



Division of the Public Advocate

2018 Annual Report

DIVISION OF THE PUBLIC ADVOCATE

October 10, 2019
Andrew C. Slater
Public Advocate



State of Delaware
Department of State
Division of the Public Advocate



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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") 2018 Annual Report. It has been a busy year for the DPA and we are pleased to highlight some of our accomplishments and set a framework for the year ahead.

We began this year with a petition to reduce the rates of all publicly regulated utilities due to the Tax Cuts and Jobs Act of 2017, and prepared to litigate the Delmarva Power electric and natural gas rate cases. We ended the year working with the Staff of the Public Service Commission ("PSC Staff") to finalize the reduction of utility rates and settling both Delmarva Power rate cases with overall reductions in rates to Delmarva Power customers.

On the federal side, we remain vigilant about the cost of the Artificial Island project, and continue to engage with PJM regarding capacity and energy market changes that will affect the cost to Delaware ratepayers and potentially affect state energy efficiency and renewable goals.

While these policy and stakeholder discussions are ongoing, we continue to address consumer concerns. In the last year, we have had nearly 1,000 consumer interactions. A majority of these communications have been for financial assistance with utility bills and we continue to look for ways to improve our consumer relations, including initiating new software to better serve our customers.

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 that consumer's voices are heard in state and federal proceedings, that the costs to consumers 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 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 utilities companies regulated by the Public Service Commission (“PSC”) 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.

In 2013, the General Assembly amended 29 *Del. C.* § 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. Finally, the advisory role of the Public Advocate was 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 PSC on behalf of the interest of consumers in any matter or proceeding over which the PSC 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.

Tax Cuts and Jobs Act of 2017

The Tax Cuts and Jobs Act of 2017 reduced the corporate tax rate from 35 percent to 21 percent. The DPA filed a petition, supported by 38 members of the General Assembly, to ensure this 14 percent savings went back to the public utility customers. In January, the PSC approved the DPA’s petition, with Delmarva Power’s rate reduction to be effected through the two open electric and natural gas rate cases. Since it would take time to compile the necessary data in order to calculate the savings back to customers of the other regulated utilities, the DPA filed a motion in February to hold all excess deferred taxes as a regulatory liability. This allowed the amount of tax collected in rates before final revised rates were calculated and approved by the Commission to be included in the amount ultimately refunded to customers. In addition, the rates of most regulated utilities were reduced to reflect the decreased revenue requirement as a result of the decreased corporate tax rate.

Rate Cases

In August 2017, Delmarva Power filed electric and natural gas base rate cases seeking rate increases between the two divisions of the company. The electric base rate case settled for an overall **reduction in rates** of \$-6,850,000. The natural gas base rate case settled for an overall **reduction in rates** of \$-3,500,000. Those rates will remain in effect until at least January 1, 2020.

2018	Delmarva Request	PSC Approved (both settled cases)	Avoided Increase to Consumers
Electric	\$24,400,000	(\$6,850,000)	\$31,250,000 (128%)
Natural Gas	\$12,900,000	(\$3,500,000)	\$16,400,000 (127%)

Other Utility Matters

The DPA monitors all filings made at the PSC and evaluates whether participation by the DPA is warranted. This year, there have been many important proposals before the PSC. The following are just a few of those cases.

- Gas Supply Rate, and Gas Cost Rate applications
- Chesapeake’s application to acquire propane community gas systems
- Delmarva Power Electric Vehicle Proposal
- Silver Run Certificate of Public Convenience and Necessity (“CPCN”) application
- Regulation Docket 56 regarding renewable cost cap provisions

- Petition seeking Commission review of the Qualified Fuel Cell Provider (“QFCP” or “Bloom”)
- Delmarva Power purchase of receivables from third-party suppliers
- Solar Renewable Energy Credit (“SREC”) auction program
- Changes to Delmarva Power’s medical certification form
- Exelon Wind Request for Proposals per merger commitment
- Opening of a docket to review Delmarva power’s distribution planning
- Commission approval of Chesapeake’s natural gas expansion proposal
- Continuing discussions on Delmarva Power’s Energy Efficiency Program proposal
- Contributions in Aid of Construction (“CIAC”) tax issue affecting developers

In addition, the DPA seeks to work collaboratively with utilities to resolve customer complaints. This year the DPA intervened in several formal complaints filed by customers of regulated utilities when the issues raised in the complaint are ones that affect utility customers generally. These cases involve the interpretation of a utility’s tariff, or the utility’s application of a provision of the Public Utilities Act to a customer or customers.

