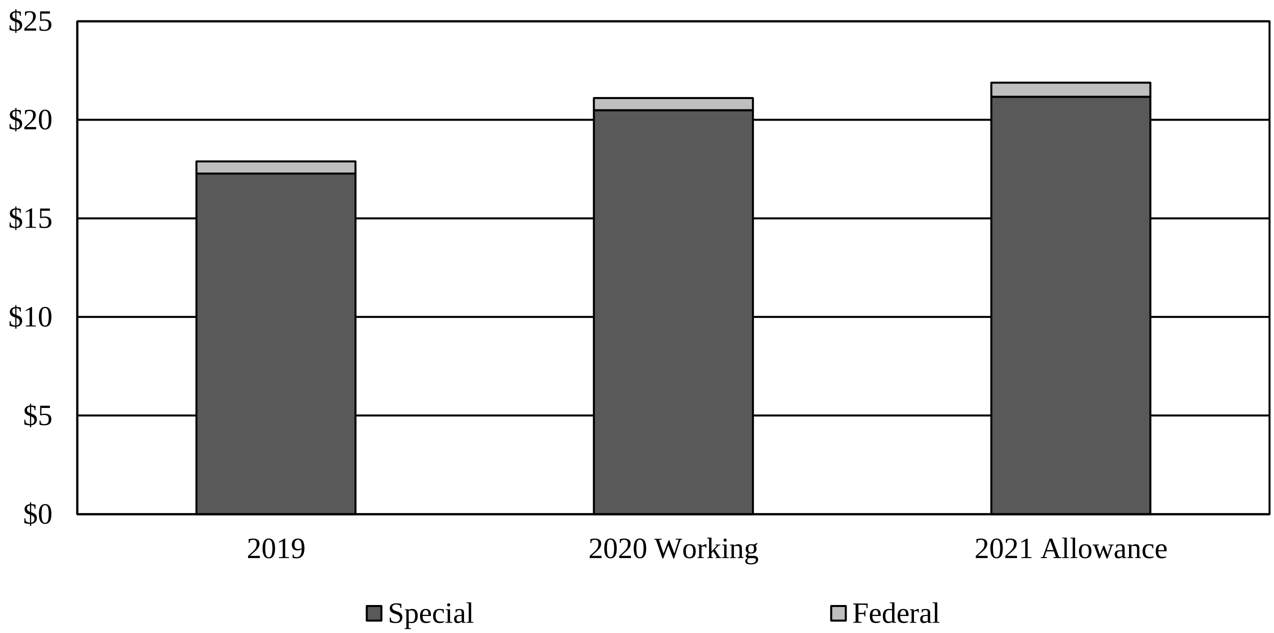
C90G00
Public Service Commission

Program Description

The Public Service Commission (PSC) regulates natural gas, electric, energy suppliers, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC sets utility rates, collects and maintains records and reports on public service companies, audits financial records, inspects equipment, handles consumer complaints, enforces rules and regulations, defends its decisions on appeal to State courts, and intervenes in relevant cases before federal regulatory commissions and federal courts. PSC is primarily funded by special funds obtained through assessments on public service companies.

Operating Budget Summary

Fiscal 2021 Budget Increases by $0.8 Million or 3.7% to $21.9 Million
($ in Millions)



Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

- Increases totaling $460,000 are from two special funds (the Electric Reliability and Remediation Fund and the Retail Choice Customer Education and Protection Fund), which hold funds from fines issued by PSC for specific purposes. The funds used in fiscal 2021 relate to fines issued to Baltimore Gas and Electric (BGE) and Smart One Energy, LLC, respectively.

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Fiscal 2019 and 2020

Section 17 of the Budget Reconciliation and Financing Act (BRFA) of 2012 required funding resulting from the merger of Exelon Corporation and Constellation Energy Group, which includes the Offshore Wind Development Fund (OWDF), to be appropriated through the budget bill or other legislation only. Chapter 3 of 2013 (the Maryland Offshore Wind Energy Act) required transfers totaling $3 million from the OWDF to PSC in fiscal 2014 and 2015 to assist the agency in hiring consultants to implement sections of the Act. The funds were authorized to be retained by PSC until June 30, 2019, at which point unused funds were to revert to the OWDF. Beginning in fiscal 2020, Chapter 3 provided that revenues in the Strategic Energy Investment Fund from the OWDF could be transferred to PSC if funds were needed to carry out the Act, limited to total transfers of $3 million.

