

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

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR A)
CHANGE IN THE GAS ENVIRONMENTAL) PSC DOCKET NO. 05-356
SURCHARGE RIDER RATE)
(FILED SEPTEMBER 30, 2005))

ORDER NO. 6889

AND NOW, to-wit, this 25th day of April, A.D., 2006;

WHEREAS, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner ("Report") issued in the above-captioned docket, which was submitted after a duly noticed public evidentiary hearing;

AND WHEREAS, the Commission finds that the proposed increase in the Environmental Surcharge Rider Rate as provided in the applicable tariff sheets of Delmarva Power & Light Company is just and reasonable and that its adoption is in the public interest; now, therefore,

IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the April 11, 2006 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as "Attachment A."

2. That the Commission approves the Company's proposed rates and tariff changes, which reflect an increase in the environmental surcharge rider rate, as follows:

<u>Rate Schedules</u>	<u>Present Charge</u>	<u>Proposed Charge</u>
RG and GG	\$0.00083/Ccf	\$0.00138/Ccf
MVG & LVG	\$0.00827/Mcf	\$0.01377/Mcf
GVTF	\$0.00083/Ccf	\$0.00138/Ccf
MVFT, LVFT	\$0.00827/Mcf	\$0.01377/Mcf

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

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

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: APRIL 11, 2006

RUTH ANN PRICE
HEARING EXAMINER

TABLE OF CONTENTS

	PAGE
I. APPEARANCES.....	1
II. A BRIEF HISTORY OF THE DELMARVA ENVIRONMENTAL SURCHARGE RIDER RATE.....	1
III. DELMARVA'S INSTANT APPLICATION TO INCREASE the ESR.....	4
A. Background.....	4
B. Public Comment Session.....	6
IV. SUMMARY OF THE EVIDENCE.....	8
A. Evidentiary Hearing.....	8
V. ISSUES PRESENTED BY THE JANUARY 19, 2005 PUBLIC COMMENT SESSION.....	16
A. Should Ratepayers Bear the Entire Cost of Delmarva's Remediation Expenses, or Should the Company's Shareholders Share These Costs?	16
B. Why is it in the Public Interest for the Commission to Allow the Proposed Rate to Go Into Effect On A Temporary Basis Pending Final Commission Consideration of the Rate Increase?	17
VI. DISCUSSION.....	20
A. Uncontested Matters that Require Commission Action	20
B. Administrative Mark-up Costs - No Commission Action Required.....	21
VII. RECOMMENDATION.....	21

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Ruth Ann Price, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, by Commission Order No. 6752, dated October 25, 2005, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Delmarva Power & Light Company ("Delmarva" or "the Company"):

TODD L. GOODMAN, ESQUIRE.

On behalf of the Public Service Commission Staff ("Staff"):

ASHBY & GEDDES
BY: REGINA A. IORII, ESQUIRE.

On behalf of the Division of the Public Advocate ("DPA"):

G. ARTHUR PADMORE, PUBLIC ADVOCATE.

II. A BRIEF HISTORY OF THE DELMARVA ENVIRONMENTAL SURCHARGE RIDER RATE

1. The Environmental Surcharge Rider Rate ("ESR" or "Environmental Surcharge Rate") grew out of a base rate case filing made by Delmarva Power & Light Company (trading as Conectiv Power Delivery) in PSC Docket No. 03-127. In that case, the Company sought

to recover, among other things, its environmental remediation costs related to clean-up of certain sites designated by the Department of Natural Resources and Environmental Control ("DNREC") in Wilmington, Delaware. While the Commission's Staff was not opposed to the Company recovering its remediation-related costs, Staff believed that a surcharge, a separate line item appearing on customers' bills, provided ratepayers with more specific information regarding the ratepayers' role in contributing to payment of these costs.

2. In PSC Docket No. 03-127, the parties reached a settlement regarding the treatment of environmental remediation costs. Consistent with that settlement, on February 13, 2004, the Company made an application seeking approval of an environmental surcharge to recover the amount of \$522,988 over a five-year period. Pursuant to PSC Order No. 6372 (Feb. 24, 2004), the Commission ordered the first environmental surcharge rate to be effective for the period April 13, 2004 through October 31, 2004. At its meeting held on April 20, 2004, the Commission approved implementation of an ESR imposing a residential surcharge of \$0.00044/Ccf or approximately five (\$0.05) cents per month for an average residential heating customer using 120 Ccfs per month.

