, etc. are classified as "consumer complaints." Contacts to the PUC involving payment negotiations for unpaid utility service are classified as "payment arrangement requests," and contacts for information or that do not require an investigation are considered "inquiries." The PUC combines both consumer complaints and payment arrangement requests as informal complaints.

As noted above, consumers must try to resolve the complaint with the appropriate utility before the PUC will investigate. If the complainant indicates that this has already been attempted, then the PUC will open a case. A PUC case interviewer will take all the relevant data from the caller and enter it into the BCS' Customer Account Information (CAI) system. The case is then assigned to a PUC investigator and the utility is notified electronically of the complaint so it can provide a report that contains all relevant records. This may include billing/payment histories and records of contacts with the customer regarding the complaint. Upon receipt of this information, the PUC investigator will review the data, render a decision, and then close the case. Oftentimes the complaint may have already been resolved between the complainant and the utility. In these situations, the investigator will check to make sure that the complainant is satisfied with the result and verbally close the case. In situations where the issue has not been resolved, a written decision will be issued by the investigator and both the complainant and utility are notified of the decision. The PUC reports that in 2004, 50 percent of the consumer complaints had already been appropriately handled by the subject utility (sometimes without the customers' knowledge) before the customers brought them to the Bureau.

Once the investigator finishes the investigation of a consumer's complaint and makes a decision regarding the complaint (if appropriate), a case evaluator from the Division of Policy reviews the case to determine if the utility took appropriate action when handling the customer's contact. Evaluators look at the actions between the customer and company that lead up to the filing of the complaint with the PUC. The case evaluator also identifies instances where the company failed to comply with the regulations.

If the evaluator finds the complaint is justified, the utility is to indicate the cause of the problem (i.e., employee error, procedures, computer program, etc.) and inform the BCS of the action it took to correct the problem. Corrective actions may entail modifying a computer program; revising company procedures or the text of a notice, bill or letter; or providing additional staff training to ensure the proper use of a procedure. If the utility states the information provided by the evaluator is inaccurate, the utility needs to provide specific details and supporting data to disprove the allegation. The BCS then provides a final determination to the utility regarding the alleged infraction.

Consumer Satisfaction With PUC Efforts

The PUC contracts with the Pennsylvania State University to survey consumers whose cases were closed, to monitor its performance. As shown in Exhibit 15, overall, respondents report a high level of approval with the service they received from the PUC. In FY 2004-05, 80 percent of respondents reporting the service they received from the PUC was either “excellent” or “good.”

PUC customers gave somewhat less favorable opinions with regard to the speed in which the PUC handled their request, with nearly 74 percent indicating that the request was handled either “very quickly” or “fairly quickly” in FY 2004-05. This figure is down from the 86 percent rating in FY 2003-04.

Lastly, when customers were asked if they would contact the PUC again if they had a problem, 83 percent indicated “yes” in FY 2004-05, roughly comparable to the ratings in FY 2002-03 and FY 2003-04.

Exhibit 15

PUC Customer Survey Results

Question: Overall how would you rate the service you received from the PUC?

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Excellent ...	52%	65%	55%
Good	27	19	25
Fair.....	13	7	12
Poor.....	8	9	8

Question: How quickly did the PUC handle your request?

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Very Quickly.....	44%	56%	44%
Fairly Quickly.....	33	30	30
Not Very Quickly.....	12	6	13
Not at all Quickly.....	8	6	11
Don't recall.....	2	1	1

Question: If you had another problem with a utility, would you contact the PUC again?

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Yes.....	85%	87%	83%
No	5	7	9
Not Sure.....	9	6	8

Source: Developed by LBFC staff from BCS Consumer Feedback Surveys. Totals may not add to 100 percent due to rounding.

BCS Complaint Statistics

Table 31 presents the number of residential consumer complaints and PARs by industry for the past three years. Exhibit 16 shows a graphical representation of the same data.

The telephone industry generates the most complaints. These complaints are historically related to billing and service delivery disputes. Most PARs are for electric service and gas service.

Table 31

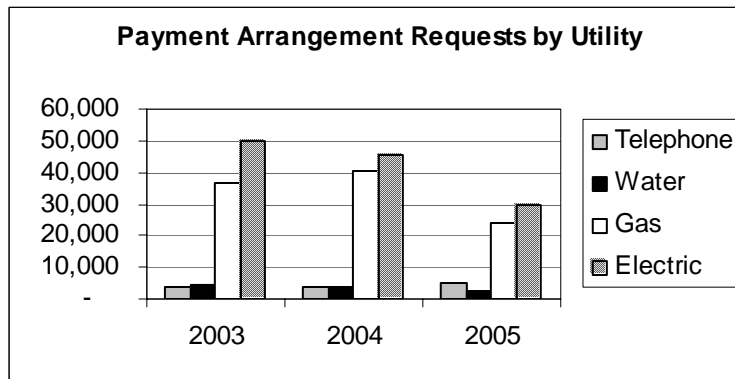
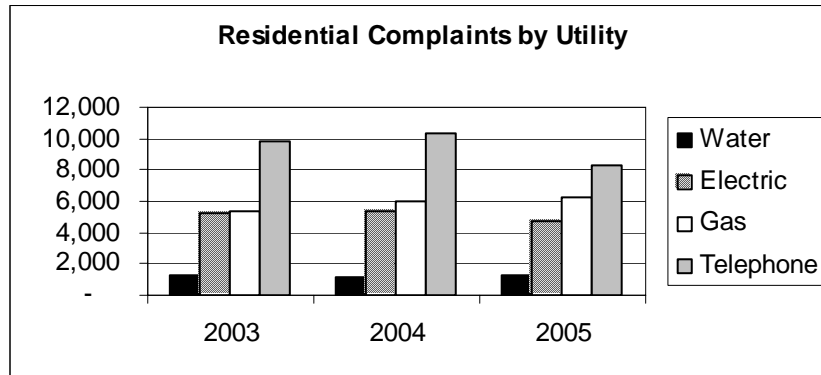
Informal Consumer Complaints to the PUC Bureau of Consumer Services (Residential)						
	<u>Electric</u>	<u>Gas</u>	<u>Water</u>	<u>Telephone</u>	<u>Other</u>	<u>Total</u>
<u>2003</u>						
Complaints	5,226	5,352	1,228	9,847	22	21,675
PARS	<u>49,945</u>	<u>36,353</u>	<u>4,012</u>	<u>4,719</u>	<u>6</u>	<u>95,035</u>
Total	55,171	41,705	5,240	14,566	28	116,710
<u>2004</u>						
Complaints	5,365	6,045	1,189	10,342	24	22,965
PARS	<u>45,767</u>	<u>40,388</u>	<u>3,806</u>	<u>4,065</u>	<u>2</u>	<u>94,028</u>
Total	51,132	46,433	4,995	14,407	26	116,993
<u>2005</u>						
Complaints	4,736	6,239	1,297	8,263	14	20,549
PARS	<u>29,640</u>	<u>24,063</u>	<u>4,977</u>	<u>2,672</u>	<u>9</u>	<u>61,361</u>
Total	34,376	30,302	6,274	10,935	23	81,910

Source: Developed by LB&FC staff from data provided by PUC Bureau of Consumer Services.

Exhibit 16 shows a substantial decrease in the number of PARs from 2004 to 2005. This reduction was attributed to enactment of the Responsible Utility Customer Protection Act (Act 201 or Chapter 14). This Act, which went into effect December 14, 2004, is intended to provide protections against rate increases for timely paying customers resulting from other customers' delinquencies. The new law changed rules for termination of service, payment arrangements, and the filing of termination complaints by residential customers.

We also reviewed the timeliness of complaint resolutions for the past three years. Exhibit 17 presents this data grouped by industry and by days to close the case from opening date.

Exhibit 16



Source: Developed by LBFC from data provided by the PUC Bureau of Consumer Services.

