

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE COMPLAINT FILED)
BY DAWN VOLL AND JACQUELINE JOINES)
AGAINST DELMARVA POWER & LIGHT CO.) PSC COMPLAINT DOCKET NO. 398-14
CONCERNING DISPUTED TRANSFER OF)
ACCOUNT BALANCE RESULTING IN NON-)
SERVICE TO NEW ADDRESS)
(FILED MARCH 21, 2014))

ORDER NO. 8721

This 5th day of May, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner issued in the above-captioned docket, which was submitted after a duly-noticed evidentiary hearing and which is attached to this Order as **Attachment "A"**;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That the Commission hereby adopts the "Findings and Recommendations of the Hearing Examiner" dated March 19, 2015 ("HE's Report"), attached as **Attachment "A"**, as the Commission's own decision, specifically ordering as follows:

- a. Complainants bear the Burden of Proof for their allegations that an account for electric service should be established in their name and that they are not responsible for the subject electric utility charges referenced in their Complaint filed on March 21, 2014. See 29 Del. C. §10125(c) and 26 Del. Admin. C. §1001-2.12.3.

- b. The Commission finds that, with regard to Complainant Voll's claim, in which she argues that she is not responsible for the balance owed, that Complainant is engaged in a billing dispute with Delmarva. Such disputes are not within the jurisdiction of the Public Service Commission under 26 Del. C. §201(a) as discussed in *Artesian Water Co. v. Cynwyd Club Apartments* (297 A.2d 387, Del. Supr. 1972). Thus, the Commission dismisses Complainant Voll's claims in this Complaint, with prejudice.
- c. The Public Service Commission has authority to regulate termination-of-services practices of a utility and to prohibit discontinuance for nonpayment where a bona fide dispute as to the bill is shown to exist. (See *Artesian*). In this case, Delmarva is refusing to provide service to Ms. Joines, which *Malawi* holds is tantamount to termination of service. For the reasons stated in the Hearing Examiner's Report and because this case involves denial of service, under *Artesian*, a bona fide dispute as to the bill exists and the Commission has jurisdiction. There is also a bona fide dispute as to whether Ms. Voll's and Ms. Joines' \$1,400 payment paid Ms. Joines' \$332.82 debt. Ms. Joines does not deny that she owes this debt. Ms. Joines makes no argument that she is not responsible for her bill or the amount owed in her name. Ms. Joines argues that her payment was misapplied, that Complainant Voll's debt is not her responsibility, and she should not be denied service. The maximum deposit under Delmarva's tariff is two (2) months of what the estimated annual charges will be. If any payment is missed Delmarva has the right, under its tariff, to

terminate service and use the deposit to settle any outstanding balance owed.

- d. Thus, the Commission orders that if Complainant Joines pays the portion of the outstanding bill apportioned to her in the amount of \$332.82, posts any deposit required by Delmarva, and assumes financial responsibility for the account; Delmarva must allow Complainant Joines to open an electric utility account in her name.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

A T T A C H M E N T "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE COMPLAINT FILED)
BY DAWN VOLL AND JACQUELINE JOINES)
AGAINST DELMARVA POWER & LIGHT CO.) PSC DOCKET No. 398-14
CONCERNING DISPUTED TRANSFER OF)
ACCOUNT BALANCE RESULTING IN NON-)
SERVICE TO NEW ADDRESS)
(FILED MARCH 21, 2014))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: March 19, 2015

R. Campbell Hay, Esq.
Hearing Examiner

Table of Contents

I.	APPEARANCES	1
II.	BACKGROUND	2
	A. COMPLAINT	2
	B. DELMARVA'S ANSWER AND MOTION TO DISMISS THE COMPLAINT	2
	C. COMPLAINANTS' RESPONSE TO DELMARVA'S ANSWER AND MOTION TO DISMISS	4
	D. FACTS	5
III.	EVIDENTIARY HEARING	8
	A. COMPLAINANT JOINES' TESTIMONY	8
	B. COMPLAINANT VOLL'S TESTIMONY	10
	C. MARIANNE MURPHY'S TESTIMONY ON BEHALF OF DELMARVA	12
	D. JERRY PLATT'S TESTIMONY ON BEHALF OF PSC STAFF	14
IV.	FINDINGS AND RECOMMENDATIONS	14
	A. COMPLAINANT VOLL'S CLAIM	14
	B. COMPLAINANT JOINES' CLAIM	16

