

# Division of the Public Advocate

Website: <https://publicadvocate.delaware.gov>

## 2022 Annual Report





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## **Annual Report**

February 9, 2023

### **VIA ELECTRONIC MAIL**

The Honorable John C. Carney, Jr.  
Governor  
State of Delaware

Re: Division of the Public Advocate 2022 Annual Report

Dear Governor Carney:

Thank you for the opportunity to serve as the Public Advocate for our State and to provide the Division of the Public Advocate's ("DPA") 2022 Annual Report.

During 2022, we saw a finalized Delmarva Power (gas) rate case, filing of a Delmarva Power (electric) rate case, Indian River Reliability Must Run contract, expenditure of the Arrearage Management Plan funding, Reduction in Tidewater rates, and a refund to Artesian customers from the Llangollen settlement. Meanwhile, on the federal side, we continue to enhance our activity on behalf of the state.

Though we have been busy with these important issues, our number one priority remained our regulated utility consumers. In 2022, we saw consumer interactions fall back to pre-pandemic levels after two years of significant increases in consumer interactions.

Thank you again for the incredible opportunity to serve as the Public Advocate for our State ensuring consumers voices are heard in state and federal proceedings, that the costs to consumers are considered, and that valuable consumer protections are in place.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Slater".

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 utility 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.

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. The DPA’s advisory role was also expanded to permit the Public Advocate to provide guidance to the Governor, General Assembly, or the Secretary of State on matters of energy policy and utility consumers, or other matters.

In 2019, the General Assembly amended 29 *Del. C.* § 8716 to allow the DPA to retain outside counsel to assist it, primarily in cases at the Federal Energy Regulatory Commission (“FERC”).

## **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.

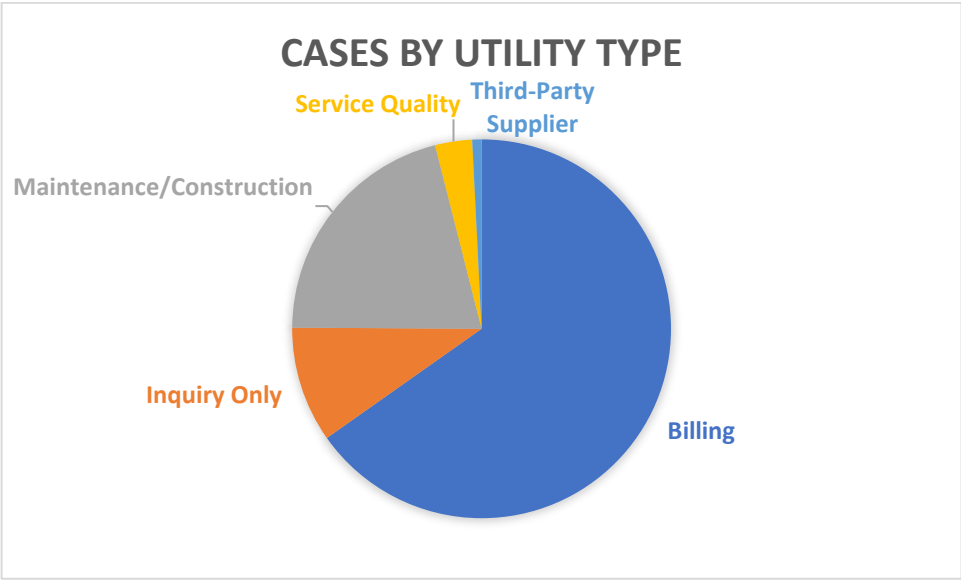
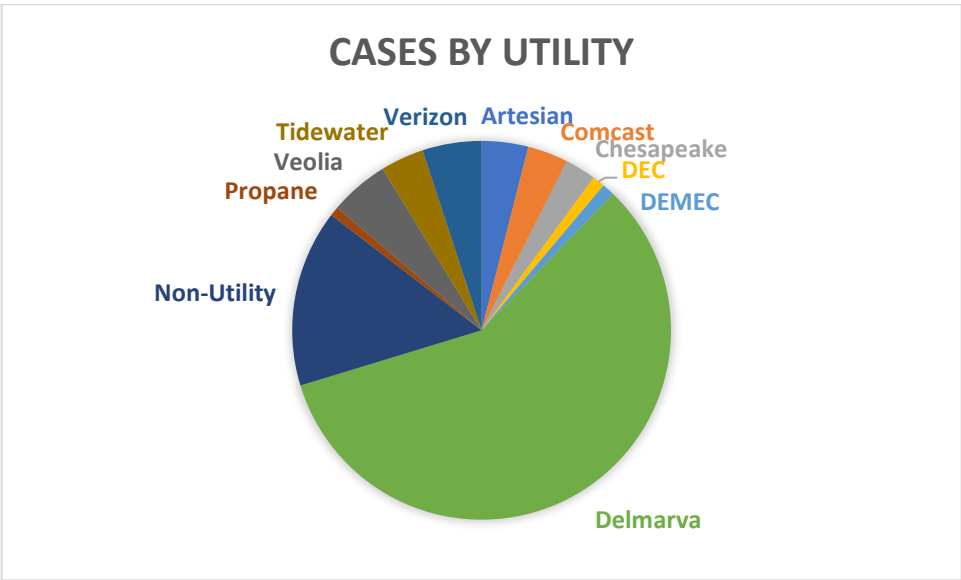
The DPA appears before the PSC on behalf of the interest of consumers in any matter or proceeding over which the PSC has jurisdiction and in which the Public Advocate deems the interest of consumers requires such participation. The DPA also appears on behalf of the interest of consumers in the courts 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 to a number of important working groups, councils, and/or committees such as the Sustainable Energy Utility (“SEU”) and Renewable Energy Task Force.