Exhibit 17

BCS Complaint Resolution Times^a

2003

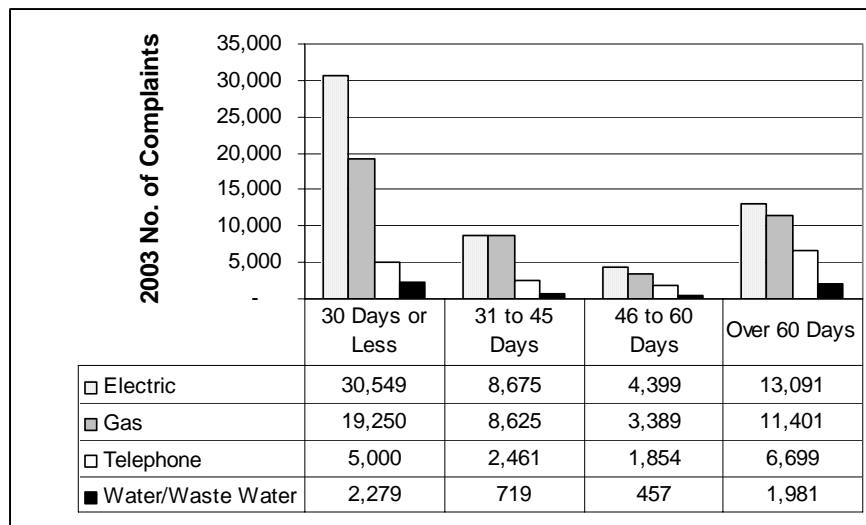
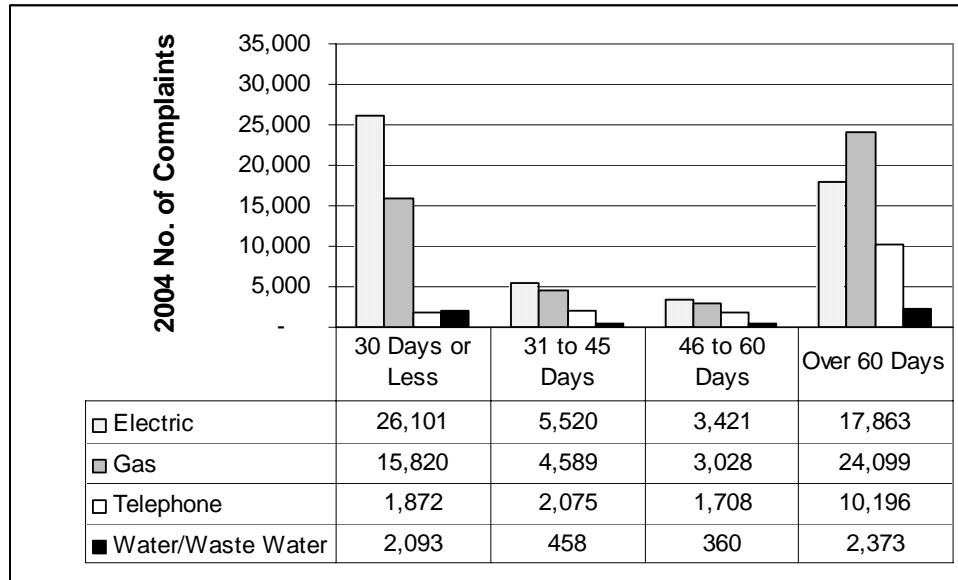
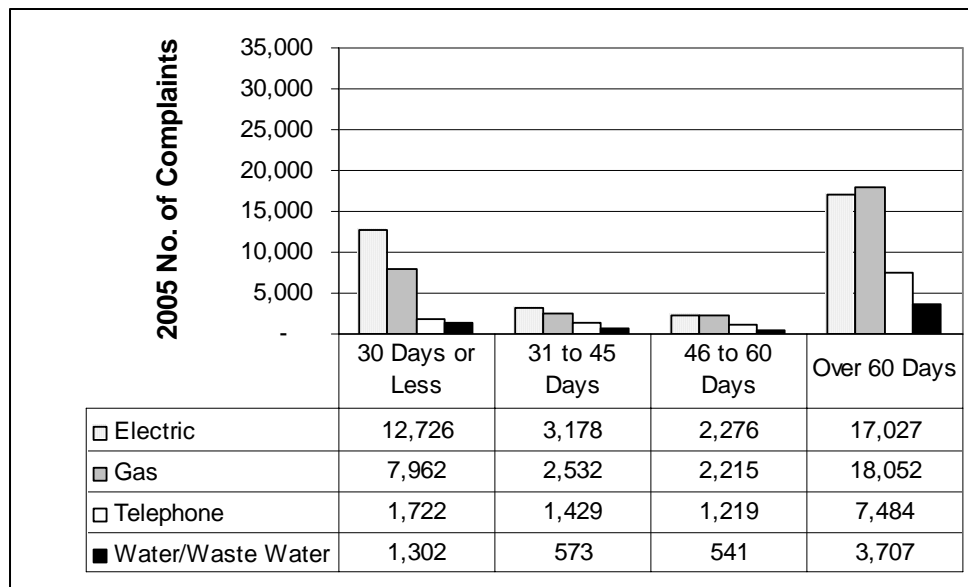


Exhibit 17 (Continued)

2004



2005



^aData represented in these exhibits differs from numbers shown in Table 31 because these numbers include both residential and commercial complaints. The data also include a small number of cases which were reassigned as it was later determined that the case should not have been classified as a consumer complaint nor a PAR. The days to resolve the case are based on the date the case was opened and then the number of days to close the case.

Source: Developed by LB&FC staff from PUC BCS Statistical Reports.

The data shows a significant increase since 2003 in the number of complaints taking over 60 days to resolve. From 2003 to 2004, in particular, there was a 111 percent increase in the number of gas complaints that took more than 60 days to close and a 36 percent increase in electric complaints that took more than 60 days to complete. The number of complaints requiring more than 60 days to resolve improved somewhat in 2005, but was still well above 2003 levels. The increase in length of time to resolve a case is somewhat surprising given that the number of complaints received decreased markedly, from 116,710 in 2003 to 81,910 in 2005.

The PUC reports that the decrease in complaints and the subsequent increases in length of time to close cases is due in part to implementation of Chapter 14 regulations which impacted the billing practices of electric and gas utilities. While there were reductions in PARS for this period, and subsequently complaints overall, there was an increase in disputed PARS, which require lengthier investigations.³ The PUC further advises that 2006 data shows that the percentage of cases closed in less than 60 days has improved, returning to 2003 levels.

Another added factor causing an increase in energy related complaints was that as of September 1, 2003, the Philadelphia Gas Works⁴ (PGW) completed the transition to full PUC regulation, and the utility was required to follow regulations to which they were previously unaccustomed. The PUC reported that during this transition the number of PGW PAR cases increased from 4,878 in 2003 to 11,019 in 2004. Since PGW had not been under PUC jurisdiction, staff had to work extensively with company representatives to obtain the information needed to investigate and respond to informal complaints such as billing disputes. Additionally, BCS reported that PGW did not provide company reports/responses to informal complaints in a timely manner (i.e., within 30 days) which, in turn, affected the BCS' staff ability to close/resolve the complaint in a timely manner. Under a recent settlement agreement, PGW has indicated that it will provide any outstanding reports within the next two months and thereafter will provide reports in a timely manner. Because of this settlement agreement, BCS anticipates that complaint resolution time will continue to improve.

The PUC also reported that, due to the increased gas cost during the 2003-2004 winter, they received a larger number of high bill disputes from gas consumers. The BCS stated that this increase in complaints (approximately 5,000 from 2003 to 2004) also affected the BCS staff's ability to close/resolve complaints in a timely manner.

³Straight PARs are routine issues involving an inability to pay amount by date requested. Disputed PARs involve not only an issue related to nonpayment, but may also include a high bill dispute, liability dispute, or other more complex issues that requires more time and investigation by staff.

⁴The Natural Gas Choice and Competition Act brought PGW under the jurisdiction of the PUC and made it subject to PUC regulation and control with the same authority as if it were a public utility.

With regard to water and waste water complaints, the PUC stated that the increases in the number of cases requiring 60 or more days to resolve were a result of implementation of Chapter 14 and the overall increases in cases beginning in 2003. Many of the smaller water companies regulated by the PUC were not familiar with the regulations, and BCS found that investigators were spending more time to obtain the necessary information or actions by the company representative to obtain reports and/or resolve consumer complaints. The BCS stated that with many small water companies it is sometimes difficult to reach company representatives during normal business hours, as these companies have only a few employees and are frequently only working part time.

BCS also reported to LB&FC staff that because of increases in the number of water complaints they have shifted case assignment to help improve case handling. Until recently, BCS had one employee who was assigned consumer complaints (non PAR related) for the water industry. Due to the increases in complaint volume, the BCS changed the case assignment to include more BCS staff, which should improve case resolution times within the industry group.

Call Center Improvements

As stated earlier the PUC recently returned their call center functions to the Bureau of Consumer Services. This function was previously outsourced to the Pennsylvania Industries for the Blind and Handicapped at a cost of \$2.2 million. In FY 05-06, the PUC's call center expenditures (including non-recurring fixed asset expenses) were approximately \$1.47 million. Furthermore, by moving the function in-house the call center has been able to improve service delivery. The PUC reports that prior to consolidation, the monthly average access rate (percent of calls answered by the automated call distributor system) was 91 percent. Since returning the call center functions back to the Bureau, the monthly average access rate has improved to 99 percent. Call data statistics from January 2006 through June 2006 show access rates to be 100 percent. We also made sample calls to the hotlines and found that, once the menu options were negotiated, calls were answered quickly.

Peer State Comparison

We compared the PUC call center function within the Bureau of Consumer Services to the peer states. As shown in Exhibit 18, the PUC is consistent with those states, all of which perform the call center function in-house. Furthermore, the staff size appears consistent with other states. For example, New York uses a staff of 85 and New Jersey has a staff of 32. Although the Pennsylvania PUC has only 9 full-time call center employees, it also uses 33 limited-term wage employees.

Exhibit 18

Peer State Comparison of Call Centers

<u>State</u>	<u>Commission Agency Name</u>	<u>Call Center Function</u>	<u>Staff Size</u>
Pennsylvania.....	Public Utility Commission	In-house	9 permanent, 33 limited-term
Illinois	Commerce Commission	In-house	Apprx. 20 (2004)
Indiana	Utility Regulatory Commission	In-house	Apprx. 8 (2005)
Michigan.....	Public Service Commission	In-house	Apprx. 36
New Jersey	Board of Public Utilities	In-house	Apprx. 32
New York.....	Public Service Commission	In-house	Apprx. 85
Ohio.....	Public Utilities Commission	In-house	Apprx. 90 ^a
Wisconsin.....	Public Service Commission	In-house	Apprx. 16

^aIncludes investigations and total consumer complaint staff. Specific numbers on call center employees not available.

Source: Developed by LB&FC Staff from peer state contacts and data from the National Regulatory Institute.

PA Office of Consumer Advocate

We also discussed the core functions performed by the Bureau of Consumer Services with the state’s Consumer Advocate. The Consumer Advocate indicated that the authority of his office and the BCS are different, and the OCA can often-times undertake legal actions beyond those available to the PUC. For example, in a recent case involving a regulated telecommunications utility that went bankrupt, once the company left the state the PUC did not have authority to pursue the utility, but the OCA could file in the bankruptcy proceeding in California and recover funds due Pennsylvania consumers.