3. In PSC Order No. 6372 (Feb. 24, 2004), the Commission ordered an annual mechanism to reset the surcharge effective on November 1 of each year. Accordingly, the Company filed an application on October 1, 2004 for an increase in the residential ESR,

among other categories, effective on or after November 1, 2004.¹ After public comment and an evidentiary hearing, the Commission approved on May 24, 2005 (PSC Order No. 6626) an increase of \$0.00083 per Ccf/per month in the ESR for the period November 1, 2004 through October 31, 2005, calculated on the environmental cost year of June 1, 2003 through May 31, 2004. The rate of \$0.00083 per Ccf was designed to recover \$55,751 in incurred expenses based upon the average residential customer's usage of 120 Ccf per month. According to the filing, under the proposed rates, the average residential heating customer using 120 Ccf a month during the winter heating season would experience an increase of \$0.05 or an increase of less than 0.01 percent since the last ESR filing.

4. The rates for the first ESR (PSC Order No. 6372 (Feb. 24, 2004), Order No. 6401 (Apr. 20, 2004)), the presently approved rates (PSC Order No.6626, May 24, 2005) and the proposed rates for the instant case are as follows:

April 13,'04-	Nov. 1,'04-	Nov. 1,'05-
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¹See In The Matter Of The Application Of Delmarva Power & Light Company for a Change in the Gas Environmental Surcharge Rider Rate (Filed October 1, 2004), PSC Docket No. 04-384.

<u>Rate Schedules</u>	<u>Oct. 31, '04 Initial ESR²</u>	<u>Oct. 31, '05 Current Charge³</u>	<u>Oct. 31, '06 Proposed Charge</u>
RG and GG	\$0.00044/Ccf	\$0.00083/Ccf	\$0.00138/Ccf
MVG & LVG	\$0.0044/Mcf	\$0.00827/Mcf	\$0.01377/Mcf
GVFT	\$0.00044/Ccf	\$0.00083/Ccf	\$0.00138/Ccf
MVFT, LVFT	\$0.0044/Mcf	\$0.00827/Mcf	\$0.01377/Mcf

²The Commission approved Delmarva's first Environmental Surcharge Rate on April 20, 2004 in PSC Order No. 6401.

³The current Environmental Surcharge Rate was made effective by Commission Order No. 6626 (May 24, 2005). The rates were applicable to Delmarva's billings issued on or after November 1, 2004 through October 31, 2005 for site remediation costs in the amount of \$55,751 incurred June 1, 2003 through May 31, 2004.

III. DELMARVA'S INSTANT APPLICATION TO INCREASE THE ESR

A. Background

5. Consistent with its obligation to reset the surcharge annually, on September 30, 2005, Delmarva filed an application with the Commission seeking to increase its ESR factors, effective on and after November 1, 2005, and with such revised factors to continue in effect until October 31, 2006, subject to refund.

6. In PSC Order No. 6752 (Oct. 25, 2005), the Commission allowed Delmarva's instant proposed Environmental Surcharge Rate to become effective on a temporary basis, subject to refund. In addition, the Commission designated the undersigned Hearing Examiner to conduct public evidentiary hearings as needed and to report to the Commission her proposed findings and recommendations based on the evidence presented.

7. On November 2, 2005, the Company published notice of its Application in the legal classified sections of The News Journal and the Delaware State News newspapers. The notices included information on how to intervene in the proceeding and announced a public comment session on January 19, 2006.

8. The Division of the Public Advocate filed a notice to participate in the proceeding. No other party petitioned for intervention.

9. According to the instant filing, under the proposed rates, the average residential heating customer using 120 Ccf a month during the winter heating season would experience an increase of \$0.07 or an increase of less than 0.1 percent since the last ESR filing.

B. Public Comment Session

10. A duly noticed⁴ public comment hearing was conducted on the evening of January 19, 2006 in Wilmington, Delaware. In addition to the public notice of the hearing included in the newspapers, the Company sent notice of the hearing directly to the organizations that participate in its "Project Concern" and the Association of Community Organizations for Reform Now ("ACORN"). No customers submitted written comments concerning the ESR proposed rate increase.

11. While several customers appeared at the public comment session, held jointly for this docket and for Delmarva's Gas Cost Rate ("GCR") case, PSC Docket No. 05-312F,⁵ no customers asked to speak at the session scheduled specifically for consideration of the Environmental Surcharge Rate application.⁶ However, several customers commented about the ESR during the portion of the public comment session devoted to the GCR.

