

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) PSC DOCKET NO. 17-0977
RATES AND MISCELLANEOUS TARIFF)
CHANGES)
(Filed AUGUST 17, 2017))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: July 23, 2018

MARK LAWRENCE
SENIOR HEARING EXAMINER

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FINDINGS OF FACT AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, having been appointed to act as the Hearing Examiner in this matter by PSC Order No. 9108 (August 23, 2017), submits the following Report to the Commission.

I. APPEARANCES

On behalf of the Applicant Delmarva Power & Light Company ("Delmarva," "Delmarva Power," or "DPL"):

By: TODD L. GOODMAN, ESQ.
Assistant General Counsel
Delmarva Power & Light Company

MORRIS, NICHOLS, ARSHT & TUNNELL, LLP
MICHAEL HOUGHTON, ESQ.
R. JUDSON SCAGGS, JR., ESQ.
DONNA L. CULVER, ESQ.
BARNABY GRZASLEWICZ, ESQ.

On behalf of the Delaware Public Service Commission ("Staff" or "Commission Staff")

ASHBY & GEDDES, P.A.
By: JAMES GEDDES, ESQ., Rate Counsel
THOMAS D. WALSH, ESQ., DEPUTY ATTORNEY GENERAL
Delaware Department of Justice

On behalf of the Division of the Public Advocate ("Public Advocate" or "DPA"):

By: REGINA A. IORII, ESQ., DEPUTY ATTORNEY GENERAL
Delaware Department of Justice

On behalf of Intervenor, Delaware Energy Users Group ("DEUG"):

CHRISTIAN & BARTON, LLP
By: MICHAEL J. QUINAN, ESQ., *Pro Hac Vice*;
Offit Kurman, P.A.
Anthony N. Delcollo, ESQ., Delaware Counsel

On behalf of Intervenor, Delaware Department of Natural Resources and Environmental Control ("DNREC"):

By: DEVERA B. SCOTT, ESQ., DEPUTY ATTORNEY GENERAL
Delaware Department of Justice

On behalf of Intervenor, Rep. John A. Kowalko, Jr., *pro se*

II. PROCEDURAL HISTORY

1. On August 17, 2017, Delmarva¹ filed with the Delaware Public Service Commission (the "Commission") an application to increase its annual operating revenues by \$24,425,436, or a 4.5% increase in total revenues (the "Application").² (Exh. 1, p.3.) On October 18, 2017, Delmarva increased its proposed revenue requirement by \$6,772,989 to

¹Delmarva is a wholly-owned subsidiary of Pepco Holdings, Inc. ("Pepco"), which is a wholly-owned subsidiary of Exelon Corporation ("Exelon"). (Exh. 1, p.1.)

²Exhibits admitted into evidence at the Evidentiary Hearing will be referred to as "Exh." and page numbers where necessary, for example, Exh. 1, p. 2. The Settlement Agreement is attached hereto as "Exhibit 1" with the word Exhibit not being abbreviated. Testimony from the transcript of the Evidentiary Hearing will be referred to, for example, as "Tr.-26," meaning the testimony appears at page 26 of the transcript.

\$31,198,425, or a 5.8% increase in total revenues. (Exh.14, p.7) The Company's amended rate request, if granted in full, would have increased the average total monthly bill of a typical residential customer using 840 kWh per month by \$5.48 per month (from \$117.49 to \$122.97), or by about 4.66%. (Exh. 18, p.2)

2. On February 9, 2018, pursuant to the Tax Cuts and Jobs Act of 2017 ("TCJA"), the Company reduced its revenue requirement by approximately \$18.6 million, resulting in an overall revenue increase of \$12,603,795. (Exh. 19, p.6) The Company's second amended rate request, if granted in full, would have increased the average total monthly bill of a typical residential customer using 840 kWh per month by \$2.49 per month (from \$117.49 to \$119.98), or by about 2.12%, a reduction of \$2.99 per month from the amended rate request. (Exh. 22, pp.2-3.)

3. On May 11, 2018, in its Rebuttal Testimony, the Company reduced its proposed revenue requirement increase to \$10,863,284 due to updates to earnings, rate base impacts, and a number of ratemaking adjustments. (Exh. 42, p.4; Sch. (JCZ-R)-1, p.3)

4. In support of its original Application, Delmarva submitted the direct testimony of Kevin M. McGowan, Vice President, Regulatory Policy and Strategy of Pepco Holdings, Inc. ("PHI"); Bryan L. Clark, Director of Engineering; Robert B. Hevert, Partner, ScottMadden, Inc.; Jay C. Ziminsky, Director, Revenue Strategy & Revenue Policy, PHI's Regulatory Affairs Department; Elliott P. Tanos, PHI's Manager of Rate Administration; Marlene C. Santacecilia, a Principal Rate Analyst on Pepco's Retail Pricing Team; Julie E. Giese, Pepco Holdings LLC's ("PHI")

Director of Accounting; and Kristin M. McEvoy, Manager, Revenue Performance, PHI's Regulatory Affairs Department. (Exhs. 2,3,4,8,9,10,6 & 5, respectively.)

5. On October 18, 2017, Delmarva submitted the Supplemental Direct Testimonies of Jay C. Ziminsky, Director, Revenue Strategy & Revenue Policy and Kristin M. McEvoy, Manager, Revenue Performance, PHI's Regulatory Affairs Department. On November 17, 2017, Delmarva submitted the Supplemental Direct Testimony of Marlene C. Santacecilia, a Principal Rate Analyst on Pepco's Retail Pricing Team. (Exhs. 14,15 & 18, respectively.) This was Delmarva's amended rate request.

6. On February 9, 2018, Delmarva submitted the Additional Supplemental Direct Testimonies of Jay C. Ziminsky, Director, Revenue Strategy & Revenue Policy, Kristin M. McEvoy, Manager, Revenue Performance, PHI's Regulatory Affairs Department, Elliott P. Tanos, PHI's Manager of Rate Administration, and Marlene C. Santacecilia, a Principal Rate Analyst on PHI's Retail Pricing Team. (Exhs. 19, 20, 21 & 22, respectively.)

7. The Test Year selected by the Company for purposes of its class cost of service study in its Application is actual data for the twelve (12) months ending March 31, 2017. According to its Supplemental Testimony, the selected Test Period for purposes of its class cost of service study is eight (8) months of actual data and four (4) months of forecasted data for the period ending December 31, 2017. (Exh. 14, p.1)

8. In its original Application, Delmarva identified several reasons for its requested rate increase, the most significant being

Delmarva's investment in its distribution system to maintain the safety and reliability of its infrastructure, and to improve customer service. (Exh. 1, App., pp.1-2) Delmarva also sought to place \$1,614,415 in rate base representing the annualization of Test Period plant closings through January 2018, plus an additional \$8,072,073 of forecasted plant closings from February 2018 through June 2018. (Exh. 14, Ziminsky, Adjs. 15, 16) In addition to plant closings, the requested rate increase was also driven by sought after recovery of Test Period rate base not currently in rates, particularly substantial Direct Load Control costs, Dynamic Pricing Program costs, and Costs to Achieve Merger Synergy Savings. (Exh. 14; Schs. JCZ-2; see PSC Order No. 9048 (May 23, 2017), Settle. Agree., Exh. "A," §§ 2-5.)

9. In PSC Order No. 9108 dated August 17, 2017, pursuant to 26 Del. C. §§306(a) (1) and 502 and 29 Del. C. ch. 101, the Commission initiated this Docket, suspended the proposed full rate increase pending the completion of evidentiary hearings into the justness and reasonableness of the proposed rates and tariffs, and designated me as Hearing Examiner to conduct such hearings and report to the Commission my proposed Findings and Recommendations.

10. In PSC Order No. 9108 dated August 17, 2017, the Commission granted Delmarva's request to implement a \$2.5 million interim rate increase effective October 16, 2017, as permitted by 26 Del. C. §306(b). The Commission allowed the Company's request "to consider and approve the Company's current financial condition and credit worthiness as a satisfactory substitute and sufficient surety to meet the bond

requirements of 26 Del. C. §306(b), conditioned on Delmarva's representation that it will abide by any Commission refund Order." (PSC Order No. 9108, ¶4.) On October 13, 2017, the Company made an Interim Electric Rate Tariff Filing "to implement, subject to refund with interest, interim rates on or after October 16, 2017." (Exh. 14) Delmarva also filed a Refund Bond without Surety. (Id.)

11. On August 23, 2017, the Public Advocate's Office intervened in this Docket. On September 26, 2017, I granted State Representative John Kowalko Jr.'s Petition to Intervene on an individual basis only, after no objection from any party. (PSC Order No. 9121, Sept. 26, 2017) I also granted the Petitions to Intervene filed by the Delaware Department of Natural Resources and Environmental Control ("DNREC") and the Delaware Energy Users' Group ("DEUG"), after no objection from any party. (PSC Order No. 9127, Oct. 4, 2017; PSC Order No. 9126, Oct. 2, 2017, *respectively*.)

12. On September 12, 2017, the parties agreed upon a Procedural Schedule, which I approved. The evidentiary hearings were originally set for February 20-22, 2018. The parties thereafter conducted extensive written discovery of Delmarva's Amended Application.

13. In late October 2017, I conducted the first round of Public Comment Sessions on Delmarva's proposed rate increase in each of Delaware's three (3) counties. Public Notice was filed in the News Journal and the Cape Gazette newspapers on September 29, 2017, and in the Delaware State News on October 1, 2017. Representatives of Delmarva, Staff and the Public Advocate attended each of the public comment

sessions. Members of the public were afforded an opportunity to comment on the rates proposed in the Company's Application and the service provided to its customers.

14. At the New Castle County Public Comment Session held in Newark on October 23, 2017, the first commenter was a resident of the Collins Park neighborhood and a member of the Goodwill Fire Company. He stated that Delmarva has made a prudent, substantial infrastructure investment by transferring the electric lines from residential backyards containing many trees to poles along the streets. This customer believes that this investment will greatly improve electric service in the area by decreasing outages due to inclement weather affecting trees which adversely affect power lines. (Tr.-25-27)

15. Another New Castle County commenter disagreed with this base rate case because he believes that "[a] base rate case increase is only justified because of increased costs of raw materials, labor, or some other permanent charge [and not capital projects such as a new roof or a new computer system]." (Tr.-28-29) This customer favors a base rate case and a rate increase which seeks to phase-out electricity fueled by fossil fuels, while favoring renewable energy such as solar or wind energy. (Tr.-29-30)

16. One (1) customer commended Delmarva for participating in the Emergency National Response Network. (Tr.-31) This customer is also in favor of Delmarva's increased reliance on renewable energy such as solar. (Tr.-32)

17. The mother of a fourteen (14) year old brain damaged son who

is dependent upon an electric oxygen machine spoke next. She cares for her son at home, as opposed to placing him in a state facility. Although she once owed Delmarva a substantial amount of money, she said she currently owes Delmarva \$0. According to her, she and Delmarva are now in a dispute over a \$500 security deposit which she states that Delmarva charged to a payment she made for her regular electric service. She wants Delmarva's customer service representatives to begin to recognize a small category of Delmarva ratepayers: financially challenged parents caring for very ill children at home dependent upon electric medical devices; parents who have fairly consistently timely paid their Delmarva electric bills over an extended period of time, although sometimes late due to the severe financial hardship of raising such children. (Tr.-40-47) A second mother whose child also had a devastating injury also attended this session but did not make any public comment. (Tr.-47)

18. Another ratepayer complained that the proposed rate increase was excessive and that his Delmarva electric bill was higher than that of every other utility in every other state he had resided in despite that he had purchased LED lighting, light timers, high efficiency appliances, and installed insulation to reduce energy consumption in his New Castle County residence. (Tr.-33-34,38-39) He stated that the distribution and legislatively-mandated charges on his monthly bill cost as much as his consumption of electricity. (Tr.-36)

19. One (1) member of the radio media attended the Kent County Public Comment Session at the Commission's office in Dover on October 24, 2017. Although she did not make any public comment, she took notes

of my public presentation of the session. No members of the public attended the Dover session.

20. At the Sussex County Public Comment Session in Millsboro on October 25, 2017, two (2) members of the public commented. A Seaford area resident commented that the Company's proposed rate increase is excessive, considering the result of the Company's prior rate case and Delawareans' stagnant income. The commenter alleged that raw material costs such as gasoline are decreasing. (Tr.-70-72) The other commenter sought to meet with the Company about his bill.

21. The local Legislative Advocate of the American Association of Retired Persons ("AARP") stated that, at this early stage of the rate case, AARP neither supported nor opposed the Company's proposed rate increase. He also stated that AARP was relying upon the Company, Commission Staff and the Public Advocate to perform their due diligence in examining whether the Company is entitled to the proposed rate increase and in reaching an overall fair result. (Tr.-73-74)

22. Pursuant to the Commission's Order, as a result of the Company's Amended Application, I held a second round of Public Comment Sessions in each of Delaware's three (3) counties and the written comment deadline was extended from December 1, 2017 to February 14, 2018.

23. Public Notice of the Amended Application and the second round of Public Comment Sessions was published in the News Journal and in the Delaware State News on December 22 and 24, 2017, and the Cape Gazette on December 22, 2017. (Exh.32) Representatives of Delmarva, Staff and the Public Advocate attended each of the public comment sessions.

Delmarva had customer service representatives at each session. Members of the public were afforded an opportunity to comment on the rates proposed in the Company's Amended Application and the service provided to its customers.

24. The second round of New Castle County Public Comment Sessions was held in Wilmington on February 6, 2018. The second Kent County Public Comment Session was held at the Commission's office in Dover on February 7, 2018. Finally, the second Sussex County Public Comment Session in Millsboro was held on February 8, 2018. No members of the public attended the second round of Public Comment Sessions.

