BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF	)	
THE DIVISION OF THE PUBLIC ADVOCATE	)	DOCKET NO. 26-XXXX
FOR THE OPENING OF A DOCKET TO	)	
INVESTIGATE RETURN ON EQUITY AND	)	
POTENTIAL REFORMS	)	

PETITION OF THE DIVISION OF THE PUBLIC ADVOCATE TO OPEN A DOCKET TO INVESTIGATE REGULATED UTILITY RETURN ON EQUITY (PROFIT), IMPACTS ON RATEPAYERS, AND POTENTIAL REFORMS TO RETURN ON EQUITY DETERMINATIONS

The Delaware Division of the Public Advocate ("DPA") respectfully petitions the Delaware Public Service Commission ("Commission") to open an expedited investigatory docket to examine Delaware's method of determining return on equity ("ROE"), and whether returns on equity being paid by utility customers to Delaware's regulated utilities are in excess of the cost of capital and represent a windfall to shareholders at the expense of ratepayers. DPA urges the Commission to examine the relationship between ROE and the actual cost of capital for regulated investor-owned utilities and to evaluate potential regulatory and/or statutory reforms to ensure that the rates paid by customers of regulated utilities are just and reasonable and are developed using only the return on equity necessary to attract capital under prevailing market conditions. In support thereof, the DPA states the following:

1. The Commission has broad authority to "investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility."[1]

[1] 26 *Del. C.* § 206.

Just and Reasonable Return on Equity

2. A utility's total return is based on two components, return on equity and return on debt, with the rates of each and the ratio of debt to equity forming the total rate of return. Return on debt should match the utility's cost of borrowing. Return on equity is in Delaware, and in most states, set by the Commission.

3. A return on equity authorized above the minimum cost of capital necessary to attract capital investment results in charges to ratepayers that are unjust and unreasonable. The seminal U.S. Supreme Court cases of *Hope* and *Bluefield* established the basic framework upon which utility returns have developed. A "just and reasonable" rate need only be sufficient to recover the actual and prudent costs of providing service—including a fair return on invested capital.[2] Regulated investor-owned utilities ("IOUs") may earn a return on their equity sufficient to attract capital under prevailing market conditions—the market-based cost of capital—but are entitled to no more.

4. Rates based upon a cost of equity set above the market-based cost of capital are not just or reasonable because they provide a windfall to shareholders at the expense of utility customers. A utility's return must be "adequate" and "sufficient," that is all. In *Bluefield* the Supreme Court concluded a utility is entitled to earn "a return *reasonably sufficient* to assure confidence in the financial soundness of the utility" and "*adequate*, under efficient and economical management, to maintain and support its credit" and to attract capital.[3] In *Hope*, the

[2] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).
[3] *Bluefield*, 262 U.S. at 693 (emphasis added).

Court similarly held that the return must be "*sufficient* to assure confidence in the financial integrity of the enterprise."[4]

5. Regulation serves as an essential check on the power granted to utilities from the State to act as true monopolies.[5] Delaware has sanctioned private, for-profit monopolies to provide safe, adequate, and reliable service at just and reasonable rates. These IOUs operate free from any competition within their service territory. In return, the IOUs are to deliver service in accordance with State law and are subject to the Commission's jurisdiction. In the absence of a competitive market, a monopolist has incentives to charge higher prices resulting in a transfer of wealth from consumers to itself.[6] Effective price regulation recognizes that IOUs are entitled to a reasonable opportunity to earn a fair return on their invested capital, but ratepayers should not bear costs that exceed the level necessary to attract capital under prevailing market conditions.

6. Delaware ratepayers cannot afford rates based on equity returns higher than the minimum needed to be "adequate" and "sufficient," the windfall such rates provide to investors at the expense of ratepayers, nor the economic incentive they create to over invest in infrastructure.

Evidence of Misalignment Between Authorized ROE and Actual Cost of Equity

7. Delaware utility customers are likely paying rates that are unjust and unreasonable because authorized ROEs nationwide likely exceed the IOUs' actual market-based cost of capital **by 50% or more**, and it appears the same may be true in Delaware.