12. At the beginning of the public comment session devoted to the ESR, the Company gave a presentation concerning the need for the ESR. Tr. 12-14. Its counsel, Todd Goodman, Esquire, and Charles

⁴The affidavits of publication of notice from the *Delaware State News* and *The News Journal* newspapers are included in the record as Exhibit 1. Exhibits will be cited as "Ex.__" and references to the public comment session transcript and the hearing transcript will be cited as "Tr.__."

⁵On October 3, 2005, Delmarva filed an application for an increase in its Gas Cost Rate ("GCR"). The GCR case is captioned In the Matter of the Application of Delmarva Power & Light Company, d/b/a Conectiv Power Delivery, For Approval of Modifications to its Gas Cost Rates, PSC Docket No. 05-312F.

⁶Since no members of the public requested to speak on the ESR during the portion of the public comment session devoted to that issue, the transcript reveals that session was only five (5) minutes, from 7:00 p.m. to 7:05 p.m. The public comment session on Delmarva's Gas Cost Case began immediately thereafter at 7:05 p.m.

Dickerson, Delmarva's Vice President, Gas Delivery, represented the Company. Tr. 12-14.

13. Approximately fifteen (15) members of the public attended the public comment session, ten (10) of whom asked to speak at the session scheduled for consideration of this application. Representatives from the Commission's Staff, the Division of the Public Advocate, and the Company appeared at the joint hearing.⁷

14. The comments regarding the ESR were essentially threefold: (a) the Commission's website did not contain information substantively discussing the surcharge; (2) the advertisement concerning the ESR increase was inadequate; and (3) Delmarva, as the cost-causer for the needed remediation, should pay the cost of cleanup.

15. Typical of the comments on this issue were those of Susan Collins, representing the "Let My People Know Coalition," a community-based group. Ms. Collins commented that her organization was opposed to customers paying for the Company's environmental clean-up on philosophical grounds. Tr. 54. Ms. Collins noted that any amount surcharged to customers for such remediation was inappropriate. Tr.55. In the view of her organization, clean-up should be the responsibility of Delmarva's shareholders. Other companies have engaged in similar environmental clean-up activities and shareholders had to assume the cost of remediation. Tr. 95. Ms. Collins voiced the opinion that Delmarva's manufacturing processes caused the toxic waste that now needs to be cleaned up; therefore, it should be solely

⁷The transcript of the January 19, 2006 ESR and GCR public comment sessions consists of 84 total pages and will be cited as "Tr. at ____."

responsible for the clean-up. Tr. 55. Delmarva's clean-up is a cost of doing business that should not be shouldered by the ratepayers.

16. In response to the issues raised at the public comment hearing, by letter dated January 24, 2006, I requested the parties to file supplemental testimony concerning three questions:

- A. Why should (or, why should not) ratepayers pay Delmarva for the total cost of remediation of its environmental pollution sites?
 - 1. Is it appropriate for the ratepayers and the Company's shareholders to share the costs of remediation?
 - 2. Has there been discussion of this topic in prior Delmarva cases?
- B. When does the Company anticipate that remediation of its known sites will be completed? Please provide a list of all of the known sites.
- C. Why (or, why not) is it in the public interest for Delmarva to have the proposed rate go into effect on a temporary basis pending final Commission consideration of the rate increase? In answering this question, please use mathematical examples to support your position.

The parties filed supplemental testimony on February 24, 2006 on the issues presented in the Hearing Examiner's letter.

IV. SUMMARY OF THE EVIDENCE

A. Evidentiary Hearing

17. A duly noticed evidentiary hearing was conducted on March 8, 2005, in Wilmington. No members of the public attended the evidentiary hearing. The record, as developed at the hearing, consists of a 45-page verbatim transcript and 8 exhibits.

18. I have considered all of the record evidence and, based thereon, I submit for the Commission's consideration these findings and recommendations.

19. **Company's Direct Testimony.** Delmarva submitted the pre-filed testimony of one witness, Heather G. Hall, Regulatory Affairs Lead. Ms. Hall provided the overview for Delmarva's case and summarized the proposals and rationale for those proposals. Ex. 2. Ms. Hall explained that by Order No. 6626 (May 24, 2005), the Commission approved the environmental surcharge rate that placed into effect the current rate of \$0.00083 per Ccf for the RG and GG rate class. As stated by Ms. Hall, the purpose of the Environmental Surcharge Rate is to allow the Company to recover certain expenses associated with remediation of its Manufactured Gas Plant sites. Ex. 2 at 3.