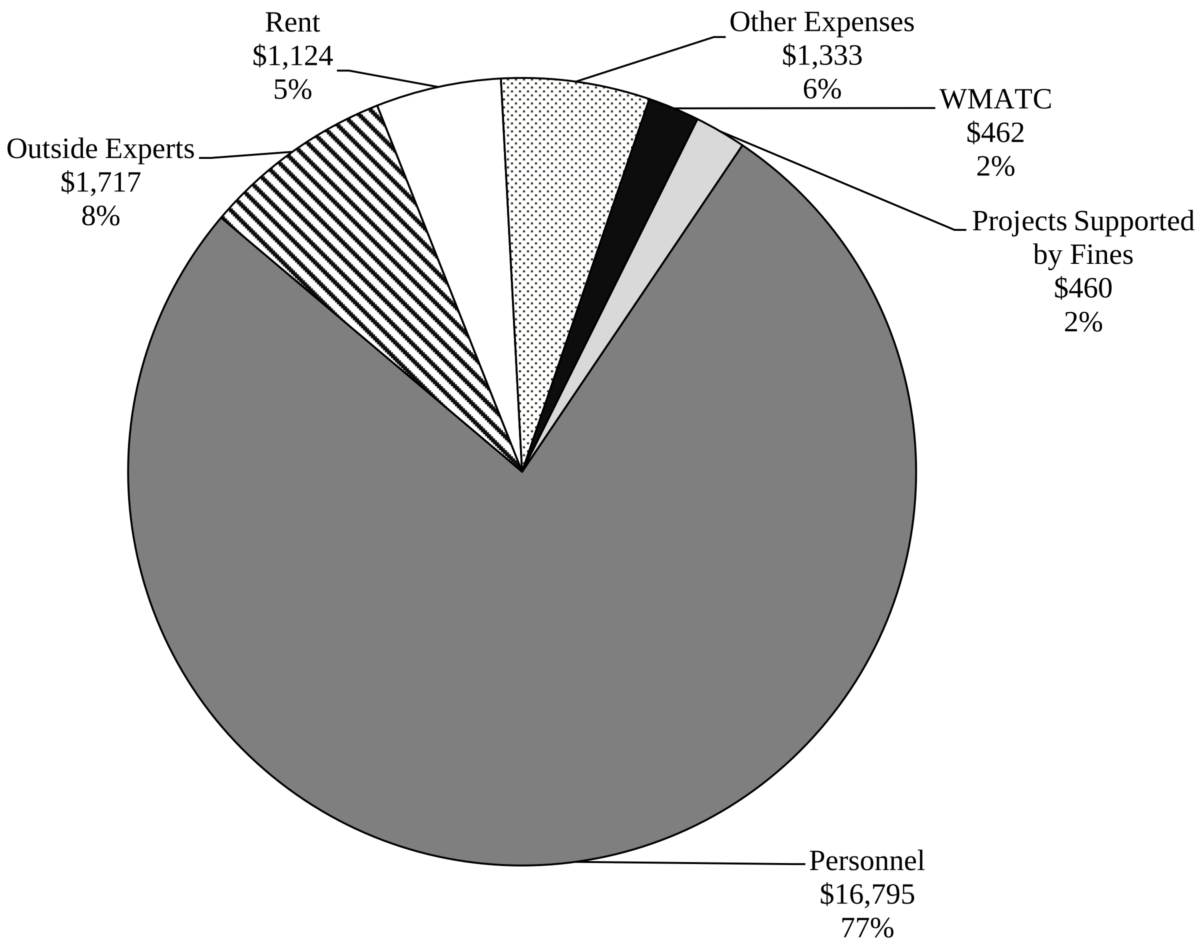
On June 30, 2019, PSC had $1.3 million from the OWDF that was not expended or encumbered. However, the Maryland Energy Administration (MEA) and PSC agreed that the implementation of the Clean Energy Jobs Act (Chapter 757 of 2019) imposed additional requirements on PSC related to offshore wind and that these funds are needed for consultant services for future rounds of applications for offshore wind renewable energy credits. As a result, PSC was not required by MEA to return the funds as expected.

