BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE INVESTIGATION	)	
INTO DELMARVA POWER & LIGHT	)	
COMPANY'S PLANNED DISTRIBUTION	)	PSC DOCKET NO. 13-152
INFRASTRUCTURE INVESTMENT OVER	)	
THE NEXT SEVERAL YEARS	)	
(OPENED MAY 7, 2013)	)	

THE DIVISION OF THE PUBLIC ADVOCATE'S COMMENTS ON THE STAFF REVIEW OF DELMARVA POWER & LIGHT COMPANY'S 2013-2017 INFRASTRUCTURE INVESTMENT PLANS

On March 22, 2013, Delmarva Power and Light Company ("Delmarva" or the "Company") filed an application with the Delaware Public Service Commission (the "Commission") to increase distribution base rates by $42,044,000. In its supporting prefiled testimony, Delmarva witness Michael W. Maxwell stated that Delmarva planned to invest approximately $397 million over the next five years to replace infrastructure and enhance and maintain system reliability. (Docket No. 13-115, Direct Testimony of Michael W. Maxwell at 5). In its application, Delmarva also included approximately $66 million of investments in its rate base that it expected to make in 2013.

The Commission Staff was concerned about the extent of Delmarva's planned infrastructure improvements and the effect such investment would have on rates in the future. On April 16, 2013, the Staff filed a motion requesting the Commission to authorize an investigation of Delmarva's planned infrastructure improvements. The Commission granted Staff's motion and opened this docket to consider Delmarva's proposed infrastructure and reliability improvements over the next several years and to ascertain whether those expenditures would be consistent with Delmarva customers' needs and their ability to pay for such investments. (Order No. 8363 dated May 7, 2013).

The Division of the Public Advocate ("DPA") filed a statutory notice of intervention. The Caesar Rodney Institute moved for and was granted leave to intervene.

Staff issued a Request for Proposals and ultimately retained Silverpoint Consulting LLC ("Silverpoint") to conduct the investigation. On April 22, 2014, Silverpoint issued a report to Staff addressing its investigation and its proposed conclusions. On May 3, 2014, Staff issued a report (the "Report") that attached Silverpoint's report and made certain recommendations regarding Delmarva's proposed capital expenditures over the 2014-17 period. Comments on the Report are due on July 17, 2014.

On April 30, 2014 Pepco Holdings, Inc. ("PHI"), Delmarva's parent company, and Exelon Corporation ("Exelon") announced that they had agreed to a merger in which PHI would become an indirect wholly-owned subsidiary of Exelon. On July 8, 2014, the Commission opened Docket No. 14-193 to investigate the proposed merger, hold public hearings on it and to obtain public comment.

These are the DPA's comments on the Staff Report.

1. The DPA Agrees With Staff that Delmarva's Proposed $397 Million Infrastructure Investment Is Excessive and Premature, But Disagrees That the Commission Should Pre-Approve *Any* Level of Capital Spending At This Time.

Staff's first conclusion is that "[g]iven Delmarva's current reliability performance, its proposed infrastructure investment of $397 million over the next five (5) years appears to be excessive and premature." (Report, page 1). The DPA agrees: Delmarva's proposed level of spending to improve reliability is both excessive and premature. But Staff then goes on to recommend that "until such time as a collaborative approach is undertaken and completed," the Commission make clear to Delmarva that any investment it makes *beyond Silverpoint's recommended $200 million cap* may not be recovered from ratepayers until the Company has

demonstrated sufficient benefits to ratepayers. (*Id*., emphasis added). It is unclear whether Staff is really agreeing to a $200 million allowance given its later statement that it was not suggesting "that the Commission approve Delmarva's future infrastructure investment plans" (Report at 17), but if it is, the Commission should decline any invitation to pre-approve *any* amount of investment.

a. Authorizing Any Amount of Spending Is Tantamount to Pre-Approving a $200 Million Investment Level.

This Commission has been reluctant to pre-approve projects or spending levels in the past. But if Staff's recommendation to limit the Company's spending to $200 million is accepted, the Commission will essentially have authorized Delmarva to spend $200 million on unidentified projects based solely on a representation that they will improve reliability in some unspecified way. The DPA submits that doing so would establish a dangerous precedent, not just for this utility but for other utilities that the Commission regulates, and the Commission should exercise caution in traveling down the pre-approval road.