8. ROEs nationwide frequently exceed a utility's true market-based cost of equity, as confirmed by Wall Street forecasts. No major asset managers or investment banks project long-

[4] *Hope*, 320 U.S. at 603 (emphasis added).
[5] *See, e.g.,* Stephen Breyer, Regulation and its Reform, Harvard College, 1982, p. 8, *et seq*.
[6] *See id.*

term returns reaching 9% for broad indexes of all U.S. equities and most cluster below 7%.[7] This concept is further supported by analyses from the Rocky Mountain Institute ("RMI") and the American Economic Liberties Project ("AELP"), which demonstrate excessive returns increase utility rates directly.[8] Importantly, rewarding additional capital investment at above-market returns, i.e. the capital bias, also encourages excessive rate base growth through capital spending, creating a cycle of rate increase requests.

9. As an example, in its current electric distribution rate case, filed in December 2025, Delmarva Power & Light ("DP&L") is seeking a ROE **above** the highest estimate of long-term returns of any Wall Street firm surveyed in the AELP report (among dozens used in that analysis).[9] As monopolies, IOUs are not entitled to and should not receive profits similar to that of "highly profitable enterprises or speculative ventures."[10] Rather, monopoly utilities face significantly lower risk than the broader market as a whole, and thus the cost of equity should be below the range of more risky entities.[11] Despite this, in its pending electric base-rate case DP&L seeks a 10.5% ROE.[12] Regardless of what was appropriate in the past, in *Bluefield* the Supreme Court reasoned "a rate of return may be reasonable at one time" but that market and business conditions could change that reasonableness.[13]

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[7] American Economic Liberties Project, Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities from Overcharging the Public (January 2025), available at https://www.economicliberties.us/wp-content/uploads/2026/04/20250102-aelp-ror-v6.pdf (hereinafter "AELP Report") at 7.
[8] *See* RMI Report, AELP Report.
[9] AELP Report at 7.
[10] *Bluefield* at 692-93; *accord, Hope*, 320 U.S. at 603.
[11] AELP Report at 7.
[12] DP&L's last approved electric distribution base-rate case authorized a 9.6% ROE. *See* PSC Docket No. 22-0897 (settlement approved Apr. 2024). DP&L's pending electric base-rate requests a 10.5% ROE. *See* Docket No. 25-1555, application filed December 9, 2025,
[13] *Bluefield*, 262 U.S. at 693.

10. Stock market investor behavior also indicates that DP&L's pending rate case ROE is roughly 50% above average estimated long-term return for the market.[14] In general, a monopolistic utility earning a return on equity equal to its cost of capital should trade at approximately book value.[15] Yet Exelon, DP&L's corporate parent, trades approximately 60% higher than book value.[16] The premium above book value is direct economic evidence that the authorized returns granted to the IOUs owned by Exelon, including DP&L, substantially exceed what investors require.

11. Numerous risk-shifting mechanisms exacerbate this. The rate of return granted to a regulated utility is intended to capture the risk borne by investors that the utility's future cash flow may differ from what was anticipated at the time of investment.[17] This risk is demonstrably reduced when a state, through legislation, regulation, or Commission order allows for contemporaneous cost recovery mechanisms, including riders and Delaware's distribution system improvement charge ("DSIC"). Yet ROE for Delaware IOUs has not decreased in line with these or other risk reduction measures, leaving Delaware customers subject to higher rates and greater risk that the utility will overinvest.