PSC explains that it is using the retained funds in fiscal 2020 to support consultant services. PSC also notes that it anticipates requiring an additional appropriation for consultant services in fiscal 2020. It is unclear whether PSC has the statutory authority to retain the funds, since no amendment was made to the original requirement to return the funds. The use of the funds for consultant services related to offshore wind energy purposes is an allowable use of the OWDF, but since these uses are related to the Clean Energy Jobs Act rather than the Offshore Wind Energy Act, it is unclear whether the secondary provision in Chapter 3 related to fiscal 2020 applies. As a result, it is unclear if the mechanism for retaining the funds and not appropriating the funds directly meets the requirements under Section 17 of the BRFA of 2012. **Because PSC anticipates needing additional funding for consultant services in fiscal 2020, the Department of Legislative Services believes that adding the OWDF to the fiscal 2020 appropriation through a deficiency appropriation in a supplemental budget would clarify the authority to spend the funds in fiscal 2020.**

Fiscal 2021 Overview of Agency Spending

The fiscal 2021 allowance for PSC totals $21.9 million after including statewide personnel adjustments. As shown in **Exhibit 1**, 77% of PSC's fiscal 2021 allowance is related to personnel expenditures (74% for regular positions and 3% for contractual full-time equivalents (FTE)), which supports 138 regular positions and 15 contractual FTEs.

Exhibit 1
Overview of Agency Spending
Fiscal 2021 Allowance
($ in Thousands)



WMATC: Washington Metropolitan Area Transit Commission

Source: Governor's Fiscal 2021 Budget Books; Department of Legislative Services

Outside of personnel spending, the largest single item in the fiscal 2021 allowance is for outside experts (8%). The majority of this is for consultants, which assist the technical staff and/or commissioners in cases before PSC or other regulatory bodies. The fiscal 2021 allowance for consultants totals $1.6 million. Spending in this area can vary widely from year to year, based on the types of cases that are before the commission. For example, between fiscal 2010 and 2019, spending exceeded $1.5 million four times but was less than $400,000 five times. As noted earlier, Chapter 757 requires PSC to conduct a number of activities necessitating the use of consultants in fiscal 2020 or

2021. PSC explains that the need for consultants related to Chapter 757 is the reason for the higher level of consultant spending included in the fiscal 2021 allowance than recent history would suggest is necessary.

Proposed Budget Change

As shown in **Exhibit 2**, PSC's fiscal 2021 allowance increases by $779,610, or 3.7%, compared to the fiscal 2020 working appropriation after accounting for the statewide employee compensation adjustments. The majority of this increase ($460,000) results from two PSC-issued fines.

Exhibit 2
Proposed Budget
Public Service Commission
($ in Thousands)

How Much It Grows:	Special Fund	Federal Fund	Total
Fiscal 2019 Actual	$17,280	$614	$17,894
Fiscal 2020 Working Appropriation	20,484	628	21,113
Fiscal 2021 Allowance	21,177	716	21,892
Fiscal 2020-2021 Amount Change	$692	$87	$780
Fiscal 2020-2021 Percent Change	3.4%	13.9%	3.7%

Where It Goes:	Change
Personnel Expenses	
2% general salary increase, effective January 1, 2021	$132
1 new public service engineer position to meet workload needs	96
Annualization of 1% general salary increase, effective January 1, 2020	63
Turnover adjustments	60
Employee retirement	57
Other fringe benefit adjustments	27
Workers' compensation premium assessment	-56
Regular earnings primarily due to budgeting vacancies at lower salary levels	-221
Additional Spending Based on Available Fine Revenue	
Electric Reliability Remediation Fund due to Baltimore Gas and Electric fine to be used for reliability projects	210
Retail Choice Customer Education and Protection Fund due to Smart One Energy, LLC fine for contracts to improve education related to residential customer choice or to increase customer protections	200
Maintenance of new retail choice websites under development in fiscal 2020	50

Where It Goes:	**Change**
Other Changes	
Consultant services due to anticipated increased need to support the implementation of the Clean Energy Jobs Act of 2019 (Chapter 757)	59
Replacement of two vehicles in the Common Carriers Investigation Division and one new vehicle for the new public service engineer position	58
Rent for office and garage space	42
Contractual employee payroll due to salary increases	36
Cost allocations	27
Archiving of public records to better align with needs	20
Contractual health insurance due to underbudgeting of costs for some contractual full-time equivalents	-36
Legal services resulting from higher than normal costs in fiscal 2020 related to expected appeals in that year	-75
Other Adjustments	31
Total	**$780**

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

Impact of PSC-issued Fines on Allowance

In the fiscal 2021 budget, PSC issued fines deposited into two special funds (the Electric Reliability Remediation Fund and the Retail Choice Customer Education and Protection Fund), which are appropriated for specific purposes.