20. In the instant application, filed on September 30, 2005, the Company seeks to increase the Environmental Surcharge Rate from \$0.00083 per Ccf to \$0.00138 per Ccf based upon the \$957,588.96 in

expenses incurred during the Environmental Cost Year of June 1, 2004 through May 31, 2005. Ex. 2 at 2, 4. Approval of the Company's request for space heating customers would result in an increase of \$0.07 or less than one percent (1%). Ratepayers using 120 Ccfs per month would experience an increase from \$150.90 to \$150.97 in their bills. Ex. 2 at 12. Ms. Hall testified that 120 Ccfs is an industry standard used as a benchmark for the typical customer. Tr. 23-24. This standard is used in the industry as a way to compare gas rates from year to year. Tr. 24.

21. Remediation Sites. Ms. Hall testified there was one manufactured gas plant site in Wilmington that DNREC has divided into three designations. Tr. 25. There are three sites located in Wilmington - Wilmington Coal Gas Site North, Wilmington Coal Gas Site South, and Wilmington Public Works Yard. Tr. 25.⁸ The Company's Application for remediation costs in its instant Application pertains to the Wilmington Coal Gas Site North and the Wilmington Public Works Yard.⁹ Tr. 25.

22. In supplemental prefiled testimony, Ms. Hall stated the Company anticipated that remediation work for the Wilmington Coal Gas Site North would be completed by February 2007. Ex. 3 at 6. However, under threat of condemnation, the site will be sold to the Delaware Department of Transportation and used for relocation of a roadway in the area. Tr. 26; Ex. 3 at 6. Therefore, remediation costs for this

⁸Delmarva has a fourth site located in New Castle, Delaware.

⁹Company witness, Heather G. Hall, noted remediation work on the Wilmington Coal Gas Site South has not begun. The Company and DNREC have not decided on the appropriate remediation steps for that site. Tr. 25-26.

site will decrease even though there will be costs in the Company's Environmental Cost Year of June 1, 2005 through May 31, 2006.

23. Further, it is anticipated that remediation of the Public Works yard will be completed in the summer of 2006. Tr. 27.

24. Environmental Cost Year and Eligible Expenses. The \$957,588.96 in costs claimed by the Company represent some legal expenses, but, primarily, these costs are payments made to engineering and consulting companies that assisted the Company in its remediation of Manufactured Gas Plant sites. Ex. 2 at 7. These firms perform various tasks such as ground water testing and work plan development. Id.

25. The Environmental Cost Year ("ECY") is defined as "the time period over which environmental costs are incurred and any payment from other parties are netted against those costs." Ex. 2 at 7. The ECY includes costs actually incurred during the applicable year. For this ECY, the Company did not receive any payments from third parties to offset the costs incurred by Delmarva. Ex. 2 at 7.

26. The Company's tariff sheet No. 79 defines the costs eligible for recovery by this rider as "[a]pplicable environmental costs are those incurred as a result of, but are not limited to, investigating, testing, monitoring, remediation, land acquisition, legal costs related directly to the site remediation, and disposal sites. The costs must be actually incurred, incremental "out-of-pocket" remediation related expenses, and must exclude such costs as internal labor and overhead expenses." Ex. 2 at 5.

27. Ms. Hall explained the process for calculating the environmental surcharge as: The amount of eligible environmental costs, \$957,588.96, is amortized over a five-year period, offset with the deferred tax benefit to customers. Ex. 2 at 10 and Schedule HGH-2. Therefore, for the first recovery year beginning November 1, 2005,

the amount of \$156,695.41 will be recovered under this Application.
Id.

28. All environmental cost invoices are reviewed by the Company's manager responsible for the particular remediation site. Ex. 2 at 8. Delmarva has established separate accounting codes to track "out-of-pocket" expenses associated with remediation efforts. The expenses are periodically reviewed by a financial consultant and the Manager of Gas Engineering to ensure that they are properly recoverable expenses. *Id.*

29. Reconciliation Factor. The reconciliation factor is the amount actually over-collected or under-collected from customers for the twelve-month period ending with the month of July immediately preceding the beginning of the next recovery year. Ex. 2 at 10.

