BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN INCREASE IN ELECTRIC BASE RATES AND MISCELLANEOUS TARIFF CHANGES (FILED March 22, 2013)	))))))	PSC DOCKET NO. 13-115

BRIEF ON EXCEPTIONS OF DELMARVA POWER & LIGHT COMPANY TO THE FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

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BRIEF ON EXCEPTIONS OF DELMARVA POWER & LIGHT COMPANY TO THE FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Delmarva Power and Light Company (Delmarva or the Company) submits this Brief on Exceptions to the Findings and Recommendations of the Hearing Examiner (the "HE Report") in the above-referenced proceeding, as issued on March 4, 2014. Pursuant to Commission Rule of Practice and Procedure 2.19.1.5, Delmarva respectfully requests the opportunity to present its exceptions through oral argument, which has been scheduled for April 1, 2014 at 10:00 a.m. at the Commission's offices in Dover.

INTRODUCTION

This rate case involves the review of Delmarva's application for an increase in annual operating revenues of $39.681 million.[1] The Company requests a rate base, cost of service and rate design that generally adheres to past ratemaking treatments approved by this Commission. For the limited items where the Company did not follow recent ratemaking treatment, it specifically identified those instances and provided the basis for why its proposed treatment is appropriate. Delmarva also presented an analysis and evaluation of market conditions from

[1] The Company's Application filed on March 22, 2013, requested an increase of $42.044 million, and such request was revised by the Company as outlined in its rebuttal filing to $39.681 million.

which a reasonable return on equity can be determined.

Hearing Examiner Mark Lawrence heard testimony during a three-day evidentiary hearing, which generally related to the Company's revenue requirements, reliability capital investments and rate design. Following briefing, the Hearing Examiner issued the HE Report. The Company appreciates the Hearing Examiner's efforts in working through the volumes of information presented in this docket and for the manner in which he handled the evidentiary hearing. For many of the adjustments and other items at issue in this proceeding, Delmarva believes that Hearing Examiner Lawrence applied the appropriate precedent and analysis in making his recommendations and findings to the Commission. These are supported below.

However, in some instances, the Hearing Examiner recommends the denial or modification of costs and expenses that have been recognized in the past by the Commission as being recoverable. These include incentive compensation, cash working capital, recurring IRP expenses, corporate governance expenses, meal expenses and membership dues. In these instances, the Hearing Examiner fails to follow precedent and ratemaking treatments recognized in this Commission's prior orders as well as well-established Delaware law. The Delaware Supreme Court has made clear that this Commission is required to allow recovery of ordinary operating expenses, including increases in those expenses, unless those expenses are found to have been incurred "in bad faith or out of an abuse of discretion."[2] In some instances, the Hearing Examiner recommends rejection or modification of recovery of operating expenses without making the necessary finding of "bad faith" or "an abuse of discretion." The Hearing Examiner appears also to apply an evidentiary burden that is inconsistent with past Commission

[2] *Delmarva Power & Light Co. v. Public Serv. Comm'n*, 508 A.2d 849, 859 (Del. 1986) (quoting *Application of Diamond State Tel. Co.*, 103 A.2d 304, 319 (Del. Super. Ct. 1954), *aff'd in part and reversed in part on other grounds*, 107 A.2d 786 (Del. Super. Ct. 1954), *on reargument*, 113 A.2d 437 (Del. Supr. 1955) (emphasis in original)).

practice.

The Hearing Examiner's recommendation that the Commission depart from its past practice is concerning to the Company in that such a departure would deprive it of the consistency in rate proceedings that is essential for it to effectively and reliably operate its business. To depart from prior precedent or decisions, there must be a basis for distinguishing or rationally explaining the basis for such departure.[3] Delmarva submits that such basis does not exist for the items excepted below, and requests that the Commission not adopt the Hearing Examiner's recommendations that deny or modify recovery as the Commission has permitted in prior proceedings.

ARGUMENT

I. Return on Equity: Delmarva Supports the Hearing Examiner's Recommendation to Award a 10.25% Return On Equity ("ROE") to the Company Based on the Evidentiary Record Presented in the Proceeding.

The Hearing Examiner was presented with two recommended ROEs in this proceeding: Delmarva's proposed ROE of 10.25% and the proposed ROE of 9.35% by the Delaware Public Advocate ("DPA"). In the HE Report, the Hearing Examiner reviewed the ROE estimation models and inputs presented by Company Witness Robert Hevert and DPA Witness David Parcell, providing analysis and comparison to other models and market conditions within his discussion. As discussed below, Hearing Examiner Lawrence found Company Witness Hevert's overall position to be "more persuasive" in the post-recession economy and that DPA Witness Parcell was "overly conservative".[4] Based upon this and the other analysis set forth in the HE Report, the Hearing Examiner recommended that the Commission award a 10.25% ROE to the Company.

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[3] *E. Shore Natural Gas Co. v. Delaware Public Service Comm'n,* 635 A.2d 1273, 1283 (1993) (citing *Acadian Gas Pipeline Sys. v. Fed. Energy Regulatory Comm'n,* 878 F.2d 865,868 (5th Cir. 1989)).
[4] HE Report at ¶ 79.

The evidence in this proceeding demonstrates that Hearing Examiner Lawrence's recommendation should be adopted and the Company's ROE should be set at 10.25% by the Commission. There is no debate that interest rates have increased since Delmarva's last two rate proceedings, from which ROE's of 10% (Commission decided, order issued August 9, 2011) and 9.75% (settled and approved by Commission order on December 18, 2012) were awarded.[5] Both experts agreed at the evidentiary hearing that interest rates are up since November 2012, which was recognized by Hearing Examiner Lawrence.[6] There also appears to be little debate that market conditions have improved during this time. During the evidentiary hearing, DPA Witness Parcell recognized that the "flight to safety" referenced in his direct testimony is no longer a major factor in the market.[7] These trends are significant as both experts recognized that there is a correlation between interest rates and ROE, and that when interest rates rise, so does ROE.[8] Thus, the prevailing market conditions support an increased ROE from Delmarva's last two rate proceedings.

Yet, while Company Witness Hevert recommended that a ROE range from 10.25% to 10.75% would be reasonable, DPA Witness Parcell recommended that the ROE be set at 9.35%. DPA Witness Parcell's ROE is .4% (that is, 40 basis points) lower than Delmarva's currently allowed ROE and .65% (65 basis points) less than the last Commission-decided ROE, notwithstanding the overall improvement in the economy and increasing interest rates. Such an ROE does not correlate with the current market conditions and is inappropriate for maintaining Delmarva's financial integrity and allowing it to compete for capital with other sources of

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[5] *In the Matter of the Application of Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes* (Filed September 18, 2009) Docket No. 09-414, Order No. 8011 at ¶ 287 (August 9, 2011) and *In the Matter of the Application of Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes* (Filed December 2, 2011) Docket No. 11-528, Order No. 8265 at ¶ 1 (December 18, 2012).

[6] Tr. at 428:21-429:20 (Hevert Cross) and 484:12-22 (Parcell Cross).

[7] *Id.* at 473:5-18 (Parcell Cross)

[8] *Id.* at 429:3-14 (Hevert Cross) and 484:3-11 (Parcell Cross).

investment.

Company Witness Hevert's recommendation, and the analytical results on which it is based, considers a variety of factors including the specific risks faced by Delmarva and existing and expected capital market conditions. That is especially important when market conditions changed significantly over an abbreviated period, as occurred between the filing of the Application and the Company's rebuttal testimony. Notably, Company Witness Hevert adjusted the high end of his recommended range from 11.00% to 10.75% to reflect certain changes in the results of his updated Constant Growth DCF analyses, but did not change his position that the Company's proposed ROE of 10.25% is reasonable. Furthermore, Company Witness Hevert explained that changes in current and expected market conditions would suggest an increase, not a decrease, in the ROE and that that is what his CAPM, Bond Yield Plus Risk Premium and Multi-Stage DCF model results indicate. Accordingly, Company Witness Hevert's modeling results support an ROE between 10.25% and 10.75%, with the Company's proposed 10.25% ROE at the low end of that range. While Company Witness Hevert lowered the high end of his recommended range, his opinion remained that the Company's proposed ROE of 10.25% is a reasonable, if not conservative estimate of its ROE, and this ROE should be adopted by the Commission.

In the HE Report, the Hearing Examiner found that Company Witness Hevert's Constant Growth and Multi-Stage DCF models to be the more credible ROE analysis provided by the parties.[9] He cited to Company Witness Hevert's use of earnings growth rates.[10] He found DPA Witness Parcell's approach to be overly conservative as it excessively relied upon historical data,

[9] HE Report at ¶ 78.
[10] *Id.*

including data from the 2008 recessionary period.[11] In his analysis, the Hearing Examiner recognized the fluctuation of Company Witness Hevert's Constant Growth DCF modeling results between the time of his direct testimony and rebuttal testimony.[12] He found persuasive the Multi-Stage DCF analysis because, in a period of future uncertainty, the model does not assume that earnings and dividends will grow indefinitely at the same rate, and relies upon multiple earnings growth projections and longer-term financial market metrics.[13] Hearing Examiner Lawrence recognized the Company's testimony that zero or negative real growth rates are not reasonable.[14]

With respect to the ROE witnesses' CAPM modeling, Hearing Examiner Lawrence also found that Company Witness Hevert's analysis was more persuasive.[15] He initially noted that both witnesses expressed concern with CAPM modeling based upon the Federal Reserve maintaining U.S. Treasury yields at historically low levels.[16] The Hearing Examiner then reviewed Company Witness Hevert's CAPM analysis, identifying that one of the results was above the ROE proposed by the Company, the others were closer to 10.25% than 9.35%, and that DPA Witness Parcell's proxy group could produce results of 10.52% to 11.05%.[17] The Hearing Examiner recognized that DPA Witness Parcell's recommendation is based on the mid-point of his DCF and Comparable Earnings results, and that the results of this CAPM model did not form any of the basis of his ROE opinion.[18]

Delmarva premised its proposed ROE in this proceeding on its ROE modeling and the prevailing market conditions, and Company Witness Hevert's analyses and recommendations

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[11] *Id.* at ¶ 79.
[12] *Id.* at ¶¶ 61 and 86.
[13] *Id.* at ¶ 84.
[14] *Id.* at ¶ 89.
[15] *Id.* at ¶ 107.
[16] *Id.* at ¶ 93.
[17] *Id.* at ¶¶ 100 and 101.
[18] *Id.* at ¶¶ 69 and 102.

correlate with the current market conditions. This approach is proper under both the applicable law and this Commission's recent deliberations with respect to ROE. Hearing Examiner Lawrence found Company Witness Hevert's analysis to be the more persuasive analysis based on the evidence presented in this proceeding, and the Commission should adopt the Hearing Examiner's recommendation.

II. Capital Investments

A. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Reject the Company's Use of Year-End Rate Base and Require It to Use Average Rate Base.

As allowed by the Commission's Minimum Filing Requirements ("MFRs"), the Company used year-end rate base as opposed to average rate base to better reflect the assets and liabilities which will be serving customers during the rate effective period.[19] In doing so, the Company adjusted its revenues to reflect the increase of year-end customers compared to the average number of customers during the test period, and likewise adjusted its depreciation expense. DPA did not contest the use of year-end rate base and its related adjustments. The Staff of the Public Service Commission ("Staff") did contest its use and proposed that average rate base be used for all items.

The HE Report recommends that the Commission not approve the Company's use of its year-end balances to develop its revenue requirements in this proceeding, and instead use the Commission's "current practice" of using average rate base. Delmarva takes exception to this recommendation.

The Commission's MFRs specifically allow the use of either year-end rate base or

[19] Exh 5: Ziminsky Direct at 8:16-18. The Company identified that in using a year-end rate base its Application differed from that filed in PSC Docket No. 09-414.

average rate base in calculating a public utility's revenue requirements.[20] Contrary to the HE Report's recommendation, there is no general policy for use of the average rate base methodology, with use of the year-end rate base methodology by exception only, as suggested by Staff Witness Peterson.[21] Staff Witness Peterson recognized during the evidentiary hearing that his use of the phrase "general policy" was not in reference to the Commission's MFRs, but to the Commission's decisions that it makes in individual rate cases.[22] It is not a stated "general policy" of the Commission to use average rate base, and such a suggestion is contrary to the Commission's policy as provided in the MFRs, which expressly permit utilities to use year-end rate base. Thus, Delmarva is permitted to use year-end rate base in developing its revenue requirements in this proceeding, and the Commission should follow this methodology in deciding on the Company's Application.

Should the Commission decide that the Company's revenue requirements in this proceeding should be developed using average rate base methodology, the average rate base methodology should be the same as previously followed by this Commission and used by Delmarva. Significantly, in the Company's last two litigated rate cases in which the Commission issued an order, PSC Docket Nos. 05-304 and 09-414, annualization of test period reliability closings was used by the Company in calculating the average rate base.[23] The Commission's decisions in those proceedings reflected average rate base with the exception for reliability plant closings, which were annualized and thus given year-end rate base treatment.

Although Hearing Examiner Lawrence recommends the use of average rate base, he did

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[20] *See* 26 *Del. Admin. C.* § 1002-3.1.1.
[21] *See* Exh. 11: Peterson Direct at 7:26-8:2.
[22] Tr. at 501:18 - 502:7 (Peterson Cross).
[23] *See In the Matter of the Application of Delmarva Power & Light Company for Approval of a Change in Electric Distribution Base Rates and Miscellaneous Tariff Changes* (Filed September 1, 2005) Docket No. 05-304, Order No. 6930 at pp. 13 (June 6, 2006) (Uncontested "Plant Closing Adjustment through 7/31/05") and PSC Order No. 8011 at ¶ 60 (Annualization of test period reliability plant closings included in post-test period reliability plant closings adjustment, as approved by the Commission.).

not address the issue of annualizing test period reliability closings in the HE Report. The Company provided the information to make the annualization of test period reliability plant closings in its schedules.[24] Although Staff Witness Peterson argues that the Commission should use average rate base because it has been used in the past, the average rate base calculation proposed by Staff Witness Peterson failed to reflect the annualization that has been used and approved in prior rate cases. During the evidentiary hearing, Staff Witness Peterson recognized this prior treatment, but stated that it would be "inconsistent" with the average rate base he is recommending.[25] Annualizing the test period reliability closings, however, treats these closings the same way that the post-test period reliability closings, as approved by the Commission in Docket Nos. 05-314 and 09-414 as well as recommended by the Hearing Examiner in this docket, are treated and makes the cost more reflective of the period during which the rates will be in effect.[26]

Accordingly, while Delmarva maintains that it should be permitted to use the year-end rate base methodology as permitted by the MFRs, in the event the Commission determines that the average rate base method should be used, the Commission should include the annualization of reliability closings that has been used and approved in prior cases.[27]

B. The Hearing Examiner Correctly Determined That Delmarva Is Entitled to Recovery Of Its Test Year And Certain Post Year Capital Investments Including Those Investments Made For The Purpose Of Enhancing And Maintaining Reliability For Its Customers. Delmarva Takes Exception to the

[24] *See* Exh. 20: Ziminsky Rebuttal at Schedule (JCZ-R)-11).
[25] Tr. at 504:2-10 (Peterson Cross).
[26] *See* PSC Order No. 8011 at ¶ 60 (In unanimously approving this adjustment, the Commission stated "We agree with Delmarva that these costs are known and measurable, and that they are necessary to make the test period more reflective of the period during which the rates approved in this case will be in effect. ... We are also persuaded that these plant additions are necessary to preserve the reliable operation of the distribution system and are not being made to serve future customers.").
[27] Furthermore, in using the year-end rate base methodology, the Company made certain adjustments to its revenues and depreciation as identified above that will need to be reversed. The Company requests it be allowed to submit a revenue requirement worksheet using this methodology and incorporating the Commission's other decisions in this proceeding.

Recommendation to Deny its Reliability Capital Investments in Adjustment 26(b).

In this docket, Staff and DPA claimed that Delmarva had overspent on reliability infrastructure (or "capital") investments. The test year in this rate case is the 12 month period ending December 31, 2012 and rate base includes reliability investments during that period. Consistent with the MFRs and Commission precedent, Delmarva also sought recovery of certain post-test year investments for reliability capital projects. For purposes of clarity, and to reflect Commission precedent, Delmarva divided its request for post-test year reliability capital adjustments into two categories: "Adjustment 26(a)" and "Adjustment 26(b)."

Adjustment No. 26(a): The costs contained in Adjustment No. 26(a) are expressly "known and measurable" because they represent reliability capital investments that were completed, used and useful, and providing actual service to customers as of September 20, 2013, which is the date that Delmarva filed its rebuttal testimony in this case. This Commission's clear precedent from Docket Nos. 05-304 and 09-414 provides that Delmarva is permitted to recovery of and on reliability investments that are completed, are in service and are used and useful as of the filing of rebuttal testimony.[28] The Hearing Examiner, following Commission precedent, recommended that Delmarva be permitted to recover all of its Test Year reliability capital investments and those reflected in Adjustment 26(a).

Adjustment No. 26(b): Adjustment No. 26(b) represents post test period adjustments for reliability capital investments that, as of the filing of Delmarva's rebuttal testimony, were not yet completed, but were forecasted to be completed, and used and useful by December 2013 – well within the rate effective period.[29] The Hearing Examiner recommended that Delmarva not be

[28] *See* PSC Order No. 6930 ¶¶ 209-211; PSC Order No. 8011 ¶ 60.
[29] The rate effective period in this case began on October 22, 2013 (when the Commission permitted Delmarva to

permitted to recover the requested Adjustment 26(b) reliability investments in this rate case. While the Hearing Examiner's recommendation to deny recovery of the Adjustment 26(b) costs in this rate case is consistent with Commission precedent, for the reasons detailed later in this brief, Delmarva is requesting recovery of the Adjustment 26(b) costs as well.

Delmarva's support concerning its reliability capital investments, set forth below, is divided into three main sections: (1) that the Hearing Examiner was correct in determining that Delmarva's reliability capital investments were appropriate under Delaware law and the Commission's regulations contained in Regulation Docket 50; (2) that the Hearing Examiner correctly recommended that Delmarva's proposed post-test period reliability investments contained in Adjustment 26(a) should be approved; and (3) that the Hearing Examiner's recommendation that Delmarva's proposed post-test period reliability adjustments contained in Adjustment 26(b) should not be included in rates should not be followed by the Commission.

1. The Hearing Examiner Correctly Determined That Delmarva's Reliability Capital Investments Were Appropriate and Correctly Recommended That The Commission Permit Delmarva To Recover Its Reliability Capital Investments.

Delaware law requires a public utility to "furnish safe[,] adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so."[30] In order for Delmarva to continue to fulfill this requirement, it must incur expenses in the form of ongoing operation and maintenance expenses and capital investments in its distribution infrastructure that are needed to provide its customers with appropriate service. In the context of a base rate case, "a Commission must consider and allow the normally accepted operating expenses of a utility corporation *unless found to have been made in bad faith or out of an abuse*

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put rates into effect subject to refund) and will end on October 21, 2014.

