DPA
Delaware Division of the Public Advocate

Division of the Public Advocate

2017 Annual Report

DIVISION OF THE PUBLIC ADVOCATE

January 9, 2018
Andrew C. Slater
Public Advocate

State of Delaware
Department of State
Division of the Public Advocate

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Annual Report

January 9, 2018

VIA ELECTRONIC MAIL

The Honorable John C. Carney, Jr.
Governor
State of Delaware
Tatnall Building
150 Martin Luther King, Jr. Boulevard South
Dover, DE 19901

Re: Annual Report of the Division of the Public Advocate

Dear Governor Carney:

Thank you for the opportunity to serve as the Public Advocate and to provide the Division of the Public Advocate's (DPA) 2017 Annual Report. It has been a whirlwind year for the DPA, and our staff, and we are delighted to highlight some of our accomplishments and set a framework for the busy year ahead.

We began this year with an evaluation of our current community outreach and engagement and discussing Artificial Island. We ended the year discussing PJM market pricing, coal and nuclear subsidies, and the overall potential "tornado" of wholesale market pricing activity in the coming year.

While these policy and stakeholder discussions are ongoing, we continue to address consumer concerns having received almost 1,000 consumer contacts. Acknowledging that a majority of these interactions have been for financial assistance with utility bills, we continuously look for ways to improve our consumer relations.

Thank you again for the opportunity to serve as the Public Advocate for our state. The DPA looks forward to working with you to ensure consumer's voices are heard, costs are considered, and valuable consumer protections are in place.

Sincerely,

/s/ Andrew Slater
Public Advocate

Agency History

The Division of the Public Advocate (DPA) was created in 1978 pursuant to the enactment of Senate Bill 643, and in response to public outcry over steadily and sharply increasing utility rates. In establishing the DPA, the General Assembly charged the Public Advocate with representing consumer interests whenever PSC-regulated utility companies seek changes in the delivery of services or changes in rates for electric distribution, natural gas supply, water, or wastewater services, or local exchange telephone services. Over the past few years, the DPA has helped save regulated utility consumers more than $50 million in avoided rate increases, program expenses, and additional costs, and has brought important protections to utility customers.

In 2013, the General Assembly amended 29 *Del. C.* Section 8716 to clarify its intent that the DPA is to advocate primarily on behalf of residential and small commercial customers, and that the DPA need not advocate on behalf of large commercial and industrial customers where the Public Advocate determines that these entities have the means to advocate on their own behalf. Beginning with the 149th General Assembly, a four-year term limit will be imposed on the Public Advocate, although the Public Advocate will continue to serve at the pleasure of the Governor. Finally, the advisory role of the Public Advocate has been expanded to permit the Public Advocate to provide guidance to the Governor, the General Assembly or the Secretary of State on matters of energy policy and utility consumers, or other matters.

Agency Mission

The fundamental mission of the DPA is to advocate for 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.

The DPA appears before the Public Service Commission on behalf of the interest of consumers in any matter or proceeding over which the Commission has jurisdiction and in which the Public Advocate deems the interest of consumers requires such participation. The DPA also appears on behalf of the interest of consumers in the courts of Delaware, the federal courts, and federal administrative and regulatory agencies and commissions in matters involving rates, service, and practices of public utilities.

Recognizing the unique role of the DPA, the General Assembly has statutorily appointed the Public Advocate, or his/her designee, to a number of important working groups, councils, and/or committees such as the Sustainable Energy Utility (SEU), Renewable Energy Task Force, and the Water Supply Coordinating Council. In addition to statutory appointments, the DPA also attends the Energy Efficiency Advisory Council meetings as a member of the public.

Community Engagement

One of the most difficult challenges we have, similar to many other agencies, is informing consumers of who we are and how we can assist them. In 2017, the DPA took several steps to try to build more community engagement, including:

New Website - One of our first actions this year was to ask the Government Information Center (GIC) to develop a more user-friendly website that allowed better access to update material. GIC is fantastic and quickly turned around the design used for our webpage. With the update, we have been able to provide our website with news, social media, and other posts to help consumers understand who we are and what we do for them.

Social Media – Almost immediately after setting up our website, the DPA joined social media with a Facebook, and more recently, a Twitter account. Our Facebook page gained 344 followers, which allows us to reach consumers with timely, important, information.

Consumer Complaint Investigations – As part of the 2013 Sunset Review, the DPA receives all initial utility complaints to investigate with the proper utility representatives. In 2017, our office logged close to 1,000 calls and e-mails. These logged calls required additional work on behalf of the consumer, while there were additional calls that did not go reported in the system because the answer was more immediately available.