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE COMPLAINT FILED)
BY DAWN VOLL AND JACQUELINE JOINES)
AGAINST DELMARVA POWER & LIGHT CO.) PSC DOCKET No. 398-14
CONCERNING DISPUTED TRANSFER OF)
ACCOUNT BALANCE RESULTING IN NON-)
SERVICE TO NEW ADDRESS)
(FILED MARCH 21, 2014))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

R. Campbell Hay, Esq., duly appointed Hearing Examiner in this docket pursuant to 26 *Del. C.* §502 and Rule 17(b) of the Commission's *Rules of Practice and Procedure* in response to a complaint filed by Ms. Dawn Voll and Ms. Jacqueline Joines on March 21, 2014, hereby reports to the Commission as follows:

I. APPEARANCES

On behalf of the Complainant Dawn Voll:

DAWN VOLL, *pro se*

On behalf of Complainant Jaqueline Joines:

BRIAN S. ENG, ESQ
Delaware Community Legal Aid Society, Elder Law Program

On behalf of Respondent, Delmarva Power & Light Company:

PAMELA J. SCOTT, ESQ.
Assistant General Counsel, Pepco Holdings, Inc.

On behalf of Delaware Public Service Commission Staff:

JULIE M. DONOGHUE, ESQ.
Deputy Attorney General, Delaware Department of Justice

II. BACKGROUND

A. Complaint

1. On March 21, 2014 Ms. Dawn Voll and Ms. Jacqueline Joines ("Complainants") filed a Complaint against Delmarva Power & Light Company ("Delmarva" or "Company"). The Complainants allege that Delmarva unfairly refused to establish an electrical service account in their name for their residence at 904 Vinings Way, Newark, DE 19702 (Vinings Way).¹ (Exh. 1, p.2)

2. Complainants believe that they should be able to have an account for electric service in their name and that the balance on the electric service account in question is not their responsibility because:

- a. The account for which the previous balance caused Delmarva to deny service in Complainant's names belonged to Mr. William Huey, Complainant Voll's deceased boyfriend (Id.);
- b. Complainant Joines is medically dependent on a pacemaker and needs electricity at all times (Id.);
- c. They have paid several thousand dollars to Delmarva and believe that is all that is owed (Id. at pp. 2-3); and,
- d. The terms of the payment arrangement with Delmarva are "too costly." (Id. at p.3)

B. Delmarva's Answer and Motion to Dismiss the Complaint

3. On April 22, 2014, Delmarva responded to the Complaint stating that electric service was denied at Vinings Way because of the past due

¹ References to the Exhibits admitted into evidence at the Evidentiary Hearing ("EH") are referred to as "Exh.- number." References to EH testimony transcribed on the EH transcript are referred to as "Tr.-page number."

balance owed on a property located at 46 Montrose Drive, Newark, DE (Montrose Drive), a property for which Ms. Voll was an owner and a Delmarva account holder. (Exh. 2, p.2)

4. Delmarva admitted that Ms. Voll paid Delmarva \$2,000 in March 2011 to prevent disconnection of the electric service at Montrose Drive. According to Delmarva's records, the remaining balance, after the aforementioned payment, was \$2,037.19. (Id. at pp.2-3)

5. Delmarva denied that the balance owed belongs to Mr. Huey. (Id. at p.3)

6. Delmarva admitted that the refusal to transfer electric service in Ms. Joines' name resulted from a balance due on an electric service account in her name at 148 Chestnut Crossing Drive, Newark, Delaware (Chestnut Crossing). (Id.)