25. The Commission received a total of forty five (45) written comments from the public objecting to the Company's proposed electric rate increase. Ten (10) commenters argued that they are on fixed retirement incomes and cannot afford the proposed rate increase.

26. Other written comments included as follows: a) customers are implementing energy conservation measures and energy prices are decreasing yet customers' electric bills continue to increase; b) the alleged large amount of the proposed increase regarding the Medium General Service Secondary (MGS-S) Tariff; c) the proposed demand charges are too high; d) the negative effect of rate increases on Delaware's economy and in attracting new business to the state; e) comparing Delmarva and the Delaware Electric Cooperative and f) that the Company must find new methods or a new business model to avoid or limit regular rate increases which are greatly exceeding the customers' income increases.

27. On October 24, 2017, Commission Staff and the Public Advocate filed a Joint Motion to Dismiss the Application, arguing that Delmarva's amended rate request was a new rate application pursuant to Title 26, Delaware Statutes requiring new schedules which satisfy the Minimum Filing Requirements.³ That day, I deferred to the Commission to make a decision on that Motion as requested by Commission Staff and the Public Advocate and set the matter for hearing before the Commission on November 9, 2017. Intervenors DEUG and John Kowalko joined the motion to dismiss.

28. On October 26, 2017, Commission Staff and the Public Advocate filed a Joint Motion to Stay Discovery and Further Proceedings ("Joint Motion to Stay"). On October 30, 2017, I also deferred that Motion to the Commission to be heard on November 9, 2017, holding that the Commission should hear all pending Motions at the same time. On October 30, 2017, Commission Staff and the Public Advocate filed a Joint Interlocutory Appeal as to my deferring their Joint Motion to Stay. On October 31, 2017, the Commission granted the Joint Motion to Stay until it could hear the Joint Motion to Dismiss on November 9, 2017. (Tr.-114-15) (PSC Order No. 9140, Nov. 9, 2017)

29. On November 9, 2017, the Commission orally denied Staff's and the Public Advocate's Joint Motion to Dismiss. However, the Commission: a) canceled the February 2018 evidentiary hearings due to Delmarva's substantial amended rate request (hereinafter "ARR"); b) required the parties to enter into a revised Procedural Schedule, including a revised

³ The specifics of Staff's and the Public Advocate's Joint Motion to Dismiss, Delmarva's Response and the Reply to Delmarva's Response, and the authorities cited in support thereof, are beyond the scope of this Report. Each may be viewed in the Commission's e-filing system, DelaFile.

public notice of the amended rates for all customer classes containing the total amount and percentage increases by class; c) ordered a second round of Public Comment Sessions to be held in Delaware's three (3) counties to consider the ARR; d) required Delmarva to provide the parties with data reflecting the impact of the ARR on class cost of service, revenue allocation, and bill impacts; e) if Delmarva claimed interim rates pursuant to 26 Del. C. §306(b),⁴ the maximum amount of interim rates the Company may receive shall be based upon the requested increase of \$24,425,436 contained in Delmarva's original Application; and f) ordered that no interim rate could be based upon the additional \$6,772,989 requested in the ARR.

30. The Commission confirmed its Nov. 9, 2017 oral ruling in PSC Order No. 9141 dated Nov. 30, 2017. On December 12, 2017, I approved the parties' Joint Second Procedural Schedule, thereby revising the discovery schedule and setting the evidentiary hearings for May 15-17, 2018 at the Carvel State Office Building in Wilmington.

31. Due to the substantial effect of the TCJA on Delmarva's rate request and the parties' respective positions, on February 27, 2018, I approved the parties' request to again revise the discovery schedule and rescheduled the evidentiary hearings to until June 26-28, 2018.

32. By PSC Order No. 9177, the Commission ordered that all regulated utilities must establish a regulatory liability beginning on

⁴ According to 26 Del. C. §306(b), after seven (7) months has elapsed since the filing of a Rate Application, a utility is permitted to place a temporary rate into effect, which is designed to produce, on an annual basis, revenues equal to or less than 15% of its gross annual revenues. This temporary rate is subject to refund depending upon the Commission's final Order.

February 1, 2018 to record and track the reduced tax costs attributable to the TCJA.⁵

33. On February 26, 2018, Delmarva filed a request to implement an additional interim rate increase of \$3.3 million pursuant to 26 Del. C. § 306, which, when added to the \$2.5 million previously approved by the Commission in PSC Order No. 9108, brought the total interim rates in effect under bond to \$5,800,000. The total interim rate increase was less than 15% of Delmarva's gross annual intrastate operating revenues as permitted by 26 Del. C. §306(b). On March 13, 2018, the Commission granted Delmarva's request, required Delmarva to submit a rate refunding bond without surety within ten (10) days, and made the interim rates effective for usage on or after March 17, 2018. (PSC Order No. 9195, March 13, 2018)

34. On March 15, 2018, Delmarva posted a rate refunding bond without surety with the Commission in the amount of the requested interim rate increase. Delmarva implemented this interim rate increase on March 17, 2018. (Id.)

35. On March 29, 2018, Staff filed direct testimony addressing the Company's Application from Larry Blank, a Principal of TAHOEconomics, LLC; Ara Azad and Ryan Pfaff, Principals of AzP Consulting, LLC; and Joshua Bowman, a Staff Public Utility Analyst. (Exhs. 24, 26/27/44, & 25, respectively)

36. Ara Azad and Ryan Pfaff of AzP Consulting, LLC ("AzP")

⁵ In PSC Order No. 9166 (Jan. 16, 2018), the Commission ordered that it would determine Delmarva's TCJA issues in its two (2) pending rate cases, this electric rate case and Docket No. 17-0978, its pending natural gas rate case.

testified regarding the Company's revenue requirement, revenues, expenses, electric rate base, and the Exelon-PHI merger. Dr. Larry Blank of TAHOEconomics, LLC testified regarding Staff's position as to the Company's jurisdictional cost allocations,⁶ functional cost allocations,⁷ affiliate transactions charged to Delmarva, the Company's class cost of service and Staff's recommended rate class revenue requirements, and the Company's rate design and Staff's recommended base distribution rates. Mr. Blank also filed revised testimony.

37. Staff's Joshua Bowman testified regarding the background of the Application filed by Delmarva Power. His testimony provided an overview of the rate case proceeding and the testimonies of Staff's three (3) other witnesses, and provided Staff's positions and recommendations regarding the Application. (Exh. 25)

38. Staff proposed earnings adjustments to Delmarva's Weather Normalization, Regulatory Expense, Injuries and Damages, Uncollectible Accounts, Wage and FICA Expense, Employee Benefits Expenses, Employee Incentive Compensation, Dynamic Pricing and Direct Load Control, Regulatory Assets, Utility Plant in Service, Supplemental Executive Retirement Plan ("SERP"), Merger Costs and Savings, Interest Synchronization, Cash Working Capital, and Flow Back of Excess Accumulated Deferred Income Taxes ("EDIT"). Staff also contested

⁶ The phrase "jurisdictional cost allocation" means the allocation of costs related to electric distribution among Delmarva Power's service territories in Delaware and Maryland.

⁷ The phrase "functional cost allocation" means the allocation of costs between state-regulated distribution systems and Federal Energy Regulatory Commission-regulated transmission systems.

Delmarva's Delaware Functional and Jurisdictional Allocations vis-à-vis FERC and Maryland as a wholly-owned subsidiary of Pepco Holdings, Inc., which is a wholly-owned subsidiary of Exelon Corporation. (Exh. 24 & 25 & 26/27/44)

39. On March 29, 2018, the DPA filed the direct testimony of Glenn A. Watkins, President and Senior Economist of Technical Associates, Inc., Peter Lanzalotta, Principal with Lanzalotta & Associates LLC, and Michael P. Gorman, Managing Principal of Brubaker & Associates, Inc. (Exhs. 28/43, 30 & 29, *respectively*) On March 29, 2018, DEUG filed the direct testimony of Brian C. Collins, a Principal of Brubaker & Associates, Inc. (Exh. 31)⁸

40. The DPA's primary challenges to the Company's rate request were: (a) Delmarva's inclusion of plant reliability investment in rate base beyond the test period (the last four (4) months of which are forecasted in this case violated the matching principle and should not be allowed; (b) the Company's use of a year-end, rather than an average, test period plant in service balance; (c) the treatment of the Company's Dynamic Pricing and Direct Load Program regulatory assets; (d) the proposed treatment of post-Test Period wages and FICA expenses; (e) the Company's inclusion of a pre-paid pension asset and Other Post-Employment Benefits (OPEB) liability in rate base; (f) weather normalization; g) the Company's proposed fixed monthly customer charge for residential customers; (h) Flow Back of Excess Accumulated Deferred Income Taxes ("EDIT") and (i) the Company's proposed return on equity ("ROE"). (Exhs.

⁸ Neither Intervenor DNREC nor Intervenor Representative Kowalko filed direct testimony. {01345467;v1 }

28/43, 30 & 29)

41. On May 11, 2018, in response to the testimonies filed by Staff, the DPA and DEUG, the Company filed rebuttal testimony from witnesses McGowan, Ziminsky, McEvoy, Giese, Clark, Hevert, Tanos and Joseph F. Janocha, Manager of PHI's Retail Pricing Team. (Exhs. 35, 42, 37, 36, 39, 38, 34 & 41, respectively.) All witnesses had previously submitted pre-filed testimony except Mr. Janocha, who adopted the testimony of Marlene C. Santacecilia, who had resigned from the Company. (Exh.41, p.1) In its rebuttal, the Company reduced its proposed revenue requirement increase to \$10,863,284 due to updates to the earnings and rate base impacts of a number of ratemaking adjustments. (Exh.42; Sch. (JCZ-R)-1, p.3)

42. On June 13, 2018, I issued Findings of Fact and Recommendations relating to Staff's position on functional allocation. The disposition of Staff's functional allocation claim is addressed in the parties' Settlement Agreement.

43. I conducted the scheduled evidentiary hearings on June 26 and 27, 2018 in Wilmington. At the June 26 hearing, I was advised by the parties that a settlement in principle had been reached among Delmarva Power, Staff, DPA and DEUG and that active negotiations to reduce the settlement in principle to a signed written settlement agreement were being conducted. I granted the parties' request to adjourn the June 26 hearing to the following day. On June 27, I was provided with a written Settlement Agreement executed by Delmarva Power, the DPA, DEUG and Staff.

44. At the June 27 hearing, the Company, Staff, and the DPA proffered a total of three (3) witnesses to testify regarding why the Settlement Agreement is in the public interest. DEUG's attorney provided an oral statement on behalf of his client that the Settlement is in the public interest. The evidentiary record consists of forty five (45) hearing exhibits and three hundred and thirty two (332) pages of hearing transcript.

45. I hereby issue my Findings and Recommendations and proposed Commission Order approving the parties' proposed Settlement Agreement (the "Report") as in the public interest.

III. OVERVIEW OF THE PARTICIPANTS' REVENUE REQUIREMENT POSITIONS

46. Delmarva. The Test Year selected by the Company is actual data for the twelve (12) months ending March 31, 2017. The selected Test Period is eight (8) months of actual data and four (4) months of forecasted data ending December 31, 2017. (Exh. 19, p.1; Exh.28, p.33)

47. After making adjustments to rate base and operating expenses, the Company originally calculated a revenue deficiency of \$31,198,425, derived from a rate base of \$804,804,165; an overall Rate of Return of 6.98%;⁹ and an "ROE"¹⁰ of 10.10% on a capital structure consisting of

⁹ The Rate of Return is defined as the Company's net operating income divided by its rate base. *E.g.*, *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 596-97.

¹⁰ The Return on Equity ("ROE" or "Cost of Common Equity") is defined as the annual rate of return which an investor expects to earn when investing in shares of a company. Investors earn from dividends and stock appreciation. (Financial Accounting Institute, *Definitions Section*; see Exh.29, p.23)

50.52% of long-term debt and 49.48% of common equity.¹¹ (Exh. 8 p.10, JCZ-S, p.7; Exh. 19 JCZ-S-2, p.2; Exh. 4, p.4; Exh. 2, p.11)

48. After Delmarva filed its Direct Testimony, Staff and the Company reached agreement on an ROE of 9.7%. (Exh. 25, 9. [Bowman Direct Testimony])¹²

49. As previously noted, on February 9, 2018, the Company reduced its proposed revenue requirement by approximately \$18.6 million, resulting in a revised, proposed revenue requirement of \$12,603,795, pursuant to the TCJA, which reduced Delmarva's federal income tax rate from 35% to 21%. (Exh. 19, pp.6, 10)

50. On May 11, 2018, in its rebuttal, the Company further reduced its proposed revenue requirement to \$10,863,284, based upon an adjusted rate base of \$810,637,370. (Exh.42, Sch. (JCZ-R)-1, p.4)

51. Staff. Staff did not contest the Company's selection of the proposed Test Period/Test Year. Staff originally argued that Delmarva was entitled to a revenue requirement decrease of \$47,530,871, applied to a rate base of \$773,421,509; an overall rate of return of 6.72% and a ROE of 9.70%, using the Company's proposed capital structure. (Exh. 26, p.5; Exh. 25, Sch. JB-1) Just prior to the evidentiary hearing, Staff amended its rate base claim to \$801,659,709. (Exh. 44, Sch AzP 3.17)¹³

¹¹ The capital structure is "[t]he relative proportion of a company's total capital made up by debt, common stock and preferred stock." (Encarta Dictionary.)

¹² The DPA did not agree with Staff and Delmarva on a 9.7% ROE, however. As a result, Delmarva filed rebuttal testimony on ROE as described later in these Findings and Recommendations.

¹³ As explained in the preceding footnote, Staff and Delmarva stipulated to an ROE of 9.7% shortly after Delmarva filed its Direct Testimony. As a result of that ROE stipulation, Staff did not file testimony on the issue of ROE.