Delmarva Power Energy Assistance Summit Presenter – The DPA was invited to present at this year's Energy Assistance Summit and greatly appreciated the invitation from Delmarva Power. The DPA spoke of the massive utility arrearages we have seen this year. Some of the largest arrearages were in excess of $60,000 owed to a utility. The DPA proposed an arrearage cap, which would need legislative approval, to cap the arrears of customers at $1,500 in order to help them find financial assistance. While the DPA does not wish to submit this legislation, there is a need to help customers in arrears because once a bill is significantly over $1,500 many non-profits are unable to assist with such high amounts. Significant arrearages also affect customers who do timely pay their bills because of the bad debt amount that is included in utility rates. This dialogue with close to 100 non-profit members was tremendously helpful, and we hope to partner with them in the future on consumer outreach and education.

Arrearage Management Plan – The Pepco/Exelon merger provided almost $3.5 million to create an Arrearage Management Plan (AMP) for Delmarva Power customers. After several meetings, with the involvement of many key stakeholders, such as DHSS and non-profit organizations, a plan was formed and is awaiting action by the PSC. The AMP would allow customers with arrears to enroll in a program where up to $6,000 of their arrears could be forgiven if they pay all of their current charges in 12 of 15 months. While the customer pays their bill, their arrears are frozen for the highest likelihood of success. If a program participant is unable to pay their current charges, without incurring additional monthly arrears, they would be ineligible for the program for seven years. This measure helps ensure the limited funding is used efficiently. We look forward to working with the PSC to institute this merger commitment.

Solar Focus 2017 Panelist – The DPA was asked to participate on a consumer protection panel at Solar Focus 2017 in Washington, D.C. We appreciated being included on this panel and were the only consumer advocate, or regulator, present, which allowed for a unique perspective on consumer protection in the solar industry.

Low Income Home Energy Assistance Program Funding Letter – On April 11, 2017, the DPA sent a letter to our congressional delegation asking that LIHEAP and Weatherization Funding be retained in the President's budget proposal.

Department of Energy Notice of Proposed Rulemaking (DOE NOPR) comments – The DPA, Public Service Commission (PSC), and Department of Natural Resources and Environmental Control (DNREC) collaborated on joint comments to the Federal Energy Regulatory Commission (FERC) regarding the proposed DOE NOPR. The proposal would subsidize coal, and potentially other resources, that are no longer economic or have reached the end of their lifecycle but are deemed too valuable to retire. Of utmost importance is the fact that there is no detail to allow for the estimation of potential costs to ratepayers. There are broad assumptions but no detail on the cost of this proposal to consumers. With thousands of comments made, it is clear that most have similar concerns regarding cost and subsidization of at least coal units at the exclusion of all other resources. In addition, the NOPR has not shown there is a critical need for coal generation beyond what is currently available. Although Winter Storm Grayson required increased electric usage in our area, current generation resources have responded to that demand. In short, Delaware ratepayers would pay for coal generation that it did not need and did not use to subsidize units outside our State. Consequently, the FERC closed this docket on January 8, 2018 and instead opened a new docket to explore ideas relating to grid security and generation resilience.

Rate Cases

On May 17, 2016, Delmarva Power filed electric and natural gas base rate cases. The chart below highlights the requested versus approved amount and the amount avoided through the rate case.

2017	**Delmarva Request**	**PSC Approved (both settled cases)**	**Avoided Increase to Consumers**
Electric	$60,235,194	31,500,000 (52.3%)	28,735,194 (47.7%)
Natural Gas	22,225,874	4,900,000 (22.0%)	17,325,874 (78.0%)

On August 16, 2017, Delmarva Power filed electric and natural gas base rate cases seeking $31,198,425 million and $12,866,033 million respectively. These two cases are ongoing.

Artificial Island

It has been a very busy year of dialogue about Artificial Island, the 240kV line from Hope Creek into Delaware at an estimated cost of $278 million, with more than 90 percent of that amount to be paid by Delmarva Zone ratepayers (the Delmarva Zone includes the eastern shore of Maryland).

On March 3, 2017, the PJM (the electric grid manager for Delaware, 12 other nearby states and the District of Columbia) Transmission Expansion Advisory Committee (TEAC) met to discuss Artificial Island. The DPA attended and asked questions regarding the rate burden this would place on Delaware consumers. Shortly thereafter, the DPA wrote a letter to the PJM Board of Managers continuing to express our concern for ratepayers in our state and asking for additional analysis. After much thought, the PJM Board of Managers agreed to consider whether there were other cost allocation methods that would be fairer to all parties.