Artificial Island

Artificial Island is the 240kV line from Hope Creek into Delaware at an estimated cost of \$278 million. PJM’s original cost allocation allocated more than 90 percent of that amount to Delmarva Zone ratepayers (the Delmarva Zone includes the eastern shore of Maryland). The FERC approved PJM’s original cost allocation. Several parties led by the PSC and including the DPA moved for rehearing.

FERC granted rehearing, and in an order issued in February 2019 reversed its original decision. It concluded that a different cost allocation methodology should be used for the unique circumstances of the Artificial Island project. The approved cost allocation methodology reduced the Delmarva Zone’s responsibility from more than 90% to approximately 10%. This is a huge victory for Delaware ratepayers.

Two Transmission Owners (TOs) appealed the FERC’s decision to the Court of Appeals for the District of Columbia Circuit. Several TOs also filed motion for reargument before FERC. The appeals were stayed for six months or until FERC decides the motions for reargument, whichever comes first. Meanwhile, the TOs have proposed another cost allocation methodology. The DPA is working with the PSC Staff to better understand the TOs’ proposal and whether, or how much, this would change the cost allocation to the Delmarva Zone.

Delaware Offshore Wind Working Group

On August 28, 2017, Governor Carney signed Executive Order 13 creating the Offshore Wind Working Group (“Working Group”). The DPA was part of the working group and made many comments regarding cost to all rate classes, environmental benefits, and job opportunities. In June, the Working Group finalized its findings and suggestions to Governor Carney. One such

suggestion was for the State to consider supply chain opportunities as they relate to projects initiated by Maryland and New Jersey. The full report can be found [here](#).

Update to Exelon Merger Commitments

Arrearage Management Plan – The Pepco/Exelon merger provided \$3.1 million to create an Arrearage Management Plan (AMP) for Delmarva Power customers. After several meetings with many key stakeholders (such as DHSS and non-profit organizations), a program outline was established.

The AMP is designed to reduce and eliminate arrearages incurred by low-income customers. Up to \$6,000 of an eligible customer’s arrearages will be forgiven if the customer pays all of their current charges in 12 of 15 months. If a program participant does not pay their current charges, and incurs additional monthly arrears, they are removed from the AMP and are ineligible for the AMP for seven years. This measure helps ensure the limited funding is used efficiently. The DPA appreciates the funding for this program coming from the Exelon merger commitment.

Natural Gas Infrastructure Expansion Projects – As part of the merger, Exelon provided \$6 million for economic development related to natural gas expansion. After an RFP was issued, the review committee met and awarded funding for projects in Delmarva Power’s and Chesapeake Utilities’ service territories.

5 MW of renewable energy – Exelon committed to provide 5 MW of renewable energy to be placed into service by December 2019. Exelon continues to work towards honoring this commitment and the DPA looks forward to the new renewable energy resources provided through the merger.

Exelon Commitment to procure wind renewable energy credits – Exelon has committed to procuring three tranches of 40 megawatts of wind energy. With the tranches staggered, this commitment is ongoing.

Merger Commitments	Closed Commitments	Open Commitments	Ongoing Commitments
179 (100%)	133 (74%)	30 (17%)	16 (9%)

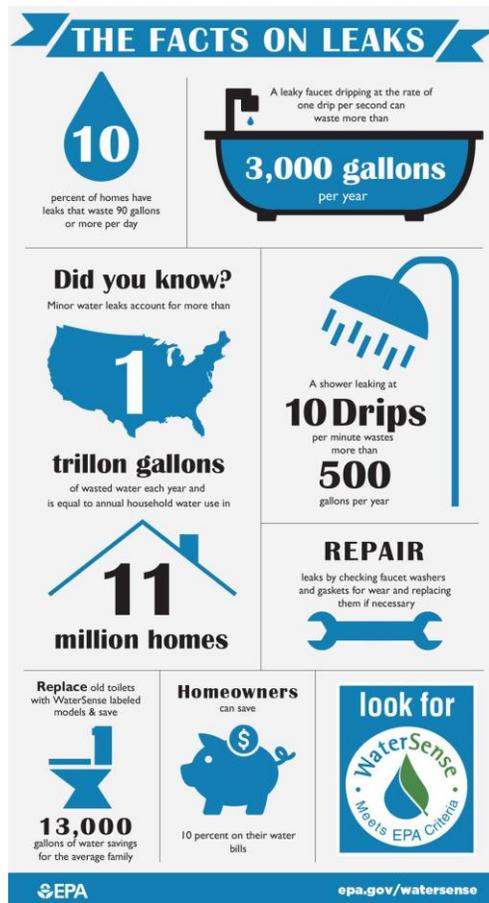
Legislation

Senate Bill 179 (DPA Enabling Statute) – The DPA has taken an active role in cases before PJM and the FERC. In doing so, it became apparent that there was a need to hire attorney and consultants to provide analysis of some of the pending cases. The DPA proposed changes to its enabling statute to allow the DPA to hire attorneys and consultants for PJM and FERC matters as needed.