[30] 26 *Del. C.* § 209 (a)(2).

of discretion."[31]

In September 2006, the Commission adopted the "Electric Service Reliability and Quality Standards" ("Docket 50").[32] Docket 50 contains broad provisions concerning achieving, maintaining, measuring and reporting on reliability and service quality issues. With respect to statistical reliability indices that must be achieved, Docket 50 focuses on one performance requirement – SAIDI. SAIDI, which stands for "System Average Interruption Duration Index," measures the average system-wide number of minutes of service interruption per year experienced by Delmarva customers.[33] Docket 50 requires Delmarva to maintain, at a minimum, a SAIDI that does not exceed 295 minutes.[34]

For purposes of this proceeding, the relevant provisions of Docket 50 are as follows:

1. "Compliance with this regulation is a minimum standard;"[35]

2. "Compliance does not create a presumption of safe, adequate and proper service;"[36]

3. In determining the level of reliability it should strive to achieve for its customers, "[e]ach EDC[37] needs to exercise their professional judgment based on their systems and service territories;"[38] and

4. "EDCs are required to explore the use of proven state of the art technology, to provide cost effective electric service reliability improvements."[39]

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[31] *Delmarva Power & Light*, 508 A.2d at 859 (emphasis in original). In citing to *Application of Diamond State Tel. Co.*, the Delaware Supreme Court recognized no interpretative difference between "abuse of discretion" and other Public Service Commission standard or review cases using the terms "waste" or "inefficiency".
[32] 26 *Del. Admin. C.* § 3007 *et. seq.* These regulatory standards arose out of a proceeding known as Commission "Regulation Docket 50" and as such, have been traditionally referred to simply as "Docket 50."
[33] *See id.* at § 3007-2.0.
[34] *See id.* at § 3007-4.3.1.2.
[35] *Id.* at § 3007-1.3.
[36] *Id.*
[37] "EDC" stands for "Electric Distribution Company." *Id.* at § 3007-1.1.
[38] *Id.* at § 3007-1.3.
[39] *Id.* at § 3007-1.8.

These four pertinent Docket 50 provisions make it clear that achieving a SAIDI of 295 minutes is the absolute "minimum" level of reliability that Delmarva must provide.[40] Docket 50 also makes it clear that merely achieving a SAIDI of 295 minutes is not good enough. Achieving a SAIDI of 295 minutes by itself "does not create a presumption" that Delmarva has met the requirement of providing "safe, adequate and proper service."[41] As such, Delmarva's engineers and managers must exercise their "professional judgment based on their systems and service territories" to determine what level of reliability the Company should seek to provide to its customers.[42] Finally, Docket 50 mandates that Delmarva must remain vigilant in its efforts to use "state of the art technology" to provide actual "service reliability improvements" to its Delaware customers.[43]

Unfortunately, throughout the case, Delmarva's reliability investments were criticized by Staff without any basis in fact, regulation or law. Staff Witness Stephanie L. Vavro, of Silverpoint Consulting, LLC, provided prefiled testimony in this case. Although Staff Witness Vavro alleged (1) that the level of Delmarva's reliability capital investment was not "necessary" to comply with Delaware's Docket 50 reliability requirements and (2) that there was no "clear mandate" to improve reliability performance, at no point did Staff Witness Vavro recommend any reduction in recovery by Delmarva for any of its reliability capital investments.[44] The

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[40] *Id.* at § 3007-1.3.

[41] *Id.* (citing 26 *Del. C.* § 209 (a) (2)).

[42] *See id.* Docket 50's clear mandate that Delmarva must exercise its professional judgment to determine the appropriate level of system reliability is consistent with established Delaware law and Commission precedent holding that the Commission's duty to regulate utilities does not entail reviewing the day to day operations and decisions made by utility company management. *See Delmarva Power & Light Co.*, 508 A.2d at 859 *("[A] public utility commission shall not dictate business practices to be followed by a utility.*"(quotation omitted and emphasis added)). The Commission must allow the utility to recover the normally accepted operating expenses in the form of reliability capital investments "*unless found to have been made in bad faith or out of an abuse of discretion.*" *Id.* (emphasis in original). Delmarva is expected to use its judgment, based upon its engineering, system planning and customer service experience, to make day-to-day decisions on how to appropriately plan and invest in its infrastructure in order to provide the appropriate levels of system reliability to its customers.

[43] *See* 26 *Del. Admin. C.* § 3007-1.8.

[44] *See* Exh. 12: Vavro Direct generally (*no denial of recovery recommended*); and Tr. at 828:8 -15, 828:23-829:11,

evidence in the case established; and the Hearing Examiner correctly determined; that Delmarva should be permitted to recover its Reliability Capital Investments.

As the evidence in this docket established, Delmarva exercised professional judgment in making the two key determinations related to reliability investments: (1) Delmarva exercised professional judgment in determining that reliability investments needed to be increased both to prevent a degradation of reliability and to provide an appropriate level of enhanced reliability for its customers, and (2) Delmarva exercised professional judgment in the reliability project initiatives it chose in order to maintain and enhance reliability for its customers. The evidence in this docket establishes that Delmarva's reliability investments are appropriate and in full compliance with Delaware law, Docket 50 regulations and Commission precedent. As such, the Hearing Examiner correctly determined that Delmarva's reliability capital investments (*both test year and Adjustment 26 (a)*) are fully recoverable in this docket.

a. Delmarva Exercised Professional Judgment In Making Its Determination That Reliability Investments are Necessary In Order To Both Maintain and Enhance Reliability For Its Customers.

The evidence in this docket establishes that Delmarva appropriately exercised its professional judgment (based upon Delmarva's system, its service territory, and the expectations of customers) to develop a reliability capital investment plan that provides its customers with the level of reliability they need. Company Witness Michael Maxwell provided testimony on behalf of Delmarva regarding the Company's construction program for capital investments designed to provide Delmarva's customers with safe and reliable service. Company Witness Maxwell is an

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and 840:10-22. In fact, there was no testimony offered in this case in which a witness from any party recommended denial of recovery for test year capital investments related to reliability. Although DPA Witness Dismukes recommended denial of recovery of certain reliability investments, those recommendations related only to the post-test year adjustments addressed in Company Adjustment 26. DPA Witness Dismukes' testimony with respect to post-test year adjustments is addressed later in this brief.

electrical engineer with over 26 years of experience in the utility industry.[45] He is responsible for the planning, design and operation of all distribution, transmission and substation facilities, as well as the engineering and design of the distribution and transmission facilities constructed by Delmarva and all PHI utilities.[46]

Company Witness Maxwell explained that Delmarva has an obligation to provide its customers with safe and reliable service.[47] He further explained that, as mandated by Docket 50, Delmarva exercised its professional judgment to conclude that merely meeting the minimum SAIDI reliability standard contained in Docket 50 of 295 minutes would neither satisfy Delmarva's obligations to its customers nor meet their needs and expectations:

> the minimum performance contained in Docket 50 is not intended to serve as the "goal" or the "standard" for reliability or even a level of reliability that will be considered "adequate" or "proper." As the Docket 50 rules specifically state: "*Compliance with this regulation is a minimum standard. Compliance does not create a presumption of safe, adequate and proper service.*" Moreover, the Docket 50 rules further specifically state that "*[e]ach EDC needs to exercise their professional judgment based on their systems and service territories.*" Delmarva Power has exercised its professional judgment to conclude that merely meeting the minimum SAIDI performance standard set forth in Docket 50 would not be adequate or satisfactory to meet the needs and expectations of Delmarva's customers.[48]

Accordingly, Delmarva plans its system to perform better than the minimum Docket 50 reliability standard of SAIDI 295. As the evidence in this proceeding establishes, there were five principal factors that drove Delmarva's decision that reliability infrastructure investment needed to be increased to meet Delmarva's duties to its customers under Docket 50. These five principal factors are addressed below in the following subsections (i – v):

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[45] Exh. 4: Maxwell Direct at 1:15-2:2.
[46] *Id.* at 1:6-8.
[47] Exh. 19: Maxwell Rebuttal at 3:19.
[48] *Id.* at 4:5-14 (*emphasis original*).

i. Enhanced Reliability Is Expected and Needed By Customers, Due To Growing Dependence Upon Reliable Electricity By An increasingly Digital/Electronic Society And Economy.

An important factor in Delmarva's decision to seek to maintain and enhance the level of reliability it provides to its customers is the growing importance of electric grid reliability in today's society. As Company Witness Maxwell explained:

> A reliable electric grid is essential to meeting the rapidly-evolving needs of an increasingly digital society. The digital/electronic nature of business, government, communication systems, healthcare and emergency services has developed to the point where the level of reliability that may have been acceptable less than a decade ago is no longer suited to meet customer needs and expectations. It is reasonable to expect that our customers will continue to become more reliant upon electronics and communications and as a result, reliability of the electrical grid will continue to be more important to customers. In today's society, when the power is out, computers do not work, communications systems fail, orders do not get taken, stores close, wages are lost, and production shuts down.[49]

The increased need for reliability by today's society in general is an important factor in Delmarva's decision to increase its investments in reliability infrastructure for the purpose of maintaining and enhancing reliability.

ii. The Increase In The Frequency And Severity Of Storms Has Posed New System Reliability Challenges To Utilities.

Another significant factor in Delmarva's reliability investment decisions is the increase in the frequency and severity of storms. While it is clear that individuals, the economy, communication networks and the ability to provide governmental and emergency services have all become increasingly reliant upon a reliable electric distribution grid, the increase in the frequency and severity of storms has posed new challenges to utilities. As Company Witness

[49] *Id.* at 4:15- 5:2.

Maxwell explained:

> At the same time that outages in general have become more problematic to customers and the *economy*, the region has experienced storms of increasing strength and frequency. As the U.S. Department of Energy has reported, eight of the largest ten hurricanes have occurred over the past decade. In the last few years alone, Hurricane Isabel, Hurricane Sandy and the 2012 Derecho have made it clear that the region is facing more frequent and powerful storms that have the potential to impair essential components of the energy infrastructure and cause enormous economic losses. As storms increase in frequency and intensity, the ability to withstand storms and to restore electricity quickly when disruptions occur will become even more important. While it is true that the 2012 Derecho and Hurricane Sandy largely spared Delaware, the same was not true for neighboring states. Maryland and New Jersey were battered by the Derecho and New Jersey and New York were devastated by Sandy. For Delmarva Power to wait until Delaware is directly impacted the way our neighboring states did before we act to modernize the electric system and make it more resilient would be irresponsible.[50]

In August 2013, five months after Delmarva filed this rate case, the President's Council of Economic Advisors and the U.S. Department of Energy issued a report from the Executive Office of the President entitled, "***Economic Benefits of Increasing Electric Grid Resilience to Weather Outages***" (the "Presidential Report"). The Presidential Report concluded that power outages caused by severe weather conditions cost the U.S. economy up to $75 billion per year in lost wages, spoiled inventory, delayed production, inconvenience and damage to the electric grid. The Presidential Report concluded that investment in electric grid modernization will save the economy billions of dollars and reduce the hardships experienced by millions of Americans.[51] In

[50] *Id.* at 5:3-16. With respect to the following statement within the quote from Company Witness Maxwell's Direct Testimony: "*As the U.S. Department of Energy has reported, eight of the largest ten hurricanes have occurred over the past decade,*" *see* Hoffman, Patricia (*Assistant Secretary of the U.S. Department of Energy's Office of Electricity Delivery and Energy Reliability*), Keeping the Lights on for Americans: Modernizing the Nation's Electric Grid, Huffington Post, June 2, 2013. (A copy of this article is attached to this brief as Exceptions Brief Att. A).

[51] Executive Office of the President, Economic Benefits of Increasing Electric Grid Resilience to Weather Outages, August 2013. (A copy of this Report is attached to this brief as Exceptions Brief Att. B).

the face of increasingly frequent and violent storms, an increase in reliability infrastructure investment is required in order to simply maintain past levels of reliability performance.

iii. Delmarva Must Replace Aging Infrastructure To Avoid Diminished System Reliability and Increased Customer Outages.

In addition to enhanced reliability expectations from its customers and increased challenges from changing weather, Delmarva is facing the issue of aging infrastructure. Among the aging infrastructure issues is the need to replace underground residential distribution cables ("URD cables") that were manufactured in the early 1970s and 1980s.[52] Delmarva, along with the rest of the industry, has been experiencing a high failure rate of these URD cables.[53] Until relatively recently, Delmarva's practice was to repair failed cables or replace only the individual section of failed URD cables after the cable failures had occurred. Having customers experience repeated URD failure-related outages before replacement, however, is highly frustrating to Delmarva's customers.[54] Based upon the increasing failure rate of 1970 – early 1980 vintage URDs, combined with the customer dissatisfaction that arises from running these aged URD cables through numerous failures before replacement, Delmarva adopted a policy whereby an increased effort would be made to identify aged and degraded URD cables and replace them before they fail.[55] In other words, rather than waiting until the aged URD cables fail, causing increasing incidences of repeated outages and customer frustration, Delmarva has focused upon identifying those aged URD cables at the end of their useful lives and replacing them before the customers served by problematic URD cables are forced to suffer through repeated outages.

A subsequent section of this brief (*entitled "Initiative 1 – Load Growth and Load*

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[52] Exh. 19: Maxwell Rebuttal at 12:2-4.
[53] *Id.* at 12:4-6.
[54] *Id.* at 12:7-8.
[55] *Id.* at 12:8-10.

Maintenance Projects") addresses an additional aging infrastructure issue related to substation transformers.[56] Yet another significant aging infrastructure issue that Delmarva is addressing is substation switchgear. Switchgear constitutes major substation equipment, the failure of which can affect tens of thousands of individual customers.[57] Delmarva's efforts to prevent outages associated with aging equipment that has a proven failure history (URD cables, aged substation transformers and aged substation switchgear) constitute good engineering practice, good customer service and good professional judgment to fulfill the requirement to provide safe, adequate and proper service.

As Company Witness Maxwell described in his testimony, Delmarva is not alone in its recognition of the importance of replacing aged infrastructure and developing a more reliable electric grid for its customers. In its 2013 ***Report Card for America's Infrastructure***, the American Society of Civil Engineers gave the nation's electric grid a D+, due to its antiquated condition.[58] Another, more comprehensive report issued by the American Society of Civil Engineers in 2011, the "***Failure to Act Report***," concluded as follows:

> If future investment needs are not addressed to upgrade our nation's electric generation, transmission, and distribution systems, the economy will suffer. . . . Ultimately, these costs all lead to the same economic impact: diversion of household income from other uses and a reduction in the competitiveness of U.S. businesses in world economic markets. As costs to households and businesses associated with service interruptions rise, GDP will fall by a total

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[56] *See* Section II(B)(1)(b) below; *see also* Tr. at 706:16-712:15 (Maxwell Redirect). In this portion of Company Witness Maxwell's hearing testimony he addresses Hearing Exhibits 74 and 75, which serve as two examples of how Delmarva extensively tests its facilities to identify aging equipment showing compromised performance. Aged equipment with degraded performance must be replaced to avoid sudden and repeated outages. Exhibit 74 addresses aged feeders and transformers and Exhibit 75 addresses aged transformers, both of which needed to be replaced to avoid load/overload related outages.

[57] *See* Hearing Exh. 82 ("*Atlantic City Electric and Delmarva Power Switchgear Replacement Program 2011"*) for a thorough report detailing the multi-year need to replace Delmarva's switchgear that has reached its end of useful life or will reach its end of life by the time that the switchgear is scheduled to be replaced.

[58] Hearing Exh. 19: Maxwell Rebuttal at 5:19-21; *see also* American Society of Civil Engineers, 2013 Report Card for America's Infrastructure, March 2013 at pp. 60 – 61. (A copy of this Report is attached to this brief as Exceptions Brief Att. C).

> of $496 billion by 2020. The U.S. economy will end up with an average of 529,000 fewer jobs than it would otherwise have by 2020. . . . In addition, personal income in the U.S. will fall by a total of $*656* billion from expected levels by 2020.[59]

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> These costs incurred by *failing* to close the investment gap are higher than the investment itself. This means that it is economically inefficient for households and businesses to allow this higher cost scenario to occur.[60]

An increase in reliability infrastructure investment is needed to replace aging deteriorating equipment. Without such investment, reliability performance for Delmarva's customers will degrade.

iv. Surveys Of Several Hundred Delmarva Customers Conducted Each Quarter Have Consistently Established That System Reliability And The Rapid Restoration Of Outages Are The Most Important Issues To Delmarva's Customers.

Company Witness Maxwell explained that another important factor in Delmarva's decision to increase its focus upon reliability is the results of Delmarva's research into the importance of reliable electric service to its customers. Delmarva uses quarterly customer satisfaction surveys performed by Market Strategies International ("MSI") to gauge customer satisfaction and perceptions of the Company's services.[61] These quarterly surveys have consistently found that the most important driver of satisfaction to Delmarva's customers is reliability: "providing reliable electric service" and "restoring outages when they occur."[62] JD

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[59] *See* American Society of Civil Engineers, Economic Development Research Group, Inc. and LaCapra Associates, FAILURE TO ACT – The Economic Impact of Current Investment trends in Electricity Infrastructure, 2011 at p. 10. (A copy of this Report is attached to this brief as Exceptions Brief Att. D).

[60] *Id.* at p. 40 (Exceptions Brief Att D).

[61] Hearing Exh. 19: Maxwell Rebuttal at 6: 9-14 and Schedule (MWM-R)-1; *see also* Tr. at 750:21-751:14 and 753:11-756:15 (Maxwell Redirect); *and* Hearing Exhibit 83.

[62] *Id.*

Power & Associates surveys have documented similar results.[63] In addition, Delmarva's experience from both its Delaware operations and those of its affiliated PHI utilities further establishes that customer satisfaction is maintained by reducing the number of outages that customers experience and, when outages do occur, minimizing the impact by reducing outage duration.[64]

v. Delmarva's Reliability Performance Compared To the Performance Of Peer Utilities Provides Delmarva With Another Useful Indicator Of The Level Of Reliability It Should Strive To Provide For Its Customers.