Should the Commission authorize $200 million (or *any* level of spending), there is no guarantee that Delmarva would actually spend that amount of money in any given year. Assuming that the PHI-Exelon merger is consummated, Exelon may have other ideas about what investments to make, and it may conclude that it does not need or want to make the investments that Delmarva has proposed. In that case, the Commission will have handed Delmarva a check for 200 million ratepayer dollars with no condition that it be spent on anything. As such, any approval would be premature. The DPA suggests that the wiser course of action would be for the Commission to do what it has done in the past: withhold approval of projects until they are included in a rate case.

b. <u>A Reduction of Four Minutes in the SAIDI[1] Is Not Worth $357 Million</u>.

Regulation Docket No. 50 established a target SAIDI of 295 minutes. Although Delmarva has comfortably exceeded that standard at least since 2008, it says that it wants to achieve a SAIDI of 142, and the $397 million of investment is necessary to do so. (Report at 9).

In 2012, the last year for which information was available during Delmarva's last rate case, the Company achieved a SAIDI of 146.

	2008	**2009**	**2010**	**2011**	**2012**
SAIDI	213	190	199	192	146
SAIFI[2]	1.47	1.35	1.47	1.41	1.14

(Docket No. 13-115, Direct Testimony of David E. Dismukes, Ph.D., at Schedule DED-2, citing Delmarva's response to Data Request PSC-CP-6). And in its reliability report filed in March 2014, the Company reported that it had achieved a SAIDI of 139 in 2013. (Report at 10). While the DPA agrees with Staff that the SAIDI will fluctuate over the years, the DPA (like Staff) also questions whether customers would want or should have to pay an additional $357 million[3] to achieve a mere four-minute reduction in the average length of a blue-sky outage. Notably, none of the individual ratepayers that made comments at the public comment sessions suggested that they were currently receiving poor service, and even the commercial representatives who commented that reliability was important to them did not suggest that Delmarva was not providing reliable service. (Report at 10).

Staff calculated that a ratepayer using 1,000 kWh per month would pay an additional $108 per year by 2017 for that four-minute reduction in blue-sky outages. (*Id.* at 10, 16-17).

[1] "SAIDI" stands for System Average Interruption Duration Index. The SAIDI measures the duration of outages on blue-sky days, that is, on an average day with no severe weather. Outages caused by severe weather events are excluded from the SAIDI calculation.

[2] "SAIFI" stands for System Average Interruption Frequency index.

[3] $397 million minus the approximately $40 million of 2013 plant investment that the Commission approved in its deliberations in Docket No. 13-115.

The DPA does not consider that reduction significant enough to justify an additional $108 annual cost to ratepayers, and we doubt that ratepayers would consider that reduction significant enough to pay an additional $108 annually either, particularly when major events (severe storms) are excluded from that measure.

The DPA contended in Docket No. 13-115 that Delmarva's increased spending was attributable to the beating that its sister company Pepco took from the Maryland and the District of Columbia commissions for its failure to maintain its distribution system. Staff seems to believe that as well. (*Id.* at 12-13). And indeed, shortly after the Maryland Commission opened its investigation, PHI launched a corporate-wide program to increase reliability across all of its utility companies. (*Id.* at 9). But even before that initiative, Delmarva was performing well below the Regulation Docket No. 50 target, and since the corporate initiative began in 2011 it has achieved notable reductions in its SAIDI for substantially less money than it proposes to spend through 2017. In light of this, the DPA submits that there is no need to approve *any* spending level at this time, let alone one that would increase the average ratepayer's rates by $108 annually for only a four-minute reduction in outage duration on a blue-sky day.

c. The Company Has Not Demonstrated Any Benefits from the Proposed $397 Million Investment.

The DPA is particularly troubled by what appears to be Delmarva's inability or unwillingness to identify *any* enhanced degree of reliability or resilience that will inure to customers in exchange for this huge outlay of their money (other than the targeted four-minute reduction in SAIDI discussed above). The Report observes that "[w]hile the Company was able to document reliability indices through 2012, it indicated *it had not made any forecasts with respect to reliability indices*." (*Id.* at 5, emphasis added). Delmarva has provided no response to the core question of how much more reliable or resilient its distribution system will become: it

has produced no *evidence* that its proposed infrastructure investments will result in any appreciable improvement in its reliability *in Delaware*, and has provided no quantification of the benefits of the proposed infrastructure improvements or reliability enhancements in terms of avoided outages or reduced outage minutes. Indeed, that was one of the reasons the DPA argued against including the 2013 out-of-test-period reliability plant investment from rate base in Docket No. 13-115.

