

Keystone Competition

Competition News
in Pennsylvania

A newsletter published by the Pennsylvania Public Utility Commission
regarding competition in the telecommunications and energy markets.

Winter 2004

Chapter 30 Policy Statement

In 2003, several House and Senate bills were introduced to amend various provisions of Chapter 30 of the Public Utility Code. Since none were acted upon before the end of the year, the sunset provision took effect permitting Chapter 30 to sunset on Dec. 31, 2003.

In light of the sunset of Chapter 30, the PUC, at the public meeting of Jan. 16, 2004, adopted a Statement of Policy effectively explaining to the telephone industry how the Commission would regulate the telecommunications providers operating in Pennsylvania. In its Statement of Policy, the PUC reiterates the basic premise that all of its prior orders concerning Chapter 30 determinations remain in effect. The PUC expressly states that Commission-approved network modernization plans (NMPs) and alternative forms of regulations for incumbent local exchange carriers (ILECs) continue for the future. In addition, services previously deemed competitive would retain that designation, and active price regulation over interexchange carriers (IXCs) will not be reimposed at this time given the competitive nature of these services.

The Commission also determined that the current Public Utility Code provides sufficient authority for ILECs to remain under their present alternative forms of regulation and for ILECs to continue their NMPs to deploy a universally available state-of-the-art broadband network in Pennsylvania. The Commission stated that it will apply the Statement of Policy in all current Chapter 30-related proceedings and in any future adjudication, as they may arise, and reach a final determination based on the specific issues raised and arguments made in those adjudications.

The Commission published its Statement of Policy in the *Pennsylvania Bulletin* on Feb. 7, 2004.

PUC Investigates FirstEnergy's Reliability

On Jan. 16, 2004, the Commission entered an investigation order at I-00040102 that directed the Law Bureau's prosecutorial staff to participate in a formal investigation examining the level of service reliability provided by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), and Pennsylvania Power Company (Penn Power), all operating companies of FirstEnergy. The investigation was assigned to the Office of Administrative Law Judge (OALJ) to conduct hearings on the matter and issue a recommended decision by Sept. 30, 2004. FirstEnergy, the Law Bureau and intervenors are expected to present testimony in this matter.

Based upon its review of the reliability data filed by FirstEnergy, additional monthly reports and other reliability data, the PUC expressed concern that FirstEnergy may not be meeting the reliability standards established in the Commission's Dec. 16, 1999, order at M-00991220. The focus of this investigation is whether the service reliability performance of any of the FirstEnergy

Competition in Pennsylvania

Welcome to the third issue of Keystone Competition, a quarterly publication of the Pennsylvania Public Utility Commission (PUC) that gives a "snapshot" view of the energy and telecommunications competitive markets and the major issues that affect each industry.

In addition to showing aggregated basic market data, this publication summarizes key Commission decisions affecting competition and discusses legislative activities at the federal and state levels. Additionally, it highlights notable developments at federal agencies, as well as state and federal courts.

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

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Duquesne Light's POLR III Filing

On Dec. 9, 2003, Duquesne Light Company filed a petition with the PUC for approval of a plan for provider of last resort (POLR) service. Duquesne, like all electric distribution companies, is required by law to provide electric generation service to all of its non-shopping, electric distribution customers. The proposed plan's term of service runs from Jan. 1, 2005, through Dec. 31, 2010. Duquesne's current POLR plan expires on Dec. 31, 2004.

The plan takes different approaches to small customers and large commercial and industrial customers. Small customers would continue to receive generation supply at fixed rates. Supply for small customers would be acquired through self-generation and long and short term wholesale energy purchases. Duquesne proposes generation rate increases of 11.5 percent and 9.3 percent in January 2005 and 2008, respectively, in order to cover increased costs. Duquesne asserts that overall rates will still be at least 10 percent below 1997 rates despite these proposed increases.

Supply for large customers would be acquired through two wholesale energy auctions. These two auctions would acquire supply for a fixed price and hourly price service option. All non-shopping large customers would be assigned to the fixed-price service. Fixed price customers would be obligated to remain with their service plan for the initial period, 17 months, once they have enrolled.

Duquesne would continue to provide all customer care functions for both small and large customers for the term of the POLR plan. Transmission and distribution rates would remain unchanged for this period.

Duquesne has asked for Commission approval of this POLR plan by July 1, 2004. The petition has been assigned to the Office of Administrative Law Judge for hearings.

Duquesne also requests PUC approval of its decision to join PJM West by Dec. 31, 2004. Duquesne cites access to PJM's energy markets as the primary benefit to both it and its customers. Duquesne also points to additional benefits of membership, including PJM's congestion management system, regional transmission planning approach, and effective market monitoring.

DSR Group Gathering Key Data

The Demand Side Response (DSR) Working Group is currently gathering information to assist staff in developing a recommendation for the Commission as to the next steps that might be taken to promote the continued deployment of DSR tools to consumers. At the Nov. 6, 2003 meeting of the DSR Working Group, several participants suggested that breaking into subgroups to study specific topics may help to narrow issues that need to be pursued in any formal proceeding that is held in conjunction with establishing DSR targets, standards or incentives for electric distribution companies (EDCs).