- The funds available in the Electric Reliability Remediation Fund ($210,000) result from a fine issued to BGE for repeated issues related to performance of periodic inspection of equipment under PSC's service quality and reliability measures. These funds must be used for targeted remediation efforts. PSC ordered BGE to develop a list of proposed projects and submit them for review by February 3, 2020.

- The funds available in the Retail Choice Customer Education and Protection Fund ($250,000) result from a fine issued to Smart One Energy, LLC related to violations of regulations related to energy suppliers (discussed further in the second key observation of this analysis). The funds must be used for education on retail electric and gas choice or protecting customers from unfair, false, misleading, or deceptive practices. PSC will use a portion of these funds to support maintenance of its retail choice-related website that is currently under development. The specific use of the remaining funds will be determined in the future but could include the development of educational videos related to retail choice or other advertising related to customer choice.

Personnel Data

	FY 19 Actual	FY 20 Working	FY 21 Allowance	FY 20-21 Change
Regular Positions	137.00	137.00	138.00	1.00
Contractual FTEs	10.35	15.00	15.00	0.00
Total Personnel	**147.35**	**152.00**	**153.00**	**1.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	5.48	4.00%
Positions and Percentage Vacant as of 12/31/19	11.00	8.03%
Vacancies Above Turnover	5.52	

- The fiscal 2021 allowance includes 1 new regular position in PSC for an engineer in the Engineering Investigations Division. PSC explains that the new position is needed due to increased rate filings by the natural gas utilities and reviews of activities related to the Strategic Infrastructure Development and Enhancement (known as STRIDE) filings by participating natural gas utilities. In addition, PSC noted that its performance in annual reviews by the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) declined recently due to overdue inspections. The failure to complete timely inspections resulted from insufficient staffing and the time it takes for newly hired personnel to achieve full qualification to complete PHMSA-related inspections.

- For the second consecutive year, PSC is experiencing high levels of vacancies relative to its budgeted turnover. PSC had 3 long-term vacant positions as of December 31, 2019. PSC explained that 1 of these positions was recently posted for the third time. In previous postings, only 1 qualified candidate was identified. **PSC should comment on the recent high levels of vacancies and the difficulties that it has experienced in filling vacant positions.**