30. As shown in the Schedule of Over/Under-Collection (Schedule HGH-3) appended to Ms. Hall's pre-filed testimony, the reconciliation factor is an under-collection of \$6,891.19 or approximately 3% of the proposed increase. Ex. 2 at 10.

31. Ms. Hall also noted that there was one unresolved issue from the Company's last ESR filing, PSC Docket No. 04-384. The issue regarded mark-ups charged by subcontractors. In that case, Staff recommended that the Company not be allowed to recover costs associated with the mark-up that a vendor incurs as a result of hiring a subcontractor to complete a project. Ex. 2 at 5. Delmarva objected to Staff's position on the ground that the mark-ups charged by contractors were incurred as result of their remediation efforts and should be allowed in accordance with the applicable tariff. Ms. Hall

stated although the Company and Staff have not come to an agreement on the issue mark-ups, in this Application there are no costs claimed for "mark-ups on mark-ups." Ex. 2 at 6.

32. **Division of Public Advocate's Direct Testimony.** The Division of Public Advocate ("DPA") submitted the testimony of Bo Shen, Ph.D. on the issues of the impact of the proposed ESR rate increase on customers, the methodology used by the Company, and whether the Company's remediation expenses were reasonable and legitimate.

33. Dr. Shen testified that the Company's proposed increase would require residential space heating customers in a winter heating month to experience a \$0.07 increase, or 0.00046%, in the bill. Ex. 4 at 4. The impact from a billing standpoint would be from \$150.90 to \$150.97, or an increase of seven cents. Dr. Shen observed that the Company had not proposed any rate design changes in its filing. Ex. 4 at 5. Dr. Shen recommended that the Company's proposed increase of \$0.00083 per Ccf to \$0.00138 per Ccf (and the increases for the other rate classifications) be approved. Ex. 4 at 4.

34. Dr. Shen opined that although there appears to be no agreement among the parties regarding the mark-ups that subcontractors may charge, it does not appear that the issue was presented in this filing. Ex. 6-7. However, Dr. Shen provided that it is the DPA's position that it is unfair for ratepayers to shoulder the cost of additional administrative mark-ups because the contractor is unable to complete a project without using a subcontractor. *Id.* at 7. In

future cases, the Company should bear the burden of demonstrating the reasonableness of including these charges in its ESR costs. *Id.* at 8.

35. Staff's Direct Testimony. The Delaware Public Service Commission's Staff submitted the testimonies of two witnesses, Heidi L. Wagner, a Public Utilities Analyst II, and David N. Bloom, a Public Utilities Analyst I, to provide Staff's position regarding the proposed increase to the environmental surcharge rate. Ex. 6 (Wagner) and Ex. 8 (Bloom).

36. Ms. Wagner reported that she conducted a thorough audit of the Application and schedules filed in this matter with other supporting documents that were made available to Staff. Ex. 6 at 4. The Commission's Staff conducted an audit of the Company's books relating to the remediation of the Wilmington Coal Gas Site North and the Public Works Yard. *Id.* Further, Ms. Wagner testified that she and Mr. Bloom conducted a site visit of the environmental clean-up locations in Wilmington. *Id.*

37. Mr. Bloom testified that, under the supervision of Ms. Wagner, he performed an audit of one hundred percent (100%) of the Company's invoices for the twelve-month period from June 1, 2004 through May 31, 2005. Ex. 8 at 2. The audited accounts, specifically 5227095 (Wilmington Coal Gas Site North) and 5229024 (Public Works Yard), are used to track out-of-pocket expenses, such as consulting, legal, and other expenses related to the remediation process. *Id.* Mr. Bloom prepared a schedule of environmental expenses showing the amount of the invoices by month and by classification. Ex. 8, Exhibit DNB-2.

38. Mr. Bloom determined that of the claimed \$957,588.96, the bulk of the expenses related to engineering and environmental consulting fees (\$924,962.50). *Id.* Legal fees represented only \$7,350.00 of the costs, and administrative fees, designated "Other," were \$25,276.46. *Id.*

39. Staff found no discrepancies between the Company's claimed expenses for environmental costs and those subjected to audit. Ex. 6 at 6; Ex. 8 at DNB-3. Staff determined that the Company had complied with and met the requirements for the proposed increase effective November 1, 2005. Ex. 6 at 6.

40. Staff investigated the issue of mark-up fees charged by vendors and subcontractors to the Company. Ex. 6 at 4. This issue was raised in the Company's last previous filing to increase its ESR, PSC Docket No. 04-384.

