

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF DEFINING “GOOD)
FAITH EFFORT TO MAKE PAYMENTS”)
FOR WATER, GAS AND ELECTRIC) PSC DOCKET NO. 16-XXXX
UTILITY CUSTOMERS WITH CERTIFIED)
MEDICAL CONDITIONS)
(FILED MARCH 30, 2016))

**PETITION OF THE DELAWARE PUBLIC SERVICE COMMISSION STAFF
SEEKING AN INVESTIGATION INTO A DEFINITION OF “GOOD FAITH EFFORT
TO MAKE PAYMENTS” UNDER 26 DEL. C. § 117(d)**

Pursuant to 26 *Del. C.* §§ 117(d), 201, and 206, the Staff of the Public Service Commission (“Staff”), by and through its undersigned counsel, petitions the Commission to initiate an investigation into a definition of “good faith effort to make payments,” and in support of its Petition states as follows:

1. During 2012, the 146th General Assembly amended 26 *Del. C.* § 117(d) by passing House Bill 261, as amended by House Amendment No. 1 and Senate Amendment No. 1 (“House Bill 261”). House Bill 261 made significant changes regarding how water, gas, and electric utilities may terminate services for non-payment when provided to customers with a certified medical condition.
2. Prior to the passage of House Bill 261, 26 *Del. C.* § 117(d) prohibited the termination of water, gas or electric service to those customers who were properly certified by a medical

professional as being so ill that termination of service would adversely affect their health or recovery – regardless of how much they may have owed for the utility service.

3. House Bill 261 aimed, as noted by its Synopsis, to “clarif[y] the parameters for a utility medical certification” because the “current medical certification law is so broad that it is being used as a method of bill avoidance by numerous customers who do not need to be on the program, which is impacting all customers of the utility.” House Bill 261 amended 26 *Del. C.* § 117(d) to allow a customer to renew the medical certification preventing termination after the initial 120 day-period “only if a customer makes a good faith effort to make payments towards the utility service being provided.”
4. House Bill 261, however, did not define “a good faith effort to make payments,” but instead permitted the Commission to do so by promulgating regulations.
5. The Commission has not yet promulgated any regulations defining a “good faith effort to make payments,” and in the absence of such regulations, the application of 26 *Del. C.* § 117(d) by various water, gas and electric utilities may have resulted in inconsistent treatment of customers.¹
6. The Office of the Governor has suggested to Staff that the Commission should consider promulgating regulations defining a “good faith effort to make payments” as permitted by

¹ For instance, a Delmarva Power & Light Company (“DPL”) customer with a prior medical certification has contacted the Division of the Public Advocate, the Public Service Commission Staff, various legislators, and the Governor’s Office seeking help to restore her electric service which has been terminated under the amendments of House Bill 261. According to the customer, she has made several payments to DPL which she believed qualified as a “good faith effort to make payments.” She further complained that DPL had not notified her that her medical certificate had expired and that Delmarva was requiring a payment of \$12,500 as a “good faith effort” to restore her electric service. On behalf of this customer, the Governor’s Office has alleged that DPL was not being fair to this constituent; that, despite the lapse of her medical certificate, this customer had been making “good faith efforts to make payments”; and that this customer was not properly notified regarding the termination of service. PSC Staff understands that this customer continues to work with the Division of the Public Advocate and may file a formal complaint.

26 *Del. C.* § 117(d) to prevent inconsistent treatment of water, gas and electric utility customers with a medical certification.

7. The adoption of a regulation defining a “good faith effort to make payments” would provide clarity and consistency to both customers and water, gas and electric utilities and standardize the procedures for termination of services for non-payment by medically certified customers.
8. Staff currently lacks sufficient information regarding the current practices of Delaware water, gas and electric utilities in applying 26 *Del. C.* § 117(d) and the impact on affected customers and other stakeholders, including other ratepayers. Staff believes a fair and appropriate regulation defining a “good faith effort to make payments” as permitted by 26 *Del. C.* § 117(d) may be more efficiently promulgated by first investigating the current practices of Delaware water, gas and electric utilities; soliciting input from affected customers and other stakeholders; and surveying the practices of other jurisdictions in the context of a Commission investigation and series of public workshops and then using the results of such investigation to promulgate an appropriate regulation.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission adopt the Proposed Order attached hereto as Exhibit A, which would 1) open a docket to investigate a definition of a “good faith effort to make payments” per 26 *Del. C.* §117(d); 2) appoint a Case Manager to conduct public workshops and facilitate input regarding the current practices of Delaware water, gas and electric utilities and any impact upon affected customers and other stakeholders, including other ratepayers; 3) provide for publication of notice of the investigation and opportunity for participation in the public workshops and for public comment; and 4) direct the Case Manager to report back to the Commission with findings and a

recommendation as to a proposed regulation to be considered and possibly promulgated by the Commission.