PUC staff then established four subgroups and solicited volunteers from the working group to participate in these ventures. A subgroup chaired by Cal Birge from the Bureau of Conservation, Economics and Energy Planning (CEEP) is expected to survey the EDCs' existing technologies, while also identifying additional steps that need to be taken to make those tools available to all customers. This subgroup will consider both the costs and the time needed to complete those steps. Shane Rooney of the Law Bureau is chairing a subgroup that is considering what mechanisms are available to allow EDCs to recover costs associated with implementing DSR. A subgroup collecting consumer research and survey results relating to their interest in DSR programs is chaired by Tom Charles of the Office of Communications. Greg Shawley of the Bureau of CEEP is chairing a subgroup that is exploring potential benefits of DSR programs to the system and to consumers.

The DSR Working Group will have conference calls on March 24 and April 21, to receive status reports from the subgroups. PUC staff hopes to have the subgroups' work completed by April 30, after which a meeting of the entire DSR Working Group will be held. Staff will then submit a recommendation to the Commission.

PA Electric Shopping Statistics

The data in these tables reflect information as of January 2004, from the Pennsylvania Office of Consumer Advocate's (OCA). The information is updated on a quarterly basis at OCA's website (www.oca.state.pa.us).

Number of Customers Served by an Alternative Supplier

Company	Residential	Commercial	Industrial	Total	Total %
Allegheny Power	807	88	0	895	0.1
Duquesne Light	131,065	12,217	604	143,886	24.4
MetEd/Penelec	2,320	131	65	2,516	0.2
PECO Energy*	280,499	60,331	134	340,964	22.2
Penn Power	502	28	0	530	0.3
PPL	1,692	1,504	90	3,286	0.3
UGI	54	3	0	57	0.1
Totals	416,939	74,302	893	492,134	

* Includes the 26,822 residential customers assigned to Competitive Discount Service (CDS) and 197,188 residential customers in the Market Share Threshold Program (MST). It also includes 45,024 commercial customers on the MST, but does not include the 137,380 former CDS customers now served by PECO on a CDS rate.

Natural Gas R&D Spurs Interest in Resuming Dialogue

A December presentation by the Gas Technology Institute (GTI) of Des Plaines, Illinois, demonstrated some of the benefits of research and technology for the natural gas industry and proposed ways in which natural gas distribution companies (NGDCs) might fund research.

Ron Edelstein, Director of Regulatory Affairs for GTI, made the presentation at the Commission's offices on Dec. 18, 2003. His proposal included tying the funding of research to specific projects which would be intended to benefit the NGDCs providing the funding.

Peter Terranova, Vice President of Operations for UGI Utilities, explained how a research and development (R&D) project enabled UGI to achieve savings in the replacement of a gas main in the Harrisburg area. Bruce Ellsworth, a former Public Utilities Commissioner for New Hampshire and a consultant to GTI, offered comments in support of the R&D funding proposal.

Following the presentation, Robert A. Rosenthal, the Director of the PUC's Bureau of Fixed Utility Services, discussed reviving the "Tuesday Group," a group formed by the Commission in 1993 to ease the transition to the Federal Energy Regulatory Commission order 636 environment. The group created a staff-industry dialogue on current natural gas industry questions. Based upon that discussion, PUC staff believes there is sufficient interest in resurrecting that group and hopes to reconvene interested stakeholders during the second quarter of 2004.

Pennsylvania Natural Gas Shopping Statistics

The data in these tables reflect information as of Jan. 1, 2004, from the Pennsylvania Office of Consumer Advocate (OCA). The information is updated on a quarterly basis at OCA's website (www.oca.state.pa.us).

Company	Total Residential Customers	Total Customers Served by Alternative Suppliers	Percent of Customers Served by Alternative Suppliers
Columbia Gas	344,527	79,694	23.1
Dominion Peoples	326,382	89,629	27.5
Equitable Gas	238,167	20,627	8.7
National Fuel Gas	199,044	0	0
PECO Gas	415,871	1,709	0.4
PG Energy	139,415	0	0
PGW*	487,009	0	0
PPL Gas	65,860	0	0
TW Phillips	56,092	0	0
UGI Gas	268,206	3,231	1.2
Valley Cities, NUI	4,612	0	0
Totals	2,545,185	194,890	7.7

*PGW opened to natural gas choice on Sept. 1, 2003.

PUC Initiates Provider of Last Resort Roundtables

On March 4, 2004, the Commission unanimously voted to hold a series of roundtable meetings to discuss the provider of last resort (POLR) obligations of electric distribution companies (EDCs) following the transition period for electric restructuring. While EDCs are required by the statute to offer POLR service to customers during the transition period, the Commission must promulgate regulations to define the EDCs' obligations after stranded cost recovery terminates and rate caps expire. The purpose of the POLR Roundtable is to provide a forum where interested participants may discuss before Commissioners and Commission staff various issues related to the default service for consumers who do not choose an electric generation supplier. Interested parties were to notify the Secretary's Bureau by March 11, 2004, of their intent to participate.

There will be a series of POLR Roundtable meetings between April 7 and June 30, 2004. Although they will be open to the public, the Commission will designate a particular meeting for each stakeholder group to present their views on POLR service. The Commission will distribute a meeting schedule and issues list to the participants by March 18, 2004. The participants shall file testimony one week in advance of these meetings and should be prepared to offer their detailed opinions on all relevant issues. At the conclusion of these meetings, the Commission will promulgate a Notice of Proposed Rulemaking to address the POLR obligation of EDCs in the post-transition period.

