BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN INCREASE IN ELECTRIC BASE RATES AND MISCELLANEOUS TARIFF CHANGES (FILED DECEMBER 15, 2022)	))))))	PSC DOCKET NO. 22-0897

STAFF'S BRIEF ON EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSED FINDINGS AND RECOMMENDATIONS

ASHBY & GEDDES
James McC. Geddes (#690)
500 Delaware Avenue
P.O. Box 1150
Wilmington DE 19899

Sommer Falgowski Poppe (#6893)
Delaware Department of Justice
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904

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I. CURRENT STAGE OF THE PROCEEDINGS

On December 15, 2022, Delmarva Power (“Delmarva” or the “Company”) filed with the Delaware Public Service Commission (the "Commission") an Application to increase its annual operating revenues by $72,341,417, or a 27.7% increase over existing base rates (the "Application"). If granted in full, this initial request would have increased a typical residential customer's monthly bill (using 844 kWh) by $10.41 (8.35%).

On September 29, 2023, in its Rebuttal Testimony, the Company reduced its requested rate increase to $53,744,356, based on twelve months of actual data for the test period ending June 30, 2023.[1]

On November 22, 2023, a proposed Settlement Agreement was circulated that was agreed to by Delmarva, the Division of the Public Advocate (“DPA”), Delaware Energy User’s Group (“DEUG”), Walmart, and the Weldin Farms Homeowners. It was subsequently agreed to by Local Union 1238 of the International Brotherhood of Electrical Workers (“IBEW”). Commission Staff did not join in the Settlement Agreement.

On December 4, 2023, an evidentiary hearing was held before the Hearing Examiner at the Commission’s office in Dover. At the evidentiary hearing, the Company, DPA, and the Weldin Farms homeowners proffered a total of four (4) witnesses who testified as to why the proposed Settlement Agreement is in the public interest. Additionally, DEUG, IBEW and Walmart proffered a total of three (3) statements from respective Counsel on the record as to why the proposed

[1] The Company filed its Application with 3 months of actual data and 9 months of projected data. The Company subsequently made three updates to its revenue requirement. The Company’s initial Application rate increase, as well as the three updates, are as follows: $72,341.417 (Application- 1Q); $60,671,518 (2Q); $55,546,586 (3Q); and, finally, to $53,744,356 (4Q).

Settlement Agreement is in the public interest. Commission Staff proffered a total of four (4) witnesses who testified as to why the proposed Settlement Agreement is not in the public interest.

II. OVERVIEW OF THE HEARING EXAMINER'S FINDINGS AND RECOMMENDATIONS

On February 29, 2024, the Hearing Examiner issued the Findings and Recommendation of the Hearing Examiner (the "Hearing Examiners Report"), finding that the Settlement Agreement was in the public interest and recommending approval by the Commission.

Commission Staff disagrees with the Hearing Examiner's determination and files these exceptions for the Commission's consideration. These exceptions argue that the Settlement Agreement is not in the public interest and deviates from established Commission precedent.

III. EXCEPTIONS

On August 18, 2023, Staff filed testimony, in this proceeding supporting a revenue increase of $36.155 million over current rates.[2] **Staff's proposed adjustments to the Company's requested revenue increase of $55.547 million are based on Commission precedent established in prior cases involving Delmarva**. In analyzing the Settlement Agreement that this Commission is now being asked to approve, Staff did not believe it was proper to *sua sponte* compromise previous Commission policy positions, and therefore potentially disrupt Commission precedent to agree to the Settlement Agreement's proposed rate increase. Commission Staff works for the Commission. It follows therefore that Commission precedent serves as a central consideration for all of Staff's decisions.

Staff's testimony supporting a $36.155 million revenue increase is consistent with established Commission precedent on these issues. Accordingly, without compromising these

[2] Staff's revenue increase was based on Delmarva's 9 months of actual data, 3 months of forecasted data.

well-established principles that the Commission has itself decided, Staff cannot support the proposed revenue increase included in the Settlement Agreement. If the Commission wishes to depart from its precedent, that decision should come directly from the Commission, not from Staff.

A. STAFF EXCEPTS TO THE PROPOSED REVENUE REQUIREMENT OF $42.250 MILLION AS REFLECTED IN THE SETTLEMENT AGREEMENT.

Staff does not believe the proposed revenue increase of $42.250 million is in the public interest, nor consistent with prior Commission decisions. As explained below, when the Company's proposed rate increase is appropriately adjusted to reflect precedent established by this Commission, the resulting rate increase is $36.3 million, *not* $42.250 million.