Community Solar – The DPA believes more robust dialogue is needed before the introduction of community solar legislation and has begun those conversations with stakeholders.

Renewable Portfolio Standard – Similar to community solar, there was a push at the end of the legislation session to move forward with new RPS goals. While this legislation did not pass, the DPA is hopeful for more robust dialogue as we move forward with consideration of new RPS goals.

Fix-a-Leak Week Proclamation – In March, Governor Carney signed a proclamation for Fix-A-Leak Week. This has been a priority of Commissioner Conaway, the PSC, and their Staff. To highlight the issue, below is a fact sheet about the amount of water lost through leaks each year.



SSI to Senate Bill 80 (Distribution System Improvement Charge) – This legislation was a holdover from the first session of the 149th General Assembly. With the added amendment allowing for this surcharge for only seven years, along with the commitment to create regulations for more robust distribution planning, the legislation passed in June 2018.

PJM

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

Similar to last year, we remain concerned about several proposals. Two in particular 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 Repricing - The DPA was vigorously involved in the Capacity Repricing docket at FERC in which PJM sought to reprice state subsidized resources that bid into the capacity market. FERC held that States have the right to pursue policies by supporting resources with out-of-market payments, but they do not have the right to have those resources participate in the Capacity Market where they cause price suppression. FERC proposed establishing a Minimum Offer Price Rule with very limited exemptions, particularly the RPS. PJM has opined that resources participating in the Regional Greenhouse Gas Initiative (“RGGI”) would not be considered an “actionable subsidy” because RGGI is merely a method to price carbon. Renewable Energy Credits, Solar Renewable Energy Credits and Offshore Wind Renewable Energy Credits would be considered out-of-market subsidies. This case is still before FERC awaiting a decision on the appeals.

Energy Price Formation - Throughout 2018, the DPA and other PJM stakeholders worked on PJM’s proposed changes to the Energy Market. At the end of the year, time ran out on PJM for stakeholders to come to a consensus package for filing with FERC. The package ultimately filed with FERC (without member consensus) addresses the structure of the Reserve Market to properly value excess reserves. PJM proposes to have at least three more reserve products than it has already. The DPA remains concerned about the potential cost of this proposal on consumers.

Price Responsive Demand - Due largely to the efforts of the DPA and Maryland’s Office of People’s Counsel, the Price Responsive Demand, in which Delmarva’s air conditioning cycling program participates, has been retained for one or, possibly, two more years after which it appears PJM may want to eliminate the program.

PJM Carbon Tax Whitepaper – In December, the DPA spoke with PJM regarding their carbon pricing white paper to better understand PJM’s thoughts on state actions. This is an ongoing issue for PJM which will be discussed in greater detail next year. PJM emphasized that it does not intend to impose a carbon tax on states. Rather, it was putting forth a mechanism for consideration for states which may want to price carbon. PJM’s proposal was that a carbon tax would go back to “load” (ratepayers) to offset the tax. This would clear up market inequities where Delaware generators pay a price incorporating RGGI and out of state resources do not.

FERC

The DPA intervenes in many matters that PJM files with the FERC. The DPA also participates in other matters filed with FERC that do not involve PJM. Three of the more significant of these non-PJM FERC matters are discussed below.

FERC Order 841 (Energy Storage) – In February 2018, FERC issued their final ruling on energy storage. In the order, the FERC said they “remove barriers to the participation of electric storage resources in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTO) and Independent System Operators (ISO) (RTO/ISO markets).” (FERC Order 841, p. 1). In addition to allowing energy storage to participate in the markets, FERC decreed that “each RTO and ISO [is] to revise its tariff to establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitating the participation in the RTO/ISO markets.” (FERC Order 841, p. 1).

Pursuant to the Order, PJM promulgated tariff revisions consisting of a minimum hour run time of ten hours. The DPA asked several questions, in person and by phone, about run time resources and specifically the ten hour requirement. The DPA has taken issue with this performance standard to counter PJM’s assertion that because hydro can already produce pumped storage it knows its minimum performance standard can be met.

GreenHat Default

On June 21, 2018, PJM Member GreenHat Energy, LLC, defaulted on a \$1.7 million weekly invoice. Over several years, they accumulated the largest Financial Transmission Rights (FTR) portfolio in PJM history with only \$600,000 in collateral.