The Consumer Advocate also noted his office works closely with the BCS and that the BCS operates in a professional and timely manner. He referred to the BCS as having the “hammer” with utilities since the PUC has the authority to direct the utilities as to what they must do.

Consumer Advisory Council

We also contacted the PUC’s Consumer Advisory Council as part of our review of PUC interactions with consumers. The Consumer Advisory Council was established by the Commission pursuant to regulations under the Commission’s

general enabling powers in the Code.⁵ It is administratively located within PUC's Office of Communications and advises the Commission on matters relating to the protection of consumer interests under the PUC's jurisdiction. Examples of Council activities include:

- Receiving briefings on reconnections, terminations, and shut-offs from the Bureau of Consumer Services.
- Presentations from the Commission on the heat-wave emergency procedures used by PUC staff and utility companies to assist vulnerable populations.
- Receiving periodic updates on consumer education programs.

We conducted telephone interviews with several Council members and reviewed minutes from recent Council meetings. The minutes show that the Council receives updates from PUC staff and discusses current issues within the utility industry, such as the removal of electric rate caps, the Alternative Energy Portfolio Standards Act, consumer education, electric reliability, programs to help low-income consumers, and other consumer issues. PUC staff attend meetings to educate the Council on a particular industry, and to be available for questions.

According to the Council members we interviewed, the Commission is generally responsive to the issues and concerns raised by Consumer Advisory Council, at least in the sense of providing Council members with the information they request. Current issues before the Council include the impact on consumers from mergers and acquisitions, rate cap removal from electric utilities, programs to help low income consumers, the possibility of establishing a utility "gift card" program, and regulatory revisions to Chapter 14.

⁵Members are appointed by the Commission and by the Governor, Lt. Governor, and Majority and Minority Chairpersons of the House Consumer Affairs and Senate Consumer Protection and Professional Licensure Committees.

Q. Although One of The Nation's Largest Public Utility Commissions, the Size and Cost of Pennsylvania's PUC Appears Reasonable When Compared to PUCs in Other States

With a budget of \$47.0 million (FY 2004-05), the Pennsylvania PUC ranks 5th in the nation in expenditures. In overall staff size, the Pennsylvania PUC ranks 2nd (533 employees), with only California (830) having more employees.¹ We note, however, that the PUC's 2007-08 budget request contains funding for 509 positions.

We noted that the budgets of the Public Service Commission in two other large states, Florida and Michigan, are much less than Pennsylvania, \$27.7 million and \$25.0 million respectively. However, the responsibilities of these Commissions are also less.

PUC Budget Information

As shown in Table 32, the PUC's estimated budget for FY 2006-07 is \$55.3 million. The Commission receives no General Fund monies; virtually all (over 95 percent) of its funding is derived from utility assessments and other augmentations, with an additional \$1.6 million in federal funds. Of the PUC's overall budget, approximately 78 percent is used for salary and benefits. Although the PUC does not budget at the bureau level, it provided estimated expenditures by bureau for the current fiscal year using available data from the prior fiscal year.

Compared to Other States

Based on data published by the National Regulatory Research Institute (NRRI), the Pennsylvania Public Utility Commission has the fifth largest budget of utility regulatory commissions nationwide,² while Pennsylvania has the sixth largest population among the states. The Pennsylvania PUC, however, has the second largest staff (excluding Virginia). Table 33 provides the state comparison information for all states. Based on these comparisons, budget and complement would appear to fall within a reasonable range in relation to state populations and the scope of statutory responsibilities.

¹New York State, with 532 employees, is, however, virtually tied with Pennsylvania.

²Virginia is excluded because the Virginia State Corporation Commission's authority encompasses utilities, insurance, state-chartered financial institutions, securities, retail franchising, and railroads. The Commission also serves as the central filing office for corporations, limited partnerships, limited liability companies, business trusts, and Uniform Commercial Code filings.

Table 32

Estimated Bureau Budgets for Fiscal Year 2006-07

<u>Bureau/Office</u>	<u>Estimated Budget</u> (\$000)	<u>Authorized Complement</u>
Commissioners and Staff ^a	\$3,532	31
Legislative Affairs.....	277	3
Transportation and Safety ^b	8,190	99
Administrative Services ^c	8,447	36
Director of Operations, Human Resources, Communications ^d	2,614	27
Secretary's Bureau	2,069	34
Conservation, Economics and Energy Planning.....	980	10
Trial Staff.....	1,910	22
Consumer Services ^e	7,751	77
Audits ^f	3,780	45
Fixed Utility Services.....	4,332	49
Administrative Law Judge ^g	4,055	39
Special Assistants.....	1,728	18
Law ^h	<u>3,587</u>	<u>33</u>
Total	\$55,252	523

^aIncludes vehicles for the Commissioners.

^bIncludes vehicles, uniforms, and equipment utilized by enforcement officers and inspectors. Federal funding of \$1.621 million is also allocated to this bureau.

^cIncludes several Commission-wide expenses which total more than \$3 million for electronic data processing services, office supplies, computer equipment, computer maintenance, computer hardware, insurance bond, and purchasing card and computer-related telecommunications. Also includes \$2,750,000 for case management system upgrade, InfoMAP.

^dIncludes various Commission-wide training programs, contracts for legal personnel services, and the rental of parking spaces for staff in Harrisburg and Philadelphia.

^eIncludes call center costs and statistical data contracts.

^fIncludes costs of vehicles for auditors' use in traveling to audit sites and real estate for Pittsburgh office.

^gIncludes contracts for court reporter services.

^hIncludes court filing fees and outside consultant contracts for specialized legal services.

Source: Pennsylvania PUC.

As shown in Table 33, the utility commissions in two large states, Florida and Michigan, have substantially lower budgets than the Pennsylvania PUC. We contacted these states to determine if their responsibilities are similar to those of the Pennsylvania PUC and other factors that might account for the difference in spending levels. We found that neither Florida nor Michigan have significant rail, truck or other transportation responsibilities, responsibilities for which the Pennsylvania PUC spends about \$8.2 million annually.

Additionally, Michigan's Public Service Commission has no water or wastewater responsibilities, has only a small staff to handle consumer complaints, and does not conduct routine management audits or have an in-house equivalent of the Office of Trial Staff. For the Pennsylvania PUC, these functions cost approximately \$3.8 million (water/wastewater), \$7.8 million for consumer services, \$1.3 million (management audits), and \$1.9 million (Office of Trial Staff).

We also noted the Michigan Public Service Commission:

- has only 3 Commissioners and 7 Commission staff.³ In contrast, the Pennsylvania PUC has five Commissioners, each of whom are assigned five or six staff positions, for a combined total of 32 Commissioners and staff at a cost of \$3.5 million.
- is administratively located within the Michigan Department of Labor and Economic Development. This allows the Commission to gain certain administrative efficiencies in areas such as human resources and financial administration. Although not able to cite a specific dollar figure for such savings, one Commission official we spoke to attributed their placement within an executive branch agency as one factor contributing to their relatively low operating costs.

Florida's Public Service Commission, like Pennsylvania's, has five Commissioners. But each Commissioner has only two personal staff: a secretary and a policy/program analyst.⁴ A Florida official also noted that, in response to a Gubernatorial directive to reduce expenditures, Florida's Commission has cut its total staff size from 401 in FY 1999-00 to 341 currently.

³Two Commissioners have a secretary and policy/program staff each; the Chairman has a secretary and two policy/program staff.

⁴In addition to two personal staff, the Chairman also receives support from two Commission staff.

Table 33

Comparison of Other State Utility and Regulatory Commissions' Budget and Staff^a

State	Regulatory Commission	Staff ^b	Budget (Millions)	Population ^c (Millions)	Budget Rank	Pop. Rank	\$ Per Capita
Alabama	Public Service Commission	132	\$ 17.3	4.5	17	23	\$ 3.84
Alaska	Regulatory Commission	58	6.1	0.8	42	45	7.63
Arizona	Corporation Commission	300	21.4	5.6	11	18	3.82
Arkansas	Public Service Commission	114	12.7	2.7	24	33	4.70
California	Public Utilities Commission	830	104.9	35.5	1	1	2.95
Colorado	Public Utilities Commission	90	12.2	4.6	27	22	2.65
Connecticut	Department of Public Utility Control	124	17.0	3.5	18	28	4.86
D.C.	Public Service Commission	69	7.0	0.6	35	47	11.67
Delaware	Public Service Commission	31	3.8	0.8	48	46	4.75
Florida	Public Service Commission	355	27.7	17	7	4	1.63
Georgia	Public Service Commission	95	8.7	8.7	31	9	1.00
Hawaii	Public Utilities Commission	45	6.2	1.3	41	42	4.77
Idaho	Public Utilities Commission	54	4.6	1.4	46	39	3.29
Illinois	Commerce Commission	279	53.1	12.7	3	5	4.18
Indiana	Utility Regulatory Commission	72	7.1	6.2	34	14	1.15
Iowa	Utilities Board	79	6.8	2.9	36	31	2.34
Kansas	Corporation Commission	219	19.1	2.7	14	32	7.07
Kentucky	Public Service Commission	109	12.4	4.1	26	26	3.02
Louisiana	Public Service Commission	122	8.6	4.5	32	24	1.91
Maine	Public Utilities Commission	72	6.4	1.3	39	41	4.92
Maryland	Public Service Commission	138	12.6	5.5	25	20	2.29
Massachusetts	Dept. of Telecommunications & Energy	154	13.2	6.4	23	13	2.06
Michigan	Public Service Commission	140	25.0	10.1	9	8	2.48
Minnesota	Public Utilities Commission	35	4.2	5.1	47	21	0.82
Mississippi	Public Service Commission	165	12.0	2.9	28	30	4.14
Missouri	Public Service Commission	220	18.7	5.7	15	17	3.28
Montana	Public Service Commission	39	2.7	0.9	50	44	3.00
Nebraska	Public Service Commission	49	5.7	1.7	44	38	3.35