Customer Impacts and Ratepayer Harm

12. Just and reasonable rates necessarily involve a balance of investor and consumer interests.[18] Approximately one quarter of U.S. households have been unable to pay their utility bill in full at least once over the past twelve months.[19] That fact is not surprising, because

[14] AELP Report at 7.
[15] AELP Report at 6.
[16] AELP Report at 6.
[17] Tim Koller, Marc Goedhart, and David Wessels, Valuation (5th ed.), Wiley, 2010, p. 35.
[18] *Hope*, 320 U.S. at 603.
[19] AELP Report at 2.

nationwide the residential rates charged by electric IOUs have increased by nearly 50 percent more than the rate of inflation over the last three years, while publicly owned (ex. cooperative and municipal) utility rate increases have been well below the rate of inflation.[20] IOUs requested a record $31 billion in rate increases during 2025 alone—double the prior year. There are no indications that this is slowing in 2026, as utilities filed $9.4 billion in rate increase requests in the first quarter alone.[21] Delaware is in no way immune from increases in excess of inflation. All of Delaware's major IOUs (electric, gas, and water) have been in for rate increases within the last two years and Delaware's electric IOU has filed for increases roughly every 2-3 years since 2009, and its current rate increase request sets the record for the largest rate case in Delaware history. Notably, the amounts paid by Delaware's electric IOU customers now significantly exceed what a customer with similar usage would be charged by Delaware's one electric co-operative, the Delaware Electric Co-op.

13. Excess ROE directly increases Delaware customer bills in several ways, including the direct cost of the profit margin, the increased income taxes paid on this margin that are ultimately paid by ratepayers, and the incentive to overinvest in capital.

14. The direct cost of those profit margins. Research from the Energy and Policy Institute shows that in total 11.4% of a DP&L electric customer's bill goes to paying ROE, i.e. profit.[22] The portion of ROE above actual cost of capital is unjustified.

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[20] *Id*.
[21] PowerLines, "Utility Bills are Rising: Q1 2026," (May 2026), p. 5, available at: https://powerlines.org/wp-content/uploads/2026/05/0511_PowerLines_Rising-Utility-Bills-Q1-2026.pdf.
[22] How Ratepayers Pay for Soaring Utility Profits, Energy And Policy Institute, available at https://energyandpolicy.org/utility-profit-report/. Individual utility data available at https://energyandpolicy.org/utilityprofittracker/

15. Increased income taxes paid for the benefit of the utility and its shareholders on the higher income taxes. IOUs recover income taxes paid through customer rates; therefore, an increased ROE resulting in additional corporate profit also raises corporate income taxes paid, which utility customers then pay. Thus, higher ROEs that drive higher corporate income tax payments will result in higher bills for Delaware customers.

16. The Averch-Johnson effect, which describes how excessive rates of return on equity incentivize utilities to overinvest in capital assets. Nationwide, reporting indicates that electric IOUs nationwide are proposing to spend at least $1.4 trillion through 2030 on capital expenditures (CapEx), a spend rate that is increasing substantially.[23] Excessive ROE "incentivizes the utility to solve problems such as growing demand for electricity with system-expanding CapEx instead of other cost-effective solutions like energy efficiency."[24]

17. This effect is consistent with what we see in Delaware. According to DP&L's Infrastructure, Safety, and Reliability ("ISR") Plan filings, its annual CapEx more than doubled from an average of less than $70 million in 2018 and 2019 to $176.2 million in 2025. Non-mandatory spending[25] (a category of overall CapEx detailed in the ISR filings) has increased even more drastically, almost quadrupling from an average of $24 million in 2018 and 2019 to $81 million in 2025 (and was forecast to continue, spiking to a projected $120.0 million in 2028 if not for the cost controls imposed by Senate Bill 326, passed and signed in 2026). This

[23] PowerLines, Utility Spending is Rising: A Review of Utility Capital Expenditure Plans (April 2026), at 4, available at https://powerlines.org/wp-content/uploads/2026/04/0413_PowerLines-CapEx-Report.pdf.
[24] RMI, "Rebalancing 'Return on Equity' to Accelerate an Affordable Clean Energy Future" (Feb. 21, 2025), available at: https://rmi.org/resources/rebalancing-return-on-equity-to-accelerate-an-affordable-clean-energy-future/ (hereinafter "RMI Report").
[25] Non-mandatory spending is CapEx spending that excludes vegetation management, inspection and maintenance, new business and new customers, facility relocations, statutory and regulatory requirements, and emergency failures. 26 *Del. C.* § 1008(a)(1).

spending is entirely out of proportion with inflation, which from 2018-2025 was in total approximately 30% over the period, a small fraction of DP&L's increase in spending.