7. Delmarva admitted entering into a payment arrangement with Complainants on January 14, 2014, in which Complainants paid \$1,400 to Delmarva in order that the electric service account would be in Complainant's names at Vinings Way with a 28 month deferred payment arrangement to pay the remaining balance due. (Id.)

8. According to Delmarva, a new payment arrangement was offered on March 19, 2014 after Complainants did not meet the terms of the January 14, 2014 agreement. The Complainants also failed to meet the terms of the second payment arrangement. (Id.)

9. Delmarva requested that the Complaint be dismissed because:

- a. Under its electric tariff, Delmarva has the right to disconnect service for non-payment;

- b. According to its electric tariff, Delmarva can reject an application for service if the applicant does not meet all of the requirements of the Rules and Regulations of the tariff;
- c. Complainants owe Delmarva \$2,978.31 for electric service that Delmarva provided and for which Complainants did not pay; and,
- d. The Complaint is a billing dispute and is not within the Public Service Commission's jurisdiction.

(Id. at pp.4-5)

C. Complainants' Response to Delmarva's Answer and Motion to Dismiss

10. In the Complainants' response, Ms. Voll stated that she and Mr. Huey moved in together at Montrose Drive in 2003. Ms. Voll stated that Mr. Huey was renting the property at the time and all utilities were in his name. Ms. Voll and Mr. Huey lived together at Montrose Drive when Mr. Huey had a heart attack² and asked her to pay his electric bill while he was recovering in the hospital in order to avoid disruption of electric service at Montrose Drive. (Exh.4, p.2)

11. Ms. Voll stated that Delmarva required permission from Mr. Huey to discuss his account with Ms. Voll. After that, Ms. Voll contended that Mr. Huey received an electric bill upon which both names appeared. She stated that upon Complainant's request, Delmarva removed Ms. Voll's name from the bill. (Id. at pp.2-3)

12. Ms. Voll stated that in order to open an electric service account in her own name at Montrose Drive after Mr. Huey's death, Delmarva demanded

² In her response, Ms. Voll states that Mr. Huey had a heart attack in June of 2004 or 2005. Therefore, making it difficult to establish exactly when the initial billing in her name began. (Exh. 4, p.2)

that the previous balance for electric service to the Montrose Drive property be paid in full. It appears from her answer that Ms. Voll entered into a payment arrangement with Delmarva for that balance.³ (Id. at p.3)

D. Facts

13. Prior to taking up residence at Vinings Way, Ms. Voll resided with her boyfriend, William Huey, at Montrose Drive, Newark, DE 19713 (Montrose Drive). (Exh. 1)

14. The property at Montrose Drive was owned, jointly, by Ms. Voll and Mr. Huey from November, 2005 until Mr. Huey's death in December, 2010. (Exh. 6)

15. On or around May, 2008, the electric bill for 46 Montrose Drive was changed to list both Ms. Voll and Mr. Huey. (Exh. 13, p.1)

16. On the May 2008 electric bill in the names of Ms. Voll and Mr. Huey, the balance carried forward from the previous bill in Mr. Huey's name only was \$1,349.58. (Id.)

17. Mr. Huey died on December 4, 2010. (Exh. 9)

18. In March, 2011, Ms. Voll sent a payment in the amount of \$2,000 to partially pay an outstanding electric account balance on the Montrose Drive property. (Supra. ¶4)

19. The property at Montrose Drive was foreclosed upon by Wells Fargo Bank which took title on December 13, 2011. (Exhs. 7 and 21)

20. The aforementioned payment of \$2,000 came from the children of Mr. Huey to cover his outstanding debt remaining after his death. (Tr. pp.33-34)

³ Ms. Voll stated in her response that "Every month for that year and ½ I had to pay anywhere from \$700 to \$1100." (Id. at p.3)

21. Following is a chart summarizing various electric account payments and Deferred Payment Arrangements (DPA) made to and with Delmarva for the service provided at Montrose Drive and Chestnut Crossing:

Date	Event
Oct 19, 2007	Huey entered Payment Arrangement for Montrose (\$160/month for 6 months)
May 22, 2008	Voll/Huey Delmarva bill for \$310.22 (bal. forward \$1,349.58, deposit balance \$100, deferred payment \$449.58, actual payment \$975.00)
May 22, 2008	Voll/Huey entered Payment Arrangement with Delmarva for \$449.58 for Montrose Drive (~\$75/month)
Dec 21, 2010	Voll/Huey Delmarva bill for \$1,163.91 (bal. forward \$3,444.41, deferred payment \$2,699.41, service \$180.07, DPA \$224.00, Finance Charge \$14.84)
Dec 21, 2010	Voll entered Payment Arrangement with Delmarva for Montrose Drive (\$224/month for 12 months)
Jan 21, 2011	First Delmarva bill in Voll's name only (bal. forward \$3,639.32, deferred payment \$2,893.18)
Jan 21, 2011	Voll entered Payment Arrangement with Delmarva for Montrose Drive (\$241/month for 12 months)
Mar 22, 2011	\$2000 Payment on Montrose Drive
Mar 22, 2011	Voll entered Payment Arrangement for Montrose (\$170/month for 12 months)
May 20,	\$654 Payment by Voll on Montrose Drive

2011	
2011	May 20, Voll entered Payment Arrangement for Montrose (\$170/month for 10 months)
2011	Jul 21, \$850 Payment on Montrose Drive
2011	Jul 21, Voll entered Payment Arrangement for Montrose (\$164/month for 8 months)
2011	Sep 21, \$1,154 Payment on Montrose Drive
2011	Sep 21, Voll entered Payment Arrangement for Montrose (\$198)
2011	Nov 18, \$566.81 Payment on Montrose Drive
2011	Nov 18, Voll entered Payment Arrangement for Montrose (\$196/month for 3 months)
2012	Apr 20, \$1,000 Payment on Montrose Drive
2012	May 21, Voll entered Payment Arrangement for Montrose (\$241/month for 5 months)
2014	Jan 14, Voll and Joines bring \$1,400 to Delmarva to obtain service at Vinings Way

(Exhs. 7 and 13)

III. EVIDENTIARY HEARING

22. On November 17, 2014, I held an Evidentiary Hearing in this matter.

A. Complainant Joines' Testimony

23. Brian S. Eng, Esq. of Delaware Community Legal Aid, Inc., on behalf of Ms. Joines, took the position that Ms. Joines should not be liable for the Delmarva debts accumulated by Ms. Voll. He argued that Ms. Joines did not receive any consideration⁴ for her name being added to the account for Vinings Way. (Tr., p.5)

24. Mr. Eng also argued that the \$1,400 payment to Delmarva should have been used to pay Ms. Joines' outstanding debt with the remaining balance applied to Ms. Voll's outstanding debt. (Id. at p.6)

25. Ms. Joines testified that her Delmarva electric bill from July 2013 was the final bill received from her residence at Chestnut Crossing. Ms. Joines testified that the amount on that bill was [\$332.82].⁵ (Id. at p.9)

⁴ Presumably, Mr. Eng is arguing that no contract was entered into between Ms. Joines and Delmarva to pay the debts of Ms. Voll. A valid contract requires an offer, acceptance of the offer, and consideration passing between the parties. (Alfred v. Walt Disney Co., 2015 WL 177434, Del.Ch., 2015). However, the Delaware Court of Chancery has made it clear that "[u]nder Delaware law, overt manifestation of assent—not subjective intent—controls the formation of a contract." Whether both of the parties manifested an intent to be bound "is to be determined objectively based upon their expressed words and deeds as manifested at the time rather than by their after-the-fact professed subjective intent." (Black Horse Capital, LP v. Xstelos Holdings, Inc., 2014 WL 5025926, Del.Ch., 2014) It does not appear that Ms. Joines ever intended to enter into a contract to assume Ms. Voll's debts; therefore, it is not necessary to argue the validity or existence of consideration.