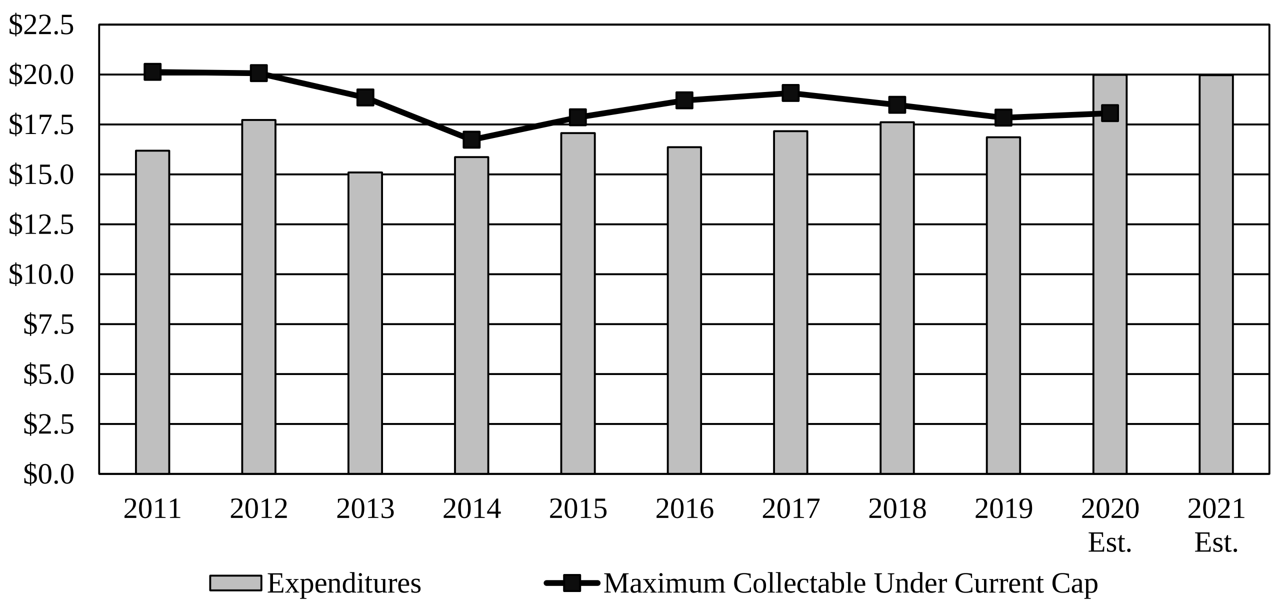
Key Observations

1. PSC Spending Limited by Cap on Utility Assessments

The primary source of revenue supporting PSC is the Public Utility Regulation Fund, which is composed largely of revenue received from the collection of assessments from public service companies. The public service companies are assessed based on the estimated expenses of PSC and Office of People's Counsel (OPC). Section 2-110 of the Public Utilities Article caps the assessments at the lower of (1) the expenses of PSC and OPC or (2) 0.17% of the public service company's gross operating revenues derived from intrastate utility and electricity supplier operations in the preceding calendar year (or other 12-month period) for PSC and 0.05% of those revenues for OPC. The determination of the assessment typically occurs prior to the start of the fiscal year (May), though an additional assessment could occur if costs change, for example, by budget amendment. The cap for PSC was last changed in 1977.

As shown in **Exhibit 3**, in recent years, the maximum amount collectable under the cap has generally declined. From fiscal 2011 through 2019, the maximum amount collectable under the cap decreased by 11.4%, from $20.1 million to $17.8 million. The amount collectable can fluctuate and is expected to increase slightly in fiscal 2020. However, the long-term trend is concerning.

Exhibit 3
Maximum Collectable Revenue Under Assessment Cap versus Expenditures
Fiscal 2011-2021 Est.
($ in Millions)



Source: Public Service Commission; Governor's Budget Books

In recent years, PSC's appropriation has exceeded the maximum collectable levels. However, PSC's actual spending from the Public Utility Regulation Fund has remained below the cap level, typically due to underspending related to staffing vacancies and lower than anticipated use of consultant services. The fiscal 2020 working appropriation exceeds the estimated cap level by $1.9 million. As discussed earlier, PSC anticipates needing an increase in appropriation to meet the need for consultant services in fiscal 2020 to comply with Chapter 757. The consultant services needs create concern about the ability of PSC to maintain spending levels below the cap through lower than budgeted spending, as it has done in recent years.

It should be noted that HB 102 and SB 676 of 2020 propose to increase the cap on assessments for PSC from 0.17% to 0.25%.

2. PSC Initiates Cases Against Energy Suppliers During 2019

During calendar 2018, several reports were released that highlighted concerns regarding the residential energy supplier market in Maryland. In particular, these reports focused on the increased costs for energy from the suppliers compared to the standard utility prices. A report prepared on behalf of OPC noted that Maryland households signed up with energy suppliers were estimated to be paying $54.9 million more for electricity and gas than the households would have paid if they received service from the utility companies. A report by the Abell Foundation estimated an aggregate $255 million of overpayment by households receiving service from energy suppliers between fiscal 2014 and 2017 compared to the cost that would have been paid to the utilities. Due to these and related concerns, committee narrative in the 2019 *Joint Chairmen's Report* requested that PSC submit data for fiscal 2014 through 2019 regarding:

- the number of complaints concerning energy suppliers broken down by individual supplier;
- the number of complaints related to energy suppliers that were closed without further investigation and that required additional investigation/action;
- the average processing time for review of energy supplier complaints, separately for those screened out after initial review and those requiring additional investigation;
- the number of complaints related to energy suppliers that resulted in penalties, including refunds (including information on the penalties and the amount and number of customers awarded a refund);
- the number of energy suppliers that have withdrawn from the State following a PSC investigation or a determination of a violation; and
- the number of energy suppliers that PSC has required to cease operations following an investigation.

The committee narrative also requested information on ongoing oversight activities by PSC related to energy suppliers (such as spot checks of marketing and contract materials) and the feasibility of posting complaint data on the PSC website. PSC was also asked to provide information on current staffing and additional staffing that would be needed to provide additional, proactive oversight of energy suppliers.

Consumer Affairs Division Investigation Process and Staffing

Complaints/disputes in PSC are handled by the Consumer Affairs Division. PSC indicates that the staffing in the Consumer Affairs Division includes a director, assistant director, administrative officer, and 3 administrative specialists that handle complaints related to energy suppliers. One additional administrative officer and 4 administrative specialists handle nonsupplier-related complaints. PSC also indicates that staff in other divisions review license applications and supplier marketing material as well as determine additional enforcement activities.