Finally, Company Witness Maxwell testified that the 5th of 5 primary factors Delmarva used in determining the appropriate level of reliability to strive for is how Delmarva's actual reliability performance compares with other electric delivery utilities. He explained that Delmarva looks at annual national reliability indices over several years to compare Delmarva's annual performance against the performance of its peers.[65] In his Rebuttal Testimony, Company Witness Maxwell utilized the following chart, which depicts the results of the 2012 Institute of Electrical and Electronics Engineers (IEEE) Annual Reliability Survey, to demonstrate that a utility whose SAIDI performance was actually equal to the Docket 50 performance minimum of 295 minutes would be among the worst performing utilities in the IEEE national study. A utility with an actual SAIDI performance of 295 minutes places that utility in the bottom of the worst (4th Quartile) performers.[66] Only five utilities out of the 106 participating in the IEEE survey would have failed to meet the Delaware Docket 50 SAIDI 295 minute minimum standard:[67]

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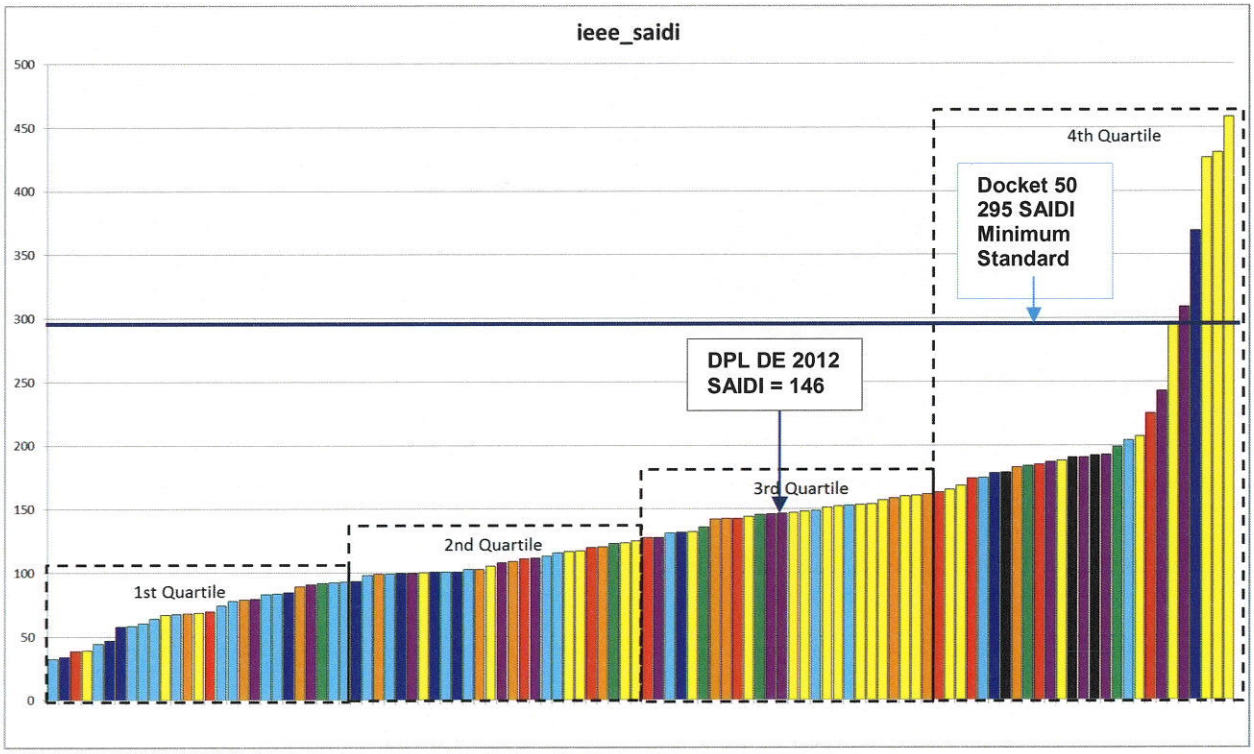
[63] Hearing Exh. 19: Maxwell Rebuttal at 6: 9-14.
[64] *Id.* at 6:15-17.
[65] *Id.* at 7:7-10.
[66] *Id.* at 7:11-8:5.
[67] *Id.*

Table 1: Delmarva's SAIDI Ranking on 2012 IEEE Annual Reliability Survey

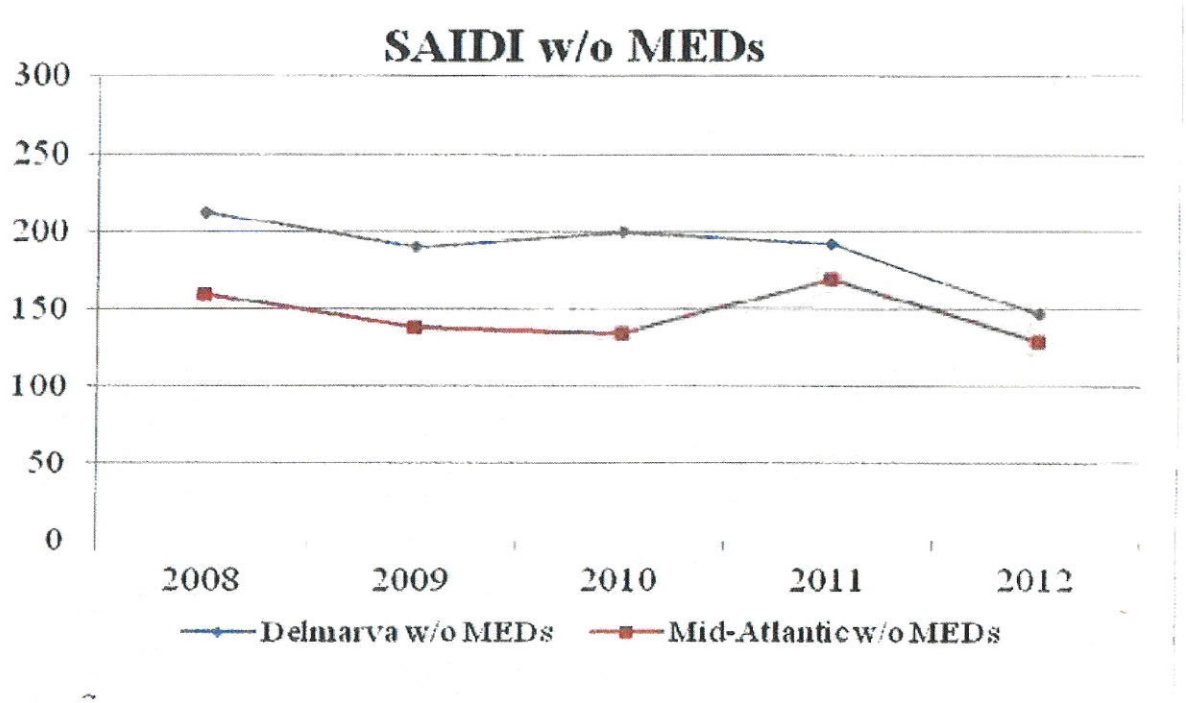


Moreover, it is clear that Delmarva's increased investments in reliability have, in fact, resulted in improved reliability for its customers. Staff Witness Vavro has stated as much and the plain facts establishing the improved performance are indisputable.[68] In 2010 and 2011, before Delmarva's increased investments in reliability began, Delmarva's SAIDI performance was 199 and 192 minutes, respectively.[69] In 2012, after Delmarva began to increase investments in reliability infrastructure, Delmarva's SAIDI performance improved to 146 minutes.[70] As the above IEEE survey chart depicts, had Delmarva not increased its reliability investments and, therefore, its SAIDI remained in the 192-199 minute range in 2012, Delmarva's current reliability performance would be among the worst performing utilities in the IEEE national

[68] Exh. 12: Vavro Direct at 13:4-7; and Exh. 4: Maxwell Direct at 5:16-6:12. In her testimony, Staff's reliability witness, Stephanie Vavro, stated: "there has been a noticeable improvement in SAIDI performance since the REP reliability-related initiatives began. To be clear, we are not challenging the Company's selection of projects in its REP, or questioning whether those projects might have a positive effect." (Vavro Direct Testimony at 14:19-21)."
[69] Exh. 4: Maxwell Direct at 6:3-12.
[70] *Id.*

survey - in the middle of the worst (4th Quartile) performers.

Interestingly, during both the evidentiary hearings and in its post hearing brief submitted to Hearing Examiner Lawrence, Staff relied upon a chart prepared by Ms. Vavro of Silverpoint that compares Delmarva's SAIDI performance to other Mid-Atlantic utilities. Using that chart, Staff argued that "Delmarva's performance on a system basis is comparable with other utilities in the region."[71] Assuming that Ms. Vavro's Mid-Atlantic SAIDI performance chart is correct, it serves to further support the overwhelming evidence that Delmarva's decision to invest in reliability to maintain and improve its reliability performance was an appropriate decision (made in the exercise of "professional judgment" and without "waste, inefficiency or bad faith").



Staff's Mid-Atlantic SAIDI Chart[72]

[71] Staff's Opening Post-Hearing Brief to the Hearing Examiner at page 18.

[72] Staff's Mid-Atlantic SAIDI Chart Appears in Staff's Post Hearing Answering Brief to the Hearing Examiner at page 17 and is Hearing Exhibit 83. It has been reproduced and incorporated into Delmarva's Exceptions Brief for the convenience of the Commission.

Staff's Mid-Atlantic SAIDI chart (Hearing Exhibit No. 83 and reproduced above) clearly reveals that from 2011-2012, the Mid-Atlantic SAIDI average improved from approximately 170 minutes to approximately 130 minutes.[73] During the same period, as a result of Delmarva's increased reliability infrastructure investments, Delmarva's SAIDI also improved, from 192 minutes in 2011 to 146 minutes in 2012.[74] The Mid-Atlantic SAIDI chart proves that Mid-Atlantic utilities, like Delmarva, have recognized the need to improve reliability - and like Delmarva, have taken action to do so.[75] Staff's Mid-Atlantic SAIDI chart shows that Delmarva's decision to increase its reliability performance is consistent with the realization of the industry (both nationwide and in the Mid-Atlantic Region) that reliability needs to be improved. Staff's Mid-Atlantic SAIDI chart offers further support that Delmarva's reliability investment decisions were based upon the appropriate exercise of the "professional judgment" required by Docket 50 and are, therefore, fully recoverable under established Delaware law and Commission precedent.[76]

In an effort to disparage Delmarva's decision to focus on reliability for its customers, the Public Advocate and Staff argued that Delmarva is only investing in reliability in Delaware because of the experience of its affiliate, Pepco, in Maryland.[77] That argument is entirely without merit and was not recognized by the Hearing Examiner. In the Pepco, Maryland

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[73] Ms. Vavro's Mid-Atlantic SAIDI chart does not reveal what the specific Mid-Atlantic SAIDI number is and no number was provided in the record. Nevertheless, Delmarva is willing to accept that the 2012 Mid-Atlantic SAIDI average, according to Ms. Vavro's chart, appears to be approximately 130 minutes and that the average in 2011 was approximately 170 minutes.

[74] *Id.*

[75] The Mid-Atlantic SAIDI chart also establishes that had Delmarva not increased its reliability investments from 2011-2012 and, therefore, its SAIDI remained in the 192-199 minute range in 2012, Delmarva's reliability performance would have lagged significantly behind the Mid-Atlantic SAIDI average by approximately 70 minutes.

[76] In its Post-Hearing Brief to Hearing Examiner Lawrence, the Public Advocate actually went so far as to assert that Delmarva is "Gold plating a distribution system" (DPA Post Hearing Brief to the Hearing Examiner at p. 4). Delmarva's current improved SAIDI performance, compared to both the IEEE Annual survey and Staff's Mid-Atlantic SAIDI chart, shows how unreasonable DPA's "gold plating" allegation is. Hearing Examiner Lawrence wisely disagreed with both Staff and DPA.

[77] DPA Post Hearing Brief to the Hearing Examiner at pp. 21-26.

reliability case (MD Docket No. 9240), Pepco was *not* found to have violated any Maryland SAIFI or SAIDI performance standard. In fact, the performance of Pepco Maryland would have complied with Delaware's minimum 295 minute SAIDI standard. Nevertheless, Pepco was penalized for inadequate reliability performance in Maryland.[78] Notwithstanding those facts, DPA argues that "in Delaware, however, Delmarva had no such reliability problems. It was meeting its Docket 50 reliability standards with relative ease."[79]

Both DPA and Staff fail to recognize an obvious point. Delmarva did learn from Pepco's experience in Maryland. Delmarva learned that providing reliability performance that merely complied with the Delaware Docket 50 minimum of 295 SAIDI minutes was considered entirely unsatisfactory to Pepco's Maryland customers. Delmarva learned from the Pepco Maryland experience that customers require more than the Docket 50 bare minimum level of reliability.[80] Along with the five primary factors addressed above and in Delmarva's Opening Brief, Pepco's Maryland reliability experience did help guide Delmarva's decision that reliability investments in Delaware needed to be increased. What would have been improper would have been for Delmarva to not have learned from the experience of its Pepco affiliate.

A review of the evidence in this docket leads to one conclusion: As required by Docket 50, Delmarva appropriately exercised "professional judgment" in determining that an increase in

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[78] *See In the Matter of an Investigation into the Reliability and Quality of the Electric Distribution Service of Potomac Electric Power Company* (Initiated August 12, 2010) Maryland Case No. 9240, Order No. 84564 (December 21, 2011).

[79] DPA Post Hearing Brief to the Hearing Examiner at p. 26.

[80] As Delmarva Witness Maxwell testified in his Rebuttal Testimony:

> "It is true that Delmarva learned from Pepco's Maryland experience and is applying that knowledge across its sister companies. The fact that Delmarva is applying lessons learned from other jurisdictions should not be seen as a negative, but rather as one of the benefits of having the experience of a larger corporate group on which to draw." (Exh. 19: Maxwell Rebuttal at 13:3-6.).

reliability infrastructure investments was necessary to both maintain and enhance reliability.[81] Based upon its analysis of the five principal factors addressed above, without the increased reliability infrastructure investment, Delmarva could not meet its obligation to provide its customers with "adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so."[82]

b. Delmarva Exercised Appropriate Professional Judgment In Selecting The Four Primary Initiatives It Would Pursue To Maintain And Enhance Reliability Performance For Its Customers.

Once Delmarva determined that it was necessary to increase its investments in reliability infrastructure, Delmarva relied upon sound engineering principles, long-standing utility practices and proven state of the art technology in selecting specific infrastructure investments necessary to meet its reliability objectives.[83] Delmarva adopted four primary reliability infrastructure investment initiatives designed to maintain and enhance reliability of the electric system. Those investments have been effective in improving reliability for customers from the SAIDI 192 – 199 minutes range (in 2010 and 2011) to a SAIDI of 146 minutes in 2012. Company Witness Maxwell provided an overview of the four primary reliability infrastructure investment initiatives in Delmarva's capital plan as follows:

Initiative 1 - Load Growth and Load Maintenance Projects

Delmarva's Load program is considered reliability work because it is a reliability requirement to identify and address distribution circuit, substation, and substation supply overloads before they result in customer outages.[84] Generally, "load" work takes two forms: (a) investments necessary to address new customer load growth and (b) investments to replace aging

[81] 26 *Del. Admin. C.* § 3007-1.3.
[82] 26 *Del. C.* § 209 (a)(2).
[83] Exh. 19: Maxwell Rebuttal at 9:19-10:2.
[84] *Id.* at 11:3-6.

poorly performing infrastructure that cannot continue to support existing loads.

New Load Growth - While Delaware as a whole is seeing low overall load growth, there are areas of Delaware that are, in fact, experiencing significant load growth – for example: the Middletown-Odessa-Townsend area in New Castle County below the C&D Canal, the corridor between Dover and Harrington, and the coastal areas in Sussex County are all experiencing enough growth to require action on the part of Delmarva to avoid a degradation in reliability.[85] Delmarva's capital investments to address load growth in these areas are necessary to serve these pockets of growing load.[86]

Replacing Deteriorated Aging Infrastructure to Prevent Load Related Outages - Load-related reliability challenges include not only increasing the capacity of the system to address load growth where it is occurring, but also, continually monitoring and testing existing equipment to prevent load related failures due, not to growing load, but rather, the inability of deteriorated equipment to handle current load. Delmarva's aging infrastructure makes this monitoring and testing especially crucial.

Delmarva practices "reliability centered maintenance" to manage its system. As part of its reliability centered maintenance program, Delmarva engages in "Equipment Condition Assessment" (or "ECA"), which is a process through which Delmarva's reliability engineers review the age, performance and condition of equipment through monitoring, testing and field inspections.[87] The ECA identifies equipment that is not performing at a level adequate to meet current or projected future loads.[88] When this monitoring and testing reveals deteriorated equipment conditions that could lead to overloads or other failures, action is taken to prevent

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[85] *Id.* at 14:5-18.
[86] *Id.*
[87] Tr. at 709:23-710-8 (Maxwell Redirect).
[88] *Id.*

customer outages.[89]

During the evidentiary hearing, Company Witness Maxwell testified regarding two examples of how the ECA is used to identify aging equipment with deteriorating performance (*in this case, substation transformers*) that, if not replaced, would not be able to continue to handle existing loads and would, therefore, result in large scale outages.[90] He explained that this type of reliability infrastructure work – replacing deteriorated aging infrastructure to avoid outages – is an example of "maintaining" reliability, as opposed to "enhancing" it.[91] He explained that customers on a circuit that is fed by an aging substation transformer showing deteriorated performance may have never experienced an outage and replacing the deteriorated transformer before it fails is done to avoid having those customers experience an outage in the first place.[92]

Initiative 2 - Priority Feeders.

Delmarva is required by Docket 50 to report individual feeder reliability performance (*feeders are also referred to as "circuits"*), as well as designate a group of the ten poorest-performing "Priority Feeders" for corrective action.[93] Pursuant to this Docket 50 minimum requirement, Delmarva must take corrective action with respect to, at a minimum, its ten poorest performing Priority Feeders.[94] Because Delmarva seeks to provide its customers with better reliability than the minimum required by Docket 50, Delmarva developed its "Feeder

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[89] *Id.* at 710: 9-712:15.

[90] *Id.* at 706:13-707:18 and 708:18-712:15; *see also* Exh. 74 and 75. At least 26 "Construction Recommendation" memoranda were produced to the parties by Delmarva in this case. Using 2 of the 26 memoranda as examples, Company Witness Maxwell explained how the ECA is utilized to identify aging infrastructure with degraded performance. *See id.* (discussing Hearing Exhibits 74 and 75). He explained that replacement of such degraded aging infrastructure (in this case, substation transformers) is necessary to avoid load-related outages. *See id.* at 711:2-24.

[91] *Id.* at 712:5-15.

[92] *Id.*

[93] *Id.* at 11:7-11; 26 *Del. Admin. C.* § 3007-10.3.

[94] *See* 26 *Del. Admin. C.* § 3007-10.3; *see also* Tr. at 738:10-15. Delmarva must take corrective action on its ten worst performing Priority Feeders, even if Delmarva is operating in compliance with the SAIDI 295 minute minimum.

Improvement Program" to addresses more feeders than just the Docket 50 ten worst performing "Priority Feeders."[95] While the feeders identified for improvement under the Feeder Improvement Program have not reached the level of degraded performance that puts them into the Docket 50 minimum mandatory 10 worst performing Priority Feeder program, Delmarva believes that these feeders are not performing at the level of reliability reasonably expected by customers.[96] As a result, these feeders are identified for reliability work under Delmarva's Feeder Improvement Program.

As Company Witness Maxwell explained in his hearing testimony, the 2012 Annual Docket 50 Performance Report (*Hearing Exhibit 81*) established that Delmarva bettered the minimum SAIDI 295 minute requirement with a system-wide SAIDI of 146 minutes. Despite achieving that system-wide SAIDI performance, however, there were 32 individual feeders/circuits that experienced individual SAIDI performance above 295 minutes for customers on those individual feeders.[97] Although addressing only the ten worst performing feeders would place Delmarva in "minimum" compliance with Docket 50, that decision would disregard the needs of thousands of customers being served by feeders/circuits that, individually, were experiencing SAIDI over 295 minutes.[98] Delmarva exercised its professional judgment to determine that failing to address any feeders above the Docket 50 ten worst performing would not meet the reasonable reliability expectations and needs of those customers.[99] Delmarva's Feeder Improvement Program is the appropriate action to address the reasonable reliability expectations and needs of its customers.

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[95] Exh. 19: Maxwell Rebuttal at 11:7-12:1; Tr. at 742:13-743:9 (Maxwell Redirect).
[96] *Id.*
[97] Tr. at 737:7-739:6 (Maxwell Redirect) and Exh. 81.
[98] *Id.*
[99] *Id.* at 742:13-743:9; *see also* Exh. 19: Maxwell Rebuttal at 11: 7-12:1.

