

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT )  
FILED BY JAMES & VICKI SHAW )  
AGAINST CHESAPEAKE UTILITIES ) PSC COMPLAINT DOCKET NO. 383-12  
CORPORATION CONCERNING RULES )  
AND REGULATIONS REGARDING ITS )  
TARIFF (FILED AUGUST 9, 2012) )

ORDER NO. 8275

AND NOW, this 5<sup>th</sup> day of March, 2013:

WHEREAS, the Delaware Public Service Commission (the "Commission") has reviewed and considered the record in this case, including the "Findings and Recommendations of the Hearing Examiner" (the "Report") dated December 5, 2012, which is attached as Exhibit "A", the Exceptions filed on December 19, 2012, by Mr. and Mrs. James and Vicki Shaw (the "Shaws") which are attached as Exhibit "B", and the oral arguments of the participants at the Commission's regularly-scheduled meetings held on January 22 and March 5, 2013; and

WHEREAS, the Report was submitted to the Commission after a duly-noticed, formal evidentiary hearing was held on November 21, 2012; and

WHEREAS, the Commission deliberated in public at the January 22, 2013 meeting, but there was an issue about whether the Shaws received proper notice regarding their ability to attend the January 22<sup>nd</sup> meeting and to present oral arguments about their filed Exceptions;

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

1. That the Hearing Examiner's Report ("Report") entitled "Findings and Recommendations of the Hearing Examiner," attached as Exhibit "A", is adopted by the Commission as the Commission's own decision with the following changes, additions, and clarifications:

a. Pursuant to 26 Del. C. §§201(a), 206, and 209(a)(1) and (a)(2), the Commission has jurisdiction in this matter over the Shaws' allegations that (i) Chesapeake Utilities Corporation ("CUC") improperly applied moneys paid on behalf of the Shaws to a security deposit rather than to an unpaid account balance and (ii) CUC allegedly failed to properly credit interest on their security deposits. *See also Georgia-Pacific Corp. v. Delmarva Power & Light Co.*, 1992 WL 396307, at \*6, Del. Ch. (Dec. 31, 1992) (holding Commission has the exclusive powers of regulation and supervision over the provision of utility service).

b. The Commission does not have jurisdiction over the Shaws' allegations that they are entitled to monetary damages. *See Brown v. United Water Delaware Inc.*, 3 A.3d 253, 256 (Del. 2010) (under filed rates doctrine, utility's liability is contractually limited and defined, but not absolute immunity); *see also Artesian Water Co. v. Cynwyd Club Apartments, Inc.*, 297 A.2d 387, 389 (Del. 1972) (Commission does not sit as a court of law and does not adjudicate debt controversies between parties).

c. The Shaws have the burden of proof for this case.  
29 Del. C. §10125(c); 26 Del. Admin. C. §1001-2.12.3.

d. The Shaws failed to meet their burden of proof in this case.

e. CUC complied with the provisions of its tariff regarding the proper application of moneys to the Shaws' security deposit and the payment of interest thereon.

f. The Commission does not find merit in any of the arguments set forth in the Shaws' Exceptions.

g. Furthermore, the Commission adopts the conclusions in paragraphs 14, 15, 16, 17, and 19 of the Report and finds that because the Shaws failed to meet their burden of proof, the Commission should deny the Shaws' Complaint with prejudice; however, the Commission does not adopt the recommendation in paragraph 18 of the Report.<sup>1</sup>

2. That the Shaws' Complaint is hereby denied and dismissed with prejudice.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow  
Chair

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<sup>1</sup> Based on the denial of the relief requested and the dismissal of the Shaws' claims with prejudice, the Commission will rely on CUC to follow the provisions of its tariff currently in effect regarding any responsibility to send the Shaws information on energy assistance programs and/or medical certifications.

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

EXHIBIT "A"

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER  
DATED DECEMBER 5, 2012

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT FILED BY )  
JAMES & VICKI SHAW AGAINST CHESAPEAKE ) PSC COMPLAINT DOCKET  
UTILITIES CORPORATION CONCERNING RULES ) NO. 383-12  
AND REGULATIONS REGARDING ITS TARIFF )  
(FILED AUGUST 9, 2012) )

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: December 5, 2012

MARK LAWRENCE  
HEARING EXAMINER

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BEFORE THE PUBLIC SERVICE COMMISSION  
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IN THE MATTER OF THE COMPLAINT FILED BY )  
JAMES & VICKI SHAW AGAINST CHESAPEAKE ) PSC COMPLAINT DOCKET  
UTILITIES CORPORATION CONCERNING RULES ) NO.383-12  
AND REGULATIONS REGARDING ITS TARIFF )  
(FILED AUGUST 9, 2012) )

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, duly appointed Hearing Examiner in this Docket, as delegated by the Commission, finds as follows:

I. APPEARANCES

On Behalf of the Complainants, James and Vicki Shaw:  
James L. Shaw and Vicki Shaw, *pro se*.