The complaint/dispute resolution process begins with a series of opportunities for the complainant and energy supplier to provide information related to the complaint or to respond to the complaint. After the initial response from the company, if the complainant does not respond, the case is considered closed/resolved. After both parties have had the opportunity to respond to the information/complaint, a Consumer Affairs Division representative reviews the information submitted by both parties and determines whether a violation has occurred. Following this determination, a written decision is mailed to each. Several levels of appeal are available to either party dissatisfied with the decision, including (1) further review by the assistant director of the division; (2) appeal to PSC, including possible delegation to the Public Utility Law Judge Division if additional proceedings are deemed necessary; and (3) appeal to the circuit court. At each of the PSC steps, additional information may be gathered or the determination may be made based on information already received.

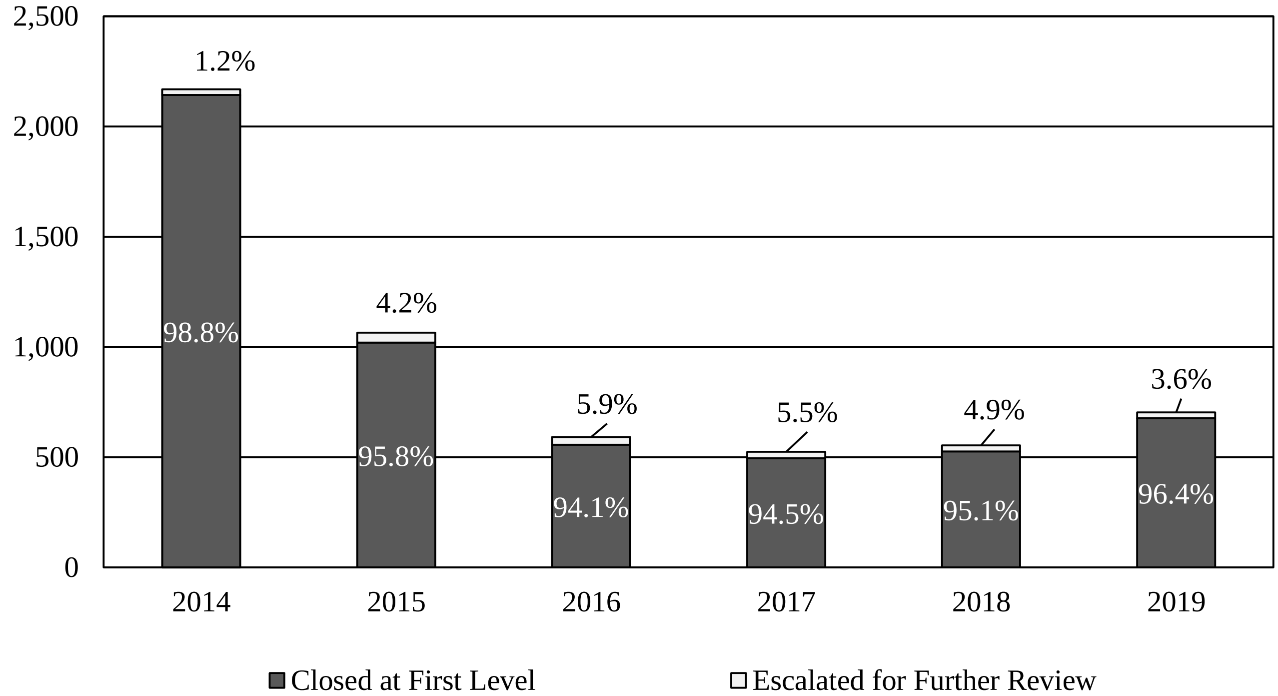
No additional personnel were added for these activities in the fiscal 2021 allowance. PSC states that it is committed to enhancing its supplier oversight function and will inform the General Assembly if additional staffing will be needed to address any proactive oversight.

Most Complaints Resolved at First Level

PSC notes that most complaints against energy suppliers relate to one or more of the following activities: (1) unauthorized enrollment; (2) misrepresentation of the company; (3) misrepresentation of contract terms; (4) increases in variable rates; (5) contract renewal; (6) early termination fees; or (7) general billing disputes.

Between fiscal 2014 and 2019, PSC identified 5,661 energy supplier-related complaints. As shown in **Exhibit 4**, the largest share of these complaints occurred in fiscal 2014, primarily related to weather-related complaints, including the extreme cold in winter 2013 to 2014. Other events also impacted the number of complaints in subsequent years. For example, in fiscal 2016, PSC revised regulations related to energy suppliers. These revisions included enhanced consumer protections, which reduced complaints. In fiscal 2019, a change in the complaint database resulted in an increase in complaints, as complaints against multiple suppliers began to be tracked as individual complaints rather than under a combined complaint.