Initiative 3 - URD Cable Replacement
(And Other Aging Infrastructure - Substation Transformers and Switchgear)

Delmarva described the need to address its aging infrastructure in prior sections of this brief. The primary aging infrastructure issue addressed by Delmarva is the need to replace underground residential distribution cables (URD cables) that were manufactured in the early 1970s and 1980s. Another significant aging infrastructure issue that Delmarva addressed in a prior section of this brief is substation switchgear. Additionally, in a preceding section of this brief, entitled "*Initiative 1 – Load Growth and Load Maintenance Projects*," Delmarva described substation transformer investments necessary to address aging infrastructure and avoid load-related reliability problems. Rather than repeat those discussions here, Delmarva notes that its investments to address aging infrastructure are a critical part of Delmarva's reliability work. If Delmarva failed to make investments to address those aging infrastructure issues, it would fail to meet its Docket 50 obligation to "exercise professional judgment."[100] Without making the reliability investments necessary to address its aging infrastructure, Delmarva would not meet its duty to "furnish safe[,] adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so."[101] Delmarva's efforts to prevent outages associated with aging equipment that is on the verge of failure constitutes good engineering practice, good customer service, and good professional judgment.

Initiative 4 - Distribution Automation (DA).

As discussed above, Docket 50 specifically provides that Delmarva is "required to explore the use of proven state of the art technology, to provide cost effective electric service

[100] *See* 26 *Del. Admin. C.* §. 3007 *et. seq.*
[101] 26 *Del. C.* § 209 (a)(2).

reliability improvements."[102] Distribution Automation (or "DA") is part of Delmarva's commitment to use proven state of the art technology to provide cost effective electric service reliability improvements through advancements in grid modernization and advanced technologies. Deployment of DA involves the use of advanced distributive control systems, Automated Circuit Reclosers and Automated Circuit Switches to reduce both the number of customers affected by outages and the length of outages for customers who are affected. Automated Circuit Reclosers (or "ACRs") isolate faulted sections of overhead lines by sensing and interrupting fault currents in the section of the feeder exposed to the fault, and the computer operated control systems then automatically restores service after the occurrence of a temporary fault. Rather than losing all customers on a feeder to a sustained outage when a fault occurs, DA systems serve to limit the affected customers to only the specific section of feeder affected by the fault. Automated Circuit Reclosers and Switches used as part of a DA restoration scheme isolate a faulted section of a feeder, transfer load between feeders, or separate sections of a feeder to isolate faults. For example, if a feeder serves 1,500 customers, a fault on that feeder would normally result in 1,500 sustained outages. With the use of DA Automated Circuit Switches, however, sustained outages on the feeder would be limited to only the customers served by the specific section of the feeder where the fault exists. Not only will significantly fewer customers be affected by a sustained outage, but because the fault has been isolated by DA Automated Circuit Switches to a specific section of feeder, the fault can be detected and located more quickly and efficiently, meaning that service can be restored more quickly and efficiently to those customers who are affected by the outage.[103]

As Company Witness Maxwell described in his hearing cross examination, Delmarva's

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[102] 26 *Del. Admin. C.* § 3007-1.8.
[103] Exh. 19: Maxwell Rebuttal at 10:3-11:3.

sister utility - Pepco - proved the effectiveness of Distribution Automation through a two year pilot program.[104] That DA pilot resulted in significant reductions in the duration of outages and improvements in various reliability indices for Pepco customers on the feeders/circuits involved in the two year DA pilot.[105] By virtue of the successful DA pilot in the Pepco territory, Delmarva exercised its professional judgment to expand the use of the proven DA technology into other PHI jurisdictions, including Delmarva, Delaware.[106]

c. Staff's Consultant Offered No Evidence That Delmarva Failed To Exercise Professional Judgment In Either (a) Determining That Reliability Infrastructure Investment Needed To Be Increased Or (b) Selecting the Specific Reliability Infrastructure Projects To Undertake.

Staff Witness Vavro of Silverpoint Consulting testified as Staff's reliability consultant. She described the purpose of her testimony as follows:

> "We were asked to consider whether the level of [reliability] spending was reasonable, and whether the [reliability] investments were necessary to comply with the service quality *standards* included in Regulation Docket no. 50, *i.e.,* a maximum SAIDI of 295 minutes."[107]

At the evidentiary hearings, Staff Witness Vavro clarified, that the purpose of her testimony was to "look at the reliability project[s] and comment on whether the [reliability] spending is necessary to comply with Docket 50 requirements."[108] Staff Witness Vavro's testimony, however, provides no evidence that Delmarva failed to exercise professional judgment in determining that reliability needed to be improved and that additional investments in

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[104] Tr. at 767:1-7 (Maxwell Re-Cross) and Exh. 78; *see also* Tr. at 765:16-769:10 (discussion concerning the manner in which Distribution Automation (DA), using Automatic Circuit Reclosers (ASRs), was first proven effective through a two year pilot program with Pepco, then rolled out in to other jurisdictions, such as Delmarva Delaware).

[105] *Id.* at 767:8-15.

[106] *Id.*

[107] Exh. 12: Vavro Direct at 11:4-10; *see also* Tr. at 840:23-841: 9 (Vavro Re-direct).

[108] Tr. at 827:*20*-24 (Vavro Cross).

reliability infrastructure were needed to both maintain and enhance reliability for customers. Staff Witness Vavro did not recommend any reduction in recovery by Delmarva for any of its reliability capital investments.[109] Moreover, Staff Witness Vavro did not challenge any of the reliability infrastructure investment initiatives made by Delmarva.[110]

Staff Witness Vavro offered the following conclusions in her testimony with regard to Delmarva's decision to make increased reliability investments for the purpose of enhancing and maintaining reliability, all of which the Hearing Examiner correctly rejected: (1) "from a policy perspective, there was no clear mandate to necessitate spending for reliability enhancement programs in Delaware....,"[111] (2) "we saw no engineering necessity for the REP reliability-related capital projects to maintain SAIDI at its status quo level,"[112] and (3) "Given the Company has no new performance standards to meet, there is little context or framework within which the parties in this proceeding can consider these [reliability] investments."[113]

Upon reviewing merely those three conclusions, it would appear that Staff Witness Vavro is opining that unless and until the Commission establishes a new Docket 50 minimum SAIDI requirement stricter than 295 minutes, Delmarva should not seek to improve reliability performance above SAIDI 295 minutes. In another part of her Direct Testimony, however, Staff Witness Vavro clarifies that under Docket 50, a SAIDI of 295 minutes is not the goal that Delmarva should seek to achieve:

> Under the current [Docket 50] standards, a SAIDI of 295 is the absolute maximum value above which point penalties may be imposed. No one actually expects the Company to operate at that

[109] *See* Exh. 12: Vavro Direct generally (*no denial of recovery recommended*); and Tr. at 828:8 -15, 828:23-829:11, and 840:10-22.
[110] Exh. 12: Vavro Direct at 13: 4-7 ("To be clear, we are not challenging the Company's selection of projects in its REP, or questioning whether those projects might have a positive effect.")
[111] *Id.; see also id.* at 13:9-10 ("Our concern in this proceeding is that spending for such [reliability] improvement comes without a clear mandate....")
[112] *Id.* at 12:22-23.
[113] *Id.* at 14:19 -21.

> level. The [Docket 50] standards recognize that each utility must exercise its professional judgment in satisfying the standard based on its system *and* service territory.[114]

As such, it appears that Staff Witness Vavro's conclusion is that without an adjustment of the current Docket 50 SAIDI 295 minute minimum performance requirement, it was not necessary for Delmarva to seek to enhance reliability for its customers from the SAIDI 200 minutes range where it remained from 2007 – 2011, to an improved SAIDI of 146 minutes in 2012.[115] Both the clear language of Docket 50 and the evidence of record establish that Staff Witness Vavro's conclusion is without merit.

Docket 50 clearly provides: (1) that a SAIDI of 295 minutes is the absolute "minimum" level of reliability that Delmarva must provide,[116] (2) that achieving a SAIDI of 295 minutes "does not create a presumption" that Delmarva has met the requirement of providing "safe, adequate and proper service,"[117] and (3) that Delmarva's engineers and managers must exercise their "professional judgment based on their systems and service territories" to determine what level of reliability the Company should seek to provide to its customers.[118] As set forth above, Delmarva's decision that its reliability investments needed to be increased for the purpose of enhancing and maintaining reliability was based upon five principal factors:

(1) The increasing need for reliable service to meet the needs of an increasingly digital society and economy;

(2) The increase in the frequency and severity of storms;

(3) The need to replace aging and degrading infrastructure, including URD cables, substation transformers and switchgear;

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[114] *Id.* at 14: 4-9; *see also* Tr. at 826:12-22 (Vavro Cross).

[115] *See id.* at *12*:11-12 (*chart showing Delmarva's SAIDI performance from 2007 – 2011 as 197, 213, 190, 199 and 192, respectively with SAIDI performance in 2012 improving to 146 after the increased reliability infrastructure investments began*); *see also* Exh. 19: Maxwell Rebuttal at 5:16- 6:12.

[116] 26 *Del. Admin. C.* § 3007-1.3.

[117] *Id.*

[118] *Id.*

(4) The quarterly surveys from MSI and JD Power & Associates that have consistently found that the most important driver of satisfaction to Delmarva's customers is "providing reliable electric service" and "restoring outages when they occur."

(5) How Delmarva's reliability performance compares with respect to other electric delivery utilities in the United States – namely, the annual IEEE national survey revealing that had Delmarva not increased its reliability investments to improve its SAIDI performance from the 192-199 minute range, where it was from 1998 – 2011, Delmarva's current reliability performance would be among the worst performing utilities in the IEEE national survey.

Based upon an analysis of these factors, Delmarva's reliability engineers exercised their professional judgment to conclude that an increase in reliability infrastructure investment was necessary both: (1) to "furnish safe[,] adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so," as required by Delaware statute[119] and (2) to comply with Docket 50's clear mandate requiring Delmarva to "exercise their professional judgment based on [Delmarva's] system[] and service territor[y]" to determine the level of reliability necessary to meet the reasonable expectations of its customers.[120]

The evidence of record in this docket is clear that the following conclusions of Silverpoint are without merit:

> Silverpoint Conclusion 1: "from a policy perspective, there was no clear mandate to necessitate spending for reliability enhancement programs in Delaware….,"[121]

Silverpoint is incorrect – This conclusion of Silverpoint is incorrect for at least two reasons. First: Docket 50 does contain a "clear mandate" - that Delmarva must "exercise [its] professional judgment" to determine the appropriate level of reliability to provide its

[119] 26 *Del. C.* § 209 (a)(2).
[120] 26 *Del. Admin. C.* § 3007-1.3.
[121] Exh. 12: Vavro Direct at 8:13- 14; *see also id.* at 13: 9-10 ("Our concern in this proceeding is that spending for such [reliability] improvement comes without a clear mandate….")

customers.[122] Delmarva did, in fact, exercise professional judgment in determining that an increase in reliability infrastructure investment was necessary. Second: Docket 50 contains a second "clear mandate" in that utilities are specifically "*required* to explore the use of proven state of the art technology, to provide cost effective electric service *reliability improvements*."[123] With respect to that clear Docket 50 mandate, Delmarva is utilizing Distribution Automation (or "DA") to provide "cost effective reliability improvements." As previously addressed herein, DA is a "state of the art technology," the effectiveness of which has been "proven" through both the successful two year Pepco pilot project and the successful adoption of DA by leading utilities nationwide.

> Silverpoint Conclusion 2: "we saw no engineering necessity for the REP reliability-related capital projects to maintain SAIDI at its status quo level"[124]

Silverpoint is incorrect - Delmarva appropriately exercised its professional judgment to determine that there was a "necessity" for the increased investment in reliability-related capital projects. As discussed above, Delmarva's Load and Aging Infrastructure programs are "necessary" to avoid significant degradation to its 1998 – 2011 "status quo" SAIDI performance in the 200 minute range. Without those increased load and aging infrastructure investments, Delmarva would not be able to (a) prevent a significant decline in reliability or (b) "maintain its property and equipment in such condition as to enable it to do so."[125] Delmarva's Priority Feeder and Distribution Automation initiatives are "necessary" to provide Delmarva's customers with the enhanced reliability performance (SAIDI 146 minutes range) that they reasonably expect and need.

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[122] 26 *Del. Admin. C.* § 3007-1.3.
[123] *Id.* § 3007-1.8 (emphasis added).
[124] Exh. 12: Vavro Direct at 12:22-23.
[125] 26 *Del. C.* § 209 (a)(2).

Silverpoint Conclusion 3: "Given the Company has no new performance standards to meet, there is little context or framework within which the parties in this proceeding can consider these [reliability] investments."[126]

Silverpoint is incorrect - If Delmarva were to wait for the Commission to enact "new performance standards to meet" before taking action to provide its customers with the level of reliability needed, Delmarva would be in clear violation of the Docket 50 mandate for Delmarva to exercise its "professional judgment" to determine the appropriate level of reliability to provide to its customers and the appropriate level of infrastructure investment necessary to achieve that performance.[127]

As addressed above, Staff Witness Vavro testified that her role was limited to the issue of "whether the [reliability] spending is necessary to comply with Docket 50 requirements."[128] Staff Witness Vavro made it clear that Delmarva's reliability performance has improved noticeably due to Delmarva's increased reliability infrastructure investments and that Silverpoint is not challenging the reliability infrastructure projects selected by Delmarva:

> "there has been a noticeable improvement in SAIDI performance since the REP reliability-related initiatives began. To be clear, we are not challenging the Company's selection of *projects* in its REP, or questioning whether those projects might have a positive effect."[129]

Simply stated, there was no evidence offered in this docket for the purpose of challenging whether the four reliability infrastructure investment initiatives chosen by Delmarva are appropriate for the purpose of maintaining and enhancing reliability. The facts are uncontroverted that the reliability infrastructure investments chosen by Delmarva have resulted

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[126] Exh. 12: Vavro Direct at 14:19-21.
[127] 26 *Del. Admin. C.* § 3007-1.3.
[128] Tr. at 827:20-*24* (Vavro Cross) and 840:23-841:9 (Vavro Re-direct); *see also* Exh. 12: Vavro Direct at 11:4-10.
[129] Exh. 12: Vavro Direct at 13: 4-7.

in marked reliability performance enhancement for Delmarva's customers.[130]

Delmarva appropriately exercised its judgment, based upon its engineering, system planning and customer service experience, to properly plan and invest in its infrastructure in order to provide the appropriate levels of system reliability to its customers. Hearing Examiner Lawrence's recommendation that the Commission grant recovery to Delmarva of its test year and Adjustment 26(a) reliability capital infrastructure investments is consistent with both this Commission's well-established precedent and Docket 50. Delaware law is clear that a utility is entitled to recovery of and on its investments "in the absence of a finding of waste, inefficiency or bad faith."[131] The evidence of record establishes that Delmarva acted appropriately in all respects in its reliability capital investments. Staff's witness failed to offer any evidence suggesting that Delmarva failed to meet its burden and likewise, offered no evidence suggesting that Delmarva engaged in "waste, inefficiency or bad faith." DPA did not present any reliability witness, nor did it attempt to offer any evidence concerning Delmarva's test year reliability capital investments in this case.[132] Accordingly, Hearing Examiner Lawrence's recommendation that Delmarva's reliability capital investments should be approved in rates should be adopted by the Commission.

d. **Staff's Allegation That Delmarva Failed To Comply With Its Docket No. 11-528 Settlement Agreement Obligations Is Without Merit.**

At pages 50 through 52 of its Post-Hearing Brief to the Hearing Examiner, Staff alleged

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[130] *Id.; see also* Exh. 4: Maxwell Direct at 5:16-6:12.

[131] *Delmarva Power & Light Co.*, 508 A.2d at 859 (Del. 1986) (The Commission must allow the utility to recover its normally accepted operating expenses "*unless found to have been made in bad faith or out of an abuse of discretion.*") (emphasis in original); *see also, Application of Wilmington Suburban Water Corp.*, 203 A.2d 817, 829 (Del. Super. Ct. 1964), *aff'd in part by*, 211 A.2d 602 (Del. 1965).

[132] DPA presented David Dismukes, an economist, on the issue of post-test year adjustments only. DPA Witness Dismukes did not address any test year reliability capital investments or any issues related to Delmarva's reliability decisions, but objected to the adjustment to include such investments (i) on general ratemaking grounds, and (ii) on the basis that they are not supported by a cost-benefit or value of service study. The Hearing Examiner's cost-benefit recommendation is discussed in subsection (e) below.

that Delmarva failed to comply with its settlement obligations from its last base rate case, Docket No. 11-528. Staff made that argument in support of its claim that Delmarva should not be permitted to recover for reliability capital investments. Hearing Examiner Lawrence clearly rejected Staff's argument in recommending that rates include all of Delmarva's test year and Adjustment 26(a) post-test year reliability capital investments. In anticipation that Staff will raise the same meritless allegation in its Exceptions Brief to the Commission, Delmarva addresses the issue herein.

The pertinent obligations from the Docket No. 11-528 settlement are as follows:

> "17. The Parties have agreed to meet and discuss several issues outside the confines of this rate proceeding in the hopes of resolving each of them. These issues include:
>
> (1) the establishment of metric(s) for the reporting and/or approval of reliability projects going forward so that customers are aware of how investment in Delmarva's plant in service benefits them in a quantifiable manner;
>
> (2) an agreement to meet and discuss alternative regulatory methodologies which would include, but not be limited to, multi-year rate plans."[133]

In other words, the parties agreed to meet and attempt to: (1) develop new reliability metrics for use in (a) reporting on reliability or approving reliability investments and (b) helping customers understand how reliability infrastructure (or "plant") investment benefits them, and (2) develop a multiyear rate plan or other alternative regulatory methodology. This brief will hereinafter refer to these two settlement obligations as the "Reliability Metrics Obligation" and the "Multiyear Rate Plan Obligation."

In its Post Hearing Brief to the Hearing Examiner, Staff asserted that because neither

[133] Paragraph 17 of Settlement Agreement in Docket No. 11-528 – approved by Commission Order No. 8265 (Dec. 18, 2012).

Delmarva's policy witness, Mr. Fred Boyle (the Chief Financial Officer of the Company), or Company Witness Maxwell testified on cross examination that they were personally aware of specific meetings where Delmarva worked to fulfill its Reliability Metrics and Multiyear Rate Plan Obligations, Delmarva must have failed to fulfill its settlement obligations.[134] As the facts reveal, however, Staff's assertion that Delmarva did not act to fulfill its Reliability Metrics Obligation or Multiyear Rate Plan Obligation is entirely incorrect.