52. DPA. DPA also accepted Delmarva's proposed test period/test year, and calculated a revenue deficiency of \$10,994,900 million on an adjusted rate base of \$724,051,543; an overall rate of return of 6.50% and an ROE of 9.15%, also using the Company's proposed capital structure. (Exh. 28, p.2; Sch. GAW-2; Exh. 29, p.2.) At the evidentiary hearing, the DPA amended its revenue deficiency claim to \$8.394 million related to an issue involving the Federal benefit of state decoupling. (Exh. 42; p.59; Tr.-320)

53. DEUG. Intervenor DEUG addressed only Delmarva's proposed Class Cost of Service Study ("CCOSS") and proposed rate design. (Exh. 31) DEUG argued that, except for Delmarva's three (3) residential rate classes, the rates associated with the other rate classes including DEUG's clients, the General Service Primary ("GSP") customer class, were inflated and would produce revenues substantially higher than the cost of service to such classes. (Id. at pp.3,22.) DEUG presented a class revenue allocation which essentially mirrored that presented by the DPA. (Tr.-322)

IV. SUMMARY OF THE PRE-FILED TESTIMONY

A. Delmarva's Direct, Supplemental & Corrective Testimony, and Additional Supplemental Testimony.

54. Delmarva witness McGowan, PHI's Vice President of Regulatory Policy and Strategy, provided an overview of the Company's Application, emphasizing that the Company's earned Return on Equity ("ROE") is 7.74%, while its current authorized ROE is 9.70%. (Exh. 2, pp.8-9.)

55. Witness McGowan testimony states that Delmarva has continued

to undertake initiatives to maintain electric reliability and system safety and has invested millions of dollars in its electric distribution system since the Test Period ending December 2015 reflected in its last electric base rate case. (Exh. 2 at pp.8-9.) "Delmarva plans to make infrastructure investments of \$60.8 million and \$59.5 million in 2017 and 2018 respectively in order to maintain and where necessary, upgrade the system." (Id. at p.9.)

56. In addition to plant reliability spending plant costs, a 1,000 kWh monthly electric residential customer is using 16% less electricity per year. (Id at p.10.) Favorable SOS auctions occurred in June, 2017 resulting in a \$5.32 per month decrease for an 840 kWh monthly electric residential customer. (Id. at p.11.)

57. According to Mr. McGowan, Delmarva also continues to face increasing operations and maintenance costs to meet the needs of its customers and fulfill its statutory public service obligations. As a result of these rising costs, the Company's revenues are falling far short of the level necessary to cover its costs, earn a reasonable rate of return, and preserve a strong investment grade rating. (Id. at pp.8-9.)

58. Company witness McGowan also presented Delmarva's capital structure and current credit ratings. (Id. at pp. 11-14.) Mr. McGowan testified that the Company's proposed capital structure, consisting of 50.52% for common equity and 49.48% for long-term debt, was consistent with industry practice and averages, and was reasonable in light of the mean capital structures of the proxy groups used to determine Delmarva's

ROE. (Id. at p.11.) He explained that the Company has calculated 3.80% as the Company's cost of long-term debt. (Id. at p.11.) He described why Delmarva's investment-grade credit ratings¹⁴ are important to maintain and how customers benefit from those investment-grade credit ratings. (Id. at p.12.)

59. Finally, Company witness McGowan addressed Employee Incentive Compensation Plans. The Company is seeking that four (4) plans be included in rate base: 1) the Annual Incentive Plan ("AIP") except the portion of the plan relating to PHI's CEO; 2) the Long Term Performance Plan ("LTPP"); 3) the Long Term Performance Cash Award Program ("LTPCA"); and 4) the Restoration Plan portion of the Company's Supplemental Executive Retirement Plan ("SERP"). (Id. at pp. 14-22.) Mr. McGowan testified that the Restoration Plan portion of SERP covers only 23% of the total SERP costs. (Exh. 35, pg. 16) According to Delmarva, the first three (3) plans above, are "based upon achievement of 100% operational metrics focused on the customer" such as safety, customer service and satisfaction, cost efficiency, merger integration goals such as supplier diversity, merger synergies, organizational improvements and meeting reliability thresholds. (Id. at pp. 14-18.)

60. Company Consultant Robert B. Hevert provided testimony regarding the Company's proposed Return on Equity ("ROE") and the capital structure to be used for ratemaking purposes. Witness Hevert calculated a proposed 10.10% approved ROE for the Company based upon a range of

¹⁴ Delmarva's long-term corporate unsecured debt is rated BBB+ by Standard & Poor's, Baa1 by Moody's, and BBB+ by Fitch. (Exh. 2, p.12.)

10.00%-10.75%, using three (3) models: the Discounted Cash Flow ("DCF") model, including the Constant Growth and Multi-Stage forms, the Capital Asset Pricing Model ("CAPM"), and the Bond Yield Plus Risk Premium ("RP") model, applied to a group of twenty-five (25) proxy companies.¹⁵ (Exh. 4, pp. 2-3, 15.)

61. Company witness Jay C. Ziminsky, Pepco's Director of Regulatory Strategy & Revenue Policy, filed both Direct and Supplemental Testimonies. (Exhs. 8 & 19, respectively) Mr. Ziminsky presented the selection of Delmarva's test year and test period, the development of Delmarva's revenue requirement request, and the per-books earnings and rate base used in the Application. Mr. Ziminsky sponsored certain Minimum Filing Requirements ("MFRs") and adjustments to rate base and earnings, and summarized adjustments, which Delmarva was proposing. He also discussed the Company's inability to earn its authorized Rate of Return. (Exh. 8, pp. 4-23; Exh. 19, pp. 1-7.)

62. Specifically, Witness Ziminsky described the Company's proposed adjustments regarding its reliability plant project closings, the Dynamic Pricing Program, the residential air conditioning cycling program known as the Direct Load Control Program, and the Costs to Achieve Merger Synergy Savings ("CAMSS"). (Exh. 8 at pp.12-17; see PSC Order No. 9048 (May 23, 2017), Settle. Agree., Exh. "A," §§§§ 2-5.) In PSC Order No. 9048, the Commission approved an amortization

¹⁵ The Company's current Commission-authorized ROE is 9.70%. (PSC Order No. 9048, May 23, 2017, Exh. "A" to HE's Report, Settle. Agree. §1(b)). Witness Hevert's changes to his proxy group in his Rebuttal testimony are found at Exh. 38 p. 3. After Mr. Hevert's changes in his rebuttal, Mr. Hevert and DPA Witness Gorman both used the same proxy group. (Id.)

period for the recovery of a new regulatory asset relating to the CAMSS, and continued existing regulatory assets related to the Dynamic Pricing and Direct Load Control Programs. (Settle. Agree., Exh. "A," §§§§ 2-5.)

63. Company witness Kristin M. McEvoy, Pepco's Manager of Revenue Performance in its Regulatory Affairs Department, testimony addresses certain ratemaking adjustments to Delmarva's revenue requirement request proposed by Company witness Ziminsky. (Exh. 5) According to Witness McEvoy, these adjustments are either subject to prior Commission Order or "have been made to assure that the rate effective period reflects a matching of all elements of the ratemaking formula for reasonably known and measurable changes." (Id. at p.3.)

64. The more significant ratemaking adjustments included in Ms. McEvoy's testimony included uncollectable expense, proposed Wage and FICA expense, the Company's employee medical, dental, and vision benefits program, storm restoration expense, the expense which amortizes actual refinancing transactions, and synchronizing low income and environmental charges. (Id. at pp.2-8.) Ms. McEvoy's Supplemental Testimony updated thirteen (13) adjustments sponsored previously by her with actuals and forecasts. (Exh. 20)

65. Company witness Elliott P. Tanos, PHI's Manager of Rate Administration, presented Delmarva's Class Cost of Service Study ("CCOSS"). (Exh. 9) Mr. Tanos described the key processes involved in cost allocation, the Company's cost of service model, and its cost allocation method. (Id. at pp.2-4.) Witness Tanos also confirmed that

the CCOSS was the same basic CCOSS model presented by the Company in its four (4) prior Delaware electric base rate cases, Commission Docket Nos. 09-414, 11-528, 13-115, including the most recent rate case, Docket No. 16-0649. (Id. at p.4.)

66. In her direct testimony, Company witness Marlene C. Santacecelia, a Principal Rate Analyst on PHI's Retail Pricing Team, testimony addressed Delmarva's proposed Rate Design, explaining that Delmarva's proposed customer charge increases were designed to move the rate component toward fully collecting costs identified as customer-related in the CCOSS. (Exh. 10, p.5.)

67. According to Ms. Santacecelia: "For larger electric customers, specifically those taking under service classifications Large General Service Secondary (LGS-S), General Service Primary (GS-P) and General Service Transmission (GS-T), electric delivery rate structure already reflects the cost causation standard. The rate design for these service classifications includes a customer charge and a demand charge reflecting the customer's peak load contribution." (Id. at p.4.) This also applies to those taking under service classifications Residential (RES), Residential Space Heating (RSH), and Small General Service Non-Demand (SGS-ND). (Id. at p.5.) Witness Santacecelia also testified as to five (5) "rate making" or "pre-cost adjustments" for implementing its requested rate increase.¹⁶ (Id. at pp.7-10.)

¹⁶ The rate making or pre-cost adjustments purport to reconcile the Company's proposed rates and its "actual" revenues. (Exh. 10, p.7.) Witness Santacecelia's five (5) such adjustments are the: 1) Environmental Fund Rate and the Low-Income Charge; 2) Utility Facility Relocation Charge; 3) Utility Tax and Wilmington (DE) Franchise Tax Collections; 4) Power Factor Charge; and 5) Weather Normalization. (Id. at pp.7-10.)

68. In her Supplemental Direct Testimony, Ms. Santacecelia updated Delmarva's proposed Rate Design supporting the Company's revised revenue requirement. (Exh. 18, p.1.) The schedules from Witness Santacecelia's direct testimony were "updated to reflect actual billing determinant data for the 12 months ending August 2017..." (Id. at p.2.) According to Witness Santacecelia: a) she did not modify the remainder of the Rate Design calculations; and b) she updated the Company's proposed Tariff to reflect the revised revenue requirement. (Id.)

69. Company witness Julie E. Giese, Pepco's Director of Accounting, filed Public and Confidential Testimony as to affiliated transactions charged to Delmarva Power originating from two (2) Exelon-related service companies: PHI Service Company ("PHISCO") and the Exelon Business Services Company ("EBSC"). (Exh.6 (Public) & Exh.7 (Confid.)) PHISCO and EBSC each provide services directly or indirectly for Exelon's affiliates such as Delmarva Power. (Exh. 6, pp.2-4.) According to Witness Giese, this is the first Delmarva Power electric base rate case involving EBSC charges after the Exelon/Pepco Holdings Merger. (Id. at p.3.)

70. As described above, on February 9, 2018, as a result of the TCJA, which became effective after the Company filed this rate case, the Company reduced its proposed revenue requirement by \$18.6 million resulting in a revised, proposed revenue requirement of \$12.6 million. The TCJA reduced Delmarva's income tax rate from 35% to 21%, thus requiring a reduction in the revenue requirement. (Exh.19, pp. 6,10)

71. The following is a summary of the major revenue requirement reductions the Company argues were caused by the TCJA:

REDUCTION ITEM	\$ (Millions)
Unadjusted Cost of Service Tax Gross-Up	(\$3.3)
Rate Making Adjustment ("RMA") 30 - Unadjusted Test Year Federal Income Tax Expense	(\$8.7)
RMA 31- Flow Back of Excess Deferred Federal Income Taxes	(\$6.1)
Other RMAs	(\$0.5)
Total	(\$18.6)

(Id. at pp.8-14; Schedules p.8.)

72. In the Company's Supplemental Testimony, Mr. Ziminsky presented Delmarva's revised revenue requirement request and the reductions described above caused by the TCJA. (Exh.19, pp.8-14) Ms. McEvoy testified that, due to Delmarva's federal income tax rate being reduced from 35% to 21% under the TCJA, Delmarva's ratemaking adjustments she had previously testified about were amended accordingly. (Exh. 20, p.2.) Mr. Tanos presented two (2) adjustments to Delmarva's Class Cost of Service Study caused by the TCJA, the Class Rate of Return and Customer Related Costs. (Exh.21, pp.2-4.)

73. Finally, Ms. Santacecelia updated Delmarva's proposed Rate Design supporting the Company's revised revenue requirement after the TCJA was enacted. (Exh. 22) If granted in full, this request would have increased the average total monthly bill of a typical residential customer using 840 kWh per month by \$2.49 per month (from \$117.49 to \$119.98) or by about 2.12%, a reduction of \$2.99 per month from the amended rate request. (Id. at pp.2-3.) The Company's final positions as to the major issues are discussed in its Rebuttal Testimony, Section IV(D), *infra*.

B. Staff's Direct Testimony.

74. Staff witnesses Ara Azad and Ryan Pfaff of AzP Consulting,

LLC addressed Delmarva's rate increase request and proposed rate adjustments. Specifically, they prepared a detailed analysis of Delmarva's retail electric distribution rate base and pro-forma operating income under current rates and then calculated Delmarva's revenue deficiency and operating income issues. In public and confidential joint testimony, these witnesses also challenged many of Delmarva's proposed rate adjustments. (Exhs 26 & 27 respectively.)

75. According to witnesses Azad and Pfaff, the Company's post-test period reliability plant adjustments should not be allowed. (Exh. 26, pp.21-22.) In their direct testimony, these witnesses accepted the Company's use of a year-end rate base calculation as of December 31, 2017, the end of the test period. (Id.) Staff argues that Delmarva's plant adjustments from January 2018 through and including June 2018 should be deducted from rate base and from earnings. (Id.) Staff also disagreed with the Company's annualization of reliability investments, which is a separate \$15,395,743 claim. Staff instead argued that the Commission should follow its prior ruling to use averaging of rate base. (Id at pp.20-21; Schs. AzP 2.4, 2.5, 2.6.)