On behalf of the Respondent, Chesapeake Utilities Corporation  
("Chesapeake"):  
WILLIAM A. DENMAN, ESQUIRE, Parkowski, Guerke & Swayze, P.A.

On behalf of the Public Service Commission Staff ("Staff"):  
BY: JULIE DONOGHUE, ESQUIRE, Deputy Attorney General

II. BACKGROUND

1. This matter arises out of a formal complaint filed by James and Vicki Shaw ("the Complainants" or "the Shaws") on August 9, 2012 against Chesapeake Utilities Corporation ("Chesapeake"). The Shaws are Chesapeake residential natural gas customers in Dover. The account holders are Vicki Shaw and James Shaw.<sup>1</sup> (Tr.-45.) On September 21, 2012, Chesapeake filed its Answer to the Shaws' Complaint.

<sup>1</sup> Exhibits from the evidentiary hearing will be referred to as "Exh. \_\_\_." References to the transcript from the evidentiary hearing will be referred to as "Tr.-page number." Two exhibits are attached to this Report. Those

2. For purpose of this Background section, I will first describe the allegations in the Shaws' Complaint and then Chesapeake's Answer. The Shaws' Complaint first alleges that Chesapeake improperly applied a \$400 charitable payment made by The Salvation Army to Chesapeake on the Shaws' behalf in 2009 by applying \$330 as a security deposit and applying the remaining \$70 to the unpaid account balance. The Shaws ostensibly argue that, if the entire \$400 was applied to the account rather than the security deposit as it should have been, the Shaws' service would not have disconnected in July, 2012 due to non-payment. Second, the Shaws' Complaint alleges that Chesapeake failed to properly credit interest on their security deposits. (Exh. 1.)

3. In its Answer, Chesapeake strongly denied all of the Shaws' allegations, arguing that it had complied with its duly-filed Tariff in all respects. Chesapeake maintained that it properly applied The Salvation Army's payment to the security deposit and the unpaid account balance, and accurately credited all interest due on the security deposit to the account. (Exh. 2.)

4. At the evidentiary hearing held on November 21 2012, the Shaws also claimed that they have suffered unsanitary conditions and much inconvenience as a result of Chesapeake's alleged improper disconnection of their natural gas service. (Tr.21-23.) The Shaws also allege that their electric bill increased because the Shaws were heating water for bathing and for washing dishes. (Id.) This Report does not address these claims because the Commission does not have

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Exhibits will be referred to as for example "Exhibit 1," using the complete word "Exhibit."

jurisdiction over these claims which purport to be money damage claims.<sup>2</sup>

### III. DISCUSSION

5. The Shaws filed their Complaint against Chesapeake on August 9, 2012. (Exh. 2) The Shaws' service had been disconnected on July 11, 2012 due to non-payment of \$195.38. (Exh. 2, ¶2, 1<sup>st</sup> Aff'd Defense, Tr. 27-28.) The Shaws had failed to pay their May 4, 2012 bill of \$126.05 and their June 6, 2012 bill of \$69.33. (Exh. 2, 1<sup>st</sup> Aff'd Defense, Tr.-45.) The July 2012 disconnect was the fourth (4<sup>th</sup>) time that service had been disconnected due to non-payment since this account was first established in 1999. (Tr. 7, 27-30.)

6. In April 2009, over three (3) years ago, The Salvation Army made a \$400 charitable payment to Chesapeake on the Shaws' behalf.<sup>3</sup> (Exh. 8.) There is no record evidence that The Salvation Army required or requested Chesapeake to apply its \$400 payment to the Shaws' security deposit or to the Shaws' account. On April 17, 2009, Chesapeake applied \$330 to the Shaws' security deposit and \$70 to the Shaws' unpaid account balance. (Exh. 8; Tr.-63.)

7. At the evidentiary hearing, Sue Burchett, Chesapeake's Credit and Collections Manager, testified on behalf of the Company. Ms. Burchett is responsible for managing Chesapeake's accounts receivables and bad debts, and obtaining payments from third parties.

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<sup>2</sup> The Commission's limited jurisdiction is discussed in Section IV, *infra*.

<sup>3</sup> Including this \$400 payment from the Salvation Army, the Shaws have received a total of \$5,004.82 of charitable assistance from four (4) charitable sources, including \$2,100.29 from Chesapeake's "Sharing Program," also known as the Emergency Energy Recipient Program. (Exh. 2, 2<sup>nd</sup> Aff'd Defense, Tr.-30.)

(Tr.-43-44.) Ms. Burchett has been employed by Chesapeake for thirty-two (32) years, including nine (9) years at her current position. (Tr.-43.)