Table 33 (Continued)

State	Regulatory Commission	Staff ^b	Budget (Millions)	Population ^c (Millions)	Budget Rank	Pop. Rank	\$ Per Capita
Nevada	Public Utilities Commission	88	\$11.9	2.2	30	35	\$ 5.41
New Hampshire	Public Utilities Commission	73	6.5	1.3	37	40	5.00
New Jersey	Board of Public Utilities	307	23.5	8.6	10	10	2.73
New Mexico	Public Regulation Commission	251	20.3	1.9	13	36	10.68
New York	Public Service Commission	532	65.9	19.2	2	3	3.43
North Carolina	Utilities Commission	63	6.3	8.4	40	11	0.75
North Dakota	Public Service Commission	41	5.0	0.6	45	48	8.33
Ohio	Public Utilities Commission	360	48.8	11.4	4	7	4.28
Oklahoma	Corporation Commission	453	14.3	3.5	21	29	4.09
Oregon	Public Utilities Commission	124	12.0	3.6	29	27	3.33
Pennsylvania	Public Utilities Commission	533	47.0	12.4	5	6	3.79
Rhode Island	Public Utilities Commission	45	6.0	1.1	43	43	5.45
South Carolina	Public Service Commission	98	13.7	4.1	22	25	3.34
South Dakota	Public Utilities Commission	29	3.4	0.6	49	49	5.67
Tennessee	Regulatory Authority	81	7.9	5.8	33	16	1.36
Texas	Public Utilities Commission	211	14.8	22.1	20	2	0.67
Utah	Public Service Commission	15	17.0	2.4	19	34	7.08
Vermont	Public Service Board	25	2.6	0.6	51	50	4.33
Virginia	State Corporation Commission	653	21.0	7.4	12	12	2.84
Washington	Utilities and Transportation Commission	155	30.8	6.1	6	15	5.05
West Virginia	Public Service Commission	332	18.6	1.8	16	37	10.33
Wisconsin	Public Service Commission	168	25.9	5.5	8	19	4.71
Wyoming	Public Service Commission	31	6.5	0.5	38	51	13.00

^aDue to budget setting cycles, some amounts are from as early as a biennial budget set in 2004 to as late as an 2006 annual budget set in late 2005.

^bStaff approximates and based on reviews of recent annual reports and available staff directories have and have not been adjusted to account for duties of the commission beyond commonly defined utility regulation. Therefore, staff size may not be comparable to adjusted budgets.

^cPopulation numbers are from the 2003 U.S. Census update, rounded to the nearest 100,000.

Source: Developed by LB&FC staff from information obtained from the National Regulatory Research Institute.

Funding Sources

The Pennsylvania PUC recently conducted a poll of other state PUCs for information on how their operations are funded. Of the 34 state that responded, 24 indicated that they have a process similar to that used in Pennsylvania where gross intrastate revenue is the key component for calculating the assessment rates for utility groups. Five of the responding states explained that a tax is used to fund the PUC. One state received funding from the General Fund, while one received funding from various reimbursement fees and one used a mixture of these funding mechanisms.

Detailed information on the funding sources of various state public utility commissions can be found at: <http://www.nrri.ohio-state.edu/dspace/bitstream/2068/254/1/02-16.pdf>.

R. The PUC Is Implementing a Major New Document Management System

The PUC receives, docket, tracks, and files in excess of 93,000 documents annually. This is compared to 20 years ago when only 21,000 documents were similarly processed. Some of these documents are hundreds of pages long and need to be distributed to staff members in various Commission bureaus for differing regulatory compliance aspects. Until recently, the PUC has been almost entirely dependent on hard copy information and manual processes. This will change with the implementation of the PUC's \$6.6 million Information Management and Access Project (InfoMAP), scheduled for full implementation in spring/summer 2008.

Existing System

The PUC currently utilizes a mixture of mainframe based business applications coupled with network-based client server systems. The core mainframe system, the Utility Information System (UIS), was brought online in 1978 and is largely based on business applications written in a now-outdated programming language (COBOL). These applications were designed to support manual workflow processes that use hard copy (paper) documents. Applications are frequently redundant as they were developed piecemeal to alleviate immediate and isolated deficiencies. The systems are increasingly difficult to maintain due to the decline in the number of technicians familiar with COBOL. Furthermore, the systems use a flat-file basis, in which data is stored in redundant and inefficient data structures, and are not easily compatible with Commonwealth preferred platforms; thus, creating additional design and maintenance issues for the PUC.

InfoMAP

To address these limitations, the PUC initiated a \$6.6 million technology project called the Information Management and Access Project (InfoMAP). This project will implement a case management system designed to improve efficiencies related to key PUC business functions, particularly the ability to docket, track, and share information electronically. When completed, InfoMAP will provide a single point of entry through the PUC's current web site for utilities, the public and consumers to submit and access information, initiate transactions, and conduct business. Most helpful to the Commission, and to the regulated utilities, it will permit electronic filing of documents and provide electronic access to filings. Once these files are obtained electronically, they can be shared throughout the Commission in electronic form, eliminating many, if not all, manual hard copy based processes.

The General Assembly has approved funding for the InfoMAP project. In FY 2005-06, \$3.85 million was secured for the initial startup. This amount was largely

spent on consultant fees, hardware, and software fees. In FY 2006-07, an additional appropriation of \$2.75 million was made, for a total \$6.6 million for the project. The Commission believes these funds are sufficient to complete the project and bring the InfoMAP project online, which is currently planned for spring/summer 2008, although some aspects should be available prior to that time.

Progress to Date. The PUC contracted with Unisys in March 2006 after a competitive bid process from several vendors. The PUC reported that Unisys was selected on scoring highest points prior to cost, as well as being the lowest cost bidder. The project has been divided into three phases, which are shown in Exhibit 19.

Exhibit 19

InfoMAP Project Implementation	
Phase I: Foundation Stage	<ul style="list-style-type: none"> • Develop new relational database architecture • Convert existing PUC document management system • Automate workflows of high priority business processes • Develop single point of entry to system via Internet
Phase II: Electronic Stage	<ul style="list-style-type: none"> • Implement scanning functionality and processes • Integrate image functionality with automated workflow • Develop initial e-filing applications for use by public and utilities
Phase III: e-Commerce Stage	<ul style="list-style-type: none"> • Evaluate and implement e-commerce and e-pay functionality for external stakeholders

Source: Developed by LB&FC staff from PUC materials.

The PUC estimates InfoMAP will generate annual savings of \$500,000 to the Commission through the elimination of the PUC's share of a data warehouse contract. The Commission plans to bring this function in-house without having to hire additional staff. Other potential savings have not been quantified, but should include increased staff efficiency and reduced paper costs. Additional savings and benefits should also be attained by regulated utilities and the public through improved business process. The PUC noted that information technology projects similar to InfoMAP have been successfully implemented in Missouri and Connecticut, as well as at the Federal Energy Regulatory Commission.

Other PUC Technology Efforts

The PUC has implemented several other significant technology projects since our last performance audit in 1991. These projects, along with the benefits and/or saving the PUC reported having achieved, are listed below:

May 1996 - Installation of the PUC Network

- Document Management: reduction of paper, promotion of document sharing
- Standardized MS Office products (in compliance with Office of Administration standards)
- Centralized PUC Mail Exchange
- Better back-up system for databases/files/documents
- Centralized connection for regional offices via terminal services (from home or on the road)
- Benefits/Savings: Improvement of productivity, reduction in personnel time and errors

August 1999 - Mainframe Outsourcing

- Benefits/Savings: Elimination of personnel time to manage and administer mainframe hardware and software

March 2002 - Implementation of CAI (Customer Account Information)

- Benefits/Savings: Improvement of productivity, reduction in personnel time and errors, better customer services

April 2002 - Joining CWOPA (Migrate PUC email services to Commonwealth Domain)

- Benefits/Savings: Elimination of two email servers and time spent managing and administering these servers.

August 2002 - Implementation of Data Exchange

- Benefits/Savings: Improvement of data transfer between PUC and the utility companies, better response time.

July 2004 - Website Redesign

- Benefits/Savings: Full integration with other systems, ease of use, elimination of redundant data entry, moving the PUC website from PA Online to OA server farm.

The Commission's three-year IT Strategic Plan lists several other Commission IT goals, including a new call recording solution, hardware implementation to run FileNet, replacement of hardware in regional offices, and on-going upgrades of desktop operating systems.

S. The PUC Cannot Assess Certain Regulated Entities for the Cost of Regulation, Which Increases PUC Assessments to Other Utilities

The statutory process for assessing regulatory expenses upon public utilities is set forth in Section 510 of the Public Utility Code. This provision requires that assessments be based on two factors: the amount of time spent by staff on various public utility (or industry) groups and the amount of each company's intrastate operating revenues for the prior calendar year. Utilities may pass those costs through to ratepayers.