76. Staff witnesses Azad and Pfaff also argued against the Company including OPEB liabilities in rate base, for example executive and non-executive incentive compensation, and the Company's Supplemental Executive Retirement Program ("SERP"). (Id at pp. 12-19, 22-23.)

77. Witnesses Azad and Pfaff further asserted that "hidden merger costs . . . added to O & M Expense" involved an after tax \$2.1 million

decrease in operating expenses, a \$1.9 million addition to rate base, with a corresponding increase of \$573,000 to amortization expense. (Id. at p.24.) A "merger synergy savings" argument raised by Staff Witnesses Azad and Pfaff involved a \$2.0 million reduction in operating expenses, a \$1.8 million increase to rate base, with a corresponding increase of \$563,000 to amortization expense. (Id. at pp.25-26.)

78. Staff witnesses Azad and Pfaff also challenged the appropriate amortization period for the Direct Load Control and Dynamic Pricing regulatory assets. While the Company sought a five (5) year amortization period for each regulatory asset, Staff sought a ten (10) year amortization period. (Id. at pp.19-20.) Staff also sought that post-Test Period activity should not be compensated. (Id. at p.19.)

79. Regarding its uncollectible electric accounts, Delmarva Power calculated a three (3) year average of uncollectible expense as shown below:

**DPL Adjustment No. 4
Normalize Uncollectible
Expense per Application**

Year	DE Electric Uncollectible Expense
2015	\$3,045,089
2016	\$3,736,762
2017	\$2,071,343
3 Year	\$2,951,064
Source: Electric Schedule (KMMc-S)-3	

80. Staff's examination of uncollectibles included a five (5) year period, including the Test Period, as displayed below:

**DPL Uncollectible Expenses
2013 to 2017**

Year	DE Electric Uncollectible Expense
2013	\$1,540,197
2014	\$1,789,514
2015	\$3,045,089
2016	\$3,736,762
2017	\$2,071,343

Sources: Electric Schedule (JCZ)-6 (Dkt. 16-0649) and
Electric Schedule (KMMc-S)-3 (Dkt. 17-0977)

81. Staff recommended using the test period amount for calculating this adjustment. According to Staff, Delmarva Power's "Solution One SAP Billing System was installed in January 2015. As part of this installation process, DPL did not turn on the dunning (collections) process for delinquent customers until May 2015. Since there were several months during 2015 when DPL was not engaged in the collections process, DPL's uncollectible accounts expense increased significantly." (Id. at p.9.)

82. Staff concluded: "We recommend that the Commission utilize the test period amount of \$2.071 million as the uncollectible amount to be included in the revenue requirement. The adjustment described above results in a reduction in claimed annual uncollectible expense allowance of \$879,722." (Id. at pp. 9-10.)

83. Staff witnesses Azad and Pfaff also challenged the Company's claim that Cash Working Capital should be included in its rate base. (Id. at p.26.) According to Staff, this would reduce rate base by \$811,246. (Id.)

84. Staff also addressed the Excess Accumulated Deferred Income Taxes ("EDIT") resulting from the TCJA. (Id. at PP.27-28.) Staff argued that Delmarva witness Ziminsky discussed only two of the three EDIT categories: Protected Property-Related EDIT and Non-Protected Non-Property Related EDIT, thereby omitting the Non-Protected Property Related EDIT category in his testimony. (Id at p.27.) Staff proffered a chart produced below which Staff maintains better explains this issue:

Type	EDIT	% of Total	Amortization Method
Property - Protected	(63,032,347)	49%	Average Rate Assumption Method
Property - Non-Protected	(44,314,367)	35%	TBD - Commission's discretion
Non-Property-Non-Protected	(20,769,930)	16%	TBD - Commission's discretion
Total	(128,116,645)	100%	

Source: DPL DE 17-977 TCJA Staff Backup DRs 2-8 Attachments, Tab 3

(Id. at p.27.)

85. In rejecting DPL's proposed thirty two (32) year amortization period for Property-Related Non-Protected EDIT and ten (10) year amortization period for Non-Property Related Non-Protected EDIT, Staff argues that "[t]hese excess deferred taxes represent cash DPL has already collected from ratepayers for taxes the Company is no longer anticipated to pay. Flowing non-protected EDIT back to customers over a three-year period will help ensure that the customers who originally overpaid these taxes are more likely to be the same customers who would experience the corresponding adjustment in their rates." (Id. at p.28) In terms of other local public utilities, "New Jersey Natural Gas, for example, is proposing a nearly immediate refund of unprotected excess ADIT to its customers, which it intends to process by May 2018." (Id.)

86. If Staff's approach of shortening the amortization periods was adopted, DPL's proposed adjustment would be impacted by increasing DPL's earnings from DPL's originally proposed \$4.7 million to \$22.9 million, an increase of \$18.2 million. Staff's approach also has a corresponding impact to rate base, increasing rate base by \$22.9 million, rather than DPL's originally proposed \$4.7 million. (Id.; Sch. AzP 2.11)

87. Staff witness Dr. Larry Blank of TAHOEconomics, LLC testified as to his review of the Company's Jurisdictional Cost Allocations, Functional Cost Allocations, Class Cost of Service Study, and Rate Design. (Exh. 24) Dr. Blank recommended modifications to Delmarva Power's Delaware Jurisdictional Allocations, as a result of Delmarva being a wholly-owned subsidiary of Pepco Holdings, Inc. ("Pepco"), which in turn is a wholly-owned subsidiary of Exelon Corporation ("Exelon"). Dr. Blank originally opined that a \$32,725,417 reduction in rate base and a \$14,169,325 before taxes reduction in expenses was warranted in this case. (Id. at pp. 16-17.)

88. PHI and Exelon each have service companies (PHISCO and EBSC, respectively) which bill their respective affiliates for services provided to and costs incurred by affiliates. (Id. at p.6.) According to Dr. Blank, for allocating costs to affiliates other than direct costs, Exelon uses the Modified Massachusetts Formula ("MMF"), variants of which have been accepted by FERC, and PHI uses a "two factor ratio." (Id. at pp. 6-7.)

89. Witness Blank advocates that Exelon instead use PHI's two factor ratio approach to make the cost allocation between transmission

(Exelon) and distribution (PHI) consistent. (Id. at pp.8-9.) The two (2) approaches have different factors and are reaching different results when the majority of allocated costs to Delmarva Power are allocated by PHI and the MFF formula does not have state specific direct labor amounts. (Id.)

90. Next, Dr. Blank accepted Delmarva's Class Cost of Service Study as a reasonable way to guide the allocation of the distribution revenue requirement between the Delaware rate classes. (Id. at pp.23-24.) Dr. Blank then recommended a deviation from the strict application of the cost of service results in the final determination of rate class revenue requirements, specifically, that those rate classes that would receive rate reductions recommended by Staff be held close to present base rates to help mitigate the effect on the residential space heating customers and primary voltage general service customers. (Id. at p.25.) Lastly, Dr. Blank provided the rationale for Staff's proposed rate design, Staff's recommended reduced rates for each rate schedule, and a revised bill impact statement for each rate class. (Id. at pp.24-26.)

91. Shortly before the evidentiary hearing, Staff filed amended Schedules relating to rate base, Cost of Capital, Required Return, Operating Income, Reliability Closing, Merger Costs, Negative Synergies and a number of other issues. (Exh. 44) Since the amended Schedules were not specifically testified to at the evidentiary hearing, which involved what was primarily a "black box Settlement Agreement," I will not discuss the amended Schedules any further.

92. In addition to a number of issues discussed above, Staff

witness Joshua Bowman, a Public Utility Analyst, filed pre-filed testimony that, on October 19, 2017, Delmarva Power and Staff stipulated that Delmarva's future electric (and natural gas) Return on Equity would be 9.70%.¹⁷ (Exh.25, p.7, Sch. JB-1)

C. Public Advocate's Direct Testimony.

93. In his direct testimony, Public Advocate witness Glenn A. Watkins accepted the Company's use of a year-end rate base calculation as of December 31, 2017, the end of the Test Period. (Exh. 28, pp.32-33.) Mr. Watkins challenged many of Delmarva's proposed rate base and operating expense adjustments, including but not limited to, post-Test Period reliability plant adjustments, including a pre-paid pension asset and OPEB liabilities in rate base; including supplemental executive and non-executive incentive compensation and SERP compensation in the requested revenue requirement, proposed post-Test Period wage increases, revenue and weather normalization, the appropriate ratemaking treatment for the Company's credit facility, the appropriate amortization periods for Direct Load Control and Dynamic Pricing regulatory assets, Excess Accumulated Deferred Income Taxes ("EDIT"), and rate design issues.

94. DPA Witness Watkins argued that Delmarva's post-Test period plant adjustments from January 2018 through and including June 2018 must be deducted from rate base. (Id. at pp.32-34.) This amount did not include the DPA's disagreement with the Company's annualization of reliability investments, Witness Watkins instead arguing that the Commission should follow its prior ruling to use averaging of rate base,

¹⁷Delmarva Power's pending natural gas base rate case is Commission Docket No. 17-0978. {01345467;v1 }

thereby reducing Delmarva's rate base by an additional \$15,395,743. (Id. at pp.30-31.)

95. As to Delmarva's pension asset which it seeks to include in rate base, Witness Watkins stated that "[t]he notion that the amounts in question are a true pre-paid asset confounds me as a businessman, economist, and policy advisor. Although the actuarial accounting required for pensions and OPEBs results in a so-called prepaid pension asset, one must recognize that the Company's pension plans are significantly under-funded. That is, the current value of the plan's assets are significantly less than the present value of the projected benefit obligations that must be paid." (Id. at pp.48-49.)

96. In arguing that shareholders have contributed only somewhere between 16.5% and 19.4% of the pension's balance and Delmarva's OPEB liability, the DPA stated that the Company's ratepayers provided the funding balances for the DPL pension and PHI's pension plans. (Id. at pp.46,48-49) Mr. Watkins asserted that "[a]s of December 31, 2016, the DPL pension plan was under-funded by \$21.879 million, and PHI's pension plan was under-funded by \$252.578 million. Similarly, the DPL OPEB plan was under-funded by \$29.929 million, and PHI's OPEB plan was under-funded by \$58.944 million. For the Company to assert that shareholders should be entitled to profits on a so-called prepaid asset when the present value of the obligations far outweigh the value of the assets makes no sense." (Id. at p.49.)

97. Staff Witness Watkins also argued against the post-Test Period Wage and FICA adjustments proposed by the Company, some of which

extend through June 2009, stating prior Commission precedent should be followed. (Id. at pp.4, 22.)

98. DPA Witness Watkins proposes maintaining the Commission-approved ten (10) year amortization period for the Dynamic Pricing and Direct Load Control program regulatory assets. (Id. at pp.27-29.)

99. Witness Watkins also raised an issue as to Revenue Normalization. According to Witness Watkins, the rates in effect exceed the rates approved by the Commission. (Id. at pp.7-8.) If the DPA prevails, rate base will be decreased by \$249,974. (Id. at p.8.)

100. As to weather normalization, Mr. Watkins maintained that: a) DPL made a number of mathematical errors in calculating this adjustment which were eventually corrected; and b) despite numerous requests from the DPA, Delmarva failed to provide any back-up for how the four (4) months of forecasted revenues in the Company's partially forecasted test period were determined, i.e. the Company only provided "hard-keyed values." (Id. at pp.8-12.)

101. The Company proposes an adjustment to recover its costs related to the PHI credit facility. The credit facility allows Delmarva to borrow in the commercial paper market, provides bridge construction financing and is a primary source of short-term liquidity. (Id. at p. 36.) There are annual period costs associated with starting up and maintaining the credit facility, which do not include the facility's borrowings. (Id. at p.37.) This adjustment results in a \$308,938 decrease in expenses and an increase to test period rate base of \$364,103. (Id. at pp. 38-39)

102. According to DPA Witness Watkins, Delmarva acknowledges that the credit facility's short-term debt is used to temporarily fund its construction program and fluctuations in its cash flow. (Id. at p. 38.) DPA Witness Watkins argues that the Commission precedent should be followed which does not add this adjustment to rate base, but rather adds the cost of short-term debt in the calculation of the Company's Allowance for Funds Used during Construction ("AFUDC") rate used to support Construction-Work-In-Progress ("CWIP"). (Id.)

103. As to EDIT, the DPA and Staff agree on Delmarva's EDIT balances. (Id. at p. 52; see para. 84, *supra*.) According to the DPA, in order to determine the proper "non-protected" property related amortization periods, you must "strike a balance" between intergenerational inequity caused by waiting too long to return ratepayers funds to them against returning the funds too quickly which will cause "rate shock" in short order. (Id. at pp.55-56.) Below is a table depicting DPL's and the DPA's recommended amortization of EDIT balances:

Proposed Amortization EDIT Balances
(\$000)

<u>Category</u>	<u>Delmarva</u>		<u>Public Advocate</u>	
	<u>Period</u>	<u>Amount</u>	<u>Period</u>	<u>Amount</u>
Protected Property	ARAM		ARAM	(\$1,198)
Fixed Asset Basis Differences	32.06	(\$1,666)	10	(\$5,340)
State Decoupling Modifications	32.06	\$318	--	\$0
State NOL Carry-Forward	32.06	(\$35)	10	(\$112)
Pensions	10	(\$1,141)	--	\$0
OPEBs	10	\$79	--	\$0
NOL	10	(\$292)	5	(\$585)
Other Labor	10	\$85	5	\$170
Regulatory Assets	10	(\$852)	10	(\$852)
Environmental	10	\$5	10	\$5
Refinancings	10	(\$4)	10	(\$4)
Uncollectible	10	\$88	5	\$176
Other	10	(\$45)	5	(\$90)
TOTAL		(\$4,657)		(\$7,830)

(Id. at p.56)

104. Mr. Watkins recommended maintaining the current residential and residential space heating customer charge at \$11.70 per month, as opposed to increasing it as the Company proposed. (Id. at p.3.) DPA witness Watkins agrees that Delmarva's proposed CCSS and revenue allocation are "reasonable." (Id. at p.62.) However, as to rate design, Witness Watkins maintains that Delmarva did not include its own weather normalization billing determinant, thereby overstating the required rates. (Id. at p.73.) However, in its pre-filed testimony, the DPA stated that it believed that the parties could work out an agreement as to rate design issues. (Id. at pp.73-74.)