On June 9, 2017, PJM provided two additional cost allocation methodologies. These two alternatives would place 6.94 percent and 10.36 percent respectively on Delaware Zone ratepayers as opposed to more than 90 percent under the current allocation. Either of these methodologies would produce significant savings to all Delaware consumers. After receiving these cost allocation methodologies several parties, including the DPA, requested the FERC to reconsider its decision in light of these new methodologies. That request remains pending at FERC. Now that all of the commissioners' positions at FERC have been filled, we hope a decision on the petition for rehearing will be made soon.

While the current FERC-approved cost allocation of Artificial Island fails to allocate the costs of this project to all consumers who will benefit from this new transmission line to the detriment of Delmarva Zone ratepayers, it has provided Delaware with the opportunity to present a united front to PJM and the FERC. In doing so, the DPA has worked with Governor Carney's office, the Federal Delegation, the General Assembly, the PSC, and other intervenors in an effort to press for a more just and reasonable allocation of these costs to Delaware residents.

Renewable Portfolio Standards Cost Cap Calculation

In 2011, the General Assembly required the PSC to promulgate regulations relating to the Renewable Portfolio Standard (RPS) cost caps. On December 7, 2017, the PSC voted to include Qualified Fuel Cell Provider (QFCP/"Bloom") charges as a cost of compliance with the RPS and thus part of the cost cap calculation. Ratepayers pay almost $3,000,000 per month as part of the QFCP charge and this decision by the PSC provides some benefit to ratepayers in knowing that this charge is included under the cost cap provision.

Delaware Offshore Wind Working Group

On August 28, 2017, Governor Carney signed Executive Order 13 creating the Offshore Wind Working Group (OWWG). The DPA is honored to take part in this working group and has made many comments regarding concerns of cost to all rate classes, environmental benefits, and job opportunities. We look forward to continuing this dialogue into the new year.

PJM

The DPA is the only state agency that is a voting member of PJM. In this role, we attend several meetings at PJM weekly regarding a host of issues. This year has been no different.

We have seen several new initiatives from PJM this year, some of which concern the DPA because of the potential cost to consumers of these proposed projects. Two such projects that we have concern about are the Capacity Construct/Public Policy Senior Task Force ("capacity construct") and Price Formation proposals, which could alter the wholesale market price of energy.

Capacity Construct was initiated to investigate ways that potential state public policy initiatives, such as subsidies for coal or nuclear plants, could work within the existing capacity market, which is known as the Reliability Pricing Model (RPM). The DPA attended the capacity construct meetings and believes that protecting the market status quo is the best option. However, if that option is not available, the alternative would be to ensure that the method chosen to accommodate state initiatives would not unreasonably increase prices and would minimize cost leakage from out of state subsidies into Delaware. While there is still a long way to go, with a vote in committee on the IMM's majority approved proposal in January, PJM Staff has said it will move forward with its repricing proposal to the FERC. This is one of several proposals that could be contentious at the FERC next year.

The **Price Formation** conversation began in late 2016 and ramped up this November as a way to address the DOE NOPR. Energy Price Formation was proposed to modify the pricing incentives for resources that participate in PJM's Energy Market in an attempt by PJM to more accurately reflect certain generation resources attributes to serve load. The direct impact is to provide incentives to some coal, nuclear, and natural gas generating units. PJM believes the proposed changes would increase energy and capacity market costs by 2-5 percent while an analyst at Merrill Lynch, a division of Bank of America, believes the changes could result in a $3-$4/MWh increase to the wholesale market. We are concerned about the potential increased costs to consumers and, as Bill Malcolm, Senior Legislative Representative with AARP said, "low prices and a surplus of power are not a problem for consumers."

FERC

As with PJM, it has been a busy year at the FERC. They started the year without a quorum of commissioners; they had two of five, but ended the year with a full complement and a new chair. With a new quorum, the DPA went to Washington, D.C. to introduce ourselves to the new commissioners and begin dialogue on major issues pertinent to our state and region. In addition to Artificial Island, there are two issues the DPA has been involved in before the FERC, which are listed below.