18. Historically, there has been a strong correlation between utility CapEx and rate increase requests,[26] and that trend is also evident in Delaware. DP&L has filed distribution electric rate cases every 2-3 years and its residential distribution rates rose 105% from 2006 to 2025.[27] Between filing its last rate case (filed in late 2022 and finalized in 2024) and its current rate case (filed in late 2025), based on data from the rate case, DP&L's net plant-in-service has grown by 31% over just three years, totally out of proportion with growth in customer base (2.8% total, or less than 1% per year) or sales in kWh (0.3% total increase over the three year period) or PJM's projections of future load growth (0.0% annual summer peak load growth and 0.1% annual winter peak load growth through 2035).[28]

19. These all translate into a cycle of perpetually increasing electric distribution rates. During a period of elevated electric supply rates and significant increases in the cost of other goods and services, more and more customers are becoming less able to afford their utility bills without making sacrifices in other areas, such as food and medicine.

20. Excessive utility returns translate to a substantial burden upon ratepayers. Across the country, utilities earn excess profits that go beyond their entitled reasonable returns,

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[26] PowerLines, Utility Spending is Rising: A Review of Utility Capital Expenditure Plans (April 2026), at 5, available at https://powerlines.org/wp-content/uploads/2026/04/0413_PowerLines-CapEx-Report.pdf.

[27] *See* Delaware Division of the Public Advocate, Historical Review of Delmarva Power Electric Residential Rates, April 6, 2026, available at https://publicadvocate.delaware.gov/historical-review-of-delmarva-power-electric-residential-rates/

[28] PJM Interconnection, 2025 Delaware State Infrastructure Report (June 2026), at 21, available at https://www.pjm.com/-/media/DotCom/library/reports-notices/state-specific-reports/2025/delaware.pdf.

amounting to approximately $300 extra per household annually.[29] Soaring rates place a growing share of households at risk of service disconnection; in 2024, almost 31,000 residential customers in Delaware experienced disconnection of their electricity service.[30] Businesses are also impacted, as high rates disadvantage them relative to competitors based elsewhere.

Transmission ROE Adder

21. Federal Energy Regulatory Commission ("FERC") has allowed an incentive in the form of an adder to transmission ROE for transmission utilities that voluntarily join a regional transmission organization ("RTO") or independent system operator ("ISO"). The RTO participation adder adds 0.5% (50 basis points) to a utility's base transmission ROE for being a member of an RTO or ISO. DP&L currently receives this 0.5% adder on its transmission ROE for being a member of PJM.

22. However, FERC requires that a utility's RTO/ISO membership is voluntary in order to qualify for the adder. If state law requires RTO/ISO membership the utility's membership is no longer voluntary and the adder may no longer be appropriate. For example, in Ohio, where membership was mandated, it has been determined that the utility is no longer voluntarily participating in the RTO and the adder is no longer appropriate. Maryland has also acted to make RTO membership mandatory. DP&L currently receives this 0.5% adder to its transmission ROE from by virtue of being a member of PJM Interconnection ("PJM"). Several some states have looked to eliminate that extra ROE by requiring RTO participation. The Commission should investigate whether participation in an RTO should be mandatory for

[29] AELP Report at 9.
[30] U.S. EIA, "2024 Residential Utility Disconnections Report," (April 2026), p. 16, available at: https://www.eia.gov/analysis/requests/residential/utility/pdf/Residential%20Utility%20Disconnections%20Report%20-%20April%202026.pdf.

Delaware's transmission utility and, if appropriate, what the mechanism should be used to eliminate the adder.