At no point in any prefiled testimony, discovery, or any other prehearing activities did Staff raise the issue of meetings between Delmarva, Staff and DPA for the purpose of complying with the Reliability Metrics and Multiyear Rate Plan Obligations. When asked about this issue for the first time at the evidentiary hearing, Company Witness Boyle stated that he "ha[d] not participated personally in any meetings."[135] Company Witness Boyle also made clear that his understanding is that meetings between the parties concerning the Reliability Metrics and Multiyear Rate Plan Obligations did occur.[136] Company Witness Maxwell also testified at the hearings that he did not participate personally in meetings with Staff where the Reliability Metrics and Multiyear Rate Plan Obligations were discussed.[137] He testified on cross examination by Staff's counsel that "[Delmarva] would be providing reliability benefits and/or improvements in standards as part of the Forward Looking Rate matter."[138]

Company Witnesses Boyle and Maxwell are <u>not</u> the individuals at Delmarva involved in what have been extensive efforts by Delmarva, including numerous meetings between Staff, the Public Advocate and the Company, involving the Reliability Metrics and Multiyear Rate Plan Obligations. The publicly available filed application and testimony in the Forward Looking Rate

[134] Staff Post Hearing Brief to the Hearing Examiner at pp. 50-51.
[135] Tr. at 270:15-16 (Boyle Cross).
[136] *Id.* at 271:5-7 (Boyle Cross) ("my understanding and general knowledge [is] that the follow up, as it relates to these issues, had occurred between the parties.").
[137] *Id.* at 310:16-18 (Maxwell Cross).
[138] *Id.* at 310:7-10 (Maxwell Cross).

Plan docket (Docket No. 13-384 or "FLRP" Docket) addresses the extensive efforts by Delmarva to fulfill its Reliability Metrics and Multiyear Rate Plan Obligations.

As the testimony of Delmarva's Regional Vice President, Glenn Moore, in the FLRP Docket establishes, Delmarva began meeting informally with the Public Advocate and Staff to discuss the general design concepts of a FLRP within weeks after the Commission approved the settlement in Docket No. 11-528. Those discussions spanned several months and included a number of issues, including the development of more stringent minimum reliability performance metrics.[139] Mr. Moore's filed FLRP testimony provides that a key principle of the FLRP includes "Adopting more stringent reliability performance standards [i.e., 'metrics'] backed by consequences for not meeting those standards."[140] As that FLRP testimony further provides:

> The Company agrees to the establishment of *more stringent minimum reliability standards* [i.e., "metrics"]: a SAIDI that is 35% more stringent than the current Docket 50 minimum performance standard in year one and becomes more stringent in each of the three subsequent years of the four year FLRP rate effective period.... The Staff has made it clear that Delmarva's customers need to see a *quantifiable benefit from the investments Delmarva is making to maintain and enhance the reliability of its system*. Delmarva agrees with Staff and as such, developed the FLRP with these more stringent minimum mandatory reliability [metrics], backed by bill credits to customers if Delmarva fails to meet the stricter reliability standards.[141]

Thus, within weeks after the settlement agreement in Docket No. 11-528 being approved by the Commission, Delmarva began extensive efforts towards meeting its settlement obligations – efforts that included numerous meetings and conversations with the Public Advocate and

[139] Testimony of Glenn Moore, Forward Looking Rate Plan filing, Docket No. 13-384, pp. 5:5-15 (Excerpts from Moore Testimony attached to this brief as Exceptions Brief Att. E).
[140] *Id.* at pp. 6:15-16.
[141] *Id.* at pp. 28:6-18 (emphasis added).

various members of Staff.[142] Delmarva's efforts towards fulfilling its Docket No. 11-528 settlement obligations not only included numerous meetings, but included the substantial time and effort that went into developing, drafting and filing the FLRP Application and the supporting testimonies of three witnesses. Staff's assertion that Delmarva failed to comply with any settlement obligation, including the Reliability Metrics Obligation, is entirely without merit.

e. The Hearing Examiner's Comments Related To Future Forecasted Major Infrastructure Improvements Do Not Apply To This Rate Case And Should Be Left To An Appropriate Future Commission Docket.

In his recommendations, the Hearing Examiner expressed his "concerns about whether Delmarva's *future* capital investment plans are cost-effective."[143] The Hearing Examiner further explained that, "I believe that cost-benefit studies are often helpful not only as to this issue, but also the issues of SAIDI and CAIDI compliance as to all *forecasted* major infrastructure improvements."[144] Importantly, however, Hearing Examiner Lawrence rejected the arguments of Staff and DPA that Delmarva should have conducted cost-benefit analyses for the reliability capital investments involved in *this rate case*, stating that he, "did not find Staff's and the Public Advocate's argument that evidence regarding cost-effectiveness was lacking persuasive because, to date, this Commission has never required a cost-effectiveness study from Delmarva for its capital investments."[145] The Hearing Examiner's comments related to cost-benefit analyses related only to "*future* capital investment plans"[146] involving "forecasted major infrastructure

[142] The fact that many of those meetings and conversations (over a dozen) were between Mr. Moore and the former Public Advocate (Mr. Sheehy) and the former Executive Director of Staff (Mr. Obrien), and did not involve Staff's counsel, does not mean that those meetings and Delmarva's efforts did not occur.
[143] HE Report at ¶181 (emphasis added).
[144] *Id.* at ¶184 (emphasis added). Delmarva notes that there are no "CAIDI compliance" requirements in Delaware. Docket 50 reliability requirements relate only to SAIDI. 26 *Del. Admin. C.* § 3007-4.3.1.2.
[145] HE Report at ¶181.
[146] *Id.* at ¶181 (emphasis added).

improvements."[147] Those comments of the Hearing Examiner should not be acted upon in this case for several reasons.

First, those comments specifically refer only to Delmarva's "*future* capital investment plans."[148] As such, those comments were not intended to be, and do not constitute, a recommendation that the Commission should adopt in this rate case.

Second, whether Delmarva should conduct a cost-benefit analysis for future forecasted major infrastructure improvements that the Company may undertake is a subject that should be considered by the Commission in an appropriate docket. The Commission has opened Docket No. 13-152, known as the "Investigation into Planned Distribution Infrastructure Investment for the Next Five Years" ("Docket No. 13-152" or the "Reliability Investigation"). In opening the Reliability Investigation, the Commission made clear that the purpose of that Docket is to investigate future reliability capital spending that cannot be reviewed in *this* base rate case.[149] It may be that the issue of whether Delmarva should conduct a cost-benefit analysis for a potential future forecasted major infrastructure improvement will be examined by the Commission in the Reliability Investigation docket. Any decision concerning what Delmarva should do with respect to future forecasted major infrastructure improvements should be left to a future docket, where the Commission can focus on the issue of whether a cost-benefit analysis should be

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[147] *Id.* at ¶184.

[148] *Id.* at ¶181 (emphasis added).

[149] In the Commission's deliberations that resulted in opening the Reliability Investigation Docket, Chair Winslow stated as follows:

> "the argument made by Mr. Geddes [is] that there are issues in this particular request by Staff that are beyond the scope of the rate base case...." (Transcript from April 23, 2013 oral argument in PSC Docket No. 13-152, pp. 37:5-10). "[T]he Staff wants to know about the future. There are a lot of the discussions, obviously, some of the discussions are about the future. But that is what they are really looking at." (*Id.* at pp. 38:10-13). [I]t appears to me from my hearing of the discussion that Ms. Iorii agrees with Mr. Geddes that there will be items outside of the relevant inquiry at the rate base case that they would, or that you could successfully object to if it were in the rate base case..... There seems to be a different element here." (*Id.* at pp. 38:15-22).

(Excerpts from April 23, 2013 Transcript attached to this brief as Exceptions Brief Att. F).

undertaken for a major future infrastructure project. The Commission can review evidence submitted by the parties and can determine, after reviewing the evidence on that issue, whether a cost-effectiveness study is appropriate. Whether a cost-benefit analysis for a future major infrastructure improvement project should be conducted is the appropriate subject for a future docket, not this rate case.

2. The Hearing Examiner Correctly Recommends Recovery Of The Reliability Infrastructure Investments Contained In Adjustment 26(a) (Which Represents Post-Test Year Reliability Investments Placed Into Service Between The End Of The Test Year and The Filing Of Rebuttal Testimony In This Case).

Hearing Examiner Lawrence appropriately followed the well-established precedent from the Commission in determining that Delmarva is entitled to recovery of its post-test year reliability capital investments that were completed and serving customers when Delmarva filed its rebuttal testimony on September 20, 2013. This recommendation is correct and consistent with both Commission precedent and established Delaware law.

In 1975, the Delaware Superior Court ruled that:

> Rate fixing is prospective: the rates should be just and reasonable in the foreseeable future as well as the present. Use of a test year for particular study is accepted practice. The test year, which is past experience, is evaluated as a basis for predicting the future. While the Commission has discretion in setting the test year, this does not *mean* that it may arbitrarily refuse to consider later available accurate information. Later information is especially important as a check on the continuing validity of the test year, experience in a period of rapid change like the present. Ignoring later information increases the likelihood of frequent costly and unsettling rate proceedings.[150]

Based on this reasoning, the Commission has repeatedly rejected arguments such as those

[150] *Application of Delmarva Power & Light Co.*, 337 A.2d 517, 518 (Del. Super. Ct. 1975)(internal citations omitted and emphasis added).

advanced by Staff and DPA witnesses in this case that post-test period adjustments should not be recovered. For example, in Docket No. 91-20, decided in 1992, the hearing examiner acknowledged that:

> this Commission has *frequently* allowed out-of-period adjustments under certain circumstances when the adjustments are known and measurable and when the changes are of such magnitude that the test period will no longer be representative of the utility's operations. The Commission's Minimum Filing Requirements also confirm that a utility may adjust test period data to reflect known and measurable changes to future rate base items.[151]

The Commission adopted the hearing examiner's recommendation and his supporting reasons for allowing post-test period adjustments. In so doing, the Commission explained that adopting the argument that all post-test period adjustments should be disallowed would also violate Delaware law, stating: "under Delaware Law, we may not arbitrarily refuse to consider accurate post-test period information in setting a utility's rates."[152]

In 1995, the Commission reaffirmed its ruling on post-test year adjustments in Order No. 4104, where it held that:

> This Commission has permitted expenses that will be incurred outside of the test period, or items that will be placed in service outside of the test period, to be included in operating expenses or rate base for the purpose of establishing rates when it is reasonably certain that the expense will be incurred or the item will be placed in service during the rate effective period and where the amounts associated therewith are sufficiently ascertainable. Thus, for example, we have approved post-test period *adjustments* for such items as wage increases that are contractually scheduled to become effective during the rate effective period, and we have approved the inclusion in rate base of equipment that will be placed into service shortly after the close of the test period.[153]

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[151] *In re Delmarva Power & Light Co.*, 1992 WL 465021, at *12, Docket No. 91-20, Order No. 3389 at ¶ 50 (March 31, 1992) (internal citation omitted and emphasis added).
[152] *Id.* at ¶ 52 (citing *Delmarva Power & Light Co.*, 337 A.2d at 517).
[153] *In the Matter of the Application of the Delaware Division of Chesapeake Utilities Corporation for a General*

Most recently, in Delmarva's last litigated electric rate proceeding brought before the Commission (Docket No. 09-414), the Commission spoke directly to the issue in response to DPA's advancement of an overarching theme of strict adherence to the test period. Rejecting DPA's position, the Commission stated:

> As demonstrated in our *deliberations* on the individual issues, we do not accept the DPA's position that a utility using an historic test period can never make any adjustment to the components of the test period to recognize events occurring after the close of the test period. Our MFRs expressly authorize utilities to propose, and our practice has been for many years to consider, post-test period adjustments to recognize known and measurable changes in rate base, expenses and revenues.[154]

Notwithstanding Delaware law and its consistent application by this Commission, Staff and DPA have raised, in this proceeding, a number of challenges to post-test period adjustments proposed by the Company for rate base and expenses based on the strict adherence to test period principle. Following Delaware law, Hearing Examiner Lawrence appropriately rejected the arguments of Staff and DPA.

a. <u>Hearing Examiner Lawrence Correctly Rejected The Argument That Because Delmarva May Need To File Rate Cases As Often As Annually, Depending On The Outcome Of Multiple Issues, Delmarva Should Be Denied Recovery Of Post-Test Year Adjustments.</u>

In their post-hearing briefs to the Hearing Examiner, Staff and DPA both asserted that the potential for more frequent rates cases by Delmarva negates the need for post-test period adjustments or inclusion of certain deferred costs in rates. That argument, which would lead to rates that do not reflect the cost of providing service during the rate effective period, was

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Increase in Natural Gas Rates and Charges Throughout Delaware and for Approval of Other Tariff Changes (Filed April 4, 1995) Docket No. 95-73, Order No. 4104 at VII(B)(2) (December 19, 1995).

[154] PSC Order No. 8011 at ¶ 48.

appropriately rejected by Hearing Examiner Lawrence.

First, this argument is advocating strict test period construction based upon an event (i.e., a potential rate filing in 2014) that may, or may not, happen. By expressly rejecting strict test period construction in PSC Docket No. 09-414, the Commission recognized that the inclusion of known and measurable post-test period costs in rate base may make "the test period more reflective of the period during which the rates approved in this case will be in effect."[155] Moreover, the Commission specifically recognized that the MFRs provide for such adjustments: "[o]ur MFRs expressly authorize utilities to propose, and our practice for many years has been to consider, post-test period adjustments to recognize known and measureable changes in rate base, expenses and revenues."[156] That is, "the utility can *also* suggest that its test period rate base, expense or revenue level be adjusted based on an event that is reasonably likely to occur, although outside the selected test period."[157] This is so that the test period levels will be "representative of what can be expected in the rate effective period."[158]

The reliability infrastructure investments represented by Adjustment 26(a) are completed, in service and have been providing used and useful service to customers as of September 20, 2013, which is the date that Delmarva filed its rebuttal testimony in this case. As such, those investments are, in fact, providing service to customers during the rate effective period.[159] If rates did not reflect the costs of those post-test year adjustments reflected in 26(a), the rates in effect during the rate effective period would not be reflective of the costs of providing service

[155] PSC Order No. 8011 at ¶ 60. This Commission is not alone in allowing post-test period adjustments. As described by Staff Witness Peterson at the evidentiary hearing: "Based on the research that I've done on Commission practices with regard to test years, about half of them rely on forecast test years and half of them rely on historic test years with adjustments for known changes." Tr. at 499:9-13 (Peterson Cross).
[156] *Id.* ¶ 48.
[157] *Id.* ¶ 49.
[158] *Id.*
[159] The rate effective period is the period during which new rates will be in effect. In this case, the rate effective period began on October 22, 2013 (when the Commission permitted Delmarva to put rates into effect subject to refund).

during that period.[160] Moreover, because it is the established precedent of this Commission to include in rates post-test year capital investments completed as of the filing of rebuttal testimony, a failure to include such post-test year adjustments in this case would contravene the well-established precedent of this Commission. Accordingly, Hearing Examiner Lawrence correctly recommended that the post-test year adjustments in 26(a) should be included in rates.

b. <u>The Hearing Examiner Was Correct In Rejecting Staff's Argument That Delmarva Should Be Denied Any Post-Test Year Reliability Capital Adjustments Because The Reliability Investments Are Allegedly Being Reviewed As Part Of An Ongoing Reliability Infrastructure Investment Investigation.</u>

Throughout its Post Hearing Brief submitted to the Hearing Examiner, Staff argued that Delmarva may not be awarded any post-test year adjustments (Adjustments 26(a) or 26(b)) because the Commission has opened Docket No. 13-152.[161] In support of that argument, Staff claims that Delmarva's request to recover for post-test year reliability adjustments "is the very subject that Docket No. 13-152 was opened to review."[162] Staff's argument is factually incorrect and seeks to violate Delmarva's specifically enumerated right to due process under Delaware's Administrative Procedures Act (the "APA").[163]

As described above, Commission precedent firmly establishes a utility's ability to recover for post-test year adjustments in rate cases.[164] The Commission's MFRs also expressly authorize utilities to propose post-test period adjustments to recognize known and measurable changes in rate base, expenses and revenues.[165] Accordingly, it is settled that a request for post-test period adjustments is a proper subject of a base rate proceeding. It was, therefore, entirely appropriate

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[160] *See* PSC Order No. 8011 at ¶ 60.
[161] Staff Post-Hearing Brief to the Hearing Examiner at pp. 20-21. *See id.* at 9, 19, 52.
[162] *Id.* at pp. 20.
[163] 29 *Del. C.* § 10124.
[164] PSC Order No. 8011 at ¶ 60: *see also* PSC Order No. 3389 at ¶ 50 and *Application of Delmarva Power & Light Co.*, 337 A.2d at 518.
[165] PSC Order No. 8011 at ¶ 48; *see also* 26 *Del. Admin. C.* § 1002-1.3.1, Part A.

for Delmarva to seek, and for the Hearing Examiner to recommend that post-test period reliability capital adjustments be included in rates. Staff' efforts to use the ongoing Reliability Investigation, which Staff initiated after this rate case was filed, to prevent Delmarva from recovering post-test year adjustments in a rate proceeding are both wrongful and disconcerting.

Delmarva filed this rate case on March 22, 2013. In its March 22nd Application, Delmarva requested recovery of post-test year reliability capital investments, as allowed.[166] Staff filed its petition to open Docket No. 13-152 on April 16, 2013, nearly a month after Delmarva filed this base rate proceeding. The Commission opened the Reliability Investigation docket on May 7, 2013.[167] Staff retained a consultant to investigate Delmarva's future reliability capital investment plans. No schedule exists for the Reliability Investigation. Because it is an "investigation," the Reliability Investigation provides no opportunity for Delmarva to conduct discovery and provides no opportunity for Delmarva to put on evidence in a hearing or cross examine witnesses against it.

The clear language of the Delaware APA prohibits Staff from seeking to use a Commission investigation to prevent Delmarva from recovering post–test year adjustments in this rate making proceeding. The APA specifically provides that "when the matters at issue involve price fixing, rate making or similar matters of general public interest . . . the agency *shall* conduct a formal, public evidentiary hearing . . . ."[168] By arguing that Delmarva's post-test

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[166] *See* PSC Order No. 8011 at ¶ 48 (This Commission stated as follows: "Our MFRs expressly authorize utilities to propose, and our practice has been for many years to consider, post-test period adjustments. . . .").

[167] *See In the Matter of the Investigation Into Delmarva Power & Light Company's Planned Distribution Infrastructure Investments Over the Next Five Years* (Opened April 16, 2013) Docket No. 13-152, Order No. 8363 (May 7, 2013).

[168] 29 *Del. C.* § 10124 (emphasis added); *see also Carousel Studio v. Unemployment Ins. Appeal Bd.,* 1990 WL 91108, at *1 (Del. Super. Ct. June 26, 1990) ("Due process as it relates to the requisite characteristics of the proceedings entails providing the parties to the proceeding with the opportunity to be heard, by presenting testimony or otherwise, and the right of controverting, by proof, every material fact which bears on the question of right in the matter involved in an orderly proceeding appropriate to the nature of the hearing and adapted to meet its ends.") (attached to this brief as Exceptions Brief Att. G).

period reliability capital investments (contained in Adjustments 26(a) and 26(b)) cannot be recovered in this rate case because Delmarva's right to recover for those investments "is the very subject that Docket 13-152 was opened to review,"[169] Staff seeks to violate Delmarva's rights under the APA.[170] Investigations do not entail the same procedures required under the Delaware APA, and accordingly, the post-test year reliability adjustments must be considered as part of this rate proceeding. To do otherwise would be to reassign a matter that involves rate making out of a "formal, public evidentiary hearing," an action plainly untenable under the APA.[171]

Moreover, Staff's erroneous assertion that Delmarva's post-test period reliability capital investments (Adjustments 26(a) and 26(b)) cannot be recovered in this rate case because Delmarva's right to recover for those investments "is the very subject that Docket 13-152 was opened to review,"[172] is not only legally incorrect – it is contradictory to the reasons Staff provided to the Commission as to why it was necessary to open the Reliability Investigation docket. During argument on Staff's Petition to open Docket No. 13-152, counsel for Staff told the Commission that the Reliability Investigation is needed to review future investments, through 2017, that cannot be reviewed in the current base rate case.[173] Moreover, the Commission made clear that it relied on the representation from Staff's counsel that the purpose of the Docket No.