105. DPA witness Peter J. Lanzalotta's Direct Testimony provided an overview of the Company's infrastructure and reliability spending of

\$371 million during the five (5) year period of 2012 through and including 2016. (Exh. 30, p.9.) Of this \$371 million, \$277.7 million was reliability capital spending, \$75.2 million was Customer-Related, and \$18.1 million was Load-Related. (Id.; Table 2 therein.)

106. Witness Lanzalotta also testified that, in the Exelon/Pepco Holdings Merger case, the Delaware Commission approved a settlement which requires Delmarva Power to achieve a minimum System Average Interruption Duration Index ("SAIDI") performance level of no greater than 175 minutes based upon a three (3) year average by 2020. (Id. at p.5.) The SAIDI standard "reflects the total time duration (in hours as presented herein) of electrical service interruptions per customer over a specified period of time [excluding major weather events]." (Id. at pp.3,5.) The "SAIFI" standard, on the other hand, "reflects the number of electrical service interruptions per customer over a specified period of time, typically a year." (Id. at p.3.) The lower the SAIDI or SAIFI reliability indices in a particular year, the better Delmarva is performing regarding these reliability standards. (Id. at p.4 fn 4.)

107. Delmarva Power declared the following SAIDI and SAIFI performance results between 2012 and 2017:

Excluding MEDs	2012	2013	2014	2015	2016	2017
SAIFI	1.14	1.28	0.98	1.24	0.99	0.83
SAIDI	146	139	105	118	101	97
Current SAIDI Std	295	295	295	295	295	295
SAIDI 3 Yr Ave		159	130	121	108	105
SAIDI 3 Yr Ave Std By 2020				175	175	175

(Id at pp. 3-4.)

According to the SAIDI results above, the average duration of outages

as defined by that standard has decreased from 146 minutes in 2012 to 101 minutes in 2016 (a decrease of 31%), which decreased to 97 minutes in 2017. (Id. at pp.4-5.) The SAIFI results are as follows: 1.14 in 2012, which decreased to 0.99 in 2016 (a decrease of 13%), which decreased to 0.83 in 2017. (Id. at p.4.)

108. According to DPA Witness Lanzalotta, "[t]he Company's 2016 performance for SAIDI (excluding major events) would rank towards the middle of the second quartile for medium-size utilities in the Institute of Electrical and Electronics Engineers, Inc.'s survey, defined as having between 100,000 and 1,000,000 customers. On the same basis, i) the Company's 2016 SAIFI would also rank towards the middle of the second quartile of participating utilities, ii) the Company's estimated 2017 SAIFI would rank just inside the first quartile of participating utilities, and iii) the Company's estimated 2017 SAIDI would rank in the upper half of the second quartile of the participating utilities." (Id. at p.7.)

109. According to the DPA: a) Delmarva Power's electric service reliability has substantially improved; b) Delmarva's results "greatly exceed" the minimum requirements while complying with its commitment to comply with the reliability capital budget as set forth in the Amended Merger Settlement Agreement which does not contain a SAIFI requirement; and c) the amount budgeted by the Company exceeds what is necessary to maintain current reliability levels. (Id. at pp. 2-3; see PSC Dkt. No. 14-193 (Merger case))

110. DPA Witness Michael P. Gorman testified regarding the

appropriate overall ROE and rate of return for Delmarva's electric distribution operations. (Exh. 29) Employing the Company's proposed capital structure and embedded cost of debt rate, Mr. Gorman applied Discount Cost Flow ("DCF"), Risk Premium ("RP"), and Capital Asset Pricing Model ("CAPM") models to his proxy group,¹⁸ deriving a recommended ROE of 9.15% after calculating an approximate mid-point range of 8.75% (DCF), 9.20% (CAPM) and 9.50% (Risk Premium). (Id. at pp. 2, 22-23, 53.) Mr. Gorman recommended an overall rate of return of 6.50%. (Id. at p.2.)

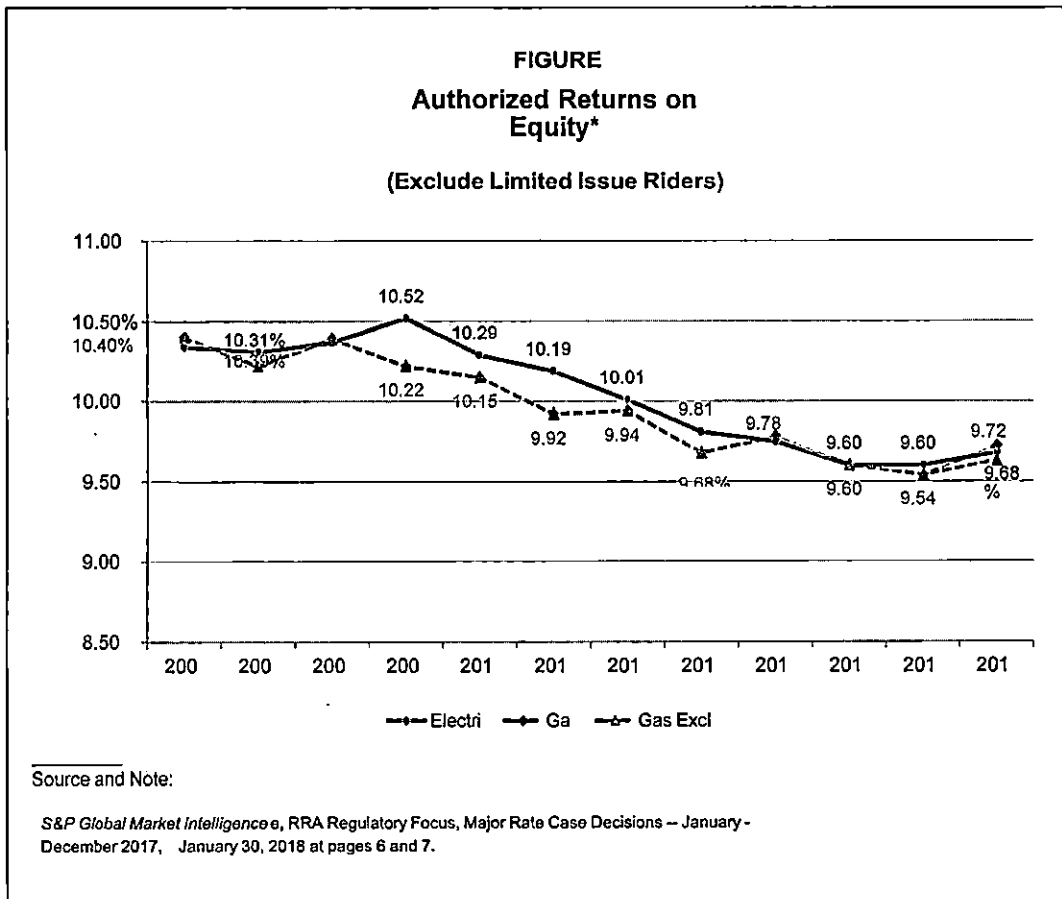
111. Witness Gorman testified that the Company's proposed ROE was "excessive" and would "require unjustified increases to retail rates." (Id.) According to Mr. Gorman, unlike the Company's ROE witness Hevert who gives primary weight to premium based models, Mr. Gorman gives primary weight to the DCF model because it "is producing economically logical results in comparison to alternative investment returns..." (Id. at p.3.)

112. The DCF model has two (2) major components: a) dividend yields; and b) growth rates. (Id. at pp. 4-5.) According to Mr. Gorman's analysis, when dividend yields are compared to A-rated utility bond yields, the spread is "close." (Id. at p. 5.) When historical growth rates of 4% are compared to Mr. Gorman's projected growth rates of 5.25% over the next 3-5 years, "higher and robust return outlooks" are produced. (Id.)

113. Although Mr. Gorman states that Commission-authorized returns

¹⁸ Due to merger and acquisition activity, Mr. Gorman excluded three (3) companies from his proxy group which Company witness Hevert had included in his proxy group in his direct testimony. (Exh. 29, pp.24-26). However, in his Rebuttal, Mr. Hevert used the same proxy group as Mr. Gorman. (Exh. 38, p.3)

for electric and gas utilities "have declined over the last ten (10) years and have been reasonably stable at around 9.6% to 9.7%," he argues that the industry average is lower but is skewed by certain jurisdictions which award higher ROEs than the rest of the industry." (Id. at pp. 6-7.) Mr. Gorman provides a table of authorized returns on equity for both electric and gas utilities for this proposition:



114. Mr. Gorman also states that electric utilities have experienced a significant amount of credit upgrades during 2010-17 by the major credit agencies, Fitch Ratings, Moody's and S&P. (Id. at p.8.) Also, Mr. Gorman argues that electric utilities are selling at robust prices relative to the past 11-15 years demonstrating the utilities'

"access to equity capital under reasonable terms and at lower costs."
(Id. at p.12.)

115. Although Witness Gorman expects the Federal Reserve Bank Open Market Committee ("FOMC") will raise short-term interest rates due to the strengthening economy, he does not expect long-term interest rates, which affect the cost of common equity, to be "significantly impacted." (Id. at pp.17-18.) Also, since Mr. Gorman's "projections of future Treasury bond yields are now much lower five to ten years out than they were over the last three years," he anticipates lower capital market costs over "for at least this intermediate period." (Id. at p.19.)

116. As to his DCF result, Mr. Gorman used "a current stock price, expected dividend, and expected growth rate in dividends. (Id. at p.27.) The "current stock price" was the average weekly high and low price of the stocks of the proxy group from *Value Line* for the thirteen (13) week period ending March 2, 2018. (Id.) The "expected dividend" was the most recently paid quarterly dividend which was annualized and adjusted for next year's growth as described in Mr. Gorman's testimony. (Id. at pp. 27-28.) The "dividend growth rates" are the mean of the estimates from *Zacks*, *MI* and *Reuters* available on March 2, 2018. (Id at p.28.) Although not relying upon his DCF/Sustainable Growth and Multi-Stage DCF models due to their relatively low results, witness Gorman's DCF results are as follows:

TABLE 6

Summary of DCF Results

<u>Description</u>	<u>Proxy Group</u>	
	<u>Average</u>	<u>Median</u>
Constant Growth DCF Model (Analysts' Growth)	8.76%	9.02%
Constant Growth DCF Model (Sustainable Growth)	8.02%	7.71%
Multi-Stage Growth DCF Model	7.91%	7.76%

117. The Risk Premium Model is based upon two (2) estimates of an equity risk premium: a) utility common equity investments minus U.S Treasury Bonds; b) Commission-authorized returns on common equity minus current "A" rated utility bond yields by Moody's. (Id. at p. 40.) Based on his methodology, Mr. Gorman developed a range of 9.20% to 9.80% with a mid-point of 9.50%. (Id. at p. 46.)

118. According to Witness Gorman, "[t]he Capital Asset Pricing Model (CAPM) method of analysis is based upon the theory that the market-required rate of return for a security is equal to the risk-free rate, plus a risk premium associated with the specific security." (Id. at p.47.) Mr. Gorman used two (2) market risk premiums: a forward looking estimate based upon the S & P 500 and a long-term historical average based upon Duff & Phelps data. (Id. at pp.49-50.) His CAPM recommendation is 9.20%. (Id. at p.52.)

119. In conclusion, the following Table 8 shows DPA Witness Gorman's DCF, Risk Premium and CAPM Return on Equity results:

TABLE 8

Return on Common Equity Summary

<u>Description</u>	<u>Results</u>
DCF	8.75%
RISK PREMIUM	9.50%
CAPM	9.20%

D. DEUG's Direct Testimony.

120. Brian C. Collins testified on behalf of DEUG, which is an association of large-volume energy users i.e. Delmarva's General Service Primary ("GSP") customers. (Exh. 31, pp.1,3.) According to Witness Collins, Delmarva's CCOS should not be accepted because all rate classes, except the residential rate classes, are above cost of service. (Id. at p.3.) Witness Collins supports rate reductions for all rate classes except the residential rate classes i.e. the "R, RSH, RTOU-ND" rate classes. (Id.) According to Mr. Collins' analysis, as to class revenue allocation, the residential classes should see an average increase of 8.8% and the other classes would average an increase of 5.2%. (Id.) Finally, DEUG maintains that any reduced revenue requirement ordered by the Commission from that sought by Delmarva should benefit the residential classes unless there is no rate increase, in which case all rate classes should benefit. (Id.)

E. Delmarva's Rebuttal Testimony

121. Company witness McGowan submitted rebuttal testimony disagreeing with the Staff's proposed jurisdictional allocations, and

the DPA's and Staff's pension and Employee Incentive Plans exclude from rate base arguments. (Id. at pp.1-3.) He also addressed Staff's and the Public Advocate's positions as to excess deferred income taxes ("EDIT"). (Exh. 40, pp.1-2.)