8. According to Ms. Burchett, as permitted by its Tariff, Chesapeake applied \$330 of The Salvation Army's \$400 payment toward the Shaws' security deposit in April 2009 because of the Shaws' poor payment history, including prior disconnects in 2008 and April 2009. (Tr.-29, 63.) Moreover, at the time the deposit was established, the Shaws owed Chesapeake an overdue balance of \$767.34. (Exh. 8; Tr. 63-64.)

9. Chesapeake's Tariff supports Ms. Burchett's uncontroverted, sworn testimony. (See Tariff, Issue Date 9/2/08.) Section 13.2 of the Tariff, entitled "Establishment of Customer Credit." is attached hereto as Exhibit "1."

10. Section 13.2(a) of the Tariff, in pertinent part, permits Chesapeake to require a security deposit if a customer, during the past twelve (12) months, twice failed to timely pay their bill or had their service disconnected.

11. According to the evidence, at the time the deposit was established, the Shaws' bill had not been timely paid since at least January, 2009, well over two (2) months. (Exh. 8.) Also, according to Ms. Burchett's sworn testimony, the Shaws' service was disconnected in April 2009. (Tr. 63.) Thus, I find that Chesapeake had the right under its Tariff in April 2009 to apply the \$330 of the Salvation Army's \$400 payment to the Shaws' account as a security deposit.

12. Section 13.2(g)(b) of the Tariff requires Chesapeake to pay 6% per annum interest on security deposits held longer than ninety (90) days. After service was disconnected in April 2009, Chesapeake refunded \$12.69 of accrued interest to the Shaws' account on April 17, 2009. (Exh. 8; Tr.-64.) There is no record evidence that Chesapeake did not refund the proper amount of interest at that time.

13. After the July 2012 disconnect, the Company credited the Shaws with \$65.03 of accrued interest on the security deposit established in 2009 from The Salvation Arme y payment. (Exh. 3.) There is no record evidence that Chesapeake did not refund the proper amount of interest at that time.

#### IV. JURISDICTION; BURDEN OF PROOF

14. The Commission has jurisdiction over this docket pursuant to 26 Del. C. §201(a), 26 Del. C. §502 and 26 Del. C. §10122. See Artesian Water Company v. Cynwood Club Apartments, Inc., 297 A.2d 387 (DE. 1972) (Commission has jurisdiction to prohibit discontinuance for non-payment where a bona-fide dispute as to the bill is shown to exist). Obviously, the Commission does not have jurisdiction over the Shaws' claims of unsanitary conditions, inconvenience and increased electric costs discussed, *supra*.

15. According to Rule 24(C) of the Commission's *Rules of Practice and Procedure* effective May 10, 1999, the Complainant has the Burden of Proof "except where placed on another party by law." Thus, the Shaws have the Burden of Proof in this case. (See 26 Del. C. §§10121, 10125(c)(3).)

V. RECOMMENDATIONS

16. This Report's Discussion Section contains my Findings of Fact for this docket. Based upon those Findings of Fact, I find that James and Vicki Shaw have failed to meet their Burden of Proof in this case. Therefore, I recommend that the Commission deny the Shaws' Complaint with prejudice.

17. I further recommend that the Commission order as follows: a) Chesapeake complied with the security deposit requirements in its Tariff by applying \$330 of the \$400 charitable payment made by the Salvation Army to Chesapeake on the Shaws' behalf, to the Shaws' security deposit, and crediting the remaining \$70 to the unpaid account balance; and b) Chesapeake properly credited all interest due on the Shaws' security deposits to the subject account.

18. Finally, I direct Chesapeake to immediately mail its current information on local energy assistance programs and medical certification to the Shaws.<sup>4</sup>

19. I recommend to the Commission that it no longer invest its resources in time and personnel in prosecuting this case because Chesapeake has conclusively demonstrated that the Shaws' Complaint is void of merit. Accordingly, this case should be dismissed with prejudice and this case closed. A proposed Order is attached as Exhibit "2."

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<sup>4</sup> As of November 21, 2012, the day of the evidentiary hearing, the Shaws again had an overdue balance with Chesapeake. (Tr.- 41.)

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark Lawrence", written over a horizontal line.

Mark Lawrence  
Hearing Examiner

Dated: December 5, 2012

EXHIBIT "B"

EXCEPTIONS FILED BY MR. AND MRS. JAMES AND VICKIE SHAW  
DATED DECEMBER 19, 2012

Docket NO. 383-12

Docket  
Mark  
JO  
Kevin  
Alisa

2012 DEC 19 PM 2:36 12/19/2012

**James & Vickie Shaw,**  
Complainants  
910 Wilson Drive  
Dover, Delaware 19904  
Home Phone - 302-734-9279  
Cellular - 302-359-6413  
Email- invvickie@hotmail.com

DELAWARE P.S.C.