41. In response to data requests sent to Delmarva, Staff found that contractors performing services for the remediation effort charged mark-ups in the range of one percent (1%) to ten percent (10%) even though the industry standard is 5% to 15%. Ex. 6 at 8. For purposes of this case alone, Staff is not disputing any vendor mark-ups, but it reserves the right to address this issue in future proceedings. *Id.*

42. Regarding the instant Application, Staff found that the Company's calculations were correct and the rate requested was appropriate. *Id.* Therefore, Staff recommended approval of the increase in the Environmental Rate Rider from \$0.00083 per Ccf to \$0.00138 per Ccf. Ex. 6 at 6.

V. ISSUES PRESENTED BY THE JANUARY 19, 2005 PUBLIC COMMENT SESSION

43. At the January 19, 2005 public comment session, customers asked some direct, common sense questions concerning their responsibility to pay remediation costs and the mechanism imposed by the Commission for paying the surcharge. In response to those concerns, I requested the parties to file supplemental testimony addressing these issues.

A. Should Ratepayers Bear the Entire Cost of Delmarva's Remediation Expenses, or Should the Company's Shareholders Share these Costs?

44. The Company's witness in prefiled testimony stated that there is a sharing of the remediation costs between the ratepayers and the shareholders derived through the amortizing of the expenses incurred during the ECY. Ex. 3 at. 2. As in the Company's instant Application, the costs of \$957,588.96 will be amortized over a five-year period. Ratepayers will pay the annual amortized cost balances. However, shareholders will bear the burden of the carrying costs on the unamortized cost balances. Further, ratepayers receive the benefits of the deferred taxes on the amortized cost balances. The Company will recover \$870,533.01 of the \$957,588.96 in remediation costs. Ex. 3 at. 3. The difference of approximately \$87,000 is the "carrying costs" which the Company's shareholders will have to bear. *Id.*

45. Dr. Shen, of the DPA, agreed with the Company that there is a sharing mechanism between the ratepayers and shareholders for the remediation costs. Ex. 7 at 3-5. He noted that the Company will

share the costs of the expenses by not receiving any interest on the deferred balances over the amortization period. Ex. 7 at 5. In fact, Dr. Shen calculated that assuming an 11.18% rate of return, the Company will recover approximately 66% of the total remediation costs over the five year amortization period. Ex. 7 at. 6.

46. Staff's witness, Heidi Wagner, agreed with both the Company and DPA that ratepayers shoulder a portion of the remediation costs. Since the costs of \$957,589 will be subject to a five-year amortization, during which the Company will not receive interest on the costs that it does not collect during the first year, Ms. Wagner applied a present value analysis to the remediation costs to determine the proportionate responsibility of costs to be borne by the Company and the ratepayers. She found that after taxes were deducted from the amount to be collected for each year of the amortization period, the amount actually recovered by the Company was \$516,530. Ex. 7 at Exhibit HLW-6. When the amount recovered, \$516,530, was discounted to present value, the net present value of the amount collected over the five years was \$409,340. Therefore, under this analysis, ratepayers shouldered less of the total costs of \$957,589 than the Company. Ms. Wagner's analysis revealed that ratepayers carried approximately 42.75% and shareholders assumed 57.25% of the total \$957,589 in remediation costs. Ex. 7 at 3.

B. Why is it in the Public Interest for the Commission to Allow the Proposed Rate to Go Into Effect on a Temporary Basis Pending Final Commission Consideration of the Rate Increase?

47. At the public comment session, several members of the public expressed the view that by allowing the Company to put the

rates in on a temporary basis before it was made to justify the need for an increase, the Commission was in effect "rubber stamping" the Company's request. Many believed that the litigation process that came after Delmarva's rate request was made effective was merely a perfunctory proceeding designed to justify the Commission's action in granting the surcharge increase. It was suggested that the Company should not receive any rate relief until after the litigation process was concluded, including a hearing before the Commission. Tr. 47-48.