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[169] Staff Post-Hearing Brief to the Hearing Examiner at pp. 20.
[170] 29 *Del. C.* § 10124; *see also Carousel Studio,* 1990 WL 91108, at *1.
[171] 29 *Del. C.* § 10124.
[172] Staff Post-Hearing Brief to the Hearing Examiner at pp. 20.
[173] Staff's counsel told the Commission:

> "the reason why this *will not work in this rate case* is because first, as you know, . . . rate cases are pretty much accounting cases, green eye shade, how much investment, what's the return, what kind of revenues do we have and what's the deficiencies that the company should be entitled to collect...." (Transcript from April 23, 2013 oral argument in PSC Docket No. 13-152, pp. 7:11-17) (emphasis added)).
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> "This [Reliability Investigation] is not accounting. This is something that's a lot bigger, and it's going to require a lot of effort. *It cannot be done in a single [rate] case.* And it clearly stretches out until 2017." (*Id.* at pp. 13:14-17) (emphasis added).

13-152 Reliability Investigation is to investigate future reliability capital spending that cannot be reviewed in this base rate case.[174] Accordingly, Staff's argument not only seeks to violate Delaware's APA, but in addition, it is inconsistent with both Staff's prior representations as to the purpose of the Reliability Investigation and the Commission's acceptance of those reasons as argued by Staff.

3. Although The Hearing Examiner's Recommendation That The Post-Test Year Reliability Capital Investments Contained In Adjustment 26(b) Should Not Be Included In Rates Is Consistent With Commission Precedent, Inclusion Of Those Specific Post-Test Year Adjustments Would Make Rates More Reflective Of The Actual Cost To Provide Service During the Rate Effective Period.

Although the Hearing Examiner correctly recommends that the Commission include in rates the post-test year reliability capital investments contained in 26(a), he recommended that the Commission reject the post-test year reliability investments contained in Adjustment 26(b). Adjustment No. 26(b) represents post test period adjustments for reliability capital investments that, as of the filing of Delmarva's rebuttal testimony, were not yet completed, but were forecasted to be used and useful by December 2013 – well within the rate effective period. Delmarva asks the Commission to reject Hearing Examiner Lawrence's recommendation to not include in rates the post-test period adjustments contained in Adjustment 26(b). Delmarva wishes to make clear, however, that the Hearing Examiner did follow Commission precedent in making his recommendation with respect to Adjustment No. 26(b). Delmarva is respectfully asking the Commission to extend its precedent in this case.

As discussed above, settled precedent from this Commission includes, in rates, post-test

[174] *See* fn. 149.

year adjustments reflecting capital investments (among other costs) that are completed and serving customers as of the filing of rebuttal testimony in a rate case (*Adjustment 26(a)*). Delmarva respectfully submits that the Commission should also include in rates reliability capital investments that will be completed, in service and providing used and useful service to customers during the rate effective period (*the capital investments contained in Adjustment 26(b)*).

For the same reasons as stated above for Adjustment No. 26(a), the Commission should permit the similar adjustment for reliability projects placed into service between September and December 2013. As the Company's rebuttal testimony established, the costs reflected in Adjustment 26(b) are reasonably known and measurable. The only difference between Adjustment No. 26(a) and Adjustment No. 26(b) is that Adjustment No. 26(b) extends an additional four months beyond the end of the test period. In compliance with the Commission's MFRs, the 26(b) reliability investments were updated at the time rebuttal testimony was filed. At the time rebuttal testimony was filed, however, the reliability capital investments reflected in Adjustment 26(b) were not completed and were, therefore, "reasonably certain" to be used and useful by December 2013. December 2013 is a date well within the rate effective period. The costs set forth in Adjustment 26(b) are, therefore, representative of the Company's costs to provide service during the rate effective period, and their inclusion in rates will make the rates approved in this case more reflective of the actual cost of providing service during the rate effective period.

III. Contested Adjustments.

A. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Remove Construction Work In Progress ("CWIP") from the Company's Rate Base.

The HE Report recommends that the Commission remove CWIP from rate base based

upon: (1) the Commission's recent precedent of excluding CWIP from Delmarva's rate base in the two most recently litigated electric rate cases and (2) Delmarva not raising any compelling new argument.[175] In doing so, Hearing Examiner Lawrence relies, in part, upon the arguments of Staff and DPA that CWIP is not "used and useful" under 26 *Del. C.* § 102(3).[176] This argument is incorrect, and the Commission should exercise its discretion to review and include CWIP in the Company's rate base based on the facts presented in this proceeding.

From the filing of its initial testimony, Delmarva has been clear that it is seeking a change from the Commission's most recent precedent regarding CWIP.[177] As the Commission specifically noted in Order No. 6930, until that Order, it had "permitted Delmarva to include CWIP in rate base since at least 1984."[178] The Commission stated that it "retain[s] the discretion to include or exclude CWIP from rate base based on the facts presented in each individual case.[179] In this case, Delmarva is asking the Commission to exercise its discretion to include CWIP in rate base.

Contrary to the assertions of Staff and DPA, the statutory "rate base" definition set forth in 26 *Del. C.* § 102(3) does not limit rate base to only "used and useful" plant during the test period. The definition defines "rate base" as:

> a. The original cost of all used and useful utility plant and intangible assets either to the first person who committed said plant or assets to public use or, at the option of the Commission, the first recorded book cost of said plant or assets; ....
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> plus ...
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> g. Any other element of property which, in the judgment of the Commission, is necessary to the effective operation of the utility.[180]

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[175] HE Report at ¶ 197.
[176] *Id.*
[177] See Exh 5: Ziminsky Direct at 8:7-15.
[178] PSC Order No. 6930 at ¶ 47.
[179] *Id.*
[180] 26 *Del. C.* § 102(3).

The Commission's MFRs do not recognize CWIP as being part of "rate base" under subsection (a) above, which contains the "used and useful" standard, but instead include it as an "other element of property" of rate base.[181] The CWIP carried by the Company on its books is not for the major projects that could be carried for a period of years without being necessary for the then-current business or operations, but is part of the Company's day-to-day business and operations. These projects are known and reasonable, and were either used and useful during the test period or will be during the rate effective period. As such, CWIP is proper within the Company's "rate base," and its inclusion is necessary to make rates reflective of the cost of providing service during the rate effective period.

For these reasons, Delmarva respectfully requests that CWIP be included in rates.

B. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Modify the Company's Cash Working Capital ("CWC") Based Upon the Lead/Lag Analysis Performed.

There is no dispute between the parties as to whether a CWC allowance should be allowed in rate base, but only as to the determination of such amount. Staff and DPA disagreed with the methodology used by the Company in performing its lead/lag analysis, and specifically the lead days assigned to its Service Company billings of certain expenses. Staff and DPA further disagreed as to how the proper lead time should be calculated. The Hearing Examiner agreed with Staff and DPA that the Company's lead/lag analysis was incorrect, but found that he was not able to make a recommendation on which proposal of Staff or DPA the Commission should accept.[182] Delmarva submits that neither proposal of Staff or DPA should be adopted, and that its lead/lag analysis was properly conducted and supported by the record.

At issue with the Company's lead/lag analysis is the timing of Delmarva's payment to its

[181] *See* 26 *Del. Admin. C.* § 1002 4.11; *see also* Exh. 1: Schedule No. 2
[182] HE Report at ¶¶ 209-210.

affiliated Service Company. As recognized by Company Witness Ziminsky, if Delmarva prepared a lead/lag study on PHI specific transactions, then the recommendations of Staff and DPA may have some merit.[183] However, the lead/lag study used in this proceeding is representative of transactions as reflected on Delmarva's books and records, and thus the lag period for the Company's "Affiliate's Transactions" was based on the timing of these types of expenses being recorded on Delmarva's books.[184] To apply the Intercompany Money Pool Balance settlement frequency as used by Staff Witness Peterson and DPA Witness Crane would be improper, and would require for the entire lead/lag study to be repeated taking into account other information. Neither Staff Witness Peterson nor DPA Witness Crane performed such analysis, and importing only one identified off-the-book frequency into the performed lead/lag study is arbitrary to their analysis. Instead, Delmarva performed its lead/lag analysis in the same manner that it has historically, which has been accepted by this Commission and the parties previously. Accordingly, Delmarva submits that the Commission should accept its lead/lag analysis for this proceeding.

C. Delmarva Supports the Hearing Examiner's Recommendation to Include the Company's Pre-Paid Pension Asset in Its Rate Base.

Consistent with the treatment of pension assets and OPEB liabilities in Docket Nos. 05-304 and 09-414, the Company included its pre-paid pension asset and OPEB liability in its rate base.[185] A pre-paid pension asset occurs when accumulated contributions and growth in the pension plan exceed the accumulated expenses associated with the pension obligations.[186] In contrast, an OPEB liability reflects the accumulated costs associated with OPEB obligations

[183] Exh. 20: Ziminsky Rebuttal at 60:1-2.
[184] *Id.* at 60:2-5.
[185] *Id.* at 70:3-4.
[186] *Id.* at 71:11-13.

exceeding the associated contributions and growth of those plan assets.[187] The Company's books and records reflect a pre-paid pension asset and an OPEB Liability on the balance sheet, and thus were accounted for in the Company's rate base.[188]

The HE Report recommends that the Company's pre-paid pension asset remain in rate base, concluding that the case law and pension plan evidence presented do not warrant changing established Commission precedent that this adjustment should be included in rate base.[189] Delmarva agrees with the recommendation of Hearing Examiner Lawrence.

This Commission recognized in PSC Docket No. 05-304 its belief "that the pre-paid pension asset is appropriately included in rate base because it is caused by a negative pension expense, which both reduces base rates, resulting in rates that are lower than they otherwise might be, and at the same time creates a cash working capital requirement."[190] It also expressly recognized that "the Company has no access to this asset to use for other operating expenses" and "is precluded by federal law from using any of the money it has collected for pensions for any other purpose."[191]

DPA asserted that the Company's pre-paid pension asset is not "used and useful."[192] This assertion is improper, however, and the Commission was correct to recognize the benefits of a pre-paid pension expense in PSC Docket No. 05-304. As explained by Company Witness Ziminsky:

> The existence of a Prepaid Pension Asset on the Company's balance sheet indicates that the *Company's* cash contributions and return in the pension trust exceed the accumulated benefit obligation. This being the case, the pension trust's assets are

[187] *Id.* at 71:13-15.
[188] *Id.* at 71:10-11.
[189] HE Report at ¶ 216.
[190] PSC Order No. 6930 ¶ 58.
[191] *Id.*
[192] DPA Opening Post-Hearing Brief to the Hearing Examiner at 54.

> higher than they otherwise would be which increases the expected return on assets. The increase in the expected return on assets because of the existence of a Prepaid Pension Asset decreases the Company's pension expense, all things being equal. The decrease in the Company's pension expense due to the existence of the Prepaid Pension Asset decreases the Company's cost of service.[193]

Company Witness Ziminsky explained that with respect to the 2012 test period cost of service, absent pension plan returns, the overall pension expense level would have increased by $4.682 million, or 42%. Thus, the pre-paid pension asset is useful to customers, as it results in rates that are lower than they would otherwise be if there was no such asset.

In the HE Report, the Hearing Examiner commented that "none of the parties addressed how our neighboring states are currently ruling as to this issue with other utilities, including but not limited to, Delmarva's related companies."[194] Pre-paid pension asset has been approved for inclusion in Delmarva affiliate's rate base in Maryland and the District of Columbia, and has not been ruled on in New Jersey.[195]

For these reasons, Delmarva respectfully requests that the recommendation of Hearing Examiner Lawrence be adopted and the Company's pre-paid pension asset included in rate base.

D. Delmarva Supports the Hearing Examiner's Recommendation to Allow Recovery of the Company's Deferred Integrated Resource Planning ("IRP") and RFP Costs.

Delmarva is statutorily authorized to recover its IRP and RFP (also known as Bluewater Wind RFP) costs. Specifically, the Delaware Electric Utility Retail Customer Supply Act of 2006 ("EURCSA") sets forth that: "The costs that DP&L incurs in developing and submitting its

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[193] *See* Ex. 20: Ziminsky Rebuttal at 72:7-14.
[194] HE Report at ¶ 212.
[195] See *In the Matter of the Application of Potomac Electric Power Company For Authority to Revise Its Rates and Charges for Electric Service and for Certain Rate Design Changes* (Filed November 17, 2006) Maryland Case No. 9092, Order No. 81517 at pgs. 38-39 (July 19, 2007) and *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* (Filed December 12, 2006) District of Columbia Case No. 1053, Order No. 14712 at pgs. 45-49 (January 30, 2008).

IRPs ***shall*** be included and recovered in DP&L's distribution rates."[196] The Company's initial IRP and RFP costs were not included in its distribution rates, and thus in Docket No. 09-414 the parties agreed to an uncontested adjustment for such costs incurred through July 2009.[197]

The Company proposed in this proceeding to amortize the initial IRP costs and RFP process costs incurred beginning in August 2009, consistent with the treatment given in Docket No. 09-414 for these costs that were incurred by or before July 2009.[198] The costs are proposed to be amortized over a multi-year period with unamortized balance included in rate base.[199] Hearing Examiner Lawrence found that the plain reading of that EURCSA provides for the recovery of the Company's initial IRP and RFP-related costs based upon as the Company proposed. Delmarva agrees with the analysis provided by the Hearing Examiner.

E. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Adopt DPA's Treatment of IRP Operating Expenses.

Consistent with the uncontested treatment of recurring IRP costs in Docket No. 09-414, the Company proposed an adjustment to normalize such costs in this proceeding.[200] Under EURCSA and implementing regulations, the IRP process is done on a two-year cycle and the Company is required to submit an IRP to the Commission bi-annually.[201] The costs within the cycle are not ratably incurred each year, and the Company proposed an annualized amount based upon its projected bi-annual expenses.[202] In fact, the proposed annualized amount is less than those amounts requested by the Company in its last two proceedings.[203]

The HE Report recommends that Delmarva's estimated IRP expense level be rejected as

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[196] 26 *Del. C.* § 1007(c)(1)(d)(emphasis added).
[197] *See* PSC Order No. 8011 at ¶ 32.
[198] Exh. 5: Ziminsky Direct at 16:10-13, 16:1 and 17:1-7.
[199] *Id.* at 16:19-20 and 17:7-8
[200] Exh. 5: Ziminsky Direct at 16:3-4.
[201] *See* 26 *Del. C.* § 1007(c)(1).
[202] Exh. 5: Ziminsky Direct at 16:4-5 and Footnote 1 of Schedule (JCZ)-13; Exh. 20; and Ziminsky Rebuttal at 34:6-8.
[203] Exh. 20: Ziminsky Rebuttal at 34:10-12.

not reasonably known and measurable, and agrees with the normalization treatment of IRP expenses proposed by DPA Witness Crane, which uses a three-year average of Delmarva's actual expenses between 2010 and 2012. Delmarva takes exception with the recommendation of Hearing Examiner Lawrence.

Delmarva followed its past practice of estimating recurring IRP costs, which has been uncontested in the past and accepted by the Commission. Further, the Company provided testimony reflecting that, while the informal IRP Working Group has been very helpful in keeping the IRP focused on relevant issues and meeting the IRP requirements in less expensive ways, including by reaching settlement agreements in the IRP proceedings, there is little reason to believe that the IRP costs will continue to decline.[204] Increased costs may be required for older analyses to be updated to more current conditions or analyses of new issues so that the IRP remains relevant and useful.[205] Staff Witness Peterson and DPA Witness Crane recognized this potential variability, and did not proffer any analysis of future recurring IRP costs. Thus, this Commission should follow its past practice and allow the estimated IRP costs adjustment proposed by the Company.

If past practice is not followed, the Company did propose an alternative approach for IRP operating expenses by which a normalized amount of costs based on past years IRP costs would be included in the revenue requirement and a deferral for costs above that average amount is established.[206] While this alternative was not agreed to by Staff and DPA, the Company remains agreeable to such an alternative.

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[204] Exh. 20: Ziminsky Rebuttal at 34:14-22 and 35:1-7.
[205] *Id.* at 35:7-10.
[206] *Id.* at 35:17-36:2.

F. Delmarva Supports the Hearing Examiner's Recommendation to Approve Recovery of the Company's Credit Facility Costs.

The Company proposed an adjustment to recover its costs related to the PHI credit facility, consistent with the ratemaking treatment approved in Docket No. 09-414.[207] The credit facility allows the Company to borrow in the commercial paper market and is a primary source of short-term liquidity for the Company. It is not a substitute for short-term debt or the Company's cash working capital and is not encompassed within either of them. As explained by Company Witness Boyle, Delmarva uses short-term debt to temporarily fund its construction program and fluctuations in its working capital requirements.[208] The credit facility is required by underwriters to support the Company's commercial paper program, which allows the Company to issue short-term debt at a cost lower than borrowing on that facility.[209] Moreover, the credit facility provides vital liquidity for Delmarva that is a key consideration in rating agencies' assessment of the Company's long-term credit rating.[210]

The HE Report, recognizing the Commission's precedent in holding that the Company's credit facility costs should be included in rate base, finds that these expenses are critically important to Delmarva's operations and very beneficial to ratepayers. Thus, the Hearing Examiner recommends that the Commission again approve this expense. Delmarva agrees with the analysis provided by Hearing Examiner Lawrence.

G. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Adopt DPA's Treatment of the Company's Dynamic Pricing Program Regulatory Asset.

The Company proposed to amortize and begin recovering the costs related to its dynamic

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[207] Exh. 5: Ziminsky Direct at 30:4-5.
[208] Exh. 17: Boyle Rebuttal at 7:21-22.
[209] *Id.* at 8:3-6.
[210] *Id.* at 8:7-9.

pricing program which were deferred to a regulatory asset based on Order No. 7420.[211] Dynamic pricing was offered to test participants in the summer of 2012, and rolled-out to all of the Company's Standard Offer Service residential customers in the summer of 2013.[212] The Company split this adjustment into two parts so that the first adjustment (No. 20a) relates to the actual regulatory asset costs incurred through August 2013, and the second adjustment (No. 20b) relates to forecasted regulatory asset costs from September 2013 through October 2013.[213]

The HE Report adopts the recommendation of DPA Witness Crane to award the Company its actual costs of dynamic pricing program costs through only the end of the test period. Delmarva takes exception to this recommendation. First, the dynamic pricing cost adjustments reflect the actual and forecasted costs placed into the dynamic pricing regulatory asset during the respective time periods and are consistent with the Commission's regulations.[214] Moreover, the costs reflected in the asset are for a used and useful program. The dynamic pricing program has now been rolled out to all of the Company's residential customers, and those customers who have taken advantage of the program have already received both energy savings and bill credit benefits.[215] Similarly, customers that take advantage of the program will receive benefits during the rate effective period and beyond. These costs should not continue to be deferred into a regulatory asset for future recovery. At a minimum, the Company's actual dynamic pricing costs, as reflected in Adjustment 20(a), should be included in its cost of service.