⁵ The amount referred to in testimony was \$323.82; however, the actual amount shown on the bill from July 2013 is \$332.82. (Exh.12, p.25)

26. Ms. Joines testified that around April, 2014 she attempted to pay a portion of the outstanding balance of \$332.82 in order to open an account for 904 Vinings Way. According to Ms. Joines' testimony, she was denied an account because Ms. Voll (who was also a party to the Vinings Way lease with Ms. Joines) owed an outstanding balance in Ms. Voll's name for service provided at Montrose Drive. (Id.)

27. Ms. Joines testified that a few weeks after the April, 2014 visit to the Delmarva office, she returned with \$1,400 to pay towards Mr. Huey's and Ms. Voll's account. (Id. at p.13)

28. On cross examination by Pamela J. Scott, Esq., Assistant General Counsel for Delmarva, Ms. Joines testified (and Mr. Eng stipulated) that she moved into Vinings Way in July, 2013 and that Ms. Voll was also listed on the lease as a tenant. (Id. at pp.19-21)

29. On redirect examination, Ms. Joines testified that while she lived with Ms. Voll at Montrose Drive for a brief time, she was never a party to the mortgage or the deed and had no lease with Ms. Voll. She also testified that, although she paid the electric bill, the account was not in her name at any time at that property. (Id. at p. 24)

30. On cross examination from Julie M. Donoghue, Esq. on behalf of PSC Staff, Ms. Joines offered contradictory testimony that she did not intend to pay for Mr. Huey's electric bill with the aforementioned \$1,400 payment.⁶ (Id. at p. 30)

⁶ See ¶24, supra; however, Ms. Joines' outstanding balance was only \$332.82 making it unclear where she intended the remainder of the \$1,400 payment be applied.

B. Complainant Voll's Testimony

31. Ms. Voll testified on her own behalf that, in November, 2013, she and Ms. Joines visited a Delmarva office to have the electric account at Vinings Way placed in their own names. (Tr., p.33)

32. Ms. Voll testified that it was her understanding that when she paid Delmarva \$2,000 the account for Montrose Drive would be put into her name. (Tr., p.35)

33. Ms. Voll testified that she attempted, unsuccessfully, to get assistance from the Delaware State Service Center and Catholic Charities to pay the outstanding amount owed. (Id. at pp.35-36)

34. Ms. Voll then testified that Delmarva demanded \$2,800 to set up an account for Vinings Way in her's and Ms. Joines' name. Ms. Voll testified that at the time the account was in the name of the apartment complex; but, new management found it necessary to have the account in their own name. (Id.)

35. Ms. Voll testified that she and Ms. Joines collected \$1,400 to pay the \$332.82 outstanding from Ms. Joines' Chestnut Crossing account with the balance to be applied to Ms. Voll's outstanding balance for service provided at Montrose Drive. (Id. at p.36)

36. Ms. Voll testified that, from March, 2011 to October, 2012, she and Ms. Joines paid Delmarva between \$700 and \$1,100 every other month. (Id. at p.37)

37. On cross examination by Mr. Eng, Ms. Voll reiterated her belief that the \$1400 paid to Delmarva would first go to pay off the amount of \$332.82 that Ms. Joines owed for service provided at Chestnut Crossing with

the balance applied to the amount she owed for service provided at Montrose Drive. (Id. at p.38)

38. On cross examination by Ms. Scott, Ms. Voll testified that she moved into Montrose Drive in November, 2005 and that Mr. Huey lived there from April, 2003. (Id. at p.39)

39. Ms. Voll testified that she lived at Montrose Drive "on and off" from November, 2005 to October, 2012. Ms. Voll also testified that in October, 2012 the property went into foreclosure. (Id.)