Exhibit 4
Energy Supplier-related Complaints Closed by Year
Fiscal 2014-2019



Note: Closed complaints may not equal all complaints filed in a year as some complaints are not resolved in the year the complaint was filed.

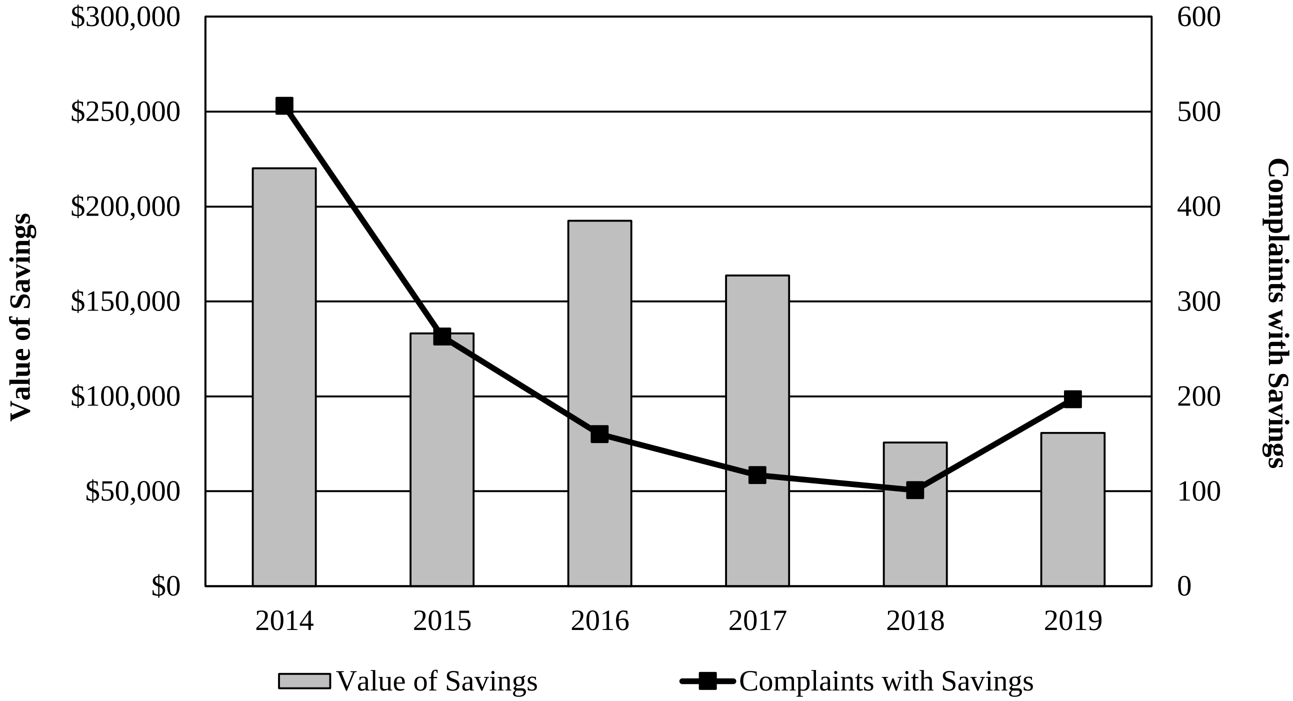
Source: Public Service Commission

In each year, more than 90% of complaints were closed at the first level. The highest share of complaints being escalated occurred in fiscal 2016, when nearly 6% of complaints were escalated. The share of escalated complaints that were subsequently appealed varied substantially between years. For example, in fiscal 2019, 60% (15 complaints) of complaints that were escalated for further review were subsequently appealed, while, in fiscal 2014, only 15% (4 complaints) were appealed.

Penalties Issued and Ongoing Activity

As shown in **Exhibit 5**, the number of complaints resulting in customer savings and the dollar value of savings issued varied between fiscal 2014 and 2019. The highest number of complaints resulting in savings and dollar value of savings occurred in fiscal 2014, which was also the year with the highest number of overall complaints. PSC indicates that prior to a regulation change in fiscal 2016, it did not always receive information on refunds issued by the supplier if it occurred through a settlement with a customer that did not run through the PSC complaint process.

Exhibit 5
Customer Savings Resulting from Complaints
Fiscal 2014-2019



Note: Savings include rebates, refunds, a change in rate, waivers of early termination fees ordered by the Public Service Commission (PSC) or provided to resolve dispute. PSC indicates data prior to adoption of new consumer protections in fiscal 2016 are inconsistent. Prior to that period, suppliers may report a settlement with customer confirmation as a closed/resolved case but not information on amounts.