Under Section 510, the PUC's estimated budget may not exceed three-tenths of 1 percent of the total gross intrastate operating revenues of the public utilities. Three-tenths of 1 percent would permit an estimated budget of \$70 million for fiscal year 2006-07; the PUC's estimated budget (excluding federal funds) is approximately \$53.7 million.

To implement these assessments, the PUC requires its staff to record time that is spent working on the various industries as well as hours that are devoted to administrative matters. The PUC then allocates percentages of the estimated budget to each industry group based on these records. Within each utility group, the particular industry's share is divided among the utilities on the basis of their intrastate operating revenues for the prior calendar year, as required by the statute.

A recent Pennsylvania Supreme Court decision, however, has significantly impacted the Commission assessment process. On March 31, 2005, the Pennsylvania Supreme Court reversed a prior order of the Commonwealth Court and concluded that the PUC lacks the requisite statutory authority to assess electric generation suppliers (EGSs) for regulatory expenses. In its opinion, the court referred to language in Section 510 that permits assessments on "public utilities" and found that electric generation suppliers are not public utilities, and thus the PUC may not collect regulatory expenses through the assessment process established by Section 510.

The PUC calculated its exposure on issuing refunds to EGSs was approximately \$7 million over a five-year period, or about \$1.4 million per year. In future assessments, these costs will be borne by electric distribution companies and, potentially, non-electric public utilities as well.

Courts have previously found that natural gas suppliers are exempt from assessments under Section 510¹. The current breakdown of assessments among utilities is depicted in Table 34.

Table 34

Approximate Assessments for Major Industries		
FY 7/1/06-6/30/07		
<u>Industry Group</u>	<u>Total Dollar Assessment</u>	<u>Percentage Distribution</u>
Electric	\$16,200,000	32.0%
Natural Gas	11,600,000	23.0
Telecommunications	11,800,000	23.0
Transportation	7,500,000	14.5
Water/Sewage	3,800,000	7.5

Source: Pennsylvania Public Utility Commission.

The amount of assessments of the five largest utilities in Pennsylvania in 2005 was:

- PECO Electric - \$5.2 million,
- Verizon-PA - \$4.4 million,
- PPL Electric - \$3.9 million,
- Philadelphia Gas Works - \$2.0 million, and
- PECO Gas - \$1.7 million.

With approximately 5 million Pennsylvania households, the approximate effect of assessments on customers is about \$10.50 annually for all utilities, according to the PUC.

Recommendation

1. The General Assembly consider amending the Public Utility Code to permit the PUC to assess electric generation and natural gas suppliers for the cost of regulation. We discussed possible recommendations for addressing this issue with the PUC. Based on these discussions, the simplest and most direct recommendation would be for the General Assembly to amend Section 102 of the Public Utility Code to add (vii) under subpart (2), to provide as follows:

(vii) Natural gas supplier companies, except for the limited purposes as described in section 2208 relating to requirements for natural gas suppliers.

¹The PUC assessment was \$1.4 million in FY 2001-02, the last year natural gas suppliers were assessed.

Section 2208(e) would likewise need to be amended by adding a sentence at the end of the subsection to read as follows:

Natural gas suppliers shall be subject to the authority of the Commission as set forth in sections 510 (relating to assessment for regulatory expenses upon public utilities) and 701 (relating to complaints) in order to ensure that the commission will be able to carry out its obligations with respect to natural gas suppliers and that complaints regarding natural gas suppliers may be brought before the commission.

Similarly, Section 2809(e) would need to be amended with parallel language added to the end of that subsection but substituting the phrase “electric generation suppliers” for “natural gas suppliers.” Read together with the language in section 102, the PUC indicated these changes would give the Commission clear authority to assess NGSs and EGSs.

T. The PUC Should Develop a Long-Range Strategic Plan

In its budget materials for 2007-08, the PUC identified the following strategic goals for the fiscal year:

- To ensure that necessary utility service is available to all residents of Pennsylvania
- To foster development of competitive markets in the electric, telecommunications and natural gas industries
- To promptly and effectively address anti-competitive activity by jurisdictional utilities or licensed competitive suppliers
- To promote greater public awareness and understanding of the public utility industry and how it affects consumers
- To establish policies that will encourage the public utilities to operate in the most environmentally compatible, safe, fair and cost effective manner
- To encourage and coordinate the upgrade of Pennsylvania's water delivery systems
- To further the economic development of Pennsylvania
- To support Pennsylvania's environmental initiatives, particularly with respect to alternative energy portfolio standards
- To implement the Information Management and Access Project, or InfoMAP, which is comprised of technology enhancements upgrading the case management system to improve internal efficiencies, permit electronic filings and provide easier public access to information
- To maintain policies and procedures for recruiting and retaining an efficient, diverse and well-trained Commission staff in order to enhance performance and promote timely, consistent, well-reasoned regulatory decisions
- To provide the Pennsylvania General Assembly and the Congress with utility policy recommendations promoting the interests of Pennsylvania consumers in state and federal regulatory forums.

The budget request reflects the Commission's regulatory priorities in the areas of (1) safe and reliable service at just and reasonable rates, (2) transportation safety and compliance, (3) consumer services and education, (4) competition, market-based pricing and incentive ratemaking and (5) fixed utility audits. The PUC also indicated that each of its bureaus and offices have developed complementary and supporting subordinate goals and objectives.

The PUC also recently adopted a new mission statement, which reads as follows:

The Pennsylvania Public Utility Commission balances the needs of consumers and utilities to ensure safe and reliable utility service at reasonable rates; protect the public interest; educate consumers to make independent and informed utility choices; further economic development; and foster new technologies and competitive markets in an environmentally sound manner.

The PUC does not, however, have a formalized, long-range strategic plan to guide its operations. The last such plan was developed in 1993 and covered a five-year period.

Developing a coherent, long-range strategic plan for the PUC would be a substantial undertaking given the wide variety of utilities and programs under the agency's jurisdiction. On the other hand, it could be argued that a long-term plan is particularly important for an agency with such disparate responsibilities to ensure that no program areas get left behind as attention is focused on those high-profile issues that necessarily demand the Commission's time and attention.

We also note that the PUC has one of the oldest workforce complements in the Commonwealth, and is tied for first as the state agency with the highest mean length of service (16 years). This is particularly notable in that Pennsylvania is one of states with the highest percentage (54 percent) of government employees eligible for retirement over the next decade. As such, the PUC is posed for high turnover of experienced staff over the next several years. A long-range strategic plan could be particularly valuable during this period, not only to orient new staff to the PUC's mission and direction but also to stimulate innovative thinking among top PUC management as to the opportunities that might be presented as a result of an infusion of new staff.

Recommendation

1. The PUC should develop a long-range (five year or longer) plan outlining Commission's vision and goals, strategic objectives, and the key tactical tasks necessary to achieve those objectives. The plan should include measurable objectives and the criteria to be used to assess achievement of the objectives.

III. Background

Legal Background

Act 1913-854, the Public Service Company Law, created the Public Service Commission (PSC) to regulate the increasing number of monopolistic utility services. The 1913 legislation charged the PSC with regulating both public service companies and railroad crossings. Act 1937-43 and Act 1937-286 repealed the Public Service Company Law, enacted the Public Utility Law, and replaced the PSC with the Public Utility Commission (PUC). In 1978, the General Assembly repealed and amended certain sections of the Public Utility Law. Act 1978-116 recodified the remaining provisions into the present Public Utility Code, 66 Pa.C.S.A. §101 *et seq.*

The PUC is an independent, quasi-judicial agency charged with supervising and regulating public utilities doing business in the Commonwealth and with enforcing Pennsylvania's public utility laws and regulations. The public utilities supervised and regulated by the PUC furnish the following services: electricity, natural gas, telephone, water, sewage collection and disposal, steam heat, transportation of persons and property (by train, bus, truck, and taxicab), and pipeline transmission of gas and oil.

The primary functions of the PUC are to establish just and reasonable rates and to provide for adequate, efficient, and safe services and facilities. Accordingly, the Commission has been granted authority to conduct audits, inspections, and investigations; develop energy plans and conservation guidelines; and inquire into the reasonableness of contracts between public utilities and either their affiliates or municipalities. The PUC is further authorized to assess all of its operational expenses on the utilities it regulates.

Act 1986-114, which re-established the PUC pursuant to the Sunset Act, made a number of significant changes in the Public Utility Code. Among other provisions, the act established the Office of Trial Staff, which performs many prosecutorial functions formerly performed by the Law Bureau. The act also legislatively established the Office of Special Assistants as a support staff to assist in the preparation of Commission orders and to perform advisory duties as assigned by the Commission. Act 1986-114 gave the PUC expanded responsibility with respect to auditing utilities and made significant changes in the law concerning ratemaking. The PUC is now required to consider a utility's efficiency, effectiveness, and adequacy of service in determining just and reasonable rates, and the Commission is empowered to reject a utility's request for rate increases if the service rendered by the utility is determined to be inadequate.

Several key pieces of legislation have been enacted since our 1991 performance audit of the Commission. Among these are:

- Act 1996-138, the Electricity Generation Customer Choice and Competition Act of 1996
- Act 1993-67 (Chapter 30 of the Public Utility Code) and Act 2004-183, pertaining to telecommunications regulation
- Act 1999-21, the Natural Gas Choice and Competition Act of 1999
- Act 2004-201 (Chapter 14 of the Public Utility Code), the Responsible Utility Customer Protection Act of 2004
- Act 2004-94, which transferred oversight of Philadelphia taxis and limousines to the Philadelphia Parking Authority

Commission Composition

The PUC is comprised of five full-time members appointed by the Governor for staggered five-year terms, with the advice and consent of a majority of the members of the Senate. The Governor designates one member as the Chairman.