# CONSUMER ENGAGEMENT

The DPA receives informal utility complaints from customers, which it investigates with the proper utility representatives. In the event an informal complaint cannot resolve a customer issue, a formal complaint may be filed at the Public Service Commission.

In 2022, our office saw consumer interactions fall back to pre-pandemic levels. The charts below illustrate the cases by utility and utility type. Notably, utility maintenance and construction (which includes vegetation management and downed infrastructure) represents the second largest source of consumer complaints.<sup>1</sup>



<sup>1</sup> The Public Service Commission does not regulate DEC, DEMEC, Comcast, or Verizon. It also does not have any regulatory authority over propane providers, but the DPA has included these providers in this chart to provide a more complete picture of the calls the DPA handles.

# HIGHLIGHTS FROM 2022

## Rate Cases

### Delmarva Power Natural Gas

<u>Requested Increase</u>	<u>Approved Increase</u>
\$19,452,122	\$13,400,000 (68.8 percent of request)

On January 14, 2022, Delmarva Power filed an application for an increase in natural gas rates seeking \$19,452,122, which was a 20.17 percent increase in rates. Since the rate increase was statutorily in effect, customers saw a refund on their January bill. Unfortunately, because most of this case involved plant that Delmarva was putting into service, there was little that the DPA could do to reduce the amount of Delmarva's requested amount, given the constraints imposed by statutes and case law. However, the DPA secured Delmarva's agreement to conduct an independent audit of Lost and Unaccounted for Gas (LAUF) to better understand why Delmarva's LAUF is so high compared to similar gas utilities and what can be done to reduce the amount of LAUF.

### Increases in the Gas Cost Rate

Each August, Delmarva Power and Chesapeake Utilities file for modifications to their gas cost recovery riders to be effective November 1<sup>st</sup> of that year. With tremendous upward pressure on natural gas rates for various reasons, the market cost of natural gas increased significantly in 2022. Delmarva Power residential customers faced an overall increase of more than 27 percent in the commodity cost of natural gas, while Chesapeake residential customers experienced an increase of more than 16 percent. While these increased costs are the result of market forces, the increased volatility in the gas market has negatively affected customers and furthers the need for energy affordability.

### Delmarva Power Electric

<u>Requested Increase</u>	<u>Approved Increase</u>
\$72,341,417	Open docket – 22-0897

On December 15, 2022, Delmarva Power filed an application to increase electric rates by \$72,341,417. This is an average increase of 27.7 percent over existing rates. The DPA issued a press release regarding the significant request, one of the largest ever seen by this office, and that has elicited tremendous interaction with consumers. The rate case is ongoing and filed under docket 22-0897.

### Potential Additional 2023 Rate Cases

The DPA is aware of potential rate case applications by Tidewater Utilities, Artesian Water Company, Veolia Water, Chesapeake Utilities, and the aforementioned December 15, 2022 filing by Delmarva Power for a \$72.3 million increase in electric base rates. If each of these utilities files rate cases in 2023, Delaware's five largest regulated utilities will have sought rate increases in one year.

## **Indian River Reliability Must Run**

On April 1, 2022, NRG filed with the Federal Energy Regulatory Commission (FERC) a Reliability Must-Run Rate Schedule to keep Indian River Unit 4 open past the date that NRG planned to retire it. The DPA, Public Service Commission, and Delaware Energy Users Group together filed comments on May 6, 2022 in this docket (No. ER22-1539-000). FERC has set the matter for confidential settlement judge proceedings, which are ongoing.

The Reliability Must Run (RMR) contract encompasses a term of 4 years and 7 months with a monthly fixed-cost charge to Delmarva Zone customers, which encompasses Delaware and Maryland, of \$5,828,312.83. This is the longest RMR contract through PJM.

## **Arrearage Management Plan**

In coordination with Delmarva Power and the Public Service Commission, more than \$1.9 million of funds from the PHI-Exelon merger settlement agreement were made available through an Arrearage Management Plan (AMP) to reduce account balances for limited-income customers.