40. Ms. Voll testified that, while she did not live at Montrose Drive all the time, she had no other electric service accounts in her own name during that time. (Id. at p.45)

41. Ms. Scott asked Ms. Voll to read from Exhibit 8, in which customer notes from Delmarva advised that Ms. Voll said she moved into Montrose Drive four (4) months before Mr. Huey's death in 2010. (Id. at pp.46-47)

42. Ms. Voll testified that she moved into Vinings Way with her mother in November, 2013⁷ and lived there until August, 2014. She further testified that from October, 2012 until November, 2013 she lived with Ms. Joines at Chestnut Crossing and then became sick and "went away." She stated that she moved some of her things in with Ms. Joines at Vinings Way prior to November, 2013, but returned to Vinings Way after her illness. (Id. at pp.50-51)

43. On cross examination by Ms. Donoghue, Ms. Voll testified that she called Delmarva regarding Mr. Huey's electric bill and was told that Ms. Voll's name did not need to be on the account in order to discuss the bill;

⁷ Prior testimony indicated that Ms. Voll and Ms. Joines signed the lease at Vinings Way in July, 2013 (Tr. pp.19-21)

however, her name was added to the account and appeared on the bill sometime between 2005 and 2008. (Id. at p. 67)

44. Ms. Voll testified that, in her opinion, she owed only half the outstanding balance on that account because she lived at the Montrose Drive property "on and off for a period of time."⁸ (Id. at pp.69-70)

C. Marianne Murphy's testimony on behalf of Delmarva

45. Marianne Murphy, Lead Analyst for Delmarva's Regulatory and Executive Customer Relations Department, testified that if a person wishes to be added as an account holder so that their name appears on an electric bill, the person must accept full responsibility for any outstanding bills from the time their name is added to the account. (Id. at pp.77, 99)

46. Ms. Murphy further testified that, under Delmarva's policy, if a person's name is added to an account that person accepts responsibility for preexisting debt on that account. (Id. at p.99)

47. Ms. Murphy testified that Ms. Voll's name was added to the Montrose Drive electric account in 2008. (Id. at p.78)

48. On cross examination by Ms. Donoghue, on behalf of PSC Staff, Ms. Murphy testified that because Ms. Voll and Ms. Joines both resided at (and both signed the lease for) the Vinings Way property, no account could be established in either Complainant's name until arrangements were made to pay the entire balance owed by both Complainants. (Id. at p.103)

49. Ms. Murphy testified that, according to customer service call records (Exh.8), Complainant Voll stated that she did not live at Vinings

⁸ While Ms. Voll claims she owed only half the electric bills associated with Montrose Drive, she offered no evidence to substantiate her claim.

Way and signed the lease as a co-signor in order that her mother could get the apartment. (Id. at p.108)

50. Ms. Murphy testified that, in accordance with Delmarva policy, in order for an account balance to be transferred to another account, there must be a relationship between the accounts. (Id. at p.112)

51. Ms. Murphy further testified that if the related parties are not the same person, Delmarva could only require payment for one parties' debts by the other party if the parties accept responsibility for the others' balance. (Id. at p.113)

52. Ms. Murphy also testified that Delmarva would only hold a party liable for the debt of another if there was an agreement to accept responsibility for the debt. She stated that Delmarva had no agreement from Ms. Voll to pay Ms. Joines' debt; nor, did Delmarva have an agreement from Ms. Joines to pay Ms. Voll's debt. (Id.)

53. Ms. Murphy distinguished that Vinings Way was an account for new service for both individuals. She noted that the balance from each Complainant was transferred to this new account for Vinings Way because both Complainants were on the lease and on the electric service account. (Id. at p.114)

54. Ms. Murphy testified that a balance transfer from one account to another would not have taken place absent "some misrepresentation." She alleged that Ms. Joines misrepresented that she was the only resident at Vinings Way. (Id. at p.115)

55. Later Ms. Murphy testified that Ms. Joines requested electrical service in her name only and that Ms. Joines did not say that she would be living at Vinings Way alone. (Id. at p.116-7)

56. Ms. Murphy testified that, to her knowledge, Delmarva had made no attempt to take legal action to collect Ms. Voll's debt. (Id. at p.122)