122. As to Staff's proposed \$17.6 revenue reduction due to jurisdictional and functional cost allocations, the Company again argued that Staff seeks to "transfer more costs to the Maryland distribution and the FERC transmission operations within Delmarva Power." (Id. at p.2.) According to DPL, although the current methodology has long been established and approved in Delaware and Maryland, "Staff's methodology has not been accepted in any other jurisdiction." (Id. at p.3.) The Company proposes a Working Group consisting of the Delaware and Maryland Public Service Commissions and FERC "to review all functional and jurisdictional allocations of the Company." (Id.) Company witness Ziminsky rebuttal testimony addresses these issues in detail.

123. As to Employee Incentive Plans, Mr. McGowan argued that Staff and the DPA failed to acknowledge that the Company's plans involve: 1) "customer focused key performance goals;" 2) the plan amounts received by an employee are part of an employee's compensation, not in addition to their compensation or a "bonus;" 3) the plans motivate employees by placing a portion of their compensation "at risk;" 4) the plans aid in providing safe, reliable electric service along with good customer service while helping DPL retain experienced employees; and 5) the Company's plans are reasonable when compared to similar electric companies. (Id. at pp.4-15.)

124. Regarding the Restoration Plan portion of the Company's SERP plan, which covers key employees and executives, the Company maintains that the Restoration Plan portion of the SERP plan is a portion of an employee's compensation package, which helps the Company retain quality employees to provide better service. (Id. at pp.15-16.) Delmarva is seeking 23% of its SERP costs which is the "Restoration Plan portion" which allows those employees, who may earn more than the IRS limit established for qualified pension plans to receive full retirement benefits, similar to all other employees in the Company." (Id. at p.16.) Finally, Delmarva argues that 100% of its peer group of electric utilities provides this benefit to its employees and Delmarva's employees are paid "at the market level." (Id. at pp.16-18.)

125. Company Witness McGowan also addressed Staff's argument that Delmarva failed to remove \$2.9 million of Merger cost to achieve costs ("CTAs") from O & M expense. (Id. at p.18.) The Company argues that CTA's represent one-time costs permitted by the Exelon/Pepco Holdings Amended Merger Agreement. (Id.; see PSC Dkt. No. 14-193 (Merger case)) According to Delmarva, Staff confuses CTAs from O & M expenses, including as to a \$425,000 employee compensation/AIP cost, which Delmarva states is an O & M expense and not a CTA. (Id. at pp.19-21.)

126. Mr. McGowan also discussed Excess Accumulated Deferred Income Taxes ("EDIT") in his pre-filed rebuttal testimony. However, since witness Ziminsky discusses the issue in more depth, for the sake of clarity, I will address the issue in Mr. Ziminsky's testimony while also referring sometimes to Mr. McGowan's testimony.

127. Company witness Ziminsky's testimony first focuses on the parties' disagreement as to the flow back period for non-protected property EDIT and non-property EDIT. (Exh. 42 at p.47.) For non-protected property EDIT, the Company proposes a 32 year flow back. (Id. at p.51.) For non-property EDIT, the Company proposes a 10 year flow back "based upon the tax and book differences to unwind..." (Id.)

128. According to Witness Ziminsky, Staff proposes to shorten the flow back for non-protected property EDIT from 32 years to 3 years, and for non-property from 10 years to 3 years. (Id.) The DPA seeks to shorten the flow back for non-protected property EDIT from 32 years to 10 years, and for non-property from 10 years to 5 years for uncollectibles for example, although the DPA does recommend 10 years for regulatory assets, environmental items and re-financings. (Id. at p.56.)

129. Regarding the appropriate flow back period, the Company's position is that "the benefits of the reduced tax rate should be flowed back to the customers who are benefitting from the use of the asset. It is [our] position that the matching principle should apply and as the company receives the benefits of paying tax liabilities at lower rates the ratepayers should receive the benefit in a similar period." (Id. at p. 53.) Regarding Staff's and the DPA's longer flow back positions, DPL argues that "EDIT liability will remain in rate base until it has been completely flowed back to customers. As such, customers will not be harmed in a longer flow back period as the EDIT liability will accrue at the Company's overall rate of return." (Id. at pp. 51-52.)

130. According to Delmarva, Staff's position represents a \$22

million reduction from the Company's proposed EDIT adjustment "resulting in a nearly 300 basis point reduction in Delmarva Power's primary credit metric (FFO/debt) and could result in negative credit action by the Rating Agencies." (Exh. 35, p. 22) The Company argues that the example of New Jersey Natural Gas, used by Staff to bolster its argument for a short flow back period, is one of twenty five (25) companies whose credit has been lowered by Moody's due to cash flow implications resulting from the TCJA. (Id. at pp.22-23.)

131. Second, "Staff may create a benefit for customers in years one through three as EDIT is flowed back, but will cause rates beginning in year four to be \$28 million higher per year as the EDIT credit ends and customers begin paying the cost of accelerating the EDIT balance. This is not sound ratemaking policy." (Id. at p.22.)

132. Finally as to EDIT, the Company maintains that the Pension/OPEB balance (-\$11.4m/\$0.7m, respectively) should be included in the amortizable EDIT balance. (Exh. 42, p.59) Also, contrary to the Public Advocate's position, DPL argues that the federal benefit of state decoupling of \$318,000 should also be included in the amortizable EDIT balance because "it is due to the nature of how the Company files federal and state tax returns and apportions deferred taxes." (Id.; Exh. 28, p.56)

133. As to jurisdictional and functional cost allocation, according to Mr. Ziminsky, in seeking an overall revenue reduction of \$17.6 million, Staff Witness Blank proposes to reduce rate base by \$32.77 million, and increase earnings by \$10.22 million by lowering Delaware

distribution expenses by \$14.17 million. (Exh. 42, p.61.) According to the Company, if Mr. Blank's proposal was accepted, Delaware's distribution customers would pay higher retail transmission rates. (Id. at p.60.)

134. As to Administrative and General Costs ("A & G costs"), the Company uses in Delaware the Modified Massachusetts Formula ("MMF"), which is an equally weighted average of three (3) factors: 1) Gross Revenues; 2) Assets; and 3) Direct Labor. (Id. at p.63; Exh. 24, p.7.) Staff witness Blank seeks to eliminate the "direct labor" factor and allocate A & G costs based upon the Two Factor approach. ("TFR") (Exh. 42 at p.63.) The TFR approach "is an equal weighting of gross distribution plant in service and Operation & Maintenance costs. ("O & M costs") (Id.)

135. Nevertheless, according to Delmarva, "the labor allocator is the best representation of the Company's current work force requirements. The Company's general theory is labor allocates general, common, intangible and service company plant, and A & G costs. (Id. at p.64.) According to DPL, "[t]he principle of cost causation for general and common plant is best represented by the current level of the Company's workforce (labor)." (Id. at p.65.)

136. Company witness Ziminsky testified that Staff Witness Blank proposes to change from the Company's O&M allocation (57.86%) to Billed Distribution Sales Revenues (54.83%). (Id.) According to Delmarva, "[i]n total, this shifts approximately \$1.6 million of expense to Maryland. [Staff Witness Blank] does not discuss this in testimony,

and does not provide any underlying rationale. This proposal should be rejected and the Company's use of the long-standing Commission approved O&M allocation should continue to be used." (Id.)

137. Regarding the Allocation method between Transmission and Distribution, DPL argues that, according to Staff Witness Blank, since the Company's service company PHISCO uses the TFR approach to allocate costs, PHISCO "is the driver of cost causation." (Id. at p.66.) Also, Witness Blank "has several issues with the labor indicator and the Company's labor indicator." (Id.)

138. Based upon a survey of twenty two (22) PJM utilities, DPL strongly disagrees with Mr. Blank's testimony that there is a "high probability that FERC will accept [Staff's] new allocator" for functional cost allocation because: 1) the labor indicator continues to be used by many companies for "general, common, intangible plant, and A&G costs" despite electric utility restructuring and much divesting of generation assets beginning in the early 2000s and despite the increase of service companies serving affiliates of holding companies; and 2) "the Company's [O&M] labor ratio of 7.07% is in the same reasonable range as the PJM average of 11.28% and median of 10.03% in contrast to Staff witness Blank's proposed allocator, which is approximately 36.66;" 3) "FERC [and the Commission] have consistently ruled the use of the labor ratio is the appropriate methodology for functionalizing [the costs at issue]; and 4) Also, the Commission has upheld the use of the labor ratio." (Id. at pp.68-69, 73-74; (JCZ-R)-23.)

139. Finally, Ms. Julie Giese, PHI's Director of Accounting, filed

Rebuttal Testimony disagreeing with Staff Witness Blank. Ms. Giese's testimony stated that PHISCO and EBSC employees are not "employees of the utility" and their associated labor and labor-related expenses should be recorded in FERC Account 923. (Exh.36, p.2.) Item 1 of FERC's definition of Account 923 states that proper expenses include: "Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc." "It shall include also the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered as an employee of the utility."

140. Company witness Ziminsky also updated the annualization of Delmarva's actual non-revenue generating reliability plant additions through December 2017. (Exh.42, pp. 3-4.) Mr. Ziminsky updated actual non-revenue generating reliability plant additions through March 2018. (Id.) He also updated CWIP through March 2018 and forecasted it from April 2018 through and including June 2018. (Id.)

141. As to the Dynamic Pricing and Direct Load Control regulatory assets, the Company's rebuttal agrees to the ten (10) year amortization period which was agreed to by the parties in the last base rate case. (Id. at pp. 2-3.) However, the Company argues that post-test period returns accruing from January 2018 through and including June 2018 "should be recoverable to synchronize costs and revenues" for "used and useful assets providing benefits to customers." (Id. at pp. 11-12.)

142. Regarding the Company's pre-paid pension asset and OPEB

liability, the Company argues that Commission precedent of including this \$45,881,000 asset and \$7,972,407 liability in this rate case should continue regardless of the DPA's opposition. (Id. at p.31.) Witness Watkins also removes the accumulated deferred income taxes and excess deferred income taxes for each. (Id.)

143. According to Mr. Ziminsky, the DPA's claim that the Company has underfunded its pension plan "incorrectly compares the current value of the pension plan assets versus the present value of the projected benefit obligation." (Id. at p.35.) For ratemaking purposes, at issue is the difference between the pension plan contributions and accumulated pension plan costs. (Id. at p.36.) The Company maintains that the DPA is looking at issues "outside Delmarva's books and records in determining rates." (Id. at p.35.)

144. Company witnesses Ziminsky and Kristin M. McEvoy listed certain uncontested issues, identified Staff's and the Public Advocate's adjustments or positions that the Company had accepted, and addressed other rate base and operating expense adjustments which Staff and the Public Advocate either had challenged or had made themselves. (Exhs.42 & 37, respectively.) The larger contested adjustments included: Regulatory Commission Expenses, Injuries and Damages, Uncollectible Accounts, Wages & FICA, Pro-Forma Medical, Vision and Dental Benefits, and Storm Restoration. (Id.)

145. Company witness Clark filed rebuttal testimony addressing Staff's testimony concerning system reliability and capital spending. (Exh.39) Bryan L. Clark is the Director of Utility of the Future at

Pepco Holdings LLC but he was testifying on behalf of Delmarva.

146. In addressing reliability performance, Mr. Clark testified that, contrary to Staff's position, the three-year average 175-minute SAIDI level contained in the Amended Merger Settlement Agreement "is not Delmarva Power's goal or its 'target' - it is the worst level of performance permitted without the Company being in violation." (Id. at p. 3.)

147. According to Mr. Clark, as to the rankings of the 2016 IEEE SAIDI Reliability Annual Survey, "if Delmarva Power actually provided a SAIDI performance of 175 minutes, [its] Delaware customers would be receiving reliability performance in the fourth (or worst) quartile in the national sample." (Id.) According to Delmarva, "[w]orst" quartile performance is not the 'target' or the goal for Delmarva Power." (Id.) Finally, as to its reliability spending, the Company argues that it "has struck the appropriate balance between providing the service level performance its customers deserve, while adhering to agreed-upon, Commission-approved limits on reliability spending." (Id. at pp. 7-8.)

148. Company witness Hevert provided rebuttal to the DPA's Witness Michael P. Gorman's proposed ROE of 9.15% using the same proxy group as Mr. Gorman used in his rebuttal. (Exh.38, p.3.) He updated his ROE models to reflect data through April 13, 2018. (Id.) Mr. Hevert testified that the updated data continued to support his original ROE recommendation of 10.10% based upon a range of 10.00%-10.75%, and the Company's capital structure of 50.52% common equity and 49.48% long-term debt. (Id. at pp. 62-63; p. 3, respectively.)

149. The Commission approved the Company's 9.70% ROE in May 2017.

(Id. at p. 4.) According to Witness Hevert, between November 1, 2017 and April 13, 2018: 1) the Tax Cuts and Jobs Act was signed into law on December 22, 2017; and 2) the S&P 500 gained 3% and the proxy group "lost about 10.15%, underperforming the overall market by approximately 13.15%." (Id. at p. 5.) According to Mr. Hevert, "[t]o the extent investors now view electric utilities as less attractive relative to other sectors, the proxy companies' prices will fall[see above], and the dividend yields will increase [they have about doubled the overall market during this time period]." (Id. at pp. 5-6.)

150. According to Mr. Hevert, "[t]he principal analytical areas in which I disagree with Mr. Gorman include: (1) the application of the Constant Growth DCF model, and interpretation of its results; (2) the MRP component of his CAPM analysis, in particular the expected market return from which the MRP is calculated; (3) the assumptions and methods underlying Mr. Gorman's Risk Premium analyses; (4) Mr. Gorman's assessment of Delmarva's relative risk; and (5) Mr. Gorman's *pro forma* analysis of the Company's financial integrity." (Id. at pp. 11-12.)