Each Commissioner, at the time of appointment, must be a resident of the Commonwealth, a qualified elector in the Commonwealth for at least one year preceding the appointment, and be not less than 25 years of age. During their tenure, Commissioners are prohibited from having an official relation with any public utility or its affiliates and from holding any other appointed or elected office. Commissioners can remain in office after the expiration of their term for a period not to exceed six months if a successor has not been appointed or confirmed. There was one vacancy on the Commission as of October 31, 2006.

Commissioners can be removed from office by the Governor with the consent of two-thirds of the Senate for violations of provisions requiring Commissioners to devote full-time to official duties and for neglect of duty or misconduct. As of November 2006, the Commissioners received \$122,155 annually (the Chairman receives an additional \$2,500), which increases each January by a cost of living factor as specified by Act 2005-72.

Commission Staff and Organizational Structure

The Public Utility Commission (PUC) headquarters are in Harrisburg, with regional offices in Harrisburg, Philadelphia, Pittsburgh, Scranton, and Altoona. The regional offices serve as administrative coordinating points for enforcement officers and address inquiries about the Commission. The regional offices in Philadelphia and Pittsburgh also house staff of the Bureau of Consumer Services.

The central office in Harrisburg consists of 14 offices or bureaus including the Chairman and Commissioners; Office of the Director of Operations; Bureau of Administrative Services; Secretary's Bureau; Office of Special Assistants; Office of Legislative Affairs; Law Bureau; Office of Administrative Law Judge; Office of Trial Staff; Bureau of Fixed Utility Services; Bureau of Transportation and Safety; Bureau of Conservation, Economics and Energy Planning; Bureau of Audits; and the Bureau of Consumer Services.

The PUC has an authorized complement of 523 employees, including attorneys, rate and service analysts, auditors, economists, engineers, motor transit and railroad specialists, safety inspectors, and enforcement investigators. As of September 16, 2005, 462 of the Bureau's 523 positions were filled.

Commission Offices and Bureaus

The PUC's organizational functions can be broken down into four areas:

Executive and General Administration

Chairman and Commissioners. The Office of the Chairman and Commissioners consist of five full-time Commissioners and their staffs. The Commissioners set policy on matters affecting utility rates and services, as well as on personnel, budget, fiscal and administrative matters. The Commissioners take official action on cases during regularly scheduled public meetings.

Office of the Director of Operations. The Office of the Director of Operations is comprised of the Director of Operations, administrative support staff, and the Offices of Communications and Human Resources. The Office of the Director of Operations is responsible for the daily administration and operations of the bureaus and offices. The Director assists the Commission in the development of policies and procedures that enhance the overall efficiency and effectiveness of the agency. The Director also participates in staff selection and training, manages various multi-bureau projects, and oversees the Commission's Continuity of Government Plan. The Office of Communications has responsibility for media relations, public outreach and employee communications. The Office of Human Resources handles all personnel issues.

Secretary's Bureau. The Secretary serves as the prothonotary of the Commission, and all correspondence and filings with the PUC must be addressed to the Secretary. Official actions and decisions are issued under the Secretary's signature. Bureau responsibilities include docketing and maintaining the Commission's case management system; coordinating and monitoring all public meeting items, agendas and minutes; and issuing all Commission orders and secretarial letters.

Office of Special Assistants. The Office of Special Assistants (OSA) is the Commission's advisory support bureau and is comprised of attorneys, rate case review specialists and administrative support staff. The Office's primary function is to provide both legal and technical advisory services to the Commissioners on all aspects of fixed utility and motor carrier regulation as required. OSA is also responsible for the review and initial recommendation on exceptions to ALJ decisions, petitions for reconsideration and modification, and requests for extensions of filing deadlines.

Office of Legislative Affairs. The Office of Legislative Affairs (OLA) acts as the Commission's liaison with the Governor's Office, the General Assembly and Pennsylvania's Congressional Delegation. OLA is responsible for promoting the Commission's position on legislation and issues before the General Assembly, handling constituent inquiries, and analyzing legislation and amendments that affect the Commission and public utilities.

Bureau of Administrative Services. The Bureau of Administrative Services provides support to the Director of Operations for administrative matters in the daily operation of the Commission. The Bureau is responsible for the preparation of the budget, collection of assessments, contracts, travel-related services, management information systems support, mail distribution, inventory control and automotive services. The Bureau is comprised of the Assessment Section; Fiscal Office; Management Information Services and Office Services.

Legal Services

Law Bureau. The Law Bureau is the Commission's in-house legal counsel, performing prosecutory, advisory, and representational and enforcement roles. The Director of the Law Bureau serves as the Commission's Chief Counsel. Functions include providing legal opinions on issues involving the interpretation of the Public Utility Code and other Pennsylvania laws; representing the Commission before state and federal courts; enforcing the Public Utility Code, Commission regulations and orders; providing legal and technical assistance in the promulgation of regulations and policy statements; and conducting informal investigations of utility misconduct.

Office of Administrative Law Judge. The Office of Administrative Law Judge (OALJ) is headed by the Chief Administrative Law Judge. OALJ's primary duty is to provide fair and prompt conflict resolution by independent administrative law judges who preside at formal hearings in contested matters before the Commission and issue initial or recommended decisions. The Office also mediates cases through the alternative dispute resolution process.

Office of Trial Staff. The Office of Trial Staff (OTS) represents the PUC in all public interest matters having an impact on rates in proceedings before the

Commission. OTS is responsible for reviewing Commission filings made by utilities involving rate-related matters. OTS may petition to intervene in those excepted proceedings. OTS prosecutes complaints against “slamming” and “cramming” by telecommunications providers and may submit a request to initiate a proceeding when it is not prosecutory in nature or file its own complaint with the Secretary if it is prosecutory in nature. The Office consists of Legal and Technical divisions.

Rates, Research, Transportation, and Safety

Bureau of Conservation, Economics, and Energy Planning. The Bureau of Conservation, Economics and Energy Planning conducts research and performs policy/planning functions focusing mainly on the electric and gas utilities and facilitating the development of competitive energy markets. The Bureau monitors developments in energy markets, such as pricing trends, demand forecasts, and availability of supply to meet demand.

Bureau of Transportation and Safety. The Bureau of Transportation and Safety is comprised of the Motor Carrier Services and Enforcement Division, the Rail Safety Division, and the Gas Safety Division. Areas of responsibility include processing Motor Carrier applications, ensuring compliance with Commission regulations, performing rail crossing and bridge safety inspections, and inspecting gas facilities and records to ensure compliance with state and federal requirements.

Investigation, Service, and Enforcement

Bureau of Audits. The Bureau of Audits conducts audits on Pennsylvania’s fixed utilities, such as management audits, management efficiency investigations, and annual adjustment clause audits. The Bureau also performs in-house technical reviews of other types of filings and is responsible for auditing the annual reconciliation statements associated with stranded costs of certain electric utilities impacted by the Electricity Generation Customer Choice and Competition Act. Further, the Bureau performs audits of certain water utilities that are authorized to charge ratepayers a Distribution System Improvement Charge, and conducts special audits or reviews as assigned by the Commission.

Bureau of Fixed Utility Services. The Bureau of Fixed Utility Services provides technical support to the Commission on all jurisdictional utilities, including energy, water, and telecommunications. It serves as principal adviser on technical issues and advocates policy recommendations on a variety of rate, tariff and regulatory matters. The Bureau processes filings such as securities certificates, affiliated interest agreements and fixed utility applications. The Director of the Bureau is vested with the authority to act for the Commission during emergencies and represents it on the Pennsylvania

Emergency Management Council. The Bureau also reviews and maintains County 911 System Plans, Telecommunications Relay Service Reports, Annual Financial Reports and utility tariffs.

Bureau of Consumer Services. The Bureau of Consumer Services responds to and investigates consumer complaints, develops payment arrangements, provides utility-related information to consumers, and monitors utility compliance with PUC regulations. The Bureau analyzes utility performance and produces an annual evaluative report for the PUC, legislators, utilities and the public. The Bureau consists of Customer Assistance and Complaints, and a Division of Policy.

Commission Expenditures

Tables 35 and 36 show the Commission’s expenditures by category of expense and source of funds, respectively.

Table 35

Public Utility Commission Expenditures			
(\$000)			
	FY 2003-04 <u>(Actual)</u>	FY 2004-05 <u>(Actual)</u>	FY 2005-06 <u>(Available)</u>
Personnel Services	\$35,884	\$35,705	\$38,004
Operational Expense.....	10,019	10,461	11,648
Fixed Assets.....	160	50	217
Misc. Expenditures.....	1,466	2,000	1,725
Budgetary Reserve	<u>0</u>	<u>0</u>	<u>500</u>
Total	\$47,529	\$48,216	\$52,094

Source: Developed by LB&FC staff from information obtained from the PUC FY 2006-07 Budget Request.

Table 36

Public Utility Commission Expenditures		
(By Source of Funds)		
(\$000)		
	FY 2004-05 <u>(Actual)</u>	FY 2005-06 <u>(Available)</u>
Augmentations	\$46,216	50,369
State General Fund.....	0	0
Federal	2,000	1,725
Total	\$48,216	\$52,094

Source: Developed by LB&FC staff from information obtained from the PUC FY 2006-07 Budget Request.