Second, the recommendation of DPA Witness Crane does not reflect the significant reclassification in January 2013 of certain costs from the Company's AMI regulatory asset to the dynamic pricing regulatory asset. As recognized by DPA Witness Crane, this reclassification

[211] Exh. 5: Ziminsky Direct at 23:16-21.
[212] Exh. 20: Ziminsky Rebuttal at 41:17-20.
[213] *Id.* at 42:2-5
[214] 26 *Del. Admin. C.* § 1002-1.3.1, Part A.
[215] The initial Dynamic Pricing event was called on July 17, 2013, with participating customers receiving approximately $775,000 in bill credits. Exh. 20: Ziminsky Rebuttal at 42:20-22.

was done in conjunction with a review by Staff.[216] The reclassified costs include costs incurred by the Company prior to 2013, and should be included in the Company's rate determination.

For these reasons, Delmarva respectfully requests that its dynamic pricing costs be included in rates.

H. Although the Hearing Examiner Recommends Denial of the Company's Recovery in this Proceeding of its Direct Load Control Program Regulatory Asset ("DLC"), Delmarva Does Not Take Exception to That Recommendation.

The Company proposed to amortize and begin recovering the costs related to its residential air conditioning cycling program which were deferred to a regulatory asset based on Order No. 8253.[217] Implementation of the program started in late 2012 and will continue through 2016.[218] As with its dynamic pricing adjustment, the Company split this proposed adjustment into two parts reflecting actual and forecasted 2013 costs.

The HE Report recommends that the Company's request be denied, agreeing with the positions taken by Staff Witness Peterson and DPA Witness Crane. The Company does not take exception with the recommendation of Hearing Examiner Lawrence given the timing of this program.

I. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Deny the Recovery of the Company's Medicare Subsidy Deferred Costs.

The Company proposed an adjustment to recover taxes related to a change in law regarding Medicare Part D in March 2010.[219] The change of law resulted in a deferred tax charge to the Company's Federal income tax expense, and the charge to tax expense was deferred in the financial records of the Company.[220] DPA Witness Crane opposed this

[216] Exh. 13: Crane Direct at 24:10-13.
[217] Exh. 5: Ziminsky Direct at 25:14-20.
[218] *Id.* at 25:5-6
[219] Exh. 5: Ziminsky Direct at 29:6-8.
[220] *Id.* at 29:8-12.

adjustment because Delmarva did not request or receive the Commission's authorization to defer these costs when the liability for the charge became known, and permitting recovery would constitute retroactive ratemaking.[221]

The HE Report recommends that the proposed adjustment must be denied because it would constitute retroactive ratemaking and violate the matching principle.[222] Delmarva takes exception to this recommendation.

This adjustment stems from a change in law that was outside of the Company's control and for which it incurred a one-time charge.[223] The Company is not attempting to, and has not proposed, to correct or revise its previously approved rate and then apply that change to customers of the past period. If that was what the Company was attempting to do, it would constitute retroactive ratemaking. Delmarva did not do that, however. To account for the charge, the Company used the accrual method of accounting as it does for other cost of service items.[224] Accordingly, the Commission should approve this adjustment.

J. Delmarva Supports the Hearing Examiner's Recommendation to Approve the Company's Wage and FICA Adjustment.

Consistent with the Commission's treatment of Wage and FICA expense in Docket Nos. 94-22, 03-127, 05-304 and 09-414, the Company proposed an adjustment to its test period wage and FICA levels of expense for known price changes required to be made to be reflective of the rate effective period.[225] The wage increases were applied to the Company's test period salaries and wages to be reflective of a rate effective period between November 2013 and October 2014, and included actual known wage increases effective in 2012, 2013 and 2014 and an estimated

[221] Exh. 13: Crane Direct at 28:5-9.
[222] HE Report at ¶ 266.
[223] It should be noted that when the law granting the tax-free subsidy was enacted in 2004, Delmarva began to lower its rate base prior to the 2006 effective date, reducing the revenue requirement from customers. DPA did not contest this treatment by Delmarva.
[224] Exh. 20: Ziminsky Rebuttal at 57:21-22.
[225] Exh. 5: Ziminsky Direct at 12:20-22.

wage increase in March 2014.[226] The recovery of such costs would ensure that the rates set by this Commission reflect the conditions that will exist during the period the new rates are in effect and are reasonably known and measurable as they are contractually obligated or reasonably predicted based on history.

The HE Report recommends that the Commission award the Company its wage and FICA adjustment consistent with the Commission's precedent and MFRs. Delmarva agrees with the analysis provided by the Hearing Examiner.

K. Delmarva Supports the Hearing Examiner's Recommendation to Approve the Company's Regulatory Expenses Adjustment.

Consistent with treatment approved in previous dockets, including Docket No. 05-304, the Company proposed to adjust its regulatory commission expenses in the test period.[227] First, the Company normalized the test period level of expense using a three-year average, which was uncontested by the parties.[228] Second, the Company adjusted the test period level of expense to reflect the estimated cost of this proceeding, including the cost of Staff, amortized over a three-year period.[229] Staff Witness Peterson and DPA Witness Crane opposed the second adjustment, recommending that a normalized rate expense over the Company's last three rate proceedings be used.

The HE Report recommends that the Company be awarded its requested regulatory expenses adjustment.[230] In doing so, Hearing Examiner Lawrence recognizes the additional fees and costs Delmarva has incurred in the protracted litigation of this proceeding as compared to one that settles. Delmarva agrees with the analysis provided by the Hearing Examiner.

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[226] Exh. 20: Ziminsky Rebuttal at 21:1-23.
[227] Exh. 5: Ziminsky Direct at 11:21-22.
[228] *Id.* at 11:22-23.
[229] *Id.* at 12:1-2.
[230] HE Report at ¶ 276.

L. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Deny Recovery of the Company's Non-Executive Incentive Compensation Costs.

The Company proposed the inclusion of the test period level of non-executive incentive compensation in its cost of service.[231] Furthermore, in light of the Commission's decision in Docket No. 09-414 (described below), the Company identified the portions of the incentive compensation attributable to non-financial goals. Notwithstanding this apportionment, the HE Report recommends that the Commission remove the entirety of the Company's Non-Executive Incentive Compensation from cost of service. The Hearing Examiner identifies that this recommendation is "consistent with [the Commission's] prior decisions in Docket Nos. 05-304 and 09-414," stating that the Commission's "precedent holds that all costs related to the achievement of financial goals will be excluded."[232] Delmarva respectfully asserts that Hearing Examiner Lawrence's recommendation should not be followed in this case and that his analysis of Commission precedent on the issue is mistaken.

The Hearing Examiner's statement regarding the Commission's precedent in the last two contested rate proceedings with Delmarva is imprecise and results in an incorrect recommendation to disallow recovery. Further, the record in this case does not support the Hearing Examiner's conclusion. Rather, the evidence in this docket shows that Delmarva's incentive compensation program is not structured such that corporate financial goals override other performance goals, many of which explicitly relate to safety and customers. Instead, Delmarva's program is designed, and chosen by the Company, to achieve these goals to the benefit of both customers and Delmarva. That there are financial triggers should not be considered as a prohibition to the recovery of the expenses, but as a means to ensure that the

[231] Exh. 5: Ziminsky Direct at 34:3-4.
[232] *See* HE Report at ¶ 284.

incentives can be paid.

Prior to its decision in Docket No. 05-304, this Commission had allowed payments made under incentive compensation programs to be included in rates (both for Delmarva and other Delaware utilities), expressing its belief that "incentive plans that are triggered by the achievement of safety, reliability, and goals of that nature benefit ratepayers."[233] The Commission allowed inclusion of incentive payments that were tied directly to financial goals, such as earnings.[234] In Docket No. 05-304, the Commission considered the Company's incentive compensation program in light of the then existing economic conditions, and concluded that if competitive sector incentive compensation plans are being reconsidered, it should do so as well.[235] Recognizing incentive compensation as a "difficult issue," the Commission adopted the recommendation to exclude financial-goal-related incentive payments in rates.[236] The Commission did, however, permit the recovery by Delmarva of those portions of its incentive compensation related to the achievement of safety, reliability and customer service goals.[237]

In Docket No. 09-414, Delmarva included a three-year normalized level of non-executive incentive compensation in its cost of service, identifying that incentive compensation payouts would only be made if certain overall corporate earning thresholds were attained.[238] Staff and DPA opposed the inclusion of the incentive compensation expenses in Docket No. 09-414, for many of the same reasons asserted in this proceeding, including the mistaken allegations that: (i) the incentive plan is driven by financial performance benefitting shareholders, (ii) rejecting that the incentive plan helps to attract and retain employees and motivate them to provide safe and reliable service, and (iii) no evidence that safety and reliability would be adversely affected if

[233] PSC Order No. 6930 at ¶¶ 96 and 97.
[234] *See* PSC Order No. 3389 at ¶¶ 156-167.
[235] PSC Order No. 6930 at ¶ 96.
[236] *Id.* at ¶¶ 96 and 98.
[237] *Id.* at ¶¶ 88 and 98.
[238] PSC Order No. 8011 at ¶ 185.

incentive payments not made.[239] However, the Commission did not exclude non-executive compensation payments in Docket No. 09-414 on those bases.

Instead, the Commission noted that in Docket No. 05-304, it had permitted recovery of non-executive incentive payments related to achievement of safety, reliability and customer service goals. The Commission stated, however, that in Docket No. 09-414, it could not permit recovery of incentive payments related to those goals because Delmarva had not shown the amount of "compensation expense that is attributable to the achievement of safety, reliability and customer service goals."[240] In other words, in Docket No. 09-414, Delmarva had submitted evidence of only the total amount of incentive compensation, which did not permit the Commission to determine what amount of that total was "attributable to the achievement of safety, reliability and customer service goals."[241] As such, recovery of incentive compensation related to those goals could not be permitted. The Commission further stated "[h]ad there been any record evidence of the amount of non-executive incentive compensation attributable to the achievement of safety, reliability and customer service goals, our determination may have been different."[242] Reviewing these decisions, there is no precedential prohibition on non-executive incentive compensation being included in the Company's cost of service, nor a more limited prohibition on costs related to the achievement of financial goals.

In this proceeding, Delmarva included the test period level of non-executive incentive compensation in its cost of service. While the Company's non-executive compensation plan may differ from area to area, or among levels, they have the same framework, including: safety; a customer satisfaction component; a reliability measure; and achievement of goals related to

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[239] *Id.* at ¶¶ 186-189.
[240] *Id.* at ¶ 195.
[241] *Id.*
[242] *Id.* at ¶ 196.

regulatory compliance and affirmative action. In addition, the non-executive compensation plan also includes financial components, such as O&M expense control, managing capital expenditures and achieving net income targets, which, if achieved, lower the revenue requirements to customers.[243] The Company's incentive plan is carefully designed to make the Company more economically efficient, safe and reliable.[244] Company Witness Boyle explained that Delmarva uses its incentive plan to drive certain performance that it views as focal areas, such as reliability and safety.[245] The financial metrics included in the Company's incentive plan relate to O&M and capital spending, and these metrics incentivize employees to control spending and seek opportunities to save money in order to meet their budgets.[246] If spending is controlled, customers benefit through lower expenses reflected in the cost of service, and ultimately through lower rates.[247]

Company Witness Boyle explained that including financial targets in the incentive plan is not designed to simply increase profits, but also lowers the costs that will be in the Company's cost of service (by both operating expenses and the Company's financial metrics).[248] A lower cost of service means lower rates for customers. Company Witness Ziminsky further explained that the financial triggers also serve to "ensure that the incentives, one, can be paid out of earnings and don't jeopardize the Company."[249] In other words, if Delmarva has not earned the money needed to pay incentives, then the money to pay incentives cannot be paid.

Importantly, in this case, Company Witness Ziminsky quantified the specific component allocation of the total non-executive incentive expense included in the test period to show the

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[243] Exh 5: Ziminsky Direct at 35:9-15.
[244] Exh. 17: Boyle Rebuttal at 11:21-22.
[245] Tr. at 205:21-24, 205:16-23 (Boyle Cross).
[246] *Id.* at 11:12-15.
[247] *Id.* at 11:15-20.
[248] Exh. 17: Boyle Rebuttal at 11:2-9.
[249] Tr. at 693:3-8 (Ziminsky Re-direct).

portion of the incentive expense that is specifically attributable to the achievement of safety, reliability and customer service goals as follows: $1,196,280 in total comprised of $797,520 for customer satisfaction and reliability, $199,380 for safety, $99,690 for Affirmative Action and $99,690 for regulatory and compliance.[250] It is appropriate for Delmarva to be provided recovery of these costs at a minimum.[251]

The assertions made by Staff Witness Peterson and DPA Witness Crane that the Company's incentive compensation program only benefits shareholders is unsupported.[252] The testimony of these witnesses does not cite any sources or case law supporting their assertions, and neither witness addressed the issue during the evidentiary hearing. Further, there is nothing in the record to support the assertions of Staff or DPA regarding the use of incentive compensation in the current marketplace. In contrast, Company Witness Boyle explained in his pre-filed testimony and at the evidentiary hearing the importance of non-executive compensation in attracting and keeping skilled employees in the Company, and creating incentives to attain levels of performance that benefit customers.[253] He described that, consistent with peer practices, a portion of a Company employee's compensation is "at risk" and can be earned only by achieving performance goals that benefit both customers and Delmarva.[254] Company Witness Boyle also explained that Delmarva needs to provide compensation plans that are competitive with other choices that skilled employees have, and that he was not aware of a single company in the industry that doesn't offer annual incentive plans.[255]

Moreover, the issue of the manner in which Company management determines how its employees should be compensated is a matter that involves the day-to-day operations of the

[250] *Id.* at 36:3-6.
[251] *See* PSC Order No. 6930 at ¶¶ 88 and 98 and PSC Order No. 8011 at ¶ 195-196.
[252] *See* Exh. 13: Crane Direct at 33-37; and Exh. 11: Peterson Direct at 24-27.
[253] Exh. 17: Boyle Rebuttal at 10:5-7; Tr. at 201:19-24 and 2021-6 (Boyle Cross).
[254] *Id.* at 10:10-23.
[255] Tr. at 201:21-24 and 202:1-6 (Boyle Cross).

Company. There can be no argument that the cost of paying employees for their work is a "normally accepted operating expense" of utility companies.[256] As such, where, as the record shows in this proceeding, the Company's management has exercised its judgment to adopt an employee compensation plan that includes incentives designed to encourage employees to perform their best, recovery of that expense must be approved unless found to have been made in bad faith or out of an abuse of discretion.[257] Nowhere in the record of this docket was bad faith or abuse of discretion alleged, and Hearing Examiner Lawrence made no finding of such.

Accordingly, Delmarva should be permitted to recover the costs of its non-executive employee incentive compensation program in this case. Delmarva respectfully asserts that the Hearing Examiner's recommendation to deny rate recovery of non-executive incentive compensation should be rejected by the Commission.

M. Delmarva Takes Exception to The Hearing Examiner's Recommendation to Approve DPA's Treatment of Relocation Expenses.

Consistent with its treatment of relocation expenses in previous rate proceedings, the Company included such expenses as incurred during the test year.[258] DPA Witness Crane asserted that the test year relocation expenses did not represent a normal, on-going level of expense based upon her review of past such expenses and recommended that the Commission utilize a "normalized" cost, reflecting the highest cost from the three years previous to the test year.[259]

The HE Report found that the Company did not meet its burden of proof for including relocation expenses from its test period, identifying that there was no evidence as to why its relocation expenses in the test period were higher than in other years or that such expenses were

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[256] *Delmarva Power & Light Co.*, 508 A.2d at 859.
[257] *Id.* (quoting *Application of Diamond State Tel. Co.*, 103 A.2d at 319).
[258] Exh. 20: Ziminsky Rebuttal at 74:6-7.
[259] Exh. 13: Crane Direct at 38:11-18 and 39:1-7.

likely to continue in the future. Delmarva takes exception to this recommendation.

In his rebuttal testimony, Company Witness Ziminsky stated that the relocation expenses in the test period were "normal expenses incurred in the ordinary course of business."[260] He identified that the expenses could be higher or lower, and that there was no normalized cost.[261] There was no discussion of the Company's relocation expenses during the evidentiary hearing. While DPA Witness Crane questions whether the relocation expenses will be at the same level going-forward, there is no argument that the expenses were incurred in bad faith or an abuse of discretion. Further, the recommended treatment by DPA does not take into account the test year expenses.

The relocation expenses at issue were supported by the Company and it has met its burden of proof by including the test period expenses as allowed in previous proceedings before the Commission. These expenses are well accepted expenses of operating a regulated utility and should be reflected in the Commission approved rates.

N. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Deny Recovery of the Company's Corporate Governance Expenses.

Consistent with its treatment of expenses in Docket Nos. 05-304 and 09-414, the Company included certain corporate governance expenses as incurred during the test year in its Application. The Company's corporate governance expenses relate to both the manner in which PHI and Delmarva are directed and controlled, as well as social responsibility expenses which directly benefit customers.[262] These expenses were reflected in the Company's rates approved by the Commission in the two prior Commission-decided proceedings. DPA Witness Crane opposed these expenses based on lack of support and no direct benefit to ratepayers.

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[260] Exh 20: Ziminsky Rebuttal at 74:8-9.
[261] *Id.* at 74:9-10.
[262] Exh. 20: Ziminsky Rebuttal at 77:18-20.

The HE Report found that the Company had not met its burden of proof for its corporate governance expenses, asserting that the Company had not documented and segregated its expenses.[263] Delmarva takes exception to this recommendation.

In his rebuttal testimony, Company Witness Ziminsky identified that the Company's corporate governance expenses are "normal and ordinary business expenses which have been included in cost of service based on the decisions in Docket Nos. 05-304 and 09-414."[264] He clarified that expenses recorded "below the line" were not included in the test period cost of service, which should remove the "shadow of soft-lobbying costs".[265] Further, there was discussion of the Company's corporate governance expenses during the evidentiary hearing. Company Witness Ziminsky described:

> For example, our public relations organization, and that's, essentially, the cost that Ms. Crane has included in her adjustment are -- these are folks that are dealing in the public in terms of our industry. For example, in the City of Wilmington, Company Witness VonSteuben's daughter is a teacher in a local school here. One of our public relations employees is scheduled to go to that school to talk about electrical safety, downed wires and those sorts of things. So, that's an example of what that organization does and how it sort of carries out the direction sort of set by senior management as to how to operate and work with customers and the community in general.[266]

For strategic *communications*, he further described:

> This is the organization that handles our corporate communications with customers as to overseeing communications as to how customers can conserve energy and those sorts of things.[267]

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[263] HE Report at ¶ 294.
[264] Exh 20: Ziminsky Rebuttal at 77:20-22.
[265] *Id.* at 77:22-23.
[266] Tr. at 670:15 - 671:7 (Ziminsky Cross).
[267] *Id.* at 672:8-12.