48. The Company contends that the primary reason for the Commission to allow rates to go into effect on a temporary basis pending refund is to save ratepayers money in the long run. Ex. 3 at 10. Delmarva notes that if the rate increase had not been granted until the spring of 2006, carrying costs would have been applied to the amount to be recovered requiring ratepayers to pay even more for the surcharge. Delmarva uses as an example the recovery through the surcharge for the period November 2005 through May 2006 is \$219,824.10. Had the surcharge become effective in May 2006, the carrying costs would have increased the amount to be recovered by approximately \$24,576.33, or \$244,400.43.¹⁰ It is therefore more economical for the ratepayers to have the rate made effective near the time it is requested than to wait for the litigation process to wind through its course. Ex. 3 at HGH S-5.

49. Delmarva also states that Delaware law, specifically 26 Del. C. §§ 304 and 306 give the Commission the authority to allow rates to go into effect sixty (60) days after filing for a rate change. Ex. 3

¹⁰The increase is based upon an 11.18% cost of capital.

at 8. Further, 26 Del. C. § 304 provides that the Commission may impose "such conditions as it may prescribe" on the rate change. The Commission has always provided that rates are subject to refund and proration so that if it decides that the rate is excessive or ill-advised, the rates may be returned to the ratepayers (usually through a credit) with interest.

50. Dr. Shen of the DPA asserts that having the increased surcharge rate go in on a temporary basis avoids "rate shock" for ratepayers. Ex. 5 at 7. Dr. Shen, like Delmarva, provides that because of the carrying costs, waiting to impose the surcharge would cause ratepayers to pay a higher rate than that requested by the Company. *Id.*

51. Particularly noteworthy is Dr. Shen's contention that allowing the rate to go into effect in November 2005 produced a "phased-in" effect for the rate increase. Beginning with the first billing cycle in May 2006, many customers will experience a substantial increase in their electric bills. The increase in the surcharge rate (albeit very small) applied to gas bills that took effect in November 2005, mitigated the rate shock that customers are feeling in their utility bills. Ex. 5 at 7. The psychological impact on customers is that they do not feel as if all utility bills are increasing at the same time.

52. Staff concurs with the Company's and DPA's positions that placing rates into effect on a temporary basis is preferable to waiting until the regulatory process has concluded. Ex. 7 at 3-4. Staff argues that allowing rates to go into effect earlier gives

ratepayers a longer time to pay the amount to be collected. Staff provides the example that if \$12,000 is to be recovered from ratepayers and the rate goes into effect on a temporary basis on November 1, ratepayers have twelve-months to pay at the rate of \$1,000 per month. However, assuming \$12,000 must be collected and the rate goes into effect on April 1, ratepayers have only seven months to pay the amount due requiring them to pay \$1,714 per month for seven months. Ex. 7 at 4.

53. After review of the arguments, I find that the procedure employed by the Commission to allow rates to go into effect on a temporary basis pending investigation and a final Commission decision is reasonable and prudent. It saves ratepayers the cost of paying additional carrying costs and provides more time for collection of the remediation costs that are to be recovered. This process ensures that ratepayers pay the least amount possible for their portion of the remediation costs.

VI. DISCUSSION

A. Uncontested Matters That Require Commission Action

54. The Company, DPA, and Staff agree that the Environmental Surcharge Rate should be increased from the currently effective rate of \$0.00083 per Ccf to \$0.00138 Ccf. Both the Company and Staff have meticulously reviewed the expenses in the accounts related to the Wilmington Coal Gas Site North and the Public Works Yard, and the parties agree that the expenses are reasonable and appropriate.

55. Moreover, I find that the average residential heating customer using 120 Ccf a month during the winter heating season would

experience a small increase of \$0.07 or an increase of less than 0.15% in their heating bill due to this increase.

56. Accordingly, I recommend that the Commission approve the Company's application for an increase in the Environmental Surcharge Rate as stated in its Application and accompanying proposed tariffs.

B. Administrative Markup Costs- No Commission Action Required

57. I note that for this Application alone, the Company and Staff agree that the mark-ups included in the audited accounts for vendor and subcontractor mark-up costs are not in dispute.

58. Staff found that the mark-ups charged by Delmarva's vendors during the applicable ECY were lower than industry standards, and therefore, deemed reasonable by Staff. However, I also note that the DPA and Staff should continue to monitor the process of selecting contractors and awarding contracts for future site remediation projects.

VII. RECOMMENDATION

In summary, and for the reasons discussed above, I propose and recommend to the Commission that it approve as just and reasonable the Company's proposed Environmental Surcharge Rider Rate from \$0.00083 per Ccf to \$0.00138 per Ccf.

Respectfully submitted,

Ruth Ann Price
Hearing Examiner

Dated: April 11, 2006