



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
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DOVER, DELAWARE 19904

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August 23, 2016

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Amy Woodward, Public Utility Analyst III

SUBJECT:

In the Matter of Defining "Good)
Faith Effort to Make Payments" for)
Water, Gas and Electric Utility) PSC Docket No. 16-0295
Customers with Certified Medical)
Conditions (Filed March 30, 2016))

STAFF FINDINGS AND RECOMMENDATIONS

BACKGROUND

On March 30, 2016 the Staff of the Public Service Commission of the State of Delaware ("Staff") filed a petition requesting that the Commission open a docket to investigate whether the Commission should promulgate rules or regulations for 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 customers have a certified medical condition. Under the previous legislation, the law was silent on requiring payments from customers for their utility service. There were customers who made no effort to pay their utility bills and the utility could not terminate their service. The current legislation states that a customer must make a "good faith effort" to pay his or

her bill. However, the legislation does not define what constitutes a "good faith effort," but it does state that the Commission may promulgate rules or regulation to create a definition. The legislation also requires customers to renew their medical certifications every 120 days, whereas there was no renewal requirement in the previous version of the statute.

Staff held two workshops to investigate current practices of the Commission's regulated electric, gas, and water utilities.

STAFF'S REVIEW PROCESS

Staff held two public workshops (see minutes attached) in the Commission Hearing Room in accordance with Commission Order No. 8873 (April 5, 2016). The first workshop was held on Thursday, May 12, 2016 with representatives from all of the regulated water, gas and electric utilities along with DPA, Staff, the Delaware Electric Cooperative and the Delaware Community Legal Aid and University of Delaware Center for Disabilities Studies. Discussions took place in regards to the number of customers of each utility that have medical certificates and if any of these customers are delinquent and if so, are they on a payment plan and current on those plans. The represented utilities only had a minimal number of customers with a medical certificate and only had a customer or two that had a delinquency issue, except for Delmarva Power & Light Company ("Delmarva"). Prior to the passage of H.B. 261, Delmarva had approximately 1,000 customers with medical certifications and had a high level of delinquencies. After the legislation amended the statute, Delmarva has seen a significant decrease in the number of customers with medical certifications. The number of customers with medical certificates has decreased by over 75% to only having 378 actively enrolled in the program. The change in legislation now requires payments from customers to be made in the 120-day period to be eligible to remain active in the medical certification program. Every 120 days the customer is required to renew the certification by getting approval from a doctor, nurse, or physician's assistant. If no payment is made during the 120-day certification, it will lead to termination of service regardless of whether the customer has renewed their certification. So it is possible that under the new 120-day renewal requirement, utilities may have medically certified customers without utility service. However, the good faith effort to make payment is interpreted by the utility to require at least some payment arrangement and payment during the 120-day period. Delmarva is currently working with these 378 actively enrolled customers with payment arrangements.

At the second workshop held June 15, 2016, the parties were asked to provide a copy of their internal written policy on delinquent bills and how they handle delinquent customers who currently are enrolled in the medical certification program. Staff's attorney Brenda Mayrack

provided the group with information regarding "good faith" definitions in other state jurisdictions. See the attached memo.

STAFF CONCLUSIONS & RECOMMENDATIONS

Staff received current written and verbal policies of its regulated water, gas and electric utilities concerning delinquent bills and how they handle delinquent customers who are currently enrolled in the medical certification program.

Since these utilities have policies that appear to be reasonable and working, it is Staff's opinion that the Commission does not need to promulgate a regulation to define "good faith effort to make payments." It is Staff's recommendation that an order be put forth to the Commission along with this report from Staff that no action needs to be taken at this time and to close this docket.



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MINUTES

Date: May 16, 2016

From: Amy Woodward, Public Utility Analyst

Re: In the Matter of Defining "Good Faith Effort to Make Payments" for Water, Gas and Electric Utility Customers with Certified Medical Conditions - PSC Docket No. 16-0295

Pursuant to Order No. 8873 signed on April 5, 2016 there was a public workshop held in the Commission Hearing Room on Thursday May 12, 2016 at 10am. There were representatives from all the Class A utilities along with DPA, Staff, the Delaware Electric Cooperative and Delaware Community Legal Aid and University of Delaware Center for Disabilities Studies. (See attached Attendee List). An agenda was presented to the parties and the floor also remained open for any issues the parties wished to discuss related to the docket (See agenda attached). The utilities were asked to provide statistics in relation to numbers of their customers currently that would be affected by defining "good faith effort to make payments."