IV. Appendices

APPENDIX A

PRINTER'S NO. **3849**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 695

Session of

2006

INTRODUCED BY FLICK, PRESTON, BARRAR, REICHLEY, SAINATO, ADOLPH, ARGALL, BAKER, BALDWIN, BENNINGHOFF, BEYER, BIRMELIN, BOYD, BUXTON, CALTAGIRONE, CASORIO, CAUSER, CAWLEY, CIVERA, CLYMER, CORNELL, COSTA, CRAHALLA, DENLINGER, DeWEESE, ELLIS, FABRIZIO, FAIRCHILD, FICHTER, FLEAGLE, FRANKEL, FREEMAN, GABIG, GILLESPIE, GINGRICH, GOOD, GOODMAN, GRELL, HANNA, HARHART, HARPER, HASAY, HENNESSEY, HERSHEY, HESS, HICKERNELL, HUTCHINSON, JAMES, KAUFFMAN, M. KELLER, W. KELLER, KENNEY, KILLION, LaGROTTA, LEH, MACKERETH, MAHER, MAJOR, MANDERINO, MANN, MARSICO, McILHATTAN, METCALFE, MICOZZIE, MILLARD, R. MILLER, MUNDY, MUSTIO, MYERS, NAILOR, NICKOL, O'NEILL, PALLONE, PARKER, PAYNE, PETRARCA, PETRI, PHILLIPS, PYLE, QUIGLEY, RAPP, READSHAW, REED, ROHRER, ROONEY, RUBLEY, SATHER, SAYLOR, SCHRODER, SEMMEL, SHAPIRO, SOLOBAY, SONNEY, R. STEVENSON, STURLA, TANGRETTI, E. Z. TAYLOR, TIGUE, TRUE, TURZAI, VITALI, WALKO, WATSON, WRIGHT, YEWIC, YUDICHAK AND PICKETT, APRIL 4, 2006

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 4, 2006

A RESOLUTION

1 Directing the Legislative Budget and Finance Committee to
2 conduct a performance audit of the Pennsylvania Public
3 Utility Commission.
4 WHEREAS, The Pennsylvania Public Utility Commission is
5 established by law as an independent administrative commission
6 to regulate rates and services of monopoly utility service
7 providers; and
8 WHEREAS, Although the Legislative Budget and Finance
9 Committee has conducted four performance audits in discrete
10 areas under the Pennsylvania Public Utility Commission's
11 jurisdiction in recent years, a comprehensive performance
audit

Appendix A (Continued)

1 is needed; therefore be it

2 RESOLVED, That the House of Representatives direct the
3 Legislative Budget and Finance Committee to conduct a
4 comprehensive review of Pennsylvania Public Utility Commission
5 activity in the following areas:

6 (1) Electric, to include:

7 (i) Pennsylvania Public Utility Commission
8 responsiveness to the recommendations contained in the
9 June 2002 report by the Legislative Budget and Finance
10 Committee assessing the reliability of Pennsylvania's
11 electric transmission and distribution system.

12 (ii) Updating performance measures reported by this
13 Commonwealth's major distribution companies.

14 (iii) Whether the Pennsylvania Public Utility
15 Commission is conducting activities that may no longer be
16 relevant in a deregulated environment.

17 (2) Alternative energy portfolio standards, to include a
18 determination as to whether the Pennsylvania Public Utility
19 Commission is on schedule and meeting the requirements of the
20 act of November 30, 2004 (P.L.1672, No.213), known as the
21 Alternative Energy Portfolio Standards Act.

22 (3) Telephone, to include:

23 (i) Pennsylvania Public Utility Commission
24 monitoring and enforcing of incumbent local exchange
25 carriers network modernization plans and the commission's
26 assessment of the carriers' progress in implementing the
27 plans.

28 (ii) An update of reporting requirements under 66
29 Pa.C.S. Ch. 30.

30 (4) Natural gas, to include a determination as to

Appendix A (Continued)

1 whether State regulation of natural gas distribution is an
2 important public endeavor for safety or economic reasons and
3 whether the commission's regulatory efforts in this area are
4 efficient and effective.

5 (5) Water, to include an assessment of the efficiency
6 and effectiveness of the Pennsylvania Public Utility
7 Commission's efforts to ensure the safety, reliability and
8 affordability of water supplied by water companies in this
9 Commonwealth.

10 (6) Transportation, to include:

11 (i) An update of information related to roadside
12 truck safety checks.

13 (ii) A review of the rail safety program.

14 (iii) A review of the Pennsylvania Public Utility
15 Commission's rate-setting process relating to
16 transportation.

17 (iv) Pennsylvania Public Utility Commission
18 responsiveness to the recommendations contained in the
19 December 2001 report by the Legislative Budget and
20 Finance Committee dealing with regulation of taxicab and
21 limousine services.

22 (7) Consumer education and outreach, to include the
23 length of time for complaint resolution, assessment of
24 consumer satisfaction with the complaint process and
25 complaint resolution and the system the Pennsylvania Public
26 Utility Commission uses to receive complaints.

27 (8) Other issues, to include:

28 (i) A comparison of Pennsylvania to other states in
29 terms of electric, gas, telephone and water costs to
30 consumers.

Appendix A (Continued)

1 (ii) A comparison of Pennsylvania to other states in
2 terms of budget, staff and funding sources of the
3 Pennsylvania Public Utility Commission.

4 (iii) Identification of important utility issues by
5 the commissioners of the Pennsylvania Public Utility
6 Commission, members of the Consumer Protection and
7 Professional Licensure Committee of the Senate, members
8 of the Consumer Affairs Committee of the House of
9 Representatives, the Consumer Advocate, the Small
10 Business Advocate, utility associations and consumer
11 groups.

12 (iv) A review of performance audits of similar
13 agencies in other states to identify issues that may be
14 relevant to public utilities in Pennsylvania;
15 and be it further

16 RESOLVED, That the Legislative Budget and Finance Committee
17 report its findings, together with recommendations for
remedial
18 legislation or other appropriate action, to the House of
19 Representatives within seven months of the passage of this
20 resolution.

APPENDIX B

Results of Adjustment Clause Audits Completed and Released

(July 1, 2005 – June 30, 2006)

	<u>Type</u>	<u>Year</u>	<u>Over</u> <u>Collection</u>	<u>Under</u> <u>Collection</u>	<u>Other</u>	<u>Explanation</u>
<u>Electric:</u>						
Boro. of St. Clair.....	PPA	2004				1
Met-Ed (NUG).....	CTC	2004				1
Penelec (NUG).....	CTC	2004				1
Schuylkill Haven.....	PPA	2004				1
West Penn Power	ITC/CTC	2004				1
Boro. of Duncannon	PPA	2004	\$28	\$604		6,7
Pike County Light.....	SBC	2004				1
PPL.....	ITC	2004				1
PA Power Co.	CTC	2004	\$451,715			9
Duquesne Light Co.	CTC	2004-05				1
PPL.....	CTC	04-02				11

Gas:

Equitable Gas	PGC	03-02	\$156,237	\$283,950		6,9
National Fuel Gas	PGC	03-02	\$1,017,219	\$107,447		14,15
PFG Inc. & North						
Penn Gas Co.	PGC	2003				1
Sigel Gas	GCR	04-01	\$3,591	\$12,844		5,10,11,12,14
T.W. Phillips	PGC	04-03	\$48,448			14

Dominion Peoples	PGC	03-02	\$122,578			6
Walker Gas & Oil	GCR	04-02				1
PECO-Gas	PGC	2003				1
Phila. Gas Works	PGC	04-03				11
PG Energy	PGC	04-03				1
Pike County Light.....	GCR	04-02	\$22,412			14
Claysville Nat. Gas.....	GCR	2004	\$1,172	\$20,357		3,7,14,15
Equitable Gas Co.....	PGC	2004		\$943,653		6,15
Columbia Gas Co.....	PGC	2004				1
<hr/> <u>Pipeline:</u> <hr/>						
PPL-Interstate Energy.....	PCR	2004				1
<hr/> <u>Water/Wastewater:</u> <hr/>						
PA-American Water						
Coatesville	CSIG	2004				1
Lehman Pike	CSIG	2004				1
Pocono Cty. Place	CSIG	2004				1
Newtown Artesian	DSIC	2004				1
PA-American Water	DSIC	04-03	\$31,508	\$766,380		2,4,11,13
<hr/> <u>Steam:</u> <hr/>						
Community Central	SCR	2004				5,10
NRG Energy-Pgh.....	SCR	2004-03		\$32,912		4
NRG Energy-Hbg.....	SCR	2004		\$10,120		6
Trigen-Phila. Energy	SCR	2004				1

Explanation:

1. No Adverse Findings
2. Overstated DSIC Eligible Plant
3. Regulatory Non-Compliance
4. Misstated Costs
5. Qualified Opinion
6. Company Clerical Errors
7. Misstated Sales Volumes
8. Over-Recovered Transition Costs
9. Deficient Accounting Records
10. Procedural Findings
11. Improper Customer Billings
12. Understated Revenues
13. Overstated Revenues
14. Overstated Purchased Gas Costs
15. Understated Purchased Gas Costs

Source: PUC Bureau of Audits.