Thus, the corporate governance expenses at issue were supported by the Company and it has met its burden of proof by including the test period expenses as allowed in previous proceedings before the Commission. There is no argument that the expenses were incurred in bad faith or out of an abuse of discretion. These expenses are well accepted expenses of operating a regulated utility and should be reflected in the Commission approved rates.

O. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Deny Recovery of the Company's Membership Fees and Dues Expenses.

Consistent with the Commission's treatment of membership expenses in previous rate proceedings, the Company included its dues, net of reported lobbying expenses, in its test period cost of service.[268] These expenses were reflected in the Company's rates approved by the Commission in the two prior Commission-decided proceedings. DPA Witness Crane recommended that 20% of the Company's membership dues identified in MFR Exhibit G-3 be disallowed on the basis that such costs constitute lobbying activities or should not otherwise be charged to cost of service.[269] This recommendation was made by DPA Witness Crane on her review of the organizations and on her recommendations in other utility rate proceedings.[270]

The HE Report recommends that DPA Witness Crane's 20% reduction be accepted by the Commission, identifying the following groups for which reimbursement should not be allowed: Maryland and Delaware Chambers of Commerce; the Art League of Ocean City, Inc. (MD); the Girl Scouts; the Committee of 100; the Delaware Alliance of Nonprofit Advancement and the Delaware Public Policy Institute (DPPI).[271] Delmarva takes exception to this recommendation.

First, the recommendation to remove 20% of the Company's membership dues based on

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[268] Exh. 20: Ziminsky Rebuttal at 79:18-19.
[269] Exh. 13: Crane Direct at 54:17-19.
[270] *Id.* at 54:21 and 55:1.
[271] HE Report at ¶ 296.

DPA Witness Crane's review of the Company's organization list and her past recommendations in other proceedings is arbitrary and unsupported. It should not be followed by the Commission.

Second, the inclusion of membership expenses in cost of service follows the Company's practice in Docket Nos. 05-304 and 09-414 and this Commission's acceptance of such expenses. As described by Company Witness Ziminsky, Delmarva believes that its membership in these organizations provides numerous benefits to the Company's customers, including improving the quality of life for Delawareans through non-profit organization support and supporting DPPI which studies a multitude of issues in the State of Delaware, including health care and economic development.[272] There is no argument that the expenses were incurred in bad faith or out of an abuse of discretion. These expenses are well accepted expenses of operating a regulated utility and should be reflected in the Commission approved rates.

P. Delmarva Supports the Hearing Examiner's Recommendation to Allow Recovery of the Company's Supplemental Executive Retirement Plan ("SERP") Expenses.

Consistent with the Commission's treatment of Supplemental Executive Retirement Plan (SERP) in previous rate proceedings, the Company included SERP expenses in the Company's revenue requirement. These expenses are a common practice among companies that offer qualified defined benefit pension plans, and a common benefit offered to attract and retain executives in the utility industry and thus a reasonable cost to include in test period cost of service.[273] As described by Company Witness Boyle at the evidentiary hearing, SERP benefits are part of "recruiting executives, becomes part of the overall compensation package that is looked at and is part of the overall development of compensation."[274] Although the DPA has in the past agreed with SERP expense, it objected to it in this proceeding.

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[272] Exh 20: Ziminsky Rebuttal at 80:16 - 82:2.
[273] Exh. 20: Ziminsky Rebuttal at 75:12-13.
[274] Tr. at 283:19-22 (Boyle Cross).

The HE Report recommends that the Commission award the Company its SERP costs, based on the Commission's decision in Docket No. 09-414 and the record in the proceeding.[275] Delmarva agrees with the analysis provided by Hearing Examiner Lawrence. The Commission has previously approved the inclusion of SERP expenses in the Company's cost of service, recognizing that the benefits are necessary to attract and retain executive talent and that they are true retirement benefits, which are not tied to the achievement of financial goals.[276] These facts have not changed in this proceeding.

Q. Delmarva Supports the Hearing Examiner's Recommendation to Approve the Company's Adjustment for Expenses for Employee Benefits.

Consistent with the Commission's treatment of employee benefit expenses in Docket No. 09-414, the Company proposed an adjustment to recognize increases in employee medical, vision and dental expenses expected in the rate effective period.[277] The expenses were forecasted by the Company's expert benefits consultant, analyzing benefit cost trends in the Mid-Atlantic region.[278] Staff and DPA opposed this adjustment.

The HE Report recommends that the Commission award the Company its employee benefit expense adjustment, based on the Commission's decision in Docket No. 09-414 and the record in the proceeding.[279] Delmarva agrees with the analysis provided by the Hearing Examiner.

R. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Deny the Recovery of Meals and Entertainment Expenses.

Consistent with its treatment of expenses in Docket Nos. 05-304 and 09-414, the Company included meal and entertainment expenses incurred during the normal course of

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[275] HE Report at ¶ 301.
[276] PSC Order No. 8011 at ¶ 184.
[277] Exh. 5: Ziminsky Direct at 14: 5-7.
[278] *Id.* at 14:8-9.
[279] HE Report at ¶ 301.

business that are not deductible for income tax purposes in its Application.[280] Such business expenses include providing meals to union employees, business meals, meals related to overtime and meals provided for training.[281] These expenses were reflected in the Company's rates approved by the Commission in the two prior Commission-decided proceedings. DPA Witness Crane, assuming that meal and entertainment expenses that are not deductions for federal tax purposes are deemed by the IRS not "to be reasonable business expenses," recommended that the Commission adopt the use of the IRS 50% criteria as a reasonable balance between shareholders and customers.[282]

The HE Report recommends that the Commission not include the Company's Meals and Entertainment expenses in its revenue requirement, finding that the Company has not met it burden of proof regarding the expenses.[283] Delmarva takes exception to this recommendation.

First, with her arbitrary reliance on an IRS regulation, DPA Witness Crane blurs the line between the taxing authority governance of the IRS and its regulations compared to the Commission's oversight of public utilities in the State of Delaware. Significantly, the IRS has not made any decision that expenses that are not deductible for tax purposes are not "reasonable business expenses." The limitation of the deduction for business meals and entertainment is a limitation imposed by statue in Internal Revenue Code ("IRC") §274(n). Thus Congress, not the IRS, made the percentage reduction decision. Looking further into the reasoning for the reduction, the committee report from the 1993 Revenue Reconciliation Act states that:

> Generally, some portion of business meal and entertainment expenses represent personal consumption (even if the expenses serve a legitimate business purpose). The committee believes that

[280] Exh. 20: Ziminsky Rebuttal at 78:5-6.
[281] *Id.* at 78:18-19.
[282] Exh. 13: Crane Direct at 52:13-20 and 53:10-11.
[283] HE Report at ¶313. It is not clear from the HE Report whether the recommendation is to remove the expenses as proposed by DPA Witness Crane, or to remove the expenses in their entirety.

> denial of some part of the deduction is appropriate as a proxy for income inclusion of the consumption element of the meal or entertainment. The committee *believes* that increasing the portion of such expenses for which a deduction is denied is appropriate in the context of deficit-reduction legislation.[284]

Based upon this language, the intent of the percentage reduction is not to recognize that meal and entertainment expenses are not reasonable business expenses, but simply to gain more tax revenue. Thus, to reject the inclusion of the Company's meal and entertainment expenses subject to the 50% limitation simply because there is a limitation on the deduction rejects Congress' logic for the limitation and uses the limitation for false reasons.

Second, in response to DPA Witness Crane's assertion questioning the validity of the expenses and inference that they may have been used for sporting or entertainment expenses, Company Witness Ziminsky responded in his pre-filed testimony that "the expenses were incurred during the normal course of business, which includes providing meals to union employees, business meals, meals related to required overtime, and meals provided for training."[285] There was no discussion of this issue at the evidentiary hearing. The inclusion of these expenses in cost of service follows Delaware law and past ratemaking treatment, and are operating expenses for which the company is entitled to recovery.[286]

S. The Company's Proposed Adjustments to Recover Dynamic Pricing O&M and Amortization Expenses are Supported by the Record and Should be Approved by the Commission.

With the full roll-out of the Dynamic Pricing program in summer 2013, the Company proposed to have its recurring annual Dynamic Pricing-related operating and maintenance expenses included in the cost of service.[287] The Company also proposed to include its

[284] H. Rep. No. 103-111, at 645 (1993) (emphasis added).
[285] Exh. 20: Ziminsky Rebuttal at 78:18-20.
[286] *See Delmarva Power & Light Co.*, 508 A.2d at 859.
[287] Exh. 5: Ziminsky Direct at 24:15-18.

incremental Dynamic Pricing amortization expense, which includes the amortization of the dynamic pricing portion of software as well as the dynamic pricing interfaces with the customer information system.[288] Otherwise, these costs would be deferred into a regulatory asset and not recovered until some later date.[289]

Staff Witness Peterson recommended that Delmarva continue to defer all costs associated with the dynamic pricing program.[290] DPA Witness Crane did not contest these adjustments.[291] The HE Report did not address this adjustment proposed by the Company, and thus it is deemed rejected by Hearing Examiner Lawrence.[292]

The dynamic pricing program has now been rolled out to all of the Company's residential customers, and those customers who have taken advantage of the program have already received bill credit benefits. Similarly, customers that take advantage of the program will receive benefits during the rate effective period and beyond. Therefore, the Company should begin recovery of its costs related to the dynamic pricing program as its normal course of business and these adjustments should be approved.

IV. COST OF SERVICE AND RATE DESIGN.

A. COST OF SERVICE

1. The Hearing Examiner Correctly Determined that Delmarva's Class Cost of Service Study should be Approved.

The Delmarva Class Cost of Service Study ("CCOSS") in this Docket uses methodology consistent with prior proceedings and incorporates initiatives developed following a series of post settlement workshop meetings held in connection with Docket No. 09-414. Despite arguments to the contrary by Staff, DPA and DEUG, the allocation factors used by Delmarva in

[288] *Id.* at 25:4-10.
[289] *Id.* at 24:18-19.
[290] Exh. 11: Peterson Direct at 32:5-7.
[291] Exh. 13: Crane Direct at 46:5-12.
[292] HE Report at ¶ 40.

its CCOSS are highly diversified and produce reasonable class results.[293]

Regarding the allocation of distribution plant investment, the Company has applied standard demand measures that are recognized in the industry. The Company has combined its experience with the operation of the Delmarva distribution system, the ongoing analysis of demands by customer class, together with the review of industry best practices to select and develop the cost allocation approaches, and is using the most reasonable and practical approach to achieve a fair allocation of these costs. The Hearing Examiner carefully highlights the rationale for the Company's allocation approach, and the development of demand allocations, and, more specifically, the 50/50 weighted demand approach.[294] The Hearing Examiner also highlights the Company's rationale for the allocation of General and Common Plant and Customer Service and Information Accounts and Sales Expenses Accounts.[295]

The Hearing Examiner, after reviewing the arguments of the parties, supported Delmarva's approach to the CCOSS based upon the fact that it is consistent with the methods used in prior dockets, and that it incorporated changes discussed by the parties in Docket No. 09-414. These changes were designed to improve and reach consensus on the CCOSS approach to be used in future rate cases. Delmarva respectfully submits that the Hearing Examiner's recommendation to accept Delmarva's CCOSS should be adopted by the Commission.

2. Delmarva Takes Exception to the Hearing Examiner's Recommendation to Incorporate AMI Data into the CCOSS for its Next Rate Case.

As part of his recommendation, the Hearing Examiner proposes that the Company use all available AMI data in the CCOSS for its next rate case, including but not limited to the CCOSS class maximum diversified loads and customer hourly demands, peak and non-peak data,

[293] Exh. 22: Tanos Rebuttal at 7:20-23.
[294] HE Report at ¶¶ 319-320.
[295] *Id.* at ¶¶ 322-325.

residential, commercial and industrial and all other class use, and above and below ground use. The Hearing Examiner further recommends that the AMI data used be current as of one (1) month prior to the filing date of Delmarva's next base rate case.[296]

Company Witness Tanos stated that now that the AMI meters have been deployed within its service territory, the Company is developing the process to integrate the new AMI meter data into the CCOSS. Witness Tanos further stated that the Company has recently started to use AMI metered data from residential and small commercial class services in the Load Settlement process.[297] However, the Company needs to collect a full year of load data using AMI data before it will be able to determine the CCOSS class maximum diversified loads; a full year of customer hourly loads will also have been collected for analysis.[298] Witness Tanos further detailed the steps required to process the demand data to ensure the reliability of the demand measures for each customer class. A rigorous process must continue to be followed to ensure the reliability of the data. Therefore, Delmarva takes exception to the Hearing Examiner's recommendation to use all available AMI data in the CCOSS process for its next base rate case.

As Witness Tanos explained, a full year of load data is required before the AMI data can be incorporated into the CCOSS process. Until a full year of data is available, it is not possible for Delmarva to use the available AMI data to develop the CCOSS for rate making purposes. Therefore, the consequence of adopting the Hearing Examiner's recommendation would be to prohibit the Company from filing its next rate case until such time as it has a full year's worth of AMI data. This recommendation serves to modify the Commission's MFRs[299] and is beyond the authority of the Hearing Examiner. Further, it would be improper for the Commission to adopt

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[296] *Id.* at ¶ 344.
[297] Exh. 22: Tanos Rebuttal at 6:8-11.
[298] *Id.* at. 6:13-18.
[299] See 26 *Del. Admin. C.* §1002-8.4.

this recommendation and effectively revise the MFRs without following the appropriate regulatory process to do so. In addition, because imposing such a requirement would result in restricting when Delmarva could file its next base rate case, adopting the Hearing Examiner's recommendation would dictate the business practice to be used by Delmarva in this instance which has been determined by the Delaware courts to be beyond the authority of the Commission.[300]

While Delmarva is prepared to move forward with incorporating available AMI data into the CCOSS process, with the exception of the underground/overhead facilities as addressed below, it will take time before the Company is in a position to do so. Further, even when AMI data is fully incorporated into the CCOSS, the data will not be "current as of one (1) month prior to the filing date of Delmarva's next rate case" as it would be extremely difficult, if not impossible for Delmarva to meet that requirement. Accordingly, the Hearing Examiner's recommendation to incorporate all available AMI data into the CCOSS for its next base rate case and to require that the AMI data be current as of one (1) month prior to the filing of Delmarva's next base rate case should be rejected by the Commission.

a. <u>Delmarva's Underground and Overhead Facilities.</u>

The Company respectfully submits that it will be problematic for it to develop reliable demand allocators differentiated by overhead and underground distribution systems. The ability to develop these measures is not dependent upon use of AMI data alone; rather, it relates also to the ability to classify customers, the availability of geographically differentiated cost accounting data and the interface of numerous massive data bases that are not linked for these purposes. As emphasized by Company Witness Tanos, because the Delmarva distribution feeders pervasively

[300] *Delmarva Power & Light Company v. Public Service Commission,* 508 A.2d 817,829 (Del. Super. Ct. 1964) (citing *Application of Wilmington Suburban Water Corp.*, 203 A. 2d 817, 829 (Del. Super. Ct. 1964), *aff'd in part by,* 211 A.2d 602 (Del. 1965)).

contain both overhead and underground components, and plant cost data is not maintained in that level of detail, attempts to classify customers as overhead or underground is problematic. This introduces additional complexities and equity issues for cost assignment.[301]

The Company has applied standard, industry recognized demand measures in the CCOSS. The Hearing Examiner highlighted the fact that for over forty years the Company's standard operating procedure has been to install underground facilities in residential developments. He further determined that there has been no evidence presented in this case that Delmarva's commercial customers use more underground facilities than the residential classes.[302]

3. The Hearing Examiner's Recommendation to Reject DEUG's Proposal for Allocation of Accounts relating to the CCOSS should be Adopted.

The Hearing Examiner adopted Delmarva's position to reject the arguments made by DEUG that certain distribution plant accounts currently classified as demand-related should be classified as customer related, and that the Minimum Distribution System analysis should be used to determine the customer cost component of the CCOSS. Consistent with Delmarva's argument that the PSC has previously considered and rejected the arguments offered by DEUG in support of using a Minimum Distribution System analysis, the Hearing Examiner also found no merit for this argument. The Hearing Examiner, by rejecting DEUG's argument, also supported the Company's position to classify distribution poles, lines and line transformers as demand related and to classify services and meters as customer related, consistent with methods used in previous studies provided to the Commission.[303] Delmarva respectfully submits that the Hearing Examiner's recommendation to reject DEUG's arguments should be adopted by the

[301] Delmarva's Post Hearing Reply Brief at p. 42.
[302] HE Report at ¶ 321.
[303] Exh. 22: Tanos Rebuttal at 16:5-10.

Commission.

B. RATE DESIGN

1. The Hearing Examiner's Recommendation relating to Rate Design should be Adopted.

In reviewing the arguments made by the parties pertaining to rate design, the Hearing Examiner considered and rejected those made by the Public Advocate opposing Delmarva's rate design and arguing for gradualism. Staff largely accepted Delmarva's rate design. DEUG proposes a modification to the Company's rate design as it relates to the power factor credit, which the Hearing Examiner also rejects. The Hearing Examiner, therefore, supports the Company's proposed rate design which is based upon the CCOSS using the Unitized Rate of Return (UROR) as an allocation mechanism to put all rate classes on an equal footing. Delmarva respectfully submits that the Hearing Examiner's recommendation to reject the Public Advocate's and DEUG's arguments pertaining to rate design should be adopted by the Commission.

2. UFRC Tariff and LED Lighting.

Company Witness Santacecilia introduced the Utility Facility Relocation Charge Rider (Rider UFRC), a mechanism for Delmarva to recover unreimbursed costs associated with the relocation of the Company's delivery facilities as needed to accommodate projects of the Delaware Department of Transportation and other state agencies.[304] Company Witness Santacecilia also discussed tariff changes pertaining to the addition of LED light offerings within the Outdoor Lighting Tariff.[305] None of the parties in this docket objected to the RIDER UFRC or the LED light offerings, and while the Hearing Examiner does not specifically address these requests, there is no basis for denying them.

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[304] Exh 6: Santacecilia Direct at 9:12-23.
[305] *Id.* at 10:3-9.

CONCLUSION

Delmarva has requested in this proceeding a rate reflective of the services provided by the Company during the rate effective period. The Company requests a rate base, cost of service and rate design that adheres to past ratemaking treatments approved by the Commission. On the limited issues where Delmarva asks the Commission to recognize a treatment that differs from past Commission decisions, Delmarva provides the reasons why the change is appropriate and seeks the Commission's agreement with these treatments. The record and Commission precedent as summarized in the Company's briefing to the Hearing Examiner and here, support the conclusion that the Company has met its burden in this proceeding. The Company has offered substantial evidence to support its cost of capital recommendation as well as the appropriate treatment of known and measurable post test period adjustments. Accordingly, Delmarva respectfully requests that its exceptions to the HE Report be accepted by the Commission and its requested increase be approved.

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March 17, 2014

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN INCREASE IN ELECTRIC BASE RATES AND MISCELLANEOUS TARIFF CHANGES (FILED March 22, 2013)	))))))	PSC DOCKET NO. 13-115

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2014, I caused the attached **BRIEF ON EXCEPTIONS OF DELMARVA POWER & LIGHT COMPANY TO THE FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER** to be served upon all parties on the attached service list via electronic mail.

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March 17, 2014

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PSC DOCKET No. 13-115
As of 3/17/14

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