Delmarva Power

Representatives from Delmarva stated it currently has 378 residential customers actively enrolled in the Medical Certification Program and 201 with a payment arrangement. Delmarva also defines the term by any customer making consistent payments toward their bill. The majority of these customers on the program are in Newark and Wilmington.

Tidewater Utilities

Representatives from Tidewater stated that they currently have 24 accounts enrolled in the medical certification program and bill their customers quarterly. They put them immediately on a payment plan if they cannot pay their bill.

Artesian Water Company

They stated they currently only have 2 customers and they are in payment arrearage but on a payment plan. They only charge \$50 month and try to keep their customers up to date monthly and are successful at doing so.

Suez

A representative stated that they only have 4 accounts that have a medical certification associated with them and the average balance of these accounts is about \$35.00.

Chesapeake Utilities

Representatives stated they only have 2 customers with medical certifications on file and one of these is currently past due.

There was also discussion around how many payments must be made in 120 day period to remain in the medical certification program. Every 120 days the customer is required to renew the certification by getting approval through a doctor, nurse, or physician's assistant. Representatives from the University of Delaware Center for Disabilities commented that if customers are current they should not have to get re-certified every 120 days. However, it was noted that this requirement is a function of Delaware Law and not something the Commission can amend.

There appeared to be consensus among the represented utilities that "good faith effort to make payments" did not really affect their business as substantially as it does Delmarva. Delmarva noted that it has significantly seen a decrease in the number of fraud cases with the medical certifications since the 120 day certification law has been enacted. They have decreased those customers by over 75% to only having 378 actively enrolled in the program.

The next workshop will be held June 15, 2016 at 10am to review the minutes from this workshop and to make a final determination if at this time the group feels that we need to define and give more clarification and consistency to customers of these utilities or if we should leave the regulations as they currently are stated. Another possibility is for the utilities to file their policies with the Commission and Public Advocate on a confidential basis and not promulgate regulations.



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MINUTES

Date: June 30, 2016

From: Amy Woodward, Public Utility Analyst

Re: In the Matter of Defining “Good Faith Effort to Make Payments” for Water, Gas and Electric Utility Customers with Certified Medical Conditions - PSC Docket No. 16-0295

Pursuant to Order No. 8873 signed on April 5, 2016 there was a public workshop held in the Commission Hearing Room on Wednesday June 15, 2016 at 10am. There were representatives from all the Class A utilities along with DPA, Staff, and the Delaware Electric Cooperative. (See attached Attendee List). An agenda was presented to the parties and the floor also remained open for any issues the parties wished to discuss related to the docket (See agenda attached). The utilities were asked to provide statistics in relation to numbers of their customers currently that would be affected by defining “good faith effort to make payments.”

Parties were asked to provide a copy of their internal written policy on delinquent bills and how they handle delinquent customers who currently are enrolled in the medical certification program. Artesian Water said they currently have no written policy other than what they have stated in their tariff regards to delinquent bills. Chesapeake Utilities only has one customer with a medical certification so they don't really have a need for a specific policy. They do however have a policy on collections and offer a payment plan to avoid disconnection of service. Delmarva is going to provide us with a copy of their policy at a later date.

Staff's attorney Brenda Mayrack provided the group with information regarding “good faith” definitions in other state jurisdictions. These will be discussed more in depth in the report to the Commission.

There appeared to be a consensus among those in attendance that the Commission does not at this time need to promulgate a regulation to define “good faith effort to make payments.” An order will be put forth to the Commission along with Staff’s findings and recommendations for further approval.