Respectfully submitted,

/s/ Brenda R. Mayrack

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Attorney for Public Service Commission Staff

Dated: March 30, 2016

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF DEFINING “GOOD)
FAITH EFFORT TO MAKE PAYMENTS”)
FOR WATER, GAS AND ELECTRIC) PSC DOCKET NO. 16-XXXX
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MEDICAL CONDITIONS)
(FILED MARCH 30, 2016))

CERTIFICATE OF SERVICE

I, Brenda R. Mayrack, Esq., counsel for Public Service Commission Staff, do hereby certify that on March 30, 2016, I caused the following documents to be served by electronic mail on all persons identified below and to be filed with the Delaware Public Service Commission using Delafile:

1. PETITION OF THE DELAWARE PUBLIC SERVICE COMMISSION STAFF SEEKING AN INVESTIGATION INTO A DEFINITION OF “GOOD FAITH EFFORT TO MAKE PAYMENTS” UNDER 26 *DEL. C.* § 117(d)
2. VERIFICATION OF ROBERT HOWATT

SERVICE LIST			
Bonar	David	Division Of The Public Advocate	David.Bonar@state.de.us
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/s/ Brenda R. Mayrack

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Attorney for Public Service Commission Staff

Dated: March 30, 2016

EXHIBIT A

**BEFORE THE PUBLIC SERVICE COMMISSION
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FOR WATER, GAS AND ELECTRIC) PSC DOCKET NO. 16-XXXX
UTILITY CUSTOMERS WITH CERTIFIED)
MEDICAL CONDITIONS)
(FILED MARCH 30, 2016))

ORDER NO. XXXX

AND NOW, this 5th day of April, 2016;

WHEREAS, on March 30, 2016, the Staff of the Public Service Commission of the State of Delaware ("Staff") filed a Petition (the "Petition") requesting this Commission to open a docket to investigate an appropriate definition of "good faith effort to make payments" as permitted by 26 *Del. C.* § 117(d); and

WHEREAS, during 2012, the 146th General Assembly amended 26 *Del. C.* § 117(d) by passing House Bill 261, as amended by House Amendment No. 1 and Senate Amendment No. 1 ("House Bill 261"), making significant changes regarding how water, gas, and electric utilities may terminate services for non-payment when provided to customers with a certified medical condition; and

WHEREAS, prior to the passage of House Bill 261, 26 *Del. C.* § 117(d) prohibited the termination of water, gas or electric service to those customers who were properly certified by a medical professional as being so ill that termination of service would adversely affect their

health or recovery - regardless of how much they may have owed for the utility service; and

WHEREAS, House Bill 261 aimed, as noted by its Synopsis, to "clarif[y] the parameters for a utility medical certification" because the "current medical certification law is so broad that it is being used as a method of bill avoidance by numerous customers who do not need to be on the program, which is impacting all customers of the utility," and amended 26 *Del. C.* § 117(d) to allow a customer to renew the medical certification preventing termination after the initial 120 day-period "only if a customer makes a good faith effort to make payments towards the utility service being provided"; and

WHEREAS, 26 *Del. C.* § 117(d), as amended by House Bill 261, does not define "a good faith effort to make payments," but permits the Commission to do so by promulgating regulations; and

WHEREAS, the Commission has not yet promulgated any regulations defining a "good faith effort to make payments," and in the absence of such regulations, the application of 26 *Del. C.* § 117(d) by various water, gas and electric utilities may have resulted in inconsistent treatment; and

WHEREAS, the Office of the Governor has suggested to Staff that the Commission should consider promulgating regulations defining a "good faith effort to make payments" as permitted by 26 *Del. C.* § 117(d) to prevent inconsistent treatment of water, gas and electric utility customers with a medical certification; and

WHEREAS, Staff has represented that information regarding the current practices of Delaware water, gas and electric utilities in applying 26 Del. C. § 117(d) and the impact on affected customers and other stakeholders, including other ratepayers is insufficient and that a fair and appropriate regulation defining a "good faith effort to make payments" as permitted by 26 Del. C. § 117(d) would be more efficiently promulgated by the Commission first investigating the current practices of Delaware water, gas and electric utilities; soliciting input from affected customers and other stakeholders; and surveying the practices of other jurisdictions in the context of a formal Commission investigation and series of public workshops and then using the results of such investigation to promulgate an appropriate regulation; and

WHEREAS, the Commission having reviewed the Petition and believing that an investigation of the issues raised therein concerning the definition of a "good faith effort to make payments" is an important issue, is within its authority under 26 Del. C. §§ 117(d), 201, and 206 to review, and would provide clarity and consistency to both customers and water, gas and electric utilities and standardize the procedures for termination of services for non-payment by medically certified customers, particularly if the Commission relies upon the investigation's findings and recommendations to promulgate a regulation defining a "good faith effort to make payments" as permitted by 26 Del. C. § 117(d);

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE

VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That under the Commission's authority under 26 *Del. C.* §§ 117(d), 201, and 206, it has right and responsibility to investigate the current practices of Delaware water, gas and electric utilities and to solicit input from affected customers and other stakeholders regarding the definition of a "good faith effort to make payments" in the context of procedures for termination of services for non-payment by medically certified customers.