Eastern Shore Natural Gas (ESNG) is an interstate pipeline that provides natural gas transmission (transportation) service from various receipt points located outside Delaware to customers within the State of Delaware and other states. In January 2017, it filed an application with the FERC to increase its transportation rates. Delaware customers would have experienced significant rate increases if the rate design sought in the filing was approved. The DPA intervened in the proceeding to protect the interests of Delaware's ESNG customers. Other ESNG Delaware customers that intervened were Delmarva Power and Light Company, Chesapeake Utilities Corporation (which is ESNG's parent company), Delaware City Refining, Inc., NRG Energy, Inc., Calpine, and Delaware PSC Staff. The Maryland Office of People's Counsel, the Maryland PSC, Elkton Gas, and Easton Utilities also intervened. After several settlement conferences, the parties reached a settlement providing for a $57.2 million cost of service, in contrast to the more than $70 million cost of service that ESNG had proposed. The DPA and Delaware PSC refused to agree to an offer that included a cost of service higher than $57.2 million and ESNG ultimately accepted that offer. While ESNG's transportation rates will increase as a result of this settlement, the DPA's participation saved ESNG's Delaware customers substantial costs. In addition, the settlement includes a provision whereby ESNG must return any overcollection of federal income taxes to ratepayers if, as has now happened, a new federal tax bill is enacted that reduces federal corporate income tax rates.

The Department of Energy's Notice of Proposed Rulemaking (DOE NOPR) entitled the "Grid Resiliency Pricing Rule", proposed on September 28, 2017 by DOE Secretary Perry was terminated by the FERC on January 8, 2018. The DOE NOPR proposed that the FERC "establish just and reasonable rates for wholesale electricity sales…to ensure reliability and resilience attributes of electric generation resources are fully valued." This issue boiled down to determining a mechanism to subsidize coal and nuclear plants at the expense of ratepayers who lived in areas where the grid operated a capacity market. After more than one thousand comments were filed in response to the NOPR, the FERC's January 8th Order specifically found the current Regional Transmission Organization (RTO) and Independent System Operator (ISO) tariffs were not unjust and unreasonable.

Specifically, the NOPR lacked any approximation of costs. To provide a range on the potential costs of this proposal, which would affect only a few RTOS (of which PJM is the largest), several analysts and consultants, including the PJM Independent Market Monitor (IMM), have stated the price per year as somewhere between $300 million and $32 billion as of October 30, 2017. The DPA, PSC, and DNREC submitted joint comments on the DOE NOPR. This again shows the great ability of Delaware agencies to collaborate together (special recognition goes to Joseph DeLosa of PSC Staff for his great work on the DOE NOPR comments).

Noting that grid resilience is an issue of the country's economic and national security, the FERC opened a new docket to explore ideas relating to grid security and generation resilience. One positive aspect of the FERC's inquiry is that it first seeks to "achieve a common understanding what resilience is in the context of the bulk power system;" a question that had been completely overlooked in the DOE NOPR. Given the present schedule, ISOs and RTOs have until March 9, 2018 to file written answers to the FERC's questions. These answers will form the basis of the FERC's decisions and conclusions regarding the nation's grid resiliency and security.

Federal Tax Changes

On December 22, 2017, President Trump signed the Tax Cut and Jobs Act of 2017 (TCJA) into law. This legislation reduces the corporate tax rate from 35 percent to 21 percent. On December 28, 2017, the DPA filed a petition before the PSC requesting all regulated utilities reduce their rates as a result of the TCJA corporate income taxes and other tax changes. Such a significant change affects the rates of all regulated utilities and what customers pay. To that extend, the DPA believes all excess taxes should be returned to ratepayers.

The Year Ahead

Hosting Community Outreach and Education Events is a goal of the DPA. We have appreciated Delmarva Power's including us in its community-organized events and would like to try something similar. Our idea is to invite regulated and unregulated utilities, non-profit and state agencies, and others together in an effort to educate customers on energy efficiency and other cost saving measures. In addition to energy efficiency, significant focus will remain on consumer education relating to utility bills and financial assistance. As the DPA discussed at the Delmarva Power Energy Assistance Summit, we need to outreach to the community and help consumers before their bills become so high that financial assistance is unavailable. We continue to work towards this goal.

Purchasing a new database is a pending request of the DPA. As with all work, it begins with assisting customers. This is why we have asked for a new database to replace our aging Access database, which has become outdated and burdensome. We have found a new database system that we believe will work well for our office, ensure consumers do not "fall through the cracks," and would provide the consumer, the PSC, and the utilities the ability to view individual investigations and follow the progress of a case. In addition, this new database would provide analytics and metrics for the DPA to track progress of cases, calls, e-mails, and general correspondence in a more efficient manner.

Keeping track of potential rising costs and continuing engagement is always a top priority for the DPA. Next year, with several proposals looming that could greatly impact consumer utility costs, looks to be another busy year of engagement for the DPA.