D. Jerry Platt's testimony on behalf of PSC Staff

57. On direct examination by Ms. Donoghue, Jerry Platt of the PSC Staff testified that, according to Delmarva's stated policy, where one person was living with another person who had a separate account, balances should not be transferred between accounts. (Id. at pp.128-9)

58. Mr. Platt testified that it was his understanding that, despite their living arrangements, if a person requested an account solely in their name, that person alone would be responsible for the account. (Id. at p.130)

59. Mr. Platt testified that Staff and Delmarva agreed with Ms. Murphy that, absent a written agreement between parties, in writing, balances would not be transferred between parties.⁹ (Id. at p.132)

60. On cross examination by Ms. Scott on behalf of Delmarva, Mr. Platt testified that he understood that the balance transfer policy would only be applicable in the absence of fraud, misrepresentation, or other bad faith. (Id. at p.135)

IV. FINDINGS AND RECOMMENDATIONS

A. Complainant Voll's Claim

61. The Commission has exclusive jurisdiction to supervise and regulate utilities; however, that authority has limits. (See 26 Del. C.

⁹ See Ms. Murphy's testimony, supra. ¶52.

§201(a) and *Artesian Water Co. v. Cynwyd Club Apartments*, 297 A.2d 387, Del. Supr. 1972)

62. Delmarva has the right to pursue any appropriate collections action to recover the amounts owed by Ms. Voll for service provided at Montrose Drive, or any other property for which an account has or had been established in her name.¹⁰ (Delmarva Electric Tariff, Second Revised Leaf No. 15, Section IV, para. H)

63. Ms. Voll contends that she has paid half of what is owed for the Montrose Drive electric bills. She believes that because she was not a full-time resident at Montrose Drive, the money she paid to Delmarva is sufficient to cover her portion of the debt. The Delaware Court of Common Pleas has held that voluntary payments made "with full knowledge of the facts" and not made under duress¹¹ are considered to be made willingly and are not subject to recovery. (*Malawi v. PHI Service Co.*, 2012 WL 986751, Del.Com.Pl., 2012) It appears from the evidence presented in this Complaint that Ms. Voll voluntarily made payments to Delmarva with full knowledge of how the payments would be applied. Additionally, Delmarva Electric Tariff, Second Revised Leaf No. 14, Section IV, para. E, specifies that partial payments are allocated first to amounts owed in arrears and then to current amounts owed.

64. Because Delmarva followed the tariff provisions regarding payment and did not err in denying service to Ms. Voll due to the large outstanding

¹⁰ The tariff reads in relevant part, "[f]ailure of the Customer to meet the conditions of this installment payment agreement including prompt payment of the current bill shall constitute a breach of this agreement and entitle the Company to pursue collection and termination procedures pursuant to the applicable rules and regulations of the Public Service Commission of Delaware." (Delmarva Electric Tariff, Second Revised Leaf No. 15, Section IV, para. H)

¹¹ In *Malawi*, the Court noted that the threat of disconnection of service due to non-payment does not amount to duress.

balance in her name for the Montrose Drive account, the dispute between Ms. Voll and Delmarva is a billing dispute.¹² As the Public Service Commission does not sit as a court of law, billing disputes are outside its jurisdiction and must be filed in a court of general jurisdiction. (*Artesian Water Co. v. Cynwyd Club Apartments*, 297 A.2d 387, Del. Supr. 1972).¹³

65. In *Artesian*, the Delaware Supreme Court held that, if a billing dispute arises in connection with a service issue, the Public Service Commission has jurisdiction to hear the complaint. In that case, a billing dispute arose because of inadequate and sub-standard water provided by Artesian. There is no such claim in the present case. Ms. Voll's Complaint is solely a billing dispute. She does not claim that Delmarva did not provide the service it was supposed to, nor did she claim that the service was not provided adequately.

66. Therefore, I recommend that Ms. Voll's Complaint be dismissed, with prejudice, because it is a billing dispute and the Commission does not have jurisdiction.

B. Complainant Joines' Claim

67. There is sufficient evidence presented to suggest that Ms. Joines maintained a separate residence from Ms. Voll until they co-signed the lease at Vinings Way.