In evaluating the Settlement Agreement, Staff re-calculated its position taken in its Direct Testimony in a manner that utilized the most current data available and that was also consistent with Commission precedent. The revised calculation resulted in a proposed revenue increase of $36.3 million.

Specifically, Staff performed the following steps to revise the $36.155 million revenue requirement in its direct testimony to $36.3 million:

(1) Replaced three months of forecasted data that was used to derive Staff's direct testimony with actual data;

(2) Utilized Delmarva's current ROE of 9.6%; and

(3) Modified the Company's proposed ratemaking adjustments for only those items that were clearly inconsistent with Commission precedent.

The Settlement Agreement's revenue requirement of $42.25 million significantly exceeds the $36.3 million justified by Commission precedent and PSC Staff calculations. This discrepancy of approximately $6 million is completely unjustified, and, if approved, would result in rates that

are above that required for safe and reliable service. While the Settlement Agreement revenue requirement figure is "black-boxed," (*i.e.*, a clear breakdown of how the Settlement Agreement arrives at the $42.25 million revenue increase is not provided) achieving this rate increase would require the Commission to abandon its established precedent on key issues, including allowing the Company to utilize a year-end rate base instead of the typical average rate base, allowing non-labor operation and maintenance (O&M) inflation adjustments, and accepting speculative wage increases.

The proposed revenue requirement in the Settlement Agreement represents 79% of what the Company was seeking in rates ($53.7 million). When compared to other recent settlements before this Commission, as well as litigated decisions involving this utility, the settlement amount presented is abnormally high with no justification or basis in fact.[3] The proposed revenue requirement represents an extra $6 million that is not necessary for safe and reliable service and provides no benefit to customers. Therefore, the Commission should reject the proposed revenue increase in the Settlement Agreement as unreasonable and not in the public interest.

B. INEFFECTIVE REPRESENTATION OF RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS BY THE DPA.

> *"The role of the Public Advocate is to advocate for the lowest reasonable rates for residential and small commercial utility customers, consistent with a fair distribution of rates and maintaining reliable service."*[4]

The DPA has failed to meet its statutory duty to represent residential and small commercial customers in at least two ways with regard to the provisions included in the Settlement Agreement:

[3] PSC Docket No. 13-115, litigated, 39%
PSC Docket No. 16-0649, settled, 52%
PSC Docket No. 20-0149, litigated, 64%
[4] https://publicadvocate.delaware.gov.

the allocation of costs associated with the customer service audit and how the proposed rate increase will be allocated among rate classes.

The first example of how the DPA failed to meet its statutory duty is that the DPA has negotiated non-quantitative concessions at the expense of customers. For example, the Settlement Agreement calls for a customer service audit to "identify those areas where Delmarva Power is performing effectively and efficiently, and to determine what improvements, if any, can be made in the management and operation of the Company's customer service and related functions."[5] In past cases, when similar concessions were included in a settlement agreement, the settlement agreement often precluded the utility from including the cost of the concession in rates.[6] The Settlement Agreement here contains no such statement. One can only conclude that the Company will charge the cost of the audit to customers – a point Delmarva did not refute during the evidentiary hearing.[7]

Operational efficiency and effectiveness should be a minimum standard the Commission expects of any regulated utility; making customers pay for the privilege adds insult to injury. The Commission should order that if the audit of the Company's customer service-related functions takes place, the costs associated with such audit are not recoverable in rates.

The second example of how the DPA failed in its statutory duty concerns how the rate increase will be allocated to and among the various customer classes. The Settlement Agreement unfairly burdens the Small General Service class to the benefit of larger commercial customers. Small General Service customers are primarily small businesses. The Settlement Agreement would have Small General Service customers pay over twice the required return needed for the service

[5] HER at 28.
[6] PSC Docket No. 20-0150, Settlement dated September 12, 2022, filed September 21, 2022.
[7] Tr. at 168-170

they receive, effectively subsidizing the larger commercial and industrial customers. Simply put, that is not fair. Recognizing this unfairness, Staff's recommendation holds Small General Service rates at current levels (no increase) which still produces a subsidy paid by those customers, but at a lower unitized rate of return (ROR) of 1.75, rather than the 2.18 unitized ROR proposed by the Settlement Agreement.

Furthermore, the Settlement Agreement also provides that the Street Lighting class (which is primarily State and municipal government customers and therefore paid for by taxpayers) is to pay more than necessary for the service received—thus, *again*—providing for an unfair subsidization of other rate classes. This Settlement Agreement subsidization allotment burdens the taxpayers of the State and municipal governments. It is inappropriate to expect Street Lighting customers to pay excess rates for the benefit of other classes, and even more so because the Street Lighting class is a public service founded on safety concerns. Staff believes this is exploiting the Street Lighting class, which is why Staff recommended no rate increase for this class. Instead, the Settlement Agreement's proposes to exacerbate the subsidies paid by Street Lighting despite the fact that these customers are already paying more than their cost of service.