Electric Supplier Licensing

Quarterly activity from Nov. 1 to Dec. 31, 2003.

48 Active Licenses

2 licenses canceled
0 license approved
0 applications pending

Natural Gas Supplier Licensing

Quarterly Activity from Nov. 1 to Dec. 31, 2003.

78 Active licenses

0 licenses canceled
3 licenses approved
4 applications pending

Statewide Sustainable Energy Board Seeking to Enhance Regional Boards' Operations

On Aug. 7, 2003, the Commission adopted an order further defining the role of the Pennsylvania Sustainable Energy Board (PASEB), which was originally created to provide guidance and assistance to the regional sustainable energy boards in the management of funds provided for in several electric restructuring proceedings.

The PASEB consists of representatives of each regional board, the Commission, the Department of Environmental Protection (DEP), the Department of Community and Economic Development (DCED), the Office of Consumer Advocate (OCA), and the Pennsylvania Environmental Council.

Pursuant to the Commission's recent directives, the PASEB held an organizational meeting on Feb. 18. In addition to planning an annual meeting at which all interested parties may learn more about how the funds are being spent, the PASEB worked on producing bylaws, an annual report and a "best practices" business model for submission to the Commission later this year.

FirstEnergy Investigation

Continued from Page 1.

companies has fallen below the level of service reliability that existed before restructuring.

In examining the service reliability of FirstEnergy, the scope of this formal investigation should include, but is not limited to, the following areas:

- Underlying causes for outages;
- Adequacy of inspection and maintenance cycles;
- Tree-trimming activities and contracts;
- Changes to budgeted/actual capital and operating expenditures in select areas in prior years;
- Emergency call-out procedures and calculation of the acceptance rate;
- Hiring/contracting practices for line workers; and
- Other factors, practices and policies that may affect service reliability.

If service reliability is found to have deteriorated, the ALJ is directed to take evidence on recommendations for corrective action. Civil fines and penalties are not within the scope of this proceeding.

Pennsylvania Wind Projects

In 2002-03, the four Sustainable Energy Funds (SEFs) offered production incentives of roughly \$12 million to establish 194 MW (megawatts) of wind power under development or operating in Pennsylvania. Approximately \$9 million syndicated between all four funds was key to establishing these wind farms. This \$9 million provided about \$3 million of subordinated debt, which resulted in a Power Purchase Agreement (PPA), and the funds were able to retain their original funding. This allows the SEFs to continue financing other wind projects within the Commonwealth, and it is anticipated that an additional 190 MW of wind will be built in the next year or two.

Projects Already Online and Operating

Energy Unlimited	120 kW
Garrett	11 MW
Somerset	9 MW
Mill Run	15 MW
Waymart	64 MW
Meyersdale	30 MW

Projects with Signed Power Purchase Agreements

Anticipated to be Online by Mid-2004

Bear Creek	26 MW
Mountaintop	40 MW

Other Projects Under Development in 2004

Somerset	30 MW
Luzerne	40 MW

In neighboring states, New York's expenditures for incentives and grants did not produce a PPA in 2003, and their focus is now turning toward a Renewable Portfolio Standard (RPS). The New England states have about 700 kW (kilowatts) of wind operating on-shore, with most anticipated (and funded) for offshore wind projects.

Mountaineer Wind in West Virginia (a 66 MW farm) is one of the only wind projects being financed without a subsidy (aside from the federal Production Tax Credit, which expired on Dec. 31, 2003.) New Jersey has spent \$3.1 million for a 7 MW project.



Heating Oil and Natural Gas Market Prices Remain Steady

The Energy Information Agency (EIA) estimate for winter 2003-04 heating bills compared to winter 2002-03 is that natural gas-heated homes - up 11 percent; heating oil users - down one percent; propane-heated households - up 7 percent; and homes with electric heat - up about 2 percent. These are national average values – actual bills vary widely by region.

Heating Oil

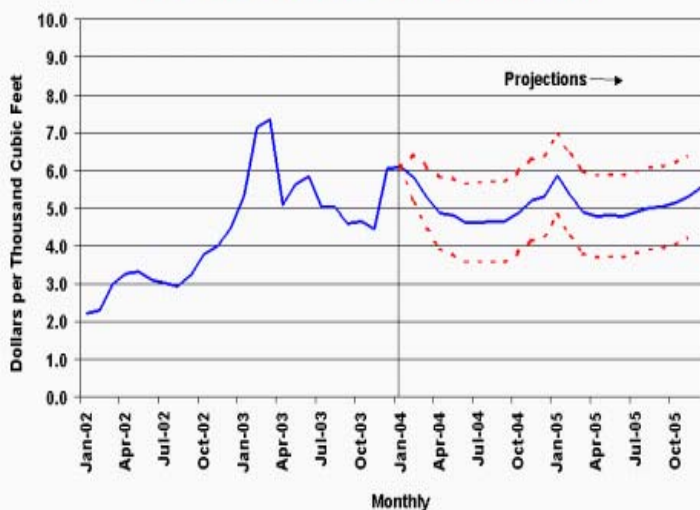
The February 2004 EIA's short-term forecast predicts that heating oil prices will be about \$1.37 per gallon for the rest of the winter. This is about the same as last year. A cold January (6 percent colder than normal nationally and 19 percent colder than normal in the Northeast) kept heating costs high. Crude oil prices through 2005 are still expected to be near \$30 per barrel, with potential spikes remaining a danger until stocks rebuild to more normal levels. Increasing world demand and OPEC production restraint is expected to keep the United States oil inventories slightly lower than normal.