¹² According to Delmarva's Delaware Tariff, "[s]ervice at new locations shall be rendered only when all bills for service to the Customer at any other locations have been paid, or credit arrangements satisfactory to the Company have been made. (Tariff Leaf 9, para. B)

¹³ In the *Artesian* case the Delaware Supreme Court upheld the Superior Court's finding that the Public Service Commission does not sit as a court of law and, therefore, must avoid adjudication of debt controversies between parties.

68. There is sufficient evidence to show that electric service accounts were established separately for those properties in each of their individual names.

69. There was no evidence presented to establish that Ms. Joines accepted financial responsibility for Ms. Voll's debt to Delmarva. Simply paying a bill on another's behalf does not establish such responsibility.¹⁴

70. A public utility is entitled to compensation for the service it provides. (*Artesian Water Co. v. Cynwyd Club Apartments*, 297 A.2d 387, Del. Supr. 1972)

71. The Public Service Commission has authority to regulate termination-of-services practices of a utility and to prohibit discontinuance for nonpayment where a bona fide dispute as to the bill is shown to exist. (*Artesian Water Co. v. Cynwyd Club Apartments*, 297 A.2d 387, Del. Supr. 1972). In the present case, there is a bona fide dispute as to whether Ms. Joines' payment was properly applied to her outstanding balance of \$332.82 from Chestnut Crossing and whether she should be denied service because of that balance

72. There is sufficient evidence that Complainants paid \$1,400 as partial payment on both outstanding balances. There is also sufficient evidence that Delmarva then combined both accounts into one account for Vinings Way and transferred both balances to that account after deducting the \$1,400 payment. There was never any agreement between the parties that Ms. Joines balance of \$332.82 would be satisfied by the \$1,400 payment; however, there was never any express agreement by Ms. Joines to accept responsibility for Ms. Voll's prior debt.

¹⁴ See discussion of Malawi case at ¶63, supra.

73. Despite the fact that Ms. Joines argues her payment was misapplied, according to *Malawi*, voluntary payments made "with full knowledge of the facts" and not made under duress are considered to be made willingly and are not subject to recovery. Because of the *Malawi* decision, Ms. Joines' \$332.82 electric bill is due and owing.

74. Regarding Ms. Voll's claim, Ms. Voll argues that the outstanding balance is not her responsibility. Ms. Joines makes no such claim. Complainant Joines does not deny the existence of her debt to Delmarva. Rather, Ms. Joines argues that her payment was misapplied and that Ms. Voll's debt is not Ms. Joines' responsibility, and Ms. Joines should not be denied service.

75. The maximum deposit under Delmarva's tariff is two (2) months of what the estimated annual charges will be.¹⁵ If any payment is missed Delmarva has the right, under its tariff, to terminate service and use the deposit to settle any outstanding balance owed.¹⁶

76. In the present case, if Ms. Joines pays her outstanding bill of \$332.82, posts the required deposit, and assumes financial responsibility for the account, Delmarva assumes little risk in providing service to her in her name alone.

¹⁵ Delmarva Electric Tariff, Second Revised Leaf No. 12, Section III, Para. A states in relevant part, "[w]here the Company holds more than one deposit for separate accounts for the same Customer, the Company shall administer each deposit individually. Such deposit shall not be more in amount than two-twelfths (2/12) of the estimated annual applicable Delivery Service revenue or combined Electric Supply & Delivery Service revenue, or as may be reasonably required by the Company in cases involving service for short periods. Service may be denied or terminated for failure to pay a deposit when requested. Deposits shall not be applied against current delinquent bills."

¹⁶ See ¶62.

77. Therefore, if Complainant Joines complies with the requirements set forth in the preceding paragraph, I recommend that Delmarva be required to open an account in her name only.

78. I attach a Proposed Order for the Commission's consideration as Exhibit "A".

Respectfully submitted,



R. Campbell Hay
Hearing Examiner

Dated: March 19, 2015