The Need for a Commission Investigation

23. The Commission should use the broad authorities under Title 26 to ensure just and reasonable rates and investigate practices affecting ratepayer interests.[31] The Commission may act on its own motion to ensure that rates are just and reasonable, and the public utility bears the burden of proving that any rate is just and reasonable.[32] Additionally, upon application or on its own motion and after notice and hearing, the Commission may consider and adopt alternatives to traditional rate-base, rate-of-return regulation—including "ranges of authorized returns" and the competitive provision of utility products and services—where it determines that such alternatives are in the public interest.[33]

24. Given:

- the evidence of a misalignment between ROE and utility cost of capital;
- the crisis in utility customer affordability and the possibility that ROE set above actual cost of capital is contributing to unjust or unreasonable rates;
- the need for transparency and public trust in the rates paid to utilities, rates which include ROE; and
- the potential need for systemic policy changes

it is necessary to open a docket to conduct a full, transparent investigation of whether historic ROE determination methods are consistent with cost of capital and to consider potential alternatives.

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[31] *See, e.g.,* 26 *Del. C.* § 206.
[32] *See* 26 *Del. C.* §§ 201, 206, 209(a)(1), 307(a).
[33] *See* 26 *Del. C.* § 201(e)(1).

25. Alternatives evaluated as part of this investigation should include:

- competitive equity auction to determine market-based cost of equity;
- reforms to the current expert witness-based approach to ensure appropriate model inputs;
- a formulaic ROE providing a premium above the 10-Year Treasury risk free rate that reflects the low risk of utilities in comparison to competitive companies; and
- a policy that considers downward adjustments to the authorized ROE to account for mechanisms enacted by the legislature or regulatory body that shift risk from IOU shareholders to Delaware customers.

26. Multiple jurisdictions are pursuing potential reforms to IOU ROE reform. Legislation has been introduced in various states, including in Pennsylvania, New Jersey, and New York to where legislation proposes a competitive approach to utility capital. The Pennsylvania House unanimously passed its ROE reform bill on June 22, 2026, which would provide a "safe harbor" ROE rate tied to the U.S. treasury rate plus 2 percent (which, even after recent increases in treasury rates, would be approximately 7.3%, or allow the IOUs to pursue a competitive auction approach that allows the market to determine the appropriate cost of equity.[34] The governors of at least New Jersey and Pennsylvania have called for changes to utility ROE and the Indiana Utility Regulatory Commission is conducting an investigation of ROE. Delaware should join those jurisdictions in investigating potential ROE reforms to ensure just and reasonable rates.

[34] Rep. Elizabeth Fiedler, "PA House unanimously passes bill that would reduce utility bills, limit shareholder profits" (June 22, 2026), available at: https://www.pahouse.com/Fiedler/InTheNews/NewsRelease/?id=144134.

27. Delaware ratepayers need relief now. Because of the time necessary to implement regulatory or statutory reform, this investigation should be conducted on an expedited basis to ensure reforms are in place within the next year.

WHEREFORE, the Division of the Public Advocate respectfully requests that the Commission:

1. **Open a docket** to investigate whether authorized returns on equity reflect actual utility cost of capital and potential alternative mechanisms for determining appropriate return on equity, including market-based mechanisms.
2. **Conduct hearings** with expert witnesses, stakeholders, and other interested parties.
3. **Develop findings and recommendations** for Commission action and, if necessary, legislative reform.
4. **Ensure that any resulting reforms** are implemented in a manner that protects ratepayers while providing utilities with a fair opportunity to attract capital.

5. REQUEST FOR EXPEDITED TREATMENT

The Division of the Public Advocate respectfully requests expedited treatment of this Petition. The issues raised by this petition directly affect the affordability of essential utility service for Delaware households and small businesses. Authorized returns on equity that exceed the actual cost of capital impose immediate and ongoing financial burdens on ratepayers, particularly during a period of heightened energy affordability concerns. Delay in opening this investigation risks prolonging unjust and unreasonable rates and undermining the Commission's statutory obligation to ensure that utility charges reflect only prudent costs and a fair, but not excessive, return. Expedited consideration is further warranted to allow sufficient time for the Commission,

stakeholders, and the General Assembly to evaluate potential reforms and, if necessary, enact statutory changes during the 2027 legislative session.

Respectfully submitted,

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