Natural Gas

Cold weather pushed up average monthly wholesale prices at the Henry Hub (Louisiana) to \$5.90 per million Btu (British thermal units) in January. Despite the severe weather, natural gas storage has remained at least slightly above normal, and spot prices in early February have moved down toward \$5. In April 2003, gas storage was 40 percent below the five-year average in February 2004 storage levels are at the five-year average. Storage provides a cushion between supply and demand.

For 2004, EIA expects natural gas prices to average about \$4.90 per million Btu. In October 2003, at the beginning of the heating season, the wholesale prices at the Henry Hub were \$4.50 per MCF (thousand cubic feet).

**Figure 8. U.S. Natural Gas Spot Prices
(Base Case and 95% Confidence Interval*)**



*The confidence intervals show +/- 2 standard errors based on the properties of the model. The ranges do not include the effects of major supply disruptions.

Sources: History: Natural Gas Week; Projections: Short-Term Energy Outlook, February 2004.



Great Information for Free

The federal Energy Information Agency (EIA) provides national and international energy data. Their website address is www.eia.doe.gov. This site has information on oil, natural gas, electricity and petroleum products. It also includes price and supply information.

Some useful sections are:

The weekly petroleum status report at www.eia.doe.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html

The weekly natural gas report at <http://tonto.eia.doe.gov/oog/info/ngw/ngupdate.asp>;

The short term energy outlook with price forecasts at www.eia.doe.gov/emeu/steo/pub/contents.html;

State energy data at www.eia.doe.gov/emeu/states/_states.html; and

Ask an expert link provides specific responses to questions from the public at <http://tonto.eia.doe.gov/ask/askexpert.asp>.

Feedback



We welcome any feedback on *Keystone Competition*.

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

CLECs Operating in PA at the End of 2003

At the end of 2003, 196 competitive local exchange carriers (CLECs) were authorized to do business in Pennsylvania. This is a significant increase over the 140 reported at the end of 2002.

There were 160 CLECs certificated as utilities in Pennsylvania. A certificate is issued to an applicant once it has satisfied all application requirements including the filing of an acceptable tariff.

A CLEC is authorized to operate with provisional authority if no protests are filed within 15 days of submission of an application and the application contains a proposed tariff with rates. At the end of 2003, there were 36 companies with provisional authority to operate in Pennsylvania, which were not yet certificated. At the end of 2002, there had been 101 such companies, most of which have now become fully certificated.

CapTel Trial Extended

On Feb. 6, 2003, the PUC approved a nine-month trial (with the possibility of two three-month extensions) of the CapTel telephone relay technology. The initial nine-month trial began on May 1, 2003, and ended on Jan. 31, 2004. At the public meeting of Jan. 24, 2004, the PUC approved a three-month extension of the trial, through April 30.

CapTel is a form of telecommunications relay service that uses a voice recognition mechanism and a captioning telephone to display the user's conversation almost simultaneously with their spoken words to the called party. It is designed to be used by people who experience some degree of hearing loss, but who can speak.

CapTel provides the users with a degree of functional equivalency that is the closest to a traditional telephone that the industry has offered to date. During the trial, the equipment is provided free of charge to the trial participants, and the cost of use for providing the service is funded by the Telecommunications Relay Service (TRS) surcharge.

Triennial Review Order

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *U.S.T.A. v. F.C.C.*, Nos. 00-1012 and consolidated cases, that vacated major determinations made by the Federal Communications Commission (FCC) in its Triennial Review Order (TRO), addressing national requirements for local access to telephone networks.

The Court of Appeals, among other things, vacated the FCC's subdelegation to state commissions of decision-making authority over certain impairment determinations, vacated the FCC's nationwide impairment determinations with respect to mass market switching and certain transport elements, and vacated the FCC's decision not to take into account availability of tariffed special access services when conducting the impairment analysis.

The Court upheld the FCC's decision to require ILECs to make routine network modifications to unbundled elements used by requesting carriers where the requested facility has already been constructed, upheld the FCC's decision to withhold unbundling orders (even in the face of some impairment) where such unbundling would pose excessive impediments to infrastructure investment, and, held that the FCC reasonably eliminated mandatory line sharing.

The Court considered whether "entrance facilities" are "network elements" subject to statutory unbundling requirements and found that the record was "too obscure to make any final ruling," so the matter was remanded for further consideration. The Court did not make its decision to vacate certain portions of the TRO effective immediately, but issued a temporary stay of at least 60 days.

The Court also ruled that the FCC had not taken final agency action on the issue of state unbundling regulations that exist independent of the FCC's federal unbundling regulations. A ruling on the state law preemption issue was deferred pending final agency action.