151. As to Mr. Gorman's criticism of Mr. Hevert's analysis, Mr. Hevert states that "Mr. Gorman asserts my estimated ROE is overstated and should be rejected because (1) my Constant Growth DCF results are based on 'unsustainably high' growth rates; (2) my Multi-Stage DCF is based on an 'unrealistic' GDP growth estimate, a 'manipulated' dividend payout ratio assumption, and an 'unjustified' terminal *P/E* ratio assumption; (3) my CAPM is based

on inflated estimates of the MRPs; and (4) my Bond Yield Plus Risk Premium is based on an inflated utility Equity Risk Premium. Lastly, Mr. Gorman disagrees with my consideration of equity floating costs." (Id. at p. 38.)

152. Mr. Hevert's rebuttal provided the following tables:

Table 5a: Summary of Constant Growth DCF Results

	Mean	Mean High
<i>Constant Growth DCF- Updated Proxy Group</i>		
30-Day Average	8.96%	10.05%
90-Day Average	8.86%	9.95%
180-Day Average	8.73%	9.82%

Table 5b: Summary of Multi-Stage DCF Results- Terminal P/E Ratio

	Low	Mean	High
<i>Multi-Stage DCF- Updated Proxy Group</i>			
30-Day Average	10.03%	10.78%	11.54%
90-Day Average	9.77%	10.51%	11.28%
180-Day Average	9.42%	10.16%	10.92%

Table 6: Summary of CAPM Results

	Bloomberg Derived Market Risk Premium	ValueLine Derived Market Risk Premium
<i>Updated Proxy Group - Average Bloomberg Beta Coefficient</i>		
Current 30-Year Treasury (3.07%)	9.81%	10.34%
Near-Term Projected 30-Year Treasury (3.52%)	10.26%	10.79%
Long-Term Projected 30-Year Treasury (4.20%)	10.94%	11.47%
<i>Updated Proxy Group - Average Value Line Beta Coefficient</i>		
Current 30-Year Treasury (3.07%)	11.31%	11.95%
Near-Term Projected 30-Year Treasury (3.52%)	11.76%	12.40%
Long-Term Projected 30-Year Treasury (4.20%)	12.44%	13.09%

Table 7a: Summary of Electric Bond Yield Risk Premium Results

Current 30-Year Treasury (3.07%)	9.97%
Near-Term Projected 30-Year Treasury (3.52%)	10.04%
Long-Term Projected 30-Year Treasury (4.20%)	10.25%

Table 7b: Summary of Natural Gas Bond Yield Risk Premium Results

Current 30-Year Treasury (3.07%)	9.93%
Near-Term Projected 30-Year Treasury (3.52%)	10.00%
Long-Term Projected 30-Year Treasury (4.20%)	10.19%

153. Although it considers other models, in the past the Commission has preferred using the Discounted Cash Flow (DCF) method in determining a utility's ROE. (PSC Order No. 8011, ¶284.) However, Company witness Hevert argues that current market conditions, particularly increasing

interest rates, require the Commission to apply more than one model in determining the Company's ROE. (Exh. 4, pp. 5-7, 22-23.)

154. Company witness Tanos provided rebuttal testimony addressing the Public Advocate's recommendations pertaining to CCOSS and the customer related costs. (Exh. 34) He also addressed DEUG's recommendation to use the MDS to classify distribution plant costs.

155. DPL's revised Electric Class Cost of Service Study states:

Customer Class	<u>ECOSS-ORIGINAL</u>		<u>ECOSS - TCIA</u>	
	Class ROR	UROR	Class ROR	UROR
1 Residential	4.36	0.92	4.10	0.86
2 Residential Space Heating	2.63	0.56	3.05	0.64
3 General Service Secondary – Small	9.13	1.93	9.32	1.96
4 General Service Secondary – Large	4.03	0.85	4.05	0.85
5 General Service Primary	2.55	0.54	2.59	0.54
6 General Service Transmission	11.74	2.49	12.13	2.55
7 Street Lighting	7.57	1.60	7.82	1.64
8 Traffic Signal Service	<u>14.98</u>	<u>3.17</u>	<u>15.68</u>	<u>3.30</u>
Total Company	4.72	1.00	4.76	1.00

(Exh. 34, p.2)

156. Company witness Joseph F. Janocha's rebuttal addressed Staff's and the DPA's criticisms of Delmarva's proposed revenue allocation and rate design, and weather normalization methodology. (Exh. 41, p. 2.)

V. THE PROPOSED SETTLEMENT

157. On June 26, 2018, the first day of the evidentiary hearings,
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I granted the parties' request to continue the hearings until the following day to allow the parties to work on a potential settlement. On June 27, Delmarva Power, Staff, DEUG and the DPA (the "Settling Parties") advised me that they had reached a written settlement. The Settling Parties presented the Settlement Agreement. I admitted the Settlement Agreement (the "Settlement") into the record. (Exh. 45.) The Settlement is attached as Exhibit "1" hereto, and is signed by the Settling Parties.

158. This is a partial "black box settlement," meaning that the Settling Parties have specifically delineated the manner in which some disputed issues in the case have been resolved, but have not addressed others. After addressing the settlement provisions, I will discuss the Settling Parties' testimony at the evidentiary hearings as to why the parties maintain that the Commission should approve the Settlement Agreement as "in the public interest."

VI. SETTLEMENT PROVISIONS

A. Rates and Charges.

159. Within 30 days after approval of this Settlement, the Company's rates will be modified (with proration) to reflect the following:

- (a) Revenue Requirement: Settling Parties agree to a net decrease of \$6.850 million to base revenues, with a rate effective date of March 17, 2018, as set forth in Exhibit 1 hereto.

(b) Cost of Capital: Settling Parties agree to a rate of return on equity of 9.70% and an overall rate of return of 6.78% based on the Company's cost of debt of 3.80% and the capital structure at March 31, 2017 consisting of 50.52% equity and 49.48% debt.

(c) Impact of the Tax Cut and Jobs Act of 2017
("TCJA")

(i) Rate Making Adjustment ("RMA") 31 (Excess Deferred Income Taxes) - Settling Parties agree to flow back the excess deferred income taxes created by the TCJA in the following manner:

a. Protected Property-Related Excess Deferred Income Taxes ("EDIT"): Settling Parties agree to use the Average Rate Assumption Method ("ARAM") to flow back \$63.0 million of protected property-related EDIT.

b. Non-Protected Property-Related EDIT: Settling Parties agree to use a 6-year amortization period to flow back \$44.3 million of non-protected property-related EDIT.

c. Non-Protected, Non-Property-Related EDIT: Settling Parties agree to use a 5-year amortization period to flow back \$20.8

million of non-protected, non-property related EDIT.

(ii) Settling Parties agree that the purpose of the EDIT adjustment is to ensure the full amount of the TCJA tax benefits associated with the non-protected EDIT benefits are returned to customers over a 5 and 6 year period.

(iii) The annual amount of the EDIT credits related to non-protected EDIT beginning in year 1 is \$16.3 million. Of that \$16.3 million annual amount, \$5.9 million is related to the 5-year amortization of Non-Protected, Non-Property-Related EDIT. The remaining \$10.4 million is related to the 6-year amortization Non-Protected Property-Related EDIT. The amortization of Non-Protected, Non-Property-Related EDIT is expected to end at the end of year 5. The amortization of Non-Protected Property-Related EDIT is expected to end at the end of year 6. See Exhibit 1 hereto.

(iv) Within 60 days of the completion of the 5-year amortization of the Non-Protected, Non-Property-Related EDIT credit, the Company will file updated tariff sheets with the Commission to eliminate the effect of that 5-year

amortization. Within 60 days of completion of the 6-year amortization of the Non-Protected Property-Related EDIT credit, the Company will file updated tariff sheets to eliminate the effect of that 6-year amortization. Each filing of updated tariff sheets will be accompanied by a report to demonstrate that the full amount of the applicable 5-year or 6-year EDIT credit will be returned to customers by the effective date of each tariff change.

(v) The tariff sheets will include a separate line item for the 5-year EDIT credit amortization and the 6-year EDIT credit amortization. The filing of the updated tariff sheets in year 5 and year 6 will only eliminate the applicable EDIT credit amortization line, with no other modifications to the tariff sheet.

(vi) During the EDIT amortization flow back period, the Company will file annual reports, commencing June 30, 2019, summarizing the cumulative amount of the non-protected EDIT benefits provided to customers through March 31 of that year, including benefits flowed back prior to the sur-credit becoming effective.

(vii) Any amounts paid to customers in excess of the total EDIT balance will be recorded as a regulatory asset with a return at the Company's Commission-authorized rate of return, to be recovered in the Company's subsequent rate case.

(viii) EDIT credits include credits associated with the prepaid pension asset/Other Post-Retirement Employee Benefits ("OPEB") and state tax allocation. DPA does not waive its ability to challenge the inclusion of prepaid pension Asset/OPEB and state tax allocation in a subsequent Delmarva rate case by virtue of the EDIT flow-back agreed to in this Settlement.

160. Recovery of and on the following regulatory assets and balances are included in the revenue requirement as follows:

- (a) \$1,215,242 - representing Delmarva's direct load control program, authorized in Order No. 8253 in Docket No. 11-330, amortized over 120 months, with the unamortized balance given rate base treatment.
- (b) \$1,771,290 - representing the Company's regulatory asset for its dynamic pricing program, authorized in Order No. 8105 in Docket No. 09-311, amortized over 120 months, with the unamortized balance given rate base treatment.

- (c) Costs to achieve synergy savings (CTAs) out of the PHI/Delmarva Power/Exelon Corporation merger allocable to Delmarva Delaware electric distribution in the amount of \$1,523,406, be amortized over 60 months, with the unamortized balance given rate base treatment.

161. Merger - Costs to Achieve and Synergies: The following language supersedes and replaces Delmarva's annual reporting requirement in paragraph 5 in the settlement agreement attached as Exhibit A to Order No. 9049 in Docket No. 16-0649 in its entirety. Delmarva will continue to track and segregate all merger-related costs and synergy savings. In its next base rate case, Delmarva will include in its application, a report on all merger-related costs and merger synergy savings for the test period (and test year, if different). This report will contain actual costs incurred and actual synergies achieved for the test period (and test year, if different), as well as each preceding year through calendar year 2016 (the year the merger was consummated). This information will include:

- (a) The most recent quarterly summary of integration CTA's and synergies containing details regarding the description of the detailed merger synergy saving initiatives and merger cost drivers;
- (b) Merger costs and synergies by Federal Energy Regulatory Commission ("FERC") account for each year and on a monthly basis, if available;

- (c) Amortization schedules for each regulatory asset set up for rate base treatment of costs-to-achieve the merger as approved by the Commission;
- (d) Quantification of total merger-related costs that remain in the revenue requirement test period after all adjustments, as well as the reason for inclusion of those costs in the revenue requirement (e.g. Docket No. 17-0977 costs to achieve regulatory asset, non-incremental O&M expense);
- (e) O&M by FERC account for each calendar year from 2012 through the test period of the next rate case; and
- (f) In its next base rate case, Delmarva will file with its application, the cost of shared services and affiliate transactions charged to Delmarva for the test period, and for each preceding year through calendar year 2013 for comparative purposes. The reports will contain charges to Delmarva on a monthly basis, if available, for each year, by account, applicable cost object and company.

162. Pursuant to the terms of the settlement agreement in Delmarva's prior rate case in Docket 16-0649, Order 9049, Exhibit A, paragraphs 4 and 5, Delmarva placed in rates \$2,597,339 of estimated

year one synergy savings, subject to customer credit in Delmarva's subsequent (current) rate case, any actual synergies exceeding this amount. In the current proceeding, Delmarva reported test period synergies of \$5,410,985, resulting in \$2,813,646 of synergy savings in excess of the docket 16-0649 estimate. In full satisfaction of currently known financial obligations under the terms of paragraph 5 (b) of the settlement agreement approved by the Commission in Order No. 9049 in Docket No. 16-0649, Delmarva has issued the one-time rate credit for synergies realized in excess of the Docket 16-0649 estimate (see paragraph 8 of the proposed Settlement Agreement).

163. The Settling Parties agree that, within 6 months of the Commission issuing a written order approving this Settlement, Staff plans to petition the Commission to open a separate new docket to address jurisdictional cost allocation issues (*i.e.*, the allocation of distribution-level costs between Delmarva Delaware distribution and Delmarva Maryland distribution) as raised in this Docket by Staff, which will include the assignment of Accumulated Deferred Income Taxes ("ADIT") relating to state tax differences between Delaware and Maryland. The new docket shall not include any functional cost allocation issues (*i.e.*, the allocation of costs between the state distribution jurisdictions and the FERC transmission jurisdiction). Notice of the opening of the docket shall be provided to the Maryland Public Service Commission and the Maryland Office of People's Counsel. The Settling Parties agree that, should such a docket be opened, a final non-appealable order in such docket will be applied to rates in the first Delmarva electric base rate

case filed subsequent to such order. Finally, no Settling Party will object to a Staff petition to open a separate docket to address the jurisdictional allocation issues addressed in this Docket.

164. The Settling Parties agree to customer charges and the allocation of the base rate revenue changes among all customer classes as shown in Exhibit 1 hereto.

165. The rates as modified by this Settlement will be implemented within 30 days of approval of this Settlement Agreement using the rate design service classifications set forth in Exhibit 1.

166. The Settling Parties agree that a refund will be required pursuant to 26 Del.C. § 306(b) representing the difference in rates put into effect on March 17, 2018, pursuant to 26 Del. C. § 306 and Commission Order No. 9195 and rates pursuant to this Settlement. Delmarva shall file a refund plan with the Commission within 60 days of the Commission issuing a written order approving this Settlement.

167. Within 60 days of a written Commission order approving this Settlement, credits will be posted to customer accounts for:

- (a) The refund for excess merger synergies in the amount of \$2,813,646, and
- (b) A refund in the amount of \$2,545,566 representing the regulatory liability created by Commission Order No. 9177 concerning the TCJA beginning on February 1, 2018 through March 16, 2018, which will have the effect of closing the TCJA regulatory liability with respect to Delmarva.