As shown in the table on page 4 *supra*, the Company's 2012 SAIDI of 146 was 51% better than the 295-minute benchmark approved in Regulation Docket No. 50, and the 2013 SAIDI was even lower at 139. While the DPA understands that the Regulation Docket No. 50 standards are only a minimum, the DPA also believes that *at the very least* Delmarva should be able to provide the Commission and the Company's ratepayers with some estimate of how much it predicts the reliability and resiliency of its distribution system will improve as a result of this massive proposed capital outlay.

d. The Company Has Not Established That Its Own Infrastructure Is So Aged That It Requires $397 Million of Proposed Investment.

During the Staff investigation, Delmarva referred to various industry reports discussing the need for utilities nationwide to upgrade and modernize their grids. (*Id.* at 6). Delmarva cited to these same authorities in Docket No. 13-115 in justifying its proposed 2013 plant additions. The DPA agrees as a general matter that reliable electric power is vital to the nation as a whole and that infrastructure that has reached the end of its useful life should be considered for replacement. However, in Docket No. 13-115, the Company specifically rejected the suggestion that equipment age alone determines whether it should be replaced. (Docket No. 13-115 Transcript at 316).

Perhaps more important, the Company presented *no* facts to support a conclusion that its own aging distribution system was driving the need for investment. (Report at 6, 14-15). Staff states that despite repeated attempts during the discovery process to obtain data from Delmarva on the age of its distribution system, the only age information Delmarva provided was certain specific age information concerning substation switchgear, distribution transformers, breakers and poles; for all other plant Delmarva could only provide its 2004 depreciation study. (*Id.* at 14). And this is true despite the fact that Delmarva has added millions of dollars of plant in the almost ten years since that study was prepared. Staff expressed disbelief that the Company did not have age information for its infrastructure (*id.*), and the DPA is equally disbelieving. How can a functioning utility not have records showing how old its plant is?

In an attempt to obtain at least *some* understanding of the age of Delmarva's current distribution plant, Staff compared the level of accumulated depreciation reserve to the level of gross plant of the distribution system for the 2009-13 period. This comparison ranged from a low of 27.5% in 2011 and 2013 to a high of 29.9% in 2012. (*Id.* at 15).[4] As Staff noted, this comparison shows that the Delmarva system has "significantly more than half of its remaining life left." (*Id.*). Staff's review of the 2004 depreciation study led it to conclude that in 2004, Delmarva's plant was relatively new and had at least 55% of its life remaining. (*Id.*). Staff also examined documents produced during discovery in Docket No. 13-115 in response to data request AG-GEN-4, and observed that the historical ratios of depreciation reserve to plant showed that Delmarva's electric plant had grown even younger as a result of the substantial new investment: the average age of such plant in 2007 was 14 years, whereas the average age of such plant in 2012 was 12 years. (*Id*. at 15-16).

[4] Staff acknowledged that this comparison had weaknesses because the Delmarva values reflected both Delmarva-Delaware and Delmarva-Maryland, and the gross distribution plant included non-depreciable assets such as land and contributions from customers. (Report at 15).

As a regulated public utility responsible for the expenditure of funds supplied by captive ratepayers, Delmarva is obligated to justify its investments. *See* 26 *Del. C.* §§307(a), (b). Silverpoint's proposed $200 million spending cap was based on general trend analysis (*see* Report at 14), not on an engineering analysis of Delmarva's distribution system; as such, there is no way to confidently conclude whether its proposal is too much, too little, or just right. Staff's Report clearly demonstrates that Delmarva cannot support its assertion that its own aging infrastructure is driving its investment plans because even *it* does not know how old all of its distribution plant is. Thus, the DPA urges the Commission to reject this claimed justification.

e. Delmarva's Comparison of Its Distribution System Performance to That of Other Utilities Is Not Meaningful.

Delmarva justifies its planned capital expenditures by comparing the position of its distribution system to that of other utilities. (*Id.* at 6). But such a comparison is not meaningful. First, there is no single standard that is used by most states to evaluate electric reliability; rather, states use a wide range of standards to assess electric distribution service quality. (*See id.* at 8). Thus, one cannot be sure that the comparison to other utilities is a true apples-to-apples comparison. Second, Delmarva's comparison of its current performance to other unidentified utilities is not evidence that its proposed plant additions will have any salutary effect on Delmarva's performance compared to its own previous performance, let alone its performance compared to other unidentified utilities. Third, the DPA submits that Delmarva's Delaware customers are more concerned with the electric system that serves them and spend little time pondering electric reliability in other states. Thus, Delmarva's position vis-à-vis other utilities does not justify its proposed capital spending.

f. AMI Was Supposed to Improve Reliability and Potentially Delay or Obviate the Need to Improve the Distribution System.