While large commercial customers were represented in this docket by DEUG, small commercial customers had no such representation — except for the DPA. 29 *Del. C.* § 8716 provides that the Public Advocate shall have the power and duty "[t]o advocate the lowest reasonable rates for consumers consistent with the maintenance of adequate utility service and consistent with an equitable distribution of rates among all classes of consumers; **provided, however that the Public Advocate shall principally advocate on behalf of residential and small commercial consumers**." (*emphasis added*)

29 *Del. C.* § 8716 was amended in 2013 to specifically clarify that the DPA is to advocate for small commercial customers in addition to residential customers. The DPA did not do so in this Settlement Agreement. Accordingly, the Commission should either reject the Settlement Agreement, or amend it to more fairly allocate costs between rate classes.

C. SIGNIFICANT STORM EXPENSE RIDER

Staff takes exception to the new Significant Storm Expense Rider ("SSER") in the Settlement Agreement. Historically the Commission has addressed storm damage expense for this utility by using a 3-year normalization to smooth out the year-to-year variations in the expense level. As provided in the Hearing Examiner's Report, this normalization approach has addressed the variation in expense levels (including the abnormal year of 2020). As shown below, over the last 12 years, the Company has recovered $4 million more in expense than it has incurred using the Commission approved normalization procedure.[8]

Table 9 – Actual Storm Expense Verses Storm Expense in Customer Rates

Year	DPL Actual Storm Expenses ($M)	Storm $ in Rates ($M)	DPL Net Recovery Position ($M)
2010	9.0	7.1	(1.9)
2011	12.7	7.1	(5.6)
2012	12.0	9.3	(2.7)
2013	0.4	9.3	8.9
2014	1.6	11.2	9.6
2015	1.7	11.2	9.5
2016	2.2	11.2	9.0
2017	5.1	1.2	(3.9)
2018	4.9	3.0	(1.9)
2019	3.7	3.0	(0.7)
2020	21.6	3.0	(18.6)
2021	2.7	4.6	1.9
2022	4.8	4.6	0.4
Total	81.8	85.8	4.0

[8] HER at 72.

As Staff pointed out, the SSER's structure may unintentionally incentivize the Company to overspend on storm damage recovery, as costs are essentially guaranteed for recovery. Furthermore, if a storm is "significant" enough such that the related expense exceeds $15 million, the Settlement Agreement allows the Company to earn a return on the unamortized balance. Essentially guaranteeing recovery of these costs and earning a return on unamortized balances further reduces Delmarva's operational risk.

In addition, there is no proposed offsetting reduction in rate of return in the Settlement Agreement for adoption of this tariff change. The rider effectively guarantees recovery for storm expenses, which reduces the company's risk profile, without a corresponding decrease in its ROE.

A further concern with the implementation of the SSER as proposed in the Settlement Agreement is the potential for over recovery of storm damage expenses. There is already a level of storm damage expense embedded in rates, over $9 million, which is calculated using the Commission precedential method of a 3-year normalization. To add an additional recovery mechanism for storm damage expense gives significant rise to the concern of over recovery of storm damage expenses.

Finally, as Staff pointed out, a new rider such as the SSER has many implications, which require it to be analyzed and reviewed in a separate proceeding so the full ramifications of adopting such a proposal can be fully vetted.[9] The Commission must reject the inclusion of the rider in the Settlement Agreement, or if it is included the Commission — at a minimum — must consider reducing the Company's ROE below its current level of 9.6 %.

[9] Tr. at 229-230; 331-334.

IV. CONCLUSION

Staff urges the Commission to reject the proposed Settlement Agreement. Specific provisions, including the revenue requirement, cost allocation among classes, and adoption of the SSER, fail to align with Commission precedent and are not in the public interest.

- **Revenue Requirement:** The proposed revenue increase of $42.25 million significantly exceeds the $36.3 million justified by Commission precedent and PSC Staff calculations. Approving such an increase would deviate from established standards and potentially harm ratepayers.
- **DPA Representation:** The DPA has failed in its statutory duty to protect residential and small commercial customers. The proposed cost allocation unfairly burdens the Small General Service and Street Lighting classes, effectively subsidizing larger customers. Additionally, the lack of safeguards regarding the proposed customer service audit creates the potential for customers to pay for improvements that should be a baseline expectation of Delmarva.
- **SSER:** Adoption of the SSER as proposed could lead to over recovery of storm damage expenses. It would also fundamentally shift risk away from Delmarva and its shareholders to ratepayers. Sound regulatory policy dictates that such risk reduction warrants a corresponding adjustment to the authorized ROE. Failure to include this adjustment in the Settlement Agreement is unjustified.