Source: Public Service Commission

Other types of penalties for energy suppliers are infrequent and result from PSC-initiated special investigations of practices or customer complaints. Between fiscal 2014 and 2019, PSC issued seven civil penalties. In addition, PSC issued either a moratorium on new enrollment or a suspension of the license to operate for three energy suppliers. These figures include one fine and one suspension issued in fiscal 2019 related to an investigation against Smart One Energy, LLC. The company was issued a civil penalty of $560,000, and customers were ordered to be returned to the default utility service provider. In addition, specific refunds were ordered for customers that were the basis of complaints. The company did not respond to the PSC-issued penalties, and PSC ultimately revoked the company's license to operate, and its surety bond proceeds were used to settle the penalty ($250,000). This penalty was placed in the Retail Choice Customer Education and Protection Fund and is used in the fiscal 2021 allowance, as discussed previously. A number of other complaints/cases against certain energy suppliers were filed by PSC staff during calendar 2019, and the reviews are ongoing.

Operating Budget Recommended Actions

1. Concur with Governor's allowance.

Updates

- ***Transportation Network Operators Licensees and Vehicles Regulated Continue to Increase Rapidly:*** Beginning with the implementation of Chapter 204 of 2015, which required PSC to develop a regulatory structure for transportation network companies (such as Uber Technologies, Inc.), the number of passenger-for-hire drivers licensed by PSC and vehicles regulated has increased dramatically. Fiscal 2019 continued this trend with growth of more than 75% in regulated passenger-for-hire vehicles with a capacity of less than 16. The growth in the number of passenger-for-hire licensees slowed to 36%. However, from fiscal 2015 to 2019, the number of passenger-for-hire licensees increased from 7,948 to 115,104.

Appendix 1
2019 *Joint Chairmen's Report* Responses from Agency

The 2019 *Joint Chairmen's Report* (JCR) requested that the Public Service Commission (PSC) prepare one report. An electronic copy of the full JCR response can be found on the Department of Legislative Services Library website.

- ***Energy Supplier Related Complaints:*** Based on reports concerning overpayment by households receiving service from energy suppliers compared to the cost that would have been paid to the utilities, PSC was requested to submit a variety of data on energy supplier-related complaints. Further discussion of this response can be found in the second key observation of this analysis.

Appendix 2
Object/Fund Difference Report
Public Service Commission

Object/Fund	FY 19 Actual	FY 20 Working Appropriation	FY 21 Allowance	FY 20 - FY 21 Amount Change	Percent Change
Positions					
01 Regular	137.00	137.00	138.00	1.00	0.7%
02 Contractual	10.35	15.00	15.00	0.00	0%
Total Positions	**147.35**	**152.00**	**153.00**	**1.00**	**0.7%**
Objects					
01 Salaries and Wages	$ 14,444,415	$ 15,974,073	$ 15,936,881	- $ 37,192	- 0.2%
02 Technical and Spec. Fees	476,246	599,898	600,144	246	0%
03 Communication	133,091	92,495	92,495	0	0%
04 Travel	127,292	160,665	175,452	14,787	9.2%
07 Motor Vehicles	164,768	146,805	215,925	69,120	47.1%
08 Contractual Services	775,636	2,191,179	2,490,960	299,781	13.7%
09 Supplies and Materials	67,098	89,258	78,153	- 11,105	- 12.4%
10 Equipment – Replacement	117,016	44,424	63,175	18,751	42.2%
11 Equipment – Additional	70,650	86,629	50,712	- 35,917	- 41.5%
12 Grants, Subsidies, and Contributions	363,450	448,321	671,761	223,440	49.8%
13 Fixed Charges	1,153,953	1,215,649	1,258,133	42,484	3.5%
Total Objects	**$ 17,893,615**	**$ 21,049,396**	**$ 21,633,791**	**$ 584,395**	**2.8%**
Funds					
03 Special Fund	$ 17,279,787	$ 20,423,236	$ 20,926,959	$ 503,723	2.5%
05 Federal Fund	613,828	626,160	706,832	80,672	12.9%
Total Funds	**$ 17,893,615**	**$ 21,049,396**	**$ 21,633,791**	**$ 584,395**	**2.8%**

Note: The fiscal 2020 appropriation does not include deficiencies, planned reversions, or general salary increases. The fiscal 2021 allowance does not include contingent reductions or general salary increases.