In 2007, the Commission authorized Delmarva to deploy advanced metering infrastructure (AMI) based in part on Delmarva's contention that AMI would improve reliability and potentially delay or obviate investment in its transmission and distribution system:

> Delmarva is deploying a number of innovative technologies. *Some, such as the automated distribution system, will help to improve reliability*… .
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> * * *
>
> These savings estimates do not include potential additional customer benefits from reducing transmission losses, *improving reliability*, reducing rate volatility, enhancing market competitiveness, improving environmental quality, reducing energy prices by lowering the costs of environmental compliance, or *potentially obviating or delaying the need for investments in transmission and distribution* … .

In the Matter of the Filing By Delmarva Power & Light Company for a Blueprint for the Future Plan for Demand-Side Management, Advanced Metering, and Energy Efficiency, Docket No. 07-28, Business Case at 2, 24 (emphasis added).

The Commission approved AMI implementation and also granted Delmarva regulatory asset treatment of the implementation costs. Delmarva began recovering the $39 million of AMI-related costs as a result of the settlement in Docket No. 11-528. Thus, Delmarva ratepayers are already paying $39 million for plant and other costs associated with AMI that was supposed to, among other things, improve reliability and potentially delay or obviate the need for distribution investments. Remember that in the time since AMI's deployment, Delmarva's SAIDI decreased from 192 in 2011 to 146 in 2012 to 139 in 2013. Some of that was likely related to the PHI corporate-wide initiative to improve reliability in its operating companies, but some of it was also likely related to AMI deployment. Now that AMI and associated technologies such as distribution automation have been fully deployed throughout Delmarva's

service territory, their impact on reliability should be fully explored and fully explained to the Commission and to Delmarva's customers who have financed it.

2. The DPA Disagrees With Staff's Recommendation to Approve a Public Review of Delmarva's Most Recent Reliability Plan and Require a Report to the Commission No Later Than September 2014.

Staff recommends that the Commission order a public review of Delmarva's most recent reliability plan (filed on March 31, 2014), and that a report be provided to the Commission on that public review no later than September 2014. (Report at 1, 19). The DPA disagrees with this recommendation. First, as a practical matter, it is unlikely that such public review and report could be completed by the end of September, given that it is now almost the end of July. Second, the DPA does not understand what purpose would be served by such a review. The Commission's reliability rules (26 *Del. C.* §3007.9.1) already contain a requirement that Delmarva convene a public meeting for interested stakeholders to "discuss electric service reliability or quality concerns within Delaware." The 2014 meeting was publicly noticed and held on May 28, 2014. Representatives of the Commission, the DPA, Delmarva, and the Delaware Electric Cooperative showed up – but no members of the public did. Similarly, the Commission publicly noticed and held three public comment sessions in this docket – but as Staff's report notes, only a handful of people attended. (Report at 5-6). The DPA views this recommendation as unlikely to accomplish anything productive in the short term, especially considering the lack of public participation in the more widely-advertised workshops that were held relating to this docket. That said, the DPA fully supports providing opportunities for Delmarva's customers to review and provide input on Delmarva's reliability plans and metrics to measure its performance when Regulation Docket No. 50 is reopened.

3. The DPA Agrees With Staff's Recommendation that the Commission Require Delmarva to Incorporate Reasonable Justifications and Tangible Ratepayer Benefits Before Submitting Future Reliability Projects for Rate Recovery.

Staff recommends that the Commission instruct Delmarva to include reasonable justifications and tangible ratepayer benefits for all planned reliability projects before they are submitted in any future planning scenarios. (*Id.* at 1). The DPA wholeheartedly agrees. In fact, in Docket No. 13-115 the DPA noted that the Maryland Commission had recently directed all of the electric utilities subject to its jurisdiction to perform cost-benefit analyses to support their planned reliability infrastructure expenditures, and the DPA recommended that the Commission reject the Company's post-test period plant additions because (among other reasons) the Company had failed to prove that they were either necessary or cost-effective. The DPA continues to believe that cost-benefit evaluations are necessary to provide the Commission with a full understanding of whether the Company is making the best use of its ratepayers' monies. Requiring Delmarva to demonstrate the need for and the cost-effectiveness of its infrastructure projects removes any temptation that a utility may have to select a more costly alternative because of its impact on rate base. .

4. The DPA Agrees With Staff's Recommendation that the Company Update Its 2004 Depreciation Study or Propose Some Other Approach That Will Provide Updated Information About the Age of Its Distribution Plant in Service.