These credits, of up to \$6,000 per household, helped 2,700 limited income customers by forgiving past-due charges on their accounts. As we noted in the joint press release, “[w]e appreciate the Commission approving the work of the parties to get this funding on the street and into Delmarva’s customers’ accounts. Utilizing this one-time AMP funding from the merger with Exelon will provide needed assistance to Delmarva’s low-income customers at a time of great need.”

## **Utility Distribution Planning**

Distribution Planning, known as the Infrastructure, Safety, and Reliability (ISR) report, is important for the Commission and other interested parties to monitor a regulated utility’s capital spending. On the electric side, the DPA has advocated for more robust distribution planning to include such things as cost benefit analyses, non-wire alternatives, strategic locating, line loss reduction, distribution savings, and integration of Distributed Energy Resources (DERs). According to its 2022 ISR, Delmarva Power plans to spend \$430 million on infrastructure over the next three years, which is a 155 percent increase from 2019 spending. Given this significant increase in spending, it’s more important than ever to have more robust utility distribution planning to ensure customers are receiving the benefits from such a significant increase in capital spending.

In 2022, Delmarva filed its first Long Range Distribution Plan (LRDP). As the title suggests, this is a look forward of more than the three year period captured by the ISR report. The DPA, PSC Staff, and Delmarva Power have engaged in active dialogue to improve both the ISR and LRDP reports for future filings.

Chesapeake Utilities also filed their Infrastructure, Safety, and Reliability plan. As part of the DPA and PSC Staff’s comments, there was an evaluation of Chesapeake’s budget forecast with the reliability budget increasing 57 percent from 2021.

## **Reduction in Tidewater Utilities' Rates**

On June 22, 2022, the DPA filed a petition with the Public Service Commission to issue a rule to show cause why Tidewater's rates should not be immediately and temporarily reduced due to the utility overearning its authorized rate of return. A first step taken prior to this action was to reduce Tidewater's Distribution System Improvement Charge (DSIC) rate to 0.00% and refunding \$1,034,238 to its customers.

The DPA contended that the quarterly rate of return reports that Tidewater submits to the Commission demonstrated that it had been earning above the 7.92% overall rate of return approved by the Commission for almost three years.

Tidewater opposed the DPA's petition stating, among other things, that it would file a rate case by January 31, 2023.

On August 10, 2022, the Commission conducted an evidentiary hearing and the DPA calculated Tidewater's current rates produced excess revenues of \$2,247,214, which required a reduction to the Company's rate revenues of 5.992%.

After hearing testimony from the parties, the Commission agreed with the DPA and unanimously granted the immediate reduction of \$2,247,214.

## **Refund to Artesian Customers from the Settlement of the Llangollen Superfund Site Litigation**

On October 24, 2022, Artesian Water Company issued a press release regarding its settlement with the Delaware Sand & Gravel Trust, which is responsible for the remediation of toxic chemical releases from a former landfill operation designated as a Superfund site. The proceeds from the settlement are to be paid in four annual installments to Artesian's customers. As of September 30, 2022, active customers received the first installment credit of approximately \$27, which appeared on the customer's subsequent bill.

The DPA, PSC Staff, and Artesian worked closely to ensure customers received the financial benefit of the reimbursed costs obtained by the settlement with the Trust, given that customers paid the increased costs of Artesian's own remediation activities to ensure that its water complied with federal and state standards.



# **FEDERAL**

## **December Winter Storm Elliott**

PJM called emergency procedures December 23-25, 2022 due to Winter Storm Elliott. PJM called on generators to provide capacity resources due to the weather outlook and about 57 gigawatts of generator availability was offline. This led to PJM calling for Demand Response and conservation from customers to ensure the lights stayed on. While PJM was able to weather the storm, there were conversations about load-shed, which can also be referred to as rolling blackouts or rotating outages.

While we continue the after-action reporting on this event, the DPA has made it clear to PJM that improved communication with emergency management and other officials is needed. This is especially true when rotating outages are being considered.

## **PJM 24/25 Base Residual Auction**

PJM filed a request with FERC to allow the exclusion of certain Planned Generation Capacity Resources from the 2024-2025 Base Residual Auction (BRA) where the addition of these resources materially increased the reliability requirement and such resources choose not to participate in the BRA. Without the exclusion of these resources, capacity prices in the Delmarva Zone (which encompasses all of Delaware) will be substantially higher causing customer bills to increase.

While this issue has not yet been ruled upon by FERC, the PSC, DPA, Delaware Municipal Electric Corporation, and others filed comments in support of PJM's proactive proposal filed in FERC Docket Nos. ER23-729-000 and EL23-19-000.

## **Pending Appeals of FERC Decisions**

The DPA is involved in three appeals of FERC decisions pending before the Courts of Appeals for the District of Columbia, Third Circuit, and Sixth Circuit. Oral arguments have been held in the appeals pending before the District of Columbia and Third Circuits, and briefing will be starting soon in the appeal pending before the Sixth Circuit.