In Pennsylvania, ongoing proceedings before the PUC's Office of Administrative Law Judge at Docket Nos. I-0003099 (9-Month Case) and M-00031754 (Efficient Loop Migration/Batch Hot Cut Proceeding) are affected by this Court of Appeal's opinion, as are other state commission TRO proceedings. The procedural status of these proceedings is under review. The Commission is also evaluating whether it will pursue further court review of issues pertaining directly to state commission jurisdiction.

TRS Consumer Education

The PUC is a partner in a new statewide campaign, which will launch on March 25, to raise awareness about Telecommunications Relay Services (TRS) for those who have hearing or speech loss. The campaign will educate hearing people about relay services that enable all people to communicate better.

PUC Commissioners Glen R. Thomas, Kim Pizzigrilli and Wendell F. Holland will participate in the launch event at the Whitaker Center for the Science and the Arts in Harrisburg at 10 a.m., and will be able to communicate via TRS with people participating at similar, simultaneous launch events in Philadelphia and Pittsburgh.

Christy Smith, who is deaf and an advocate for deaf awareness, will serve as the campaign spokesperson. Christy was a participant on CBS TV's "Survivor: The Amazon."

The campaign is driven by a recent study showing that less than 9 percent of the hearing public in the state is aware of relay services.

Verizon PA Files UNE Compliance Tariff

On Jan. 26, 2004, Verizon PA filed new Unbundled Network Elements (UNE) rates in compliance with the Commission's opinion and order entered on Dec. 11, 2003. The Commission directed Verizon PA to rerun its TELRIC (Total Element Long Run Incremental Cost) model for recurring rates using the input values and methodologies specified in the Dec. 11 order.

Verizon PA was directed to recalculate and file new UNE rates that incorporated an overall cost of capital of 12.37 percent and reflected the Commission's direction of how rejection of Verizon PA should properly apply the Forward Looking Conversion factor. Verizon PA was also directed to file TELRIC-based non-recurring rates consistent with the order of Dec. 11.

If approved, the wholesale 2-Wire Basic Unbundled Loop rates would decrease in areas of the state that are predominantly urban and suburban (in exchanges classified as Density Cell 1, 2 and 3) and increase in the most rural areas (in exchanges classified as Density Cell 4). However, the overall statewide average for these wholesale local loop rates will increase from \$13.81 to \$14.52. Verizon PA's compliance filing is tentatively scheduled to become effective March 26, 2004.

Parties had until Feb. 25 to file exceptions and/or comments to the compliance filing. Reply comments were due by March 6. The Commission will evaluate the supporting information that accompanied the compliance filing as well as all exceptions, comments and reply comments before it determines whether a rate has been properly justified.

Telephone Companies' Tariffs

Today, because of competition, there are approximately 550 phone companies that file a total of 854 tariffs with the Commission.

Breakdown of Telco Tariffs*

Switched Access Carriers	107
CAP/Other	76
CLEC (Facility Based)	114
CLEC (Non Facility Based)	46
ILECs	38
Interexchange Resellers	407
Toll (Facility Based)	66
Total	854

CAP - Competitive Access Providers

CLEC - Competitive Local Exchange Carrier

ILEC - Incumbent Local Exchange Carrier

* A company may have more than one tariff.

Voice Over Internet Protocol

Voice Over Internet Protocol (VoIP) is an emerging technology that allows real-time audio (i.e., voice, data or voice and data), instantaneously or slightly-delayed, to be transmitted and received in a digital format through the use of Internet Protocol (IP) data packet transmission.

The Federal Communications Commission (FCC) recently decided that some computer-to-computer VoIP is an information service and not a telephone service. This means that some VoIP would have little, if any, state or federal regulation. The FCC did not decide if VoIP that uses a combination of telephones, telephone networks and computers is an information service or a telephone service.

By order (Docket No. M-00031707) dated May 5, 2003, the Commission initiated an investigation regarding VoIP. The comments submitted by interested parties have been analyzed by staff and the matter is under review by the Commission.

Local Telephone Competition

Pennsylvanians for Local Competition (PLC) in January touted two Promoting Active Competition Everywhere (PACE) Coalition reports that suggest "Pennsylvania is continuing to fall behind other states in local competition."

On the contrary, data recently released by the Federal Communications Commission (FCC) shows that local telephone competition continues to increase in Pennsylvania, outpacing the national average and other states. Thanks to local telephone competition, Pennsylvanians are making calls with more than 1.4 million lines provided by competitive providers. Among neighboring states, Pennsylvania ranks eighth in the nation and behind only New York and Washington D.C., for competitive local exchange carrier (CLEC) market share.

By the end of 1999, five percent of Pennsylvania phone lines were served by a new competitor. By June 2003, 17 percent of all access lines, or 1,413,458, were provided by CLECs in the state. The national number is 15 percent.

PACE defines local telephone competition as the UNE-P (Unbundled Network Element Platform) rate, rather than also looking at other factors that need to be considered when measuring the competitiveness of the market, specifically when there are more modes of entry other than UNE-P, such as UNEs (Pennsylvania ranks ninth in the nation) and facilities-based (Pennsylvania ranks second, behind Massachusetts).

Also, contrary to the press release issued by PLC, Pennsylvania ranks seventh in the nation for total UNE-P lines and 11th for share of total CLEC lines.