As discussed previously, the most recent depreciation study conducted on the Company's plant was performed in 2004. Since then, the Company has added and retired a significant amount of plant. Staff recommends that the Company "consider" updating its 2004 depreciation study, or, alternatively, propose an approach that will allow the Commission to determine the age of the distribution plant that serves customers. (*Id.* at 1). The DPA agrees, but would take this a step further: rather than giving the Company the option to decline the invitation implicit in the

use of the word "consider," we ask the Commission to *order* the Company to either submit an updated depreciation study or propose an approach that enables the Commission (and Staff and the DPA) to ascertain how old the Company's plant actually is. Ten years is far too long to be relying on a study that has clearly become outdated due to substantial additions and retirements.

The DPA is stunned that the Company is either unwilling or unable to provide age information on what appears to be a significant portion of its plant in service. If it doesn't know how old a particular piece of plant is, how does it know (in the absence of an obvious failure or degradation) when to look at that plant to determine whether it requires replacement, refurbishment or upgrading? The DPA surmises that the Company probably does have information on the age of its plant (for example, purchase orders and payments made), but combing through these records would be time-consuming. While the Company is free to maintain its records as it wishes, it is essential that it also provide meaningful data, such as the age of its distribution plant, to the Commission.

5. The DPA Agrees With Staff's Recommendation that Delmarva Consider Re-Categorizing and Reporting Its Proposed Infrastructure Investment, But Not Necessarily With the Particular Categories Staff Identified.

In its direct testimony in Docket No. 13-115, Delmarva identified three categories for its distribution construction budget: Customer-Driven, Reliability; and Load Growth. (*See* Direct Testimony of Michael W. Maxwell at 3). The "Reliability" category includes construction of assets designed to maintain and enhance distribution system reliability, such as upgrading feeders, replacing and upgrading URD cable installations, substation improvements, and installing new technology and equipment like Distribution Automation. (*Id.*). Staff recommends that Delmarva consider re-categorizing and reporting its proposed infrastructure improvements to include: (1) New Customer Service; (2) Load Transfer and System Continuity Requirements; (3)

Short-Tern Sustaining Reliability; (4) Grid Modernization; and (5) Long-Term Sustaining Reliability/Resiliency. (Report at 1-2).

While the DPA agrees that additional classifications for infrastructure investment would be helpful in narrowing down what plant was attributable to a particular need, Staff's Report does not explain why these particular categories, as opposed to some other unidentified categories, are appropriate. The DPA respectfully suggests that there ought to be input from other stakeholders about the information that is needed and the form in which the information would be most useful.

6. The DPA Agrees With Staff that Regulation Docket No. 50 Should Be Reopened To Consider New Reliability Metrics.

The DPA supports reconsideration of the Commission's Electric Service Reliability and Quality Standards promulgated in Regulation Docket No. 50 to examine the areas suggested by Staff in its report: appropriate reliability metrics; revisions to the reliability planning process; incorporation of a public review process; addition of resiliency planning; and elimination or modification of unnecessary regulations. The reliability standards have not been reviewed since their adoption in 2006. Much has changed in the electric industry since these regulations were initially adopted (for example, AMI has now been fully deployed throughout Delmarva's service territory), and more will change in the coming years (for example, the proposed merger between PHI and Exelon), making a comprehensive review of the existing reliability standards essential. Despite the pending merger application, the DPA believes that the Commission can and should proceed with reconsidering its current reliability standards, as they will exist and will be an issue regardless of whether the merger takes place or not.

A reexamination of the reliability standards should also carefully consider the addition of resiliency planning. As discussed in the Staff Report, resiliency is not the same as reliability,

and it means different things to different interests. Reliability investments may help to improve resiliency; however, any investment in making distribution system infrastructure more 'resilient' must be thoroughly investigated, and the costs and benefits must be fully understood. Furthermore, it may be appropriate to consider alternatives to the traditional utility model such as microgrids and distributed generation in assessing resiliency concerns.

CONCLUSION

The DPA thanks Staff for its thoughtful evaluation of Silverpoint's report and for making its own investigation into areas to which Silverpoint seemed to give short shrift. Staff's Report raises significant questions about Delmarva's planned reliability spending program. In light of these concerns, the Commission should decline any suggestion that it pre-approve any reliability spending. Delmarva is currently blowing away the Commission's reliability standards; Delmarva has not established that its plant is so old that it requires its proposed level of replacement/improvement/enhancement; and Delmarva has not provided any analyses of the cost-effectiveness of the planned projects. Quite simply, there are currently too many unknowns, and things could change drastically if the merger between PHI and Exelon is consummated.

Respectfully submitted,

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