PJM estimates that the cost of GreenHat’s default could rise to at least \$430 million without a waiver of their tariff obligation. Due to the enormity of this issue, the PJM Board hired an independent team of investigators to review the facts of the default and provide a report and recommendations moving forward. The DPA was very supportive of their decision to explore the shortcomings of this default.

The DPA will continue to participate in this issue and has been actively involved at PJM and FERC in finding solutions to this problem and lessening the costs of default to ratepayers.

FERC Docket No. RP18-1126 (Transcontinental Pipe Line Company) - Transcontinental Pipe Line Company (“Transco”) 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 2018, it filed an application with the FERC to increase its natural gas transportation rates (among other rates). Because the local natural gas distribution public utilities that provide service to Delaware ratepayers purchase transportation and storage services from Transco, Delaware customers could experience significant rate increases if the rates and rate design sought in the filing are approved. The DPA intervened in the proceeding to protect the interests of Delaware’s end-use customers. Other Transco Delaware customers that

have intervened and are participating in the docket are Delmarva Power and Light Company and Chesapeake Utilities Corporation. The DPA has participated in several one- and two-day settlement conferences at FERC's offices, and such conferences are ongoing.

FERC Docket No. RP19-343 (Texas Eastern Pipe Line Company, LLC): Texas Eastern Pipe Line Company, LLC ("TETCO") 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 2019, it filed an application with the FERC to increase its natural gas transportation rates (among other rates). Because the local natural gas distribution public utilities that provide service to Delaware ratepayers purchase transportation and storage services from TETCO, Delaware customers will experience significant rate increases if the rates and rate design sought in the filing are approved. The DPA intervened in the proceeding to protect the interests of Delaware's TETCO customers. Delmarva Power and Light Company has also intervened and is participating in the docket. The DPA has participated in several one- and two-day settlement conferences at FERC's offices, and such conferences are ongoing.

Coal and Nuclear Retirements: The DPA opposed the President's plan to subsidize outdated coal and nuclear plants that did not contribute to electric reliability of the grid. In the face of coal and nuclear retirements, President Trump directed the Department of Energy ("DOE") to purchase coal and nuclear fuel through a subsidization methodology that would primarily affect members of PJM. The President directed DOE Secretary Rick Perry to compel RTOs and ISOs (in our case PJM) "to purchase or arrange the purchase of electric energy or electric generation capacity from a designated list of Subject Generation Facilities (SGFs) sufficient to forestall any further actions toward retirement, decommissioning or deactivation" for 24 months. The 24 month period is the time the DOE and its National Laboratories will need to identify "Critical Defense Facilities" served by the "Defense Critical Electric Infrastructure (DCEI)."

In response, PJM issued a statement advising that planned deactivations of certain nuclear plants had no impact on reliability; therefore, federal intervention was not necessary. PJM noted that the markets had produced historically low prices and that reserve margins were at 23 percent with billions of dollars of new investment.

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 2018, the DPA took several steps to try to build more community engagement, including:

Purchased a new database – The DPA was previously using an older database that could be prone to missing customer interactions. To ensure this did not occur, the DPA purchased a new database and began assimilating to the new interface in December. The DPA believes this new interface will work better for utilities and customers and looks forward to providing more detailed analysis of customer interactions in 2019.

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 2018, similar to

2017, our office logged nearly 1,000 calls and e-mails which required additional work on behalf of the consumer. In addition, there were many calls that were not logged 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 Summits in Salisbury and Newark. The DPA joined with the PSC Staff in providing educational information for the non-profits present to share. We jointly spoke about space heating safety, third party suppliers, arrearage management plan, solar disclosures, legislative initiatives and community outreach. The dialogue with close to 80 non-profit members was tremendously helpful, and we hope to partner with them in the future on consumer outreach and education.

Energy Coordinating Agency CEC Presenter – In April, the DPA presented to the Energy Coordinating Agency’s CEC meeting. The DPA discussed our role, protections for medical certification customers, process for public utility disputes, and education and outreach.

Delaware Energy Assistance Fair – In January, the DPA attended the Energy Assistance Fair held at Delaware Technical and Community College in Dover. As in previous years, the DPA maintained a booth to interact with customers.

2018 Exelon Innovation Expo – In August, the DPA attended Exelon’s Innovation Expo in Washington, D.C. This provided an excellent opportunity to interact with Exelon employees on projects they have created to improve efficiency, safety, reliability, and educate their customers.

The Year Ahead

Hosting Community Outreach and Education Events – The DPA has appreciated Delmarva Power’s including us in its community-organized events and hope to plan an evening event to outreach and engage regulated public utility customers. 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.

Keeping track of ongoing FERC cases – As discussed previously, the DPA is involved in numerous FERC cases that have the potential to greatly impact consumer utility costs and will continue their advocacy in the cases before FERC.