**Re:** Written Exceptions for  
PSC Docket No. 383-12  
James & Vickie Shaw vs. Chesapeake Utility

**To:** The Executive Director  
Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

**Exceptions**

This is our official letter to address the Exceptions requested by Mark Lawrence, Hearing Examiner for The Public Service Commission. The Exceptions are as follows:

- The Hearing Examiner provided an exhibit log listing items in report and recommendations; we received on December 7, 2012. The Hearing Examiner provided an exhibit 2 that indicated a decision by the Public Service Commission dated for 2013.
- The complainants have not been informed of a decision by the Commission's Board, and we are amazed that this document was entered in the package.
- We object to the Hearing Examiner's finding that our complaint lacks merit, in that he stated our complaint was about being disconnected from gas service, when in reality, our complaint was about the security deposit and interest.
- Chesapeake claimed our security deposit was paid by the Salvation Army, but Chesapeake failed to provide any proof that the Salvation Army paid the deposit.
- Chesapeake claimed to pay the interest required by the rules, but there is no proof that the interest was promptly paid to us after the service was disconnected. What was allotted was issued to the Salvation Army according to the check payment, dated 9/4/2012.
- Chesapeake failed to follow the rules and regulations of 13.2 (a) and (b), listed deposit and interest requirements. The rules require Chesapeake to allow the deposit to be paid in two (2) parts, however, were required to pay the full \$330.00, in one (1) payment.
- The 6% interest per annum was not computer generated to indicate the amount for each year the deposit was held. The interest was issued to the Salvation Army. We indicated in the complaint that the Salvation Army is a nonprofit Organization.

- The interest as decided by Chesapeake was only provided to us after more than three (3) months without service. Although, Section XIII, 13.2 (d), states a refund of the deposit and accrued interest should be prompt and automatic.
- We are disappointed that representatives of the Public Service Commission appear to be acting on behalf of the respondent, Chesapeake Utilities. This is evident in the response to our request to file a complaint on 7/12/2012, when Investigator, Charmaine Johnson, called Chesapeake, instead of looking into the rules pertaining to our deposit & interest. Ms. Johnson called us, after contacting Chesapeake, to inform us that we had not paid the deposit, because she was informed by Chesapeake that the Salvation Army paid our deposit.
- On 11/13/2012, we received a telephone call from the Hearing Examiner, Mark Lawrence, offering us a settlement, by leaving a telephone message on our voicemail, stating that he had a settlement offer. When I, Vickie Shaw, returned the call, the Hearing Examiner stated Chesapeake was offering a settlement of \$145.23, to pay the bill that was due at the time, was not admitting to any wrong doing. When we refused the offer, the Hearing Examiner, stated we should take the offer. When I, Vickie Shaw asked why he was making the offer. The Hearing Examiner stated, because Chesapeake is paying the cost for the hearing.
- We consider this intervention on behalf of the respondent outrageous, because Mr. Lawrence stated in his recommendations that the report would not address claims because the Commission lacks jurisdiction that purport to money damages.
- We submit as an exception that there was no mention of any money damages in our complaint.
- We believe as exception that if Chesapeake had refunded the deposit and interest as promptly and automatic as section XIII, 13.2 (d), indicates. We would have had service restored within a much shorter period of time; we would not have suffered the unsanitary, costly, and stressful conditions we endured.
- The Salvation Army was never asked to pay our security deposit. Therefore, the time spent sending a check to them that was not necessary or required caused us to endure the conditions mentioned above.
- Therefore, we (James & Vickie Shaw), are requesting a hearing before the full Public Service Commission Board to rebut the findings of the Hearing Examiner, Mark Lawrence.

  
James L. Shaw, Complainant

  
Vickie Shaw, Co-Complainant

**Attention:**  
**Executive Director**  
**Public Service Commission**  
**861 Silver Lake Blvd**  
**Cannon Bldg. Suite 100**  
**Dover, DE 19904**

COVER SHEET

<b>Send to:</b> The Executive Director Public Service Commission	<b>From:</b> James & Vickie Shaw (complainants)
<b>Attention:</b> Interim, Executive Director	<b>Date:</b> 12/19/2012
<b>Office location:</b> Public Service Commission 861 Silver Lake Boulevard Dover, DE 19904	<b>Home Address:</b> 910 Wilson Drive Dover, DE 19904
<b>Phone number:</b> 302-736-7500 <b>Fax number:</b> 302-736-4849	<b>Phone number:</b> 302-734-9279 <b>Cell number:</b> 202-359-6413

Total pages, including cover: 3

**Comments:**

Dear Executive Director,

This serves as the response to the filing of Exceptions requested by the Hearing Examiner, Mark Lawrence for PSC Complaint Docket No. 383-12