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Comment

TO: Public Service Commission Docket No. 16-0295 Participants

FROM: Brenda Mayrack, Esq., Deputy Attorney General
Bridget Brainard, Law Clerk

RE: Defining a “Good Faith Effort to Make Payments” for Utility Customers with Certified Medical Conditions in Other Jurisdictions

DATE: June 30, 2016

There do not appear to be any other states that require, as Delaware does, that a medically-certified customer “make[] a good faith effort to make payments towards the utility service being provided” to avoid termination of service.¹

Several states have somewhat similar language to Delaware’s “good faith effort” standard but do not provide a more specific definition. Pennsylvania requires medically certified customers to “equitably make payments on all bills.”² Wisconsin requires that the “utility and occupant shall work together to develop resources and make reasonable payment arrangements.”³ Maryland requires that utilities, not customers, “in good faith” attempt to negotiate a reasonable alternate payment plan with all “low income” customers, not just those who are medically certified.⁴

¹ 26 *Del. C.* § 117(d). BLACK’S LAW DICTIONARY defines “good faith” as a “state of mind consisting in 1) honesty in belief or purpose, 2) faithfulness to one’s duty or obligation, 3) observance of reasonable commercial standards of fair dealing in a given trade or business, 4) absence of intent to defraud or to seek unconscionable advantage.” The DELAWARE CODE contains approximately fifty references to “good faith,” but none appear to be defined. There are thousands of Delaware court decisions discussing “good faith” in the corporate or other contexts, but none that are necessarily directly applicable here.

² 52 PA. C. § 56.114(2).

³ WIS. ADMIN. C. § PSC 113.0301.

⁴ MD. ADMIN. C. § 20.31.01.08(A).

Two states specifically define a minimum payment amount for medically certified customers:

- Illinois requires a medically certified customer to pay an amount equal to 1/12th of the total amount owing for utility services if the valid medical certification is received prior to disconnection and an amount equal to 1/4th of the total amount owing for utility services, with the remaining balance divided equally among the next nine payments, if the valid medical certification is received after disconnection.⁵
- Montana requires the utility and customer to negotiate an equitable payment arrangement that is “reasonable and consistent with the customer’s ability to pay.” If the customer fails to make payments as established, resulting in an arrearage of \$500 or more, the customer is required to enter into and comply with a monthly payment arrangement equal to the average of the last 12 months’ billing plus 1/12th of the arrearage. Failure to enter into a monthly payment arrangement and make payments will result in disconnection proceedings.⁶

Several other states require a payment plan or arrangement for medically certified customers but do not specifically define a minimum sufficient payment: District of Columbia,⁷ Iowa,⁸ Maryland,⁹ New Hampshire,¹⁰ North Dakota,¹¹ Oklahoma,¹² Pennsylvania,¹³ and Wisconsin.¹⁴

⁵ 83 ILL. ADMIN. C. § 280.160(i).

⁶ MONT. ADMIN. R. § 38.5.1411.

⁷ 15 D.C. MUN. R. § 311; 15 D.C. MUN. R. § 306.

⁸ IA. ADMIN. C. § 199-20.4(15) (“reasonable payment agreement” required); IA. ADMIN. C. § 199-20.4(11)b.

⁹ MD. ADMIN. C. § 20.31.03.01(D); MD. ADMIN. C. § 20.31.01.08 (“reasonable alternate payment plan” required).

¹⁰ N.H. ADMIN. R. § PUC 1205.03(a)-(b).

¹¹ N.D. ADMIN. C. § 69-09-01-18.1(1).

¹² OKLA. ADMIN. C. § 165:45-11-14(f)(4).

¹³ 52 PA. C. § 56.114 (medically certified customer has “obligation to ... equitably make payments on all bills”); 52 PA. C. § 56.116 (medically certified customer “shall retain a duty to make payment”).

¹⁴ WIS. ADMIN. C. § PSC 113.0301(13)(a) (After providing “a licensed Wisconsin physician’s statement or notice from a public health, social services, or law enforcement official which identifies the medical or protective services emergency and specifies the period of time during which disconnection will aggravate the circumstances,” the utility shall postpone the disconnection of service, and “[d]uring the extension of service, the utility and customer shall work together to develop resources and make reasonable payment arrangements in order to continue the service on a permanent basis.).

Iowa¹⁵ and Maryland¹⁶ offer factors to be considered in determining any customer's payment plan, including but not limited specifically to those who are medically certified, but do not specifically define the required minimum payment.

Oregon requires that medically certified customers enter into a "written time-payment agreement" in accordance with the regulations that apply to all customers, not just those with a medical certification, which require a minimum payment of 1/12th of the arrearage.¹⁷

* * *

¹⁵ IA. ADMIN. C. § 199-20.4(11)b.

¹⁶ MD. ADMIN. C. § 20.31.01.08(E).

¹⁷ ORE. ADMIN. R. § 860-021-0410(5); ORE. ADMIN. R. § 860-021-0415(3).