APPENDIX C

PUC Transportation Rate-Setting Process

1. The Compliance Office receives a rate increase filing from a qualified motor carrier licensed to operate in Pennsylvania.
2. Compliance Office Secretary logs the case and a Compliance Specialist 1 (tariff analyst) checks the carrier's records for any outstanding fines or overdue assessments. If noticed, the rate increase filing may not proceed until corrective action has been taken. The case is then assignment to a Compliance Specialist 2 (CS2) for review.^a
3. The assigned CS2 creates a Letter of Suspension, which is mailed to the carrier (via first-class mail) within 30 days of filing. The suspension is for seven months from the effective date of the revised tariff. The assigned CS2 creates a rate filing folder for the case.
4. The assigned CS2 reviews the case, conducting a second check of any fines or outstanding assessments concerning the carrier.^b A determination is then made as to if sufficient information has been submitted to make a decision on the rate increase request. If it is determined that insufficient information has been submitted, the CS2 assigned to the case writes a letter to the carrier requesting additional information.^c
 - a. If additional information is not returned to the Compliance Office, the assigned CS2 writes a letter returning the rate filing (via first-class mail) to the carrier. The case is then reviewed by the Compliance Office Manager. If the Compliance Office Manager concurs with the finding of the CS2 (regarding insufficient information to make a decision), an assignment sheet is sent to the Compliance Office Secretary and the case is closed. While this does not constitute a "denial" in the formal sense, the applicant carrier must re-file the rate increase request for further consideration.
 - b. If the Compliance Office Manager disagrees with the CS2's finding that insufficient information has been submitted to make a decision on the rate increase request, the case is then re-examined by the CS2 for approval, denial, or proposing of an alternative rate structure.
5. If the CS2 determines that sufficient information has been submitted by the carrier to evaluate the merits of a rate increase, the CS2 either recommends approval, denial, or works with the Compliance Office Manager to offer an alternative rate structure that is just and reasonable.

Approval of Rate Structure

1. If the assigned CS2 determines that sufficient information is present and the rate increase filing is approved, the CS2 writes an order approving the submitted rate structure.
2. The case is reviewed by the Compliance Office Manager for concurrence of the approval decision. If the manager rejects the approval decision, the request is either denied or an alternative rate structure is offered. In most cases, the Compliance Office Manager will only deny approval orders if it is determined that insufficient information has been submitted on which to base a decision.

Appendix C (Continued)

3. If the Compliance Office Manager approves the rate filing request, the case is forwarded to the Chief of Enforcement (COE) of the Motor Carrier and Enforcement Division for approval. Upon approval of the COE, an Assignment Sheet is sent to the Compliance Office Secretary for logging-off of the carrier database.
4. The Order is then forwarded to the Director of the Bureau of Transportation and Safety for approval. If approved by the Director, the order is forwarded to the Secretary's Bureau for scheduling on a PUC public meeting agenda for approval by the PUC Commissioners. If the rate increase filing is rejected by the Bureau Director, it is returned to the Compliance Office Manager for further action as directed.
 - a. Compliance Office officials indicated that, in some cases, the COE and director may request additional information from the Compliance Office Manager if it is determined that the motor carrier has supplied insufficient information to support the justification for the rate increase, or if further clarification of the request is needed from the Compliance Office Manager.

Denial of Rate Structure

1. The assigned CS2 drafts a Tentative Order denying the rate increase.^d
2. The case is then reviewed by the Compliance Office Manager. If the manager concurs with the motion to deny the rate structure, the case is forwarded to the COE for approval, and an assignment sheet is sent to the Compliance Office Secretary for logging off of the database. If the motion to deny is rejected by the Manager, it is returned for further review by the Compliance Office Manager. If necessary, a request of additional information from the applicant carrier may be made.
3. A Tentative Order of Denial is then sent to the Director of the Bureau of Transportation and Safety for review. If the denial is approved, the order is forwarded to the Secretary's Bureau for scheduling on a PUC public meeting agenda. If the Bureau Director objects to the denial order, it is returned to the COE for further review.
4. Applicant motor carriers may appeal the denial order to the Office of Administrative Law Judge (ALJ). Following an evaluation of the facts, the ALJ will issue a recommendation for action.
5. The rate increase request, together with a recommendation of the ALJ (if applicable), is decided by the Commissioners at a public meeting.

Offer of an Alternative Rate Structure

1. In lieu of approval or denial of a submitted rate structure, a CS2 may issue an order offering an alternative rate structure. The alternative rate structure is then reviewed by the Compliance Office Manager. If approved by the manager, it is forwarded to the COE for approval.^e
2. Upon approval by the COE, an assignment sheet is sent to the CO Secretary for logging off of the database. If the COE rejects the alternative rate structure, it is returned to the Compliance Office Manager for further action. If approved by the COE, an assignment sheet is sent to the Compliance Office Secretary for logging off of the database. The order is then sent to the Director of the Bureau of Transportation and Safety for concurrence.

Appendix C (Continued)

3. If approved by the Director, the order is forwarded to the Secretary's Bureau for scheduling on a PUC public meeting agenda. If the Director rejects the alternative rate structure, it is returned to the COE for further action.
4. The applicant carrier must file a new tariff with the Compliance Office within 20 calendar days.
 - a. If the carrier fails to file a new tariff within 20 calendar days, the case is reviewed further by the Compliance Office Manager. The manager then assigns the case to a CS2, who prepares a memo serving as the official case record. The memo is forwarded to the Secretary's Bureau, the Law Bureau, and ALJ for a hearing.
 - b. If the carrier files a new tariff within 20 calendar days, it is again reviewed to ensure consistency with the alternative rate structure. PUC Commissioners then render a decision on the revised tariff at a public meeting. If found to be consistent, the new tariff becomes effective. If inconsistent with the approved alternative rate structure, the carrier must revise and re-submit the tariff for approval.

General Appellate Provisions

PUC regulations permit transportation utilities to file a petition to reopen rate case determinations, with justification of the changes of fact or of law since the conclusion of an ALJ hearing, prior to a final decision has been made by the Commission on the rate case. Following action by the Commission on a rate case, transportation utilities may file a petition for reconsideration or rehearing of the case within 15 days after the Commission order involved is entered or otherwise becomes final. The Commission may, in its discretion, either accept or refuse the petition.

Provisions also exist for a party to a case to request that the Commission find (when the Commission has made an order is not yet a final order), and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to the Commonwealth Court may materially advance the ultimate termination of the matter.

Appeals to the Commonwealth Court

Decisions of the Commission related to rate filings may also be appealed to the Commonwealth Court.^f

^a Filings received for decreases in rates are processed by a Compliance Specialist 1 (tariff analyst).

^b Compliance Office officials indicated that a second check of outstanding fines or assessments is conducted due to time elapsed from the date of initial filing.

^c Compliance Office officials indicated that requests for additional information are made in approximately 90 percent of rate increase filings.

^d Compliance Office staff noted that denial orders are drafted in less than 10 percent of rate increase filings.

^e The crafting of an alternative rate structure may also occur at other times during the rate increase filing consideration process at the discretion of the Compliance Office Manager.

^f The Bureau of Transportation and Safety is not aware of any motor carrier rate case that was appealed to the Commonwealth Court in FY 2005-06.

Source: Developed by LB&FC staff using information obtained from the Bureau of Transportation and Safety.

APPENDIX D

Response to This Report



RECEIVED JAN 24 2007

PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND
CHAIRMAN

January 24, 2007

Mr. Philip R. Durgin
Executive Director
Legislative Budget and Finance Committee
Room 400, Finance Building
Harrisburg, PA 17120

Dear Mr. Durgin:

Thank you for the opportunity to review your draft *Performance Audit of the Pennsylvania Public Utility Commission*, conducted pursuant to House Resolution 695 of 2006. We appreciate your collegial and professional approach to this audit and your willingness to take seriously the input and perspective provided by Commissioners and staff. We welcome the opportunities this report offers the Public Utility Commission (PUC) to enhance the performance of our responsibilities under the Public Utility Code.

Your acknowledgement of our successful efforts to implement recommendations in previous Legislative Budget and Finance Committee (LB&FC) audits is appreciated. As to the new areas examined during this audit, we are pleased with your overall favorable observations of the PUC's operations and activities, particularly with our progress in implementing the Alternative Energy Portfolio Standards Act. We are committed to continuing those efforts, and we recognize the need to promulgate final default service regulations and intend to do that by mid-2007, after seeking further comment from interested parties on specific issues.

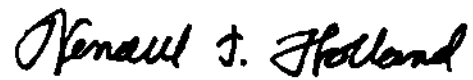
We have carefully reviewed all of your findings and recommendations, and we expect to promptly implement many of those that are within our control. For instance, we agree with the recommendation that we develop a Long-Range Strategic Plan, and we intend to commence that process immediately, building on our existing mission statement and strategic goals to develop that plan.

On your recommendations directed to the General Assembly, we believe that statutory changes in the areas of gas safety jurisdiction, assessments, and wastewater service may be warranted. Nonetheless, alternatives other than those identified by the Report may just as adequately address the noted concerns without causing unintended consequences. As to the recommendation on municipal water authorities, the Report raises valid issues regarding customers residing outside the municipality that should be further explored.

We wish to emphasize our concerns about your recommendation that the General Assembly amend Section 516 of the Public Utility Code to raise the threshold of the value of plant in service required for management audits from \$10 million to \$20 million. Our present approach to management audits is to focus on issues that have current and important public interest components, such as, electric service reliability, natural gas safety, cyber and physical security, and corporate governance. Raising the threshold would exclude some utilities from a review of their practices and performance in these critical areas that we believe are necessary in the public interest. Before any initiatives are undertaken to examine legislative changes in this area, we encourage the General Assembly to reach out to the PUC for further explanations and details.

We thank you again for your efforts, professionalism and the opportunity to respond to this report. The Commission welcomes the recommendations and ideas in your report, as well as the opportunity to enhance the way we carry out the responsibilities mandated by the General Assembly and our mission to balance the interests of Pennsylvania consumers and utilities.

Sincerely,



Wendell F. Holland
Chairman

cc: Vice Chairman Cawley
Commissioner Pizzingrilli
Commissioner Fitzpatrick
Director Moury