To prioritize balancing of ratepayer and shareholder interests, and to uphold regulatory consistency, the Commission must reject the Settlement Agreement. Staff recommends the Commission either direct parties to renegotiate the Settlement Agreement with Staff's exceptions as a basis or proceed to a full hearing on the merits of Delmarva's application.

Respectfully submitted,

/s/ James McC. Geddes
James McC. Geddes (#690)
Ashby & Geddes
500 Delaware Avenue
P.O. Box 1150
Wilmington DE 19899

/s/ Sommer Falgowski Poppe
Sommer Falgowski Poppe (#6893)
Delaware Department of Justice
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Counsel for Staff of the Delaware Public
Service Commission

Dated: March 25, 2024

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DELMARVA POWER & LIGHT COMPANY FOR	)	**PSC DOCKET NO. 22-0897**
AN INCREASE IN ELECTRIC BASE RATES	)	
(Filed December 15, 2022)	)	

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2024, I caused a copy of the attached STAFF'S BRIEF ON EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSED FINDINGS AND RECOMMENDATIONS to be served on the following persons by electronic mail.

Clark M. Stalker, Esq.	clark.stalker@exeloncorp.com
Dawn Kurtz Crompton, Esq.	dawn.crompton@exeloncorp.com
Brian T.N. Jordan, Esq.	brian.jordan@exeloncorp.com
Pamela J. Scott, Esq.	pam.scott@saul.com
Courtney L. Schultz, Esq.	courtney.schultz@saul.com
Diane Goff	diane.goff@pepcoholdings.com
Robert Grant	robert.grant@pepcoholdings.com
Kristin McEvoy	kristin.mcevoy@pepcoholdings.com
Pamela Long	pamela.long@pepcoholdings.com
Kelly Showalter	kelly.showalter@pepcoholdings.com
Matthew Hartigan	matthew.hartigan@delaware.gov
Malika Davis	malika.davis@delaware.gov
Joshua Bowman	joshua.bowman@delaware.gov
Lisa Driggins	lisa.driggins@delaware.gov
Islah Causey	islah.causey@delaware.gov
Donna Nickerson	donna.nickerson@delaware.gov
Tymone Banks	tymone.banks@delaware.gov
Samantha Hajek	samantha.hajek@delaware.gov
Larry Blank	lb@tahoeconomics.com
Jeryn Fernholz	jfernholz@polkvine.com
Ryan Pfaff	rpfaff@polkvine.com
Maureen Reno	mreno@reno-energy.com
Ruth Ann Price	ruth.price@delaware.gov
Andrea Maucher	andrea.maucher@delaware.gov
Glenn A. Watkins	watkinsg@tai-econ.com
Gregory Booth, P.E.	gboothpe@gmail.com
David Garrett	dgarrett@resolveuc.com
Skip Walker	swalker@ibew1238.org
David Bernstein	dbernstein@rlsassociates.com

Anthony LaTorella	dontcallmetony@gmail.com
Steven Lee, Esq.	slee@spilmanlaw.com
Paul Mann	espkmann@msn.com
Barry Naum, Esq.	bnaum@spilmanlaw.com
Timothy McCormick, Esq.	tmccormick@cblaw.com
Christian Tucker, Esq.	ctucker@cblaw.com
Michael Busenkell, Esq.	mbusenkell@gsbblaw.com
Ryan Browning, Esq.	rbrowning@mgmlaw.com
Nicholas Enoch, Esq.	nick@lubinandenoch.com
Mary Graham, Esq.	bfmembermg@protonmail.com
Frank Noyes, Esq.	fnoyes@offitjurman.com
Regina Iorii, Esq.	regina.iorii@delaware.gov
Daniel Haas	danielhaas38@gmail.com

/s/ James McC. Geddes
James McC. Geddes (#690)
Ashby & Geddes
500 Delaware Avenue
P.O. Box 1150
Wilmington, DE 19899
302-654-1888 ext. 230 (telephone)
302-438-9500 (cell phone)
jamesgeddes@mac.com

and

/s/ Sommer Falgowski Poppe
Sommer Falgowski Poppe (#6893)
Delaware Department of Justice
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Dated: March 25, 2024

Counsel for Staff of the Delaware Public Service Commission