2. That the Commission finds that the issues raised in the Petition concerning determining an appropriate definition of "good faith effort to make payments" are important issues that deserve further review and analysis, particularly given reports of possibly inconsistent application of 26 *Del. C.* § 117(d) by water, gas, and electric utilities and a request by the Office of the Governor to Staff that the Commission promulgate a regulation defining "good faith effort to make payments" as permitted by 26 *Del. C.* § 117(d).

3. That a docket shall be opened to investigate the current practices of Delaware water, gas and electric utilities; solicit input from affected customers and other stakeholders; and survey the practices of other jurisdictions regarding a definition of "good faith effort to make payments" per 26 *Del. C.* § 117(d).

4. That Staff will have the responsibility to conduct that review, after appropriate public notice of the opening of this docket and time for all interested parties to participate should they wish to do so, and to report back to the Commission on its findings and

recommendations regarding a definition of "good faith effort to make payments" per 26 Del. C. § 117(d).

5. That Staff shall give public notice of the investigation by publishing notice in the form attached hereto as Exhibit "A" in the legal classified section of The News Journal and The Delaware State News newspapers on April 12 and 13, 2016.

6. That Staff shall appoint a Case Manager who shall be responsible for setting a schedule and performing other administrative duties.

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

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

E X H I B I T "A"

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MEDICAL CONDITIONS)
(FILED MARCH 30, 2016))

**PUBLIC NOTICE OF INVESTIGATION REGARDING A DEFINITION OF "GOOD FAITH
EFFORT TO MAKE PAYMENTS" FOR WATER, GAS AND ELECTRIC UTILITY CUSTOMERS
WITH CERTIFIED MEDICAL CONDITIONS**

On March 30, 2016, the Staff of the Public Service Commission of the State of Delaware ("Staff") filed a Petition (the "Petition") requesting that the Commission open a docket to investigate an appropriate definition of "good faith effort to make payments" as permitted by 26 *Del. C.* § 117(d).

During 2012, the 146th General Assembly amended 26 *Del. C.* § 117(d) by passing House Bill 261, as amended by House Amendment No. 1 and Senate Amendment No. 1 ("House Bill 261"), making significant changes regarding how water, gas, and electric utilities may terminate services for non-payment when provided to customers with a certified medical condition.

Prior to the passage of House Bill 261, 26 *Del. C.* § 117(d) prohibited the termination of water, gas or electric service to those customers who were properly certified by a medical professional as being so ill that termination of service would adversely affect their health

or recovery - regardless of how much they may have owed for the utility service.

House Bill 261 aimed, as noted by its Synopsis, to "clarif[y] the parameters for a utility medical certification" because the "current medical certification law is so broad that it is being used as a method of bill avoidance by numerous customers who do not need to be on the program, which is impacting all customers of the utility," and amended 26 *Del. C.* § 117(d) to allow a customer to renew the medical certification preventing termination after the initial 120 day-period "only if a customer makes a good faith effort to make payments towards the utility service being provided."

26 *Del. C.* § 117(d), as amended by House Bill 261, does not define "a good faith effort to make payments," but permits the Commission to do so by promulgating regulations.

The Commission has not yet promulgated any regulations defining a "good faith effort to make payments," and in the absence of such regulations, the application of 26 *Del. C.* § 117(d) by various water, gas and electric utilities may have resulted in inconsistent treatment of customers.

At its meeting on April 5, 2016, the Commission ordered pursuant to within its authority under 26 *Del. C.* §§ 117(d), 201, and 206 that a docket shall be opened to investigate an appropriate definition of a "good faith effort to make payments," including determining the current practices of Delaware water, gas and electric utilities in applying 26

Del. C. § 117(d), the impact on affected customers and other stakeholders, including other ratepayers, the practices of other jurisdictions. Staff will have the responsibility to conduct that investigation and report back to the Commission regarding its findings and recommendations.

If you wish to participate in this matter, you may attend the following Public Workshops, to be held in the Commission Hearing Room, 861 Silver Lake Blvd, Suite 100, Dover, Delaware 19904:

Public Workshop Thursday, May 12, 2016 10:00am

Public Workshop Wednesday, June 15, 2016 10:00am

You may also participate by filing written comments on or before by June 30, 2016. Written comments may be filed by mail to Delaware Public Service Commission, ATTN: Docket No. 16-XXXX, 861 Silver Lake Blvd, Suite 100, Dover, Delaware 19904; by email to psc@state.de.us, ATTN: Docket No. 16-XXXX; or by using DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, searching for Docket No. 16-XXXX.

You are invited to review the Petition and supporting documents to determine how your interests may be affected by going to DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, and by searching for Docket No. 16-XXXX.

If you would like to review documents at the Commission's offices, please contact Donna Nickerson at (302) 736-7500 or by sending an email addressed to donna.nickerson@state.de.us. You may also review copies

of the Petition and supporting documents at the office of the Division of the Public Advocate located at either 820 North French Street, 4th Floor, Wilmington, Delaware 19801 or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. The link to this form can be found on the Commission's website, <http://dep.sc.delaware.gov>, or by visiting this web address: <https://delafile.delaware.gov/Complaints/FOIA.aspx>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 Del. C. ch. 100.

If you have a disability and wish to participate or to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to psc@state.de.us, ATTN: Docket No. 16-XXXX.