Blackout Investigation Identifies Causes and Recommends Action

The United States-Canada Power System Outage Task Force issued an Interim Report on Nov. 19, 2003, identifying the causes of the Aug. 14 blackout that affected an estimated 50 million people in large portions of the Midwest and Northeast United States and Ontario, Canada. Finding that the blackout initiated in Ohio when three high-voltage transmission lines short circuited after coming into contact with trees, the task force concluded that a series of complications then caused the cascade of power failures.

The task force identified various factors as causing the massive blackout, including poor communications, human error, mechanical breakdowns, inadequate training and software glitches. Additionally, the task force found that insufficient attention to matters ranging from the performance of sophisticated computer modeling systems to simple tree trimming contributed to the conditions that led to the blackout. Since issuance of the interim report, the task force has held public forums and given the public an opportunity to comment on the interim report and present recommendations for consideration by the task force. A final report is expected to be issued later this month.

On Feb. 10, 2004, the North American Electric Reliability Council (NERC) announced the results of its own investigation, noting that it had significantly contributed to the task force's interim report and fully concurs with those conclusions. Highlighting problems with existing monitoring processes, operational differences among reliability coordinators and control areas, the use of inaccurate data and the lack of adequate information sharing, NERC offered several recommendations to address these shortcomings.

Among the recommended initiatives are a stronger NERC enforcement program, audits of reliability control areas, evaluation of vegetation management procedures, clarification of reliability coordinator responsibilities and a review of system modeling data and data exchange practices.

In releasing the results of its investigation, NERC also committed to working closely with the Federal Energy Regulatory Commission and other federal, state and provincial regulatory authorities in the United States, Canada and Mexico to ensure compliance with reliability standards.

FERC Challenges State Laws that Prevent AEP from Joining PJM

From Jan. 26 to Feb. 3, 2004, hearings were held at the Federal Energy Regulatory Commission (FERC) addressing its Nov. 25, 2003, order preliminarily exempting American Electric Power Company (AEP) from Virginia and Kentucky state laws that prevent it from joining PJM.

FERC said that these states have "erected virtually insuperable barriers" preventing AEP from joining PJM. FERC relied on a rarely used provision of the Public Utility Regulatory Policies Act (PURPA), Section 205, which gives FERC authority to exempt utilities from state rules that prohibit voluntary coordination of utilities which promote economic efficiencies. FERC's order sets the stage for a major legal confrontation addressing whether FERC can utilize PURPA to promote the development of regional transmission organizations (RTOs).

The Pennsylvania PUC, along with the utility regulatory commissions of the District of Columbia, Illinois, Indiana, Michigan and New Jersey, filed a joint initial brief urging that FERC require AEP to fulfill its voluntary commitment to join an RTO that it made in exchange for FERC merger approval of AEP's acquisition of Central South West Corp. The six state commissions also told FERC that AEP's alternative proposal offering participation in a "PJM Lite" in which AEP would transfer its transmission facilities to PJM, but withhold participation in the wholesale markets, was not acceptable.

The case is on a fast track, with the FERC administrative law judge expected to issue an initial decision by March 15, and a final order from FERC in April 2004.

Federal Energy Legislation Resurfaces

Comprehensive United States energy legislation, which stalled at the end of last year by the inability of its Congressional sponsors to end a filibuster, has resurfaced in the form of a "pared down" bill (S. 2095). Although this bill reportedly does not affect the electricity title included in last year's bill, it drops or postpones some energy-related costs or expenditures related to other federal energy incentives.

The current bill, introduced by Senate Energy and Natural Resources Chairman Pete V. Domenici, will be brought directly to the floor of the Senate without going through the committee hearing process. While the bill was introduced with the cooperation of Majority Leader Bill Frist and Minority Leader Tom Daschle, it is unclear at this time whether the bill has enough additional bipartisan support to win passage in both houses of Congress.

Local Number Portability

The Federal Communications Commission (FCC) recently issued three orders clarifying the rules that govern local number portability of telephone numbers from one wireless carrier to another (wireless local number portability – WLNP) as well as from wireline to wireless carriers (intermodal porting).

On Nov. 10, 2003, the FCC clarified, in its Local Number Portability Order at CC Docket No. 95-116, a number of issues applying to wireline-to-wireless (intermodal) porting for carriers operating in the top 100 metropolitan statistical areas (MSAs). Regarding carriers operating in the top 100 MSAs, the FCC determined that local exchange carriers (wireline carriers) must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned. The FCC defined the wireless "coverage area" as the area in which the wireless carrier can provide service.

The FCC also affirmed that wireless carriers must port numbers to wireline carriers within the number's originating rate center. The FCC determined that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. Further, the FCC declined to adopt a mandatory porting interval for wireline-to-wireless ports at the present time.

Instead, the FCC issued a Further Notice of Proposed Rulemaking (FNPRM) to seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier is seeking to serve the customer. Also, the FCC has requested comments on whether it should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers. Comments and reply comments on the issues were due on Jan. 20 and Feb. 4, respectively.