168. As provided in Exhibit 1 hereto, credits addressed in paragraphs 8 (a) and (b) will be allocated across the board based upon the percent of the total revenue of each customer class to total overall revenue. Customers will be provided a fixed bill credit based upon the total credits allocated to a customer class and the total number of customers of record in that same customer class, with the exception of GS-T and GS-P customers, who will receive these credits based upon the per customer distribution revenues during the test period in this docket.

169. This Settlement includes recovery of post-test period reliability capital closings from January 1, 2018 through May 31, 2018 in the amount of \$14.271 million, such that those reliability capital closings are included in the agreed-upon May 31, 2018 plant in service of \$1.466 billion.

VII. THE EVIDENTIARY HEARING

170. On June 27, 2018, I conducted the duly-noticed evidentiary hearing as to whether the proposed Settlement should be approved. Three (3) witnesses testified at the evidentiary hearing that the Settlement is in the public interest: (1) Jay C. Ziminsky, Delmarva's Director of Revenue Strategy & Revenue Policy of PHI's Regulatory Affairs Department; (2) DPA's Consultant, Glenn A. Watkins, President and Senior Economist of Technical Associates, Inc.; and (3) Joshua Bowman, a Staff Public Utility Analyst.

171. Delmarva Witness Ziminsky summarized the major points of the proposed Settlement Agreement. He testified that the Settlement resulted in just and reasonable rates and was in the public interest. Mr. Ziminsky

noted that the Settling Parties represented different stakeholder groups with diverse interests. He testified that the Settlement struck a proper balance between the Company's need to (a) minimize the revenue decrease due to the TCJA, (b) maintain adequate, safe and reliable service to its customers, while (c) avoiding increased litigation costs for ratepayers. (Tr.-310-313)

172. As to the specifics of the parties' settlement, Mr. Ziminsky testified that the overall revenue reduction related to the conclusion of this rate case is a \$6.85 million dollar net reduction. The reduction is mainly driven by the benefits of the TCJA. That benefit is the reduction of the Federal Income Tax Rate from 35 percent to 21 percent. The \$6.85 million revenue reduction is the net result of a \$9.4 million base rate increase, a \$5.9 million reduction related to a Non-Property EDIT sur-credit, and a \$10.4 million reduction related to a Non-Protected Property EDIT sur-credit. (Tr.-306-307) In terms of bill impact, if the settlement is approved by the Commission, the average residential customer using 840 kilowatt hours per month will see a \$1.40 decrease on total bill basis, or a 1.19% decrease. (Tr.-308)

173. Witness Ziminsky further testified that "[i]n addition to the \$6.85 million dollar revenue reduction [and the customer rate decrease], there will be one-time bill credits to customers in the total amount of \$5.35 million comprised of \$2.8 million related to excess merger synergies and \$2.55 million related to TCJA impacts from February 1, 2018 through March 16, 2018, prior to the rate effective period in this proceeding." (Tr.307-308) The average customer will receive a one-time

bill credit of \$10.95. (Tr.-309)

174. In describing the Settlement Agreement, Mr. Ziminsky testified that "[s]imilar to the regulatory assets approved in Docket No. 16-0649, the following new regulatory assets are included in this settlement. One, direct load control. A \$1.2 million dollar balance to be amortized for 120 months with the unamortized balance given rate base treatment. Two, dynamic pricing regulatory asset balance of \$1.8 million to be amortized over 120 months with the unamortized given rate base treatment. Three, merger cost to achieve a \$1.5 million dollar balance to be amortized over 60 months with the unamortized balance given rate base treatment." (Tr.-308) The parties also agreed that the Company's return on equity would remain at 9.70%. (*Id.*)

175. "In addition, the parties agree to plan to review jurisdictional cost allocations between Delaware distribution and Maryland distribution, as well as expanded reporting in the next rate case in regard to merger synergies and cost to achieve." (Tr.-309)

176. Staff witness Joshua Bowman, a Public Utility Analyst and Staff's Case Manager, testified that the Settlement Agreement was just and reasonable, would result in reasonable rates and that adopting the settlement was in the public interest. (Tr.-327-328) Also, according to Mr. Bowman, the Settlement Agreement is reasonable because it will save all of the parties funds by not having to fully litigate the case and because the settlement properly balanced all of the parties' interests. (*Id.*)

177. DPA witness Glenn Watkins testified that the Settlement

Agreement resulted in just and reasonable rates and was in the public interest. (Tr. 320-321) He explained that the parties' agreed-upon revenue reduction of \$6.850 million was "very close to the DPA's litigated position of roughly \$8.4 million." (Tr.-321)

178. According to Mr. Watkins, the uncertainty of how the Commission would resolve the issues involving substantial dollar amounts convinced the DPA that adopting this Settlement with a lesser revenue reduction than proposed by the Public Advocate was in the public interest. He further testified that the DPA assessed whether it was likely to obtain a better outcome by litigating the case, and concluded in this instance that a better outcome through litigation was unlikely. (*Id.*)

179. Mr. Watkins further testified that the Settlement's resolution of the fixed monthly customer charge dispute was very important to the DPA, and that that resolution - which maintained the monthly customer charges for residential customers at its pre-rate case filing levels - and the rate reduction flowing through energy usage-were in the public interest. (Tr.-322) Witness Watkins also testified that the Settlement was in the public interest because the rate decrease was spread equally or proportionately across all customer classes. (*Id.*) This result apparently satisfied DEUG, whose lawyer signed the Settlement and stated on the record that the agreement was in the public interest and would result in just and reasonable rates. (Tr.-328-329)

VIII. DISCUSSION

180. I hereby incorporate Sections III through VII as my Findings

of Fact.

181. The Commission has jurisdiction over this Docket pursuant to 26 Del. C. §201(a).

182. The Settling Parties - Delmarva Power, Staff, the DPA, and DEUG - representing diverse interests, have testified that the Settlement results in just and reasonable rates and is in the public interest. The Settlement was reached after significant discovery and negotiations between the Settling Parties. I find their testimony in support of the Settlement persuasive. For the reasons that follow, I recommend that the Commission approve the Settlement.

183. 26 Del. C. §307(a) places the burden of proof upon Delmarva to show that the proposed rates are just and reasonable.

184. 26 Del. C. §512(a) provides that "[i]nsofar as practicable, the Commission shall encourage the resolution of matters brought before it through the use of stipulations and settlements." 26 Del. C. §512(c) provides that the Commission may approve a settlement if it is in the public interest.

185. According to the United States Supreme Court, a public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1923); *Federal Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

186. The fact that the Settling Parties represent diverse interests is persuasive to me. Delmarva's interest must focus upon

achieving rates that allow it to recover its costs of providing service and an opportunity to earn a fair rate of return. Staff seeks to balance the interests of both the utility and its ratepayers. 29 Del. C. §8716(d)(2) charges the DPA with advocating the lowest reasonable rates for primarily residential and small commercial consumers consistent with maintaining adequate utility service and an equitable distribution of rates among all the utility's customer classes. And lastly, the DEUG advocates for commercial and industrial customers.

187. There is substantial evidence on the record in this case to support my recommendation that the Settlement be approved.¹⁹ (29 Del. C. §10142(d).) First, it is clear that every Settling Party which submitted pre-filed testimony (Delmarva, Staff, the DPA and DEUG) recommended a decrease in the revenue requirement from Delmarva's original Application. But, it is also clear that the Settlement was the product of extensive negotiation and compromise. The record evidence supported a revenue requirement of anywhere between a decrease of \$47,530,871, Staff's recommendation, assuming the Commission decided every contested monetary issue in its favor, to an increase of \$10,863,284, Delmarva's requested revenue requirement on rebuttal, assuming the Commission decided every contested monetary issue in Delmarva's favor.

188. I find that the Commission, in all likelihood, would not have

¹⁹ "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be more than a scintilla, but may be less than a preponderance of the evidence." *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *Price v. State of Delaware Board of Trustees*, 2010 WL 1223792 (Del. Super. Mar. 22, 2010) (unpublished opinion).

decided every contested issue in favor of any one of the participants that submitted pre-filed testimony. Rather, the Commission would more likely have considered each party's position against certain regulatory principles and precedent and would have ultimately reached an overall result between the various positions taken by the parties. In this context, I note that the Settlement's revenue requirement decrease of \$6.850 million is approximately \$17.7 million less than the Company's requested revenue requirement on rebuttal.

IX. RECOMMENDATIONS

189. In summary, and for the reasons stated above, I find that the proposed Settlement results in just and reasonable rates and is in the public interest. Overall, it represents a fair resolution of the issues raised in this case. A proposed Order implementing the foregoing Recommendations is attached hereto as Exhibit "2" for the Commission's consideration.

190. Accordingly, I recommend that the Commission adopt these Findings and Recommendations and approve the Settlement, confirming that the Settlement rates can be placed into effect as of the date stated in the Commission Order. Such approved rates and tariff revisions shall remain effective until changed by further Commission Order.

Respectfully submitted,



Mark Lawrence
Senior Hearing Examiner

Dated: July 23, 2018

EXHIBIT "2"

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) PSC DOCKET NO. 17-0977
RATES AND MISCELLANEOUS TARIFF)
CHANGES)
(Filed AUGUST 17, 2017)

ORDER NO. 9248

AND NOW, this ___ day of _____, 2018

WHEREAS, on August 17, 2017, Delmarva Power & Light Company ("Delmarva" or the "Company") filed with the Delaware Public Service Commission (the "Commission"), an Application (the "Application") to increase electric distribution base rates by \$24,425,436, which Application was docketed as PSC Docket No. 17-0977; and

WHEREAS, on October 18, 2017, the Company amended its Application increasing its proposed revenue requirement to \$31,198,425; and

WHEREAS, on October 18, 2017, due to the Tax Cuts and Jobs Act of 2017, and its impact upon the Company's earnings, rate base and ratemaking adjustments, the Company amended its Application decreasing its proposed revenue requirement to \$12,603,795; and

WHEREAS, on May 11, 2018, in its Rebuttal Testimony, the Company reduced its proposed revenue requirement to \$10,863,284 due to updates to earnings, rate base impacts, and a number of rate making adjustments; and

WHEREAS, by Order No. 9108 dated August 17, 2017, the Commission opened this Docket to consider Delmarva's Application; designated Senior

Hearing Examiner Mark Lawrence to conduct any necessary evidentiary hearings and to submit his proposed Findings and Recommendations to the Commission; and authorized Delmarva to implement an annual \$2.5 million increase in intrastate operating revenues effective October 16, 2017, pursuant to 26 Del. C. §306(c); and

WHEREAS, on March 13, 2018, pursuant to PSC Order No. 9195, the Commission permitted Delmarva to implement an additional interim rate increase of \$3.3 million pursuant to 26 Del. C. § 306, which, when added to the \$2.5 million previously approved by the Commission in PSC Order No. 9108, brought the total interim rates in effect and subject to refund with interest under bond to \$5,800,000 in annual revenue; and

WHEREAS, the Commission Staff, the Division of the Public Advocate ("DPA"), the Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Delaware Energy Users Group ("DEUG"), and Representative John Kowalko in his individual capacity (collectively, the "Parties") participated or intervened in the proceedings; and

WHEREAS, an evidentiary hearing was held before Senior Hearing Examiner Lawrence on June 27, 2018; and

WHEREAS, on June 27, 2018, Delmarva, Staff, the DPA and the DEUG (the "Settling Parties") entered into a Settlement Agreement appended hereto as Attachment "A"; and

WHEREAS, neither Intervenor DNREC nor Representative Kowalko submitted testimony in this Docket nor did they sign the Settlement Agreement; and

WHEREAS, on June 27, 2018, Senior Hearing Examiner Lawrence admitted live testimony into evidence by Delmarva, Commission Staff and

DPA to the effect that the proposed Settlement Agreement is in the public interest as required by 26 Del. C. §512(c); and

WHEREAS, although DEUG did not offer testimony at the June 27, 2018 evidentiary hearing, DEUG's counsel provided a statement confirming DEUG's support for approval of the settlement; and

WHEREAS, Senior Hearing Examiner Lawrence issued proposed Findings and Recommendations (the "Hearing Examiner's Report") regarding the Amended Application in which he recommended that the Commission approve the Settlement Agreement; and

WHEREAS, no party filed exceptions to the Hearing Examiner's Report; and

WHEREAS, the Commission met in public session on _____, 2018, to hear oral argument and conduct deliberations on the issues addressed in the Hearing Examiner's Report; and

WHEREAS, the Commission has resolved the issues in this matter as set forth below;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE VOTE OF NO FEWER THAN
THREE COMMISSIONERS:

1. For the reasons identified by the Hearing Examiner in the Hearing Examiner's Report, the Proposed Settlement Agreement, appended hereto as Attachment "A", and the resolutions contained therein are adopted as in the public interest as required by 26 Del. C. § 512(c).

2. That, the Report and Recommendations of the Hearing Examiner, appended hereto as "Attachment B," are hereby adopted.

3. That, consistent with the Proposed Settlement, the revised Rate Design attached as Exhibit "1" to the Proposed Settlement, and the

revised rates and rate structure set forth therein, are approved and shall govern the electric services offered by Delmarva Power & Light Company as described below.

4. That, as a result of the Commission's deliberations referenced above, the Commission hereby approves an overall decrease in Delmarva Power & Light Company's electric distribution rates of \$6,850,000. The Commission also approves a 9.7% Return on Equity.

5. That, the Commission orders that new compliance tariff leaves be developed and filed with the Commission no later than ten (10) days after the issuance of this Order, which tariff leaves shall include the new electric distribution rates and which shall become effective within thirty (30) days after the issuance of this Order.

6. That the Commission reserves the jurisdiction and authority to issue such further Orders as it deems necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary