BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

DELAWARE ASSOCIATION OF ALTERNATIVE ENERGY PROVIDERS,	)	
Complainant,	)	
v.	)	
CHESAPEAKE UTILITIES CORPORATION, A DELAWARE CORPORATION AND REGULATED DELAWARE PUBLIC UTILITY, DIVISION OF THE PUBLIC ADVOCATE, and the DELAWARE PUBLIC SERVICE COMMISSION STAFF,	)	PSC DOCKET NO. 20-0357
Respondents.	)	

ORDER NO. 9635

AND NOW, this 19th day of August 2020:

WHEREAS, on June 10, 2020, the Delaware Association of Alternative Energy Providers ("DAAEP") filed with the Delaware Public Service Commission ("Commission") a complaint ("Complaint") against Chesapeake Utilities Corporation ("Chesapeake"), the Commission Staff ("Staff"), and the Delaware Division of the Public Advocate ("DPA") seeking, among other things, to provide DAAEP with the same right to information in Docket No. 19-0529 as the parties to that docket, to decline to approve the proposed settlement in Docket No. 19-0529, and to find that the Commission lacked subject matter jurisdiction over Chesapeake's Application in Docket No. 19-0529; and

WHEREAS, on or about June 11, 2020, the Commission's Executive Director caused service of the Complaint to be made on Chesapeake, Staff, and the DPA, and directed that they respond to the Complaint within 20 days; and

WHEREAS, on June 17, 2020, the Commission heard testimony from representatives of Chesapeake, Staff, the DPA, and the Hart's Landing Board of Directors, the parties in Docket No. 19-0529, regarding the proposed settlement, including testimony that the proposed settlement was in the public interest and would result in just and reasonable rates; and

WHEREAS, the Commission found that testimony persuasive, and approved the proposed settlement in Order No. 9594 dated June 17, 2020; and

WHEREAS, on June 30, 2020, the DPA and Staff (jointly) and Chesapeake filed motions to dismiss the Complaint (the "Motions"); and

WHEREAS, on July 22, 2020, DAAEP filed a response to the Motions; and

WHEREAS, on August 22 and 23, 2020, the DPA and Staff (jointly) and Chesapeake filed replies to DAAEP's response; and

WHEREAS, the Commission has reviewed the Motions, DAAEP's response, and the replies to DAAEP's response, and on July 29, 2020, heard oral argument on the Motions, the response, and the replies; and

WHEREAS, after public deliberations, the Commission voted to grant the Motions on the determination that the Complaint is moot as stated in the Motions;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. The Motions are GRANTED, and the Complaint is DISMISSED.

2. The Commission adopts the Statement of Facts in the Motions[1] and incorporates them by reference herein.

[1] Delaware Division of The Public Advocate's and The Public Service Commission Staff's Joint Motion To Dismiss Complaint, at ¶¶6-26.

3. The Commission finds, based on these facts, that: (1) DAAEP's Complaint is moot. The Commission has already granted the procedural relief requested in the WHEREFORE clause of DAAEP's Complaint. As to the remaining substantive requests for relief, the Commission approved on June 17, 2020 its final case decision in Docket No. 19-0529, which renders those requests for relief moot.

4. Even if DAAEP's Complaint were not moot, the Commission would dismiss the Complaint because, based on the Superior Court's decision in *Chesapeake Utilities Corp. v. Public Service Commission*, 2017 WL 2480804 (Del. Super. Ct. June 17, 2017), DAAEP lacks standing to obtain the relief it seeks based on its status as a competitor of Chesapeake.

5. Finally, even if DAAEP's Complaint were not moot and DAAEP had standing to assert the claims in its Complaint, the Commission rejects them. First, the Docket No. 07-186 settlement that the Commission approved specifically permits the parties to that settlement to take contrary positions in future cases. Second, that settlement specifically provides that it does not serve as precedent in any future cases. Third, to the extent the settlement is a contract among DAAEP, Chesapeake, the DPA, and Staff, DAAEP has not alleged that it (as opposed to its members) will suffer any damage because of its breach. Finally, we find that DAAEP had knowledge of the schedule for Docket No. 19-0529 because the DPA's counsel provided it to DAAEP's counsel, so DAAEP could have raised all of the claims it asserts in its Complaint in public comments prior to March 6, 2020. Similarly, we find that DAAEP had knowledge of the proposed settlement agreement in Docket No. 19-0529 and of the date that the Commission would consider the proposed settlement because the DPA's counsel provided a copy of the settlement agreement to DAAEP's counsel and informed him of the hearing date more than a month before DAAEP filed its Complaint. DAAEP's Complaint is therefore untimely.

6. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as it deems necessary and appropriate.

BY ORDER OF THE COMMISSION:

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J. Dallas Winslow, Chairman

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Joann T. Conaway, Commissioner

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Harold B. Gray, Commissioner

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Manubhai C. "Mike" Karia, Commissioner

_____
Kim F. Drexler, Commissioner

ATTEST:

_____
Secretary