On Jan. 16, 2004, the FCC released an order granting a limited waiver of the intermodal porting requirement described above for certain local exchange carriers. Specifically, the FCC granted carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide that operate in the top 100 MSAs a waiver, until May 24, 2004, to comply with the intermodal porting requirement. The waiver applies to the two percent carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. If the two percent carrier does not meet the above-mentioned qualifications, it must comply with the requirements for intermodal porting to date from Nov. 24, 2003. The FCC found that there is

good cause to grant the waiver to the specific carriers because of the technological and operational limitations that the carriers face in implementing intermodal porting.

Previously, on Oct. 7, 2003, the FCC released an order providing guidance to the industry on the implementation of wireless local number portability that began on Nov. 24, 2003, in the top 100 MSAs. The FCC held that wireless customers can port their numbers even if they have not settled their account with their old carrier. While wireless carriers may include and enforce credit requirements, early termination fees, and similar contractual provisions in their customer agreements, carriers may not refuse to port numbers upon receipt of a valid request from the customer's new carrier.

The FCC also held that WLNP does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. The FCC found that interconnection agreements are not required for WLNP.

Number Pooling in Top 100 MSAs

In response to the Federal Communications Commission's Fourth Report and Order in the Matter of Numbering Resource Optimization at CC Docket No. 99-200, Neustar Inc., the national pooling administrator has developed a proposed list of revised top 100 Metropolitan Statistical Areas (MSAs). In January 2004, Neustar Inc. developed the revised list for the purposes of determining which MSAs and corresponding rate centers would be subject to thousands-block pooling based on the 2002 revised census population estimates.

Pennsylvania has six MSAs in the proposed top 100, including the Philadelphia and Pittsburgh areas, the Allentown-Bethlehem-Easton region, the Scranton-Wilkes Barre areas, the Harrisburg-Carlisle region, and the Lancaster area. Based on the changes to the MSAs in Pennsylvania, there may be an additional 71 rate centers that are eligible for mandatory thousands-block pooling. Thousands-block pooling allows NXX codes to be divided into 10 separate 1,000-number blocks that can be assigned to different telecommunications carriers. NXX codes are the three digits following the area code in a 10-digit telephone number.

It is uncertain at this time when Neustar Inc.'s revised top 100 MSAs list will be finalized.

Chapter 30 Review

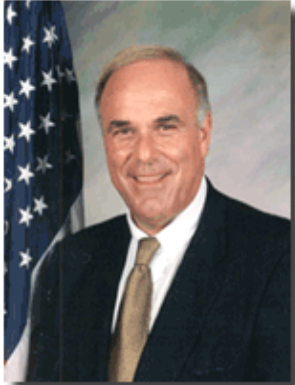
During the scheduled session days in December 2003, the General Assembly did not act to reauthorize Chapter 30 of the Public Utility Code. Therefore, the sunset provision took effect permitting Chapter 30 to sunset on Dec. 31, 2003.

However, the current legislative session does not end until Nov. 30, 2004. Because of this situation, the General Assembly can vote on any Chapter 30 proposals currently pending or to be introduced in the General Assembly before the end of November 2004.

During 2003, there were seven separate proposals introduced in the General Assembly amending various provisions of Chapter 30. They include:

- **House Bill 30**, which passed the House of Representatives on Nov. 25, 2003, has been referred to the Senate Consumer Protection and Professional Licensure Committee for consideration. The legislation provides that the incumbent local exchange carriers (ILECs) may remain subject to their existing network modernization plans (NMPs), or elect one of three options to accelerate deployment targets. The bill permits a reduced (less than 100 percent) commitment to universal broadband availability, coupled with a bona fide request program for additional deployment where market demand dictates. The bill permits a lesser degree of regulation with little PUC oversight including reductions or elimination of the productivity offset in the carriers' price stability mechanisms under current PUC-approved Chapter 30 plans.
- **House Bill 1669**, which was referred to the House Consumer Affairs Committee on June 23, provides for detailed pro-competitive language concerning interconnection, collocation, provisioning standards and basic service functions. The proposed language also eliminates any statutory NMP obligations on the ILECs and, instead, creates a new authority with 15 members, to subsidize the deployment of broadband facilities and services in the rural areas of Pennsylvania. The legislation also requires the PUC to conduct a proceeding in one year to identify all subsidies in switched access service and to establish, instead, a universal service fund.
- **House Bill 1010**, referred to the House Consumer Affairs Committee on Oct. 14, centers on the universal access to high speed telecommunications services including the Internet. House Bill 1010 establishes the Connecting Pennsylvania Authority, to provide for the deployment of a high speed modern telecommunications network ubiquitously throughout the state. The legislation also amends section 3003 of Chapter 30 to grant the PUC the authority to continue to regulate ILECs under an alternative form of regulation that is in effect for the individual companies. Similar to House Bill 1669, the PUC is granted the authority to provide unrestricted access to the ILECs' network concerning interconnection, collocation, unbundled network elements and operations support systems.
- **House Bill 2233**, referred to the House Consumer Affairs Committee on Dec. 8, 2003, extends Chapter 30 for one year, or until Dec. 31, 2004.
- **Senate Bill 30**, referred to the Senate Consumer Protection and Professional Licensure Committee on Oct. 1, amends Chapter 30 to provide economic incentives for accelerated broadband deployment, beyond what is called for in the ILECs' current NMPs. In particular, the legislation provides for scaled reductions to an ILEC's productivity offset after broadband has been deployed to agency-defined "targeted deployment areas" and to bona fide request communities. In addition, the legislation requires that ILECs with more than one million access lines (Verizon PA) complete their NMPs by 2008. The legislation also requires the PUC to create a broadband inventory which will identify the type, speed and location of available broadband services based on information provided by ILECs, competitive local exchange carriers (CLECs), interexchange carriers (IXCs) and any other telecommunications service provider in the state.
- **Senate Bill 900**, referred to the Senate Communications and High Technology Committee on Oct. 1, proposes the establishment of a Pennsylvania Telecommunications Commission (PTC) as an independent agency to regulate the telecommunications industry. The legislation provides that the PTC is comprised of five members for terms of six years. In essence, this legislation copies over Title 66 of the Public Utility Code while adding additional consumer protections and competitive provisions contained in House Bill 1669.
- **Senate Bill 961**, referred to the Senate Consumer Protection and Professional Licensure Committee on Nov. 12, is similar to House Bill 30. The legislation provides for both a reduced commitment to universal broadband availability and a lesser degree of regulation. Senate Bill 961 permits all local exchange telecommunications carriers to accelerate broadband availability to 80 percent of its total retail access lines by 2010 and to establish a bona fide request program, which permits the incumbent telephone companies to provide advanced services and broadband availability within a year's time if certain customers commit to subscribe to the service for an ILEC-defined subscription period. The legislation also provides for the elimination of the productivity offset for ILECs with price stability mechanisms and two percent annual rate increases for all other ILECs.

Governor Addresses Energy and Telecommunications in 2004-05 Budget



Gov. Edward G. Rendell

In his 2004-05 Budget Address before the General Assembly on Feb. 3, Gov. Edward G. Rendell addressed several energy and telecommunications initiatives.

"Having already doubled Pennsylvania's use of green energy, I am directing state agencies to redouble that effort so that fully 20 percent of the Commonwealth's needs are met by state-of-the-art energy technologies," Gov.

Rendell said. "To expand this effort across the state and into the private sector, I am also proposing an Advanced Energy Portfolio Standard so that in 10 years, 10 percent of all energy generated in our state will come from clean, efficient sources of power."

To continue the Hazardous Sites Cleanup Fund, Gov. Rendell proposed a fee of 15 cents a pound on the release of toxic chemicals into the state's air and water.

The Governor's budget would expand the Pennsylvania Energy Harvest program to provide financial tools to encourage clean and renewable energy projects from advanced energy sources such as biomass, wind, solar, small-scale hydroelectric, landfill methane, coal-bed methane and waste coal.

A revitalized Pennsylvania Energy Development Authority would finance a wide range of energy research, development and demonstration projects to develop, promote and more efficiently use alternative energy resources indigenous to the state.

The budget also includes two Green Sales Tax Holidays next year to encourage people to buy energy-efficient appliances.

Related to telecommunications, Gov. Rendell called on the General Assembly to enact legislation that ensures that every Pennsylvanian has access, at home, to affordable, quality basic telephone service.

According to a Pennsylvania Council for Utility Choice report, nearly 98.6 percent of Pennsylvania homes have some type of telephone service, giving the state one of the highest penetration rates in the nation.

"Eight of the 10 fastest-growing occupations are in professions that depend on high-speed communications," Gov. Rendell said. "We have no choice but to accelerate the introduction of broadband services across the Commonwealth — well before the 2015 deadline established under Chapter 30. We can do this by providing incentives

to local telephone companies and financial assistance to municipalities and entrepreneurs.

"Every school in Pennsylvania must have high-speed Internet service at affordable rates within the next 18 months."

Technical Conference Convened on Verizon PA Density Cell Restructuring

By secretarial letter dated Feb. 9, 2004, the Commission convened a Density Cell Technical Conference (Docket No. M-00041790), in accordance with the Commission's Dec. 11, 2003, order on Generic Unbundled Network Element (UNE) at Docket No. R-00016683.

The Commission concluded that a "fresh look" should be taken at Verizon PA's existing density cell structure to address the merits of revising Verizon PA's existing density cell structure and its impact on UNE rates. A close look will be particularly taken with respect to the wholesale density cell rates in the most rural areas of the state where local telephone competition is lacking. The secretarial letter was mailed to all parties of record in the Verizon PA UNE proceeding, as well as in the Consolidated Loop Cost proceeding at Docket No. R-00028028.

The secretarial letter requested interested parties to provide notice of their intent to participate and to submit a list of issues that they would like to propose for consideration at the conference. After the parties advise the PUC of their intent to participate and the issues they would like considered, PUC staff will provide further communications concerning the scope, agenda and schedule of key dates for the Technical Conference.

Parties that notified the PUC of their intent to participate include:

- AT&T Communications of Pennsylvania;
- Pennsylvania Office of The Attorney General;
- Cavalier Telephone Mid-Atlantic;
- Office of Senator Jake Corman, 34th District;
- Covad Communications Company;
- CTSI;
- Full Service Network;
- MCI Worldcom Network Services;
- Office of Consumer Advocate;
- Office of Small Business Advocate;
- PUC's Office of Trial Staff;
- RCN Telecom Services;
- Rural Telephone Company Coalition;
- Verizon Pennsylvania; and
- Office of Senator Mary Jo White, 21st District.