

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

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY, D/B/A)
CONECTIV POWER DELIVERY, FOR A CHANGE) PSC DOCKET NO. 03-127
IN ITS NATURAL GAS BASE RATES (FILED)
MARCH 31, 2003))
)

ORDER NO. 6327

AND NOW, this 9th day of December, 2003;

WHEREAS, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner ("Report") issued on October 9, 2003, in the above-captioned docket;

AND WHEREAS, the Commission, at its October 21, 2003 meeting, considered the Proposed Settlement in this case that would result in a 5.8% rate increase, or a \$4.32 net increase per month on the winter bill for the average residential gas heating customer (assuming 120 ccf of use). The Commission also considered the comments from customers who sought an additional opportunity to provide customer input into the record;

AND WHEREAS, the Commission directed the Hearing Examiner to conduct a public comment session in the City of Wilmington, which was duly noticed and held November 3, 2003, in Wilmington at the Bancroft Intermediate School;

AND WHEREAS, a Supplemental Report was issued by the Hearing Examiner on November 17, 2003 summarizing the public comments received at the Hearing in Wilmington;

AND WHEREAS, the Hearing Examiner recommends that the October 7, 2003 Proposed Settlement, which is endorsed by all the parties, and which is attached to his Report as "Attachment B", be approved;

AND WHEREAS, the Commission finds that it has been established that the proposed rates and tariff changes as set forth in the Proposed Settlement, which reflect a total base revenue increase of \$7.75 million, are just and reasonable and that adoption of the Proposed Settlement 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 October 9, 2003 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as "Attachment A".

2. That the Commission approves the Proposed Settlement, which is attached to the Hearing Examiner's Report, and the Company's proposed rate and tariff changes, effective with meter readings on and after December 10, 2003.

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/ Joshua M. Twilley
Vice Chair

PSC Docket No. 03-127, Order No. 6327 Cont'd.

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

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

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OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
D/B/A CONECTIV POWER DELIVERY, FOR) PSC DOCKET NO. 03-127
A CHANGE IN ITS NATURAL GAS BASE)
RATES (FILED MARCH 31, 2003))
)

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: OCTOBER 9, 2003

WILLIAM F. O'BRIEN
HEARING EXAMINER

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RATES (FILED MARCH 31, 2003))
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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* Ch. 101, by Commission Order No. 6141, dated April 15, 2003, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Delmarva Power & Light Company, d/b/a Conectiv Power Delivery ("Delmarva" or "the Company"):

RANDALL V. GRIFFIN, ESQUIRE, Conectiv Power Delivery.

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

Ashby & Geddes
BY: JAMES McC. GEDDES, ESQUIRE.

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

G. ARTHUR PADMORE, PUBLIC ADVOCATE.

On behalf of the Delaware Energy Users Group ("DEUG"):

Christian Barton, LLP
BY: LOUIS R. MONACELL, ESQUIRE

II. BACKGROUND

1. On March 31, 2003, Delmarva filed an application with the Commission to increase its gas base rates, to institute a proposed research and development surcharge, and to modify certain provisions of its gas tariff. The application was accompanied by various schedules, tables, and data required by the Commission's minimum filing requirements as well as the pre-filed testimony of several witnesses. On April 16, 2003, in Order No. 6141, the Commission suspended the proposed rate and tariff changes for a period of seven months, required public notice through newspaper publication, established a time period for interventions, and assigned the matter to the undersigned Hearing Examiner for evidentiary hearings and further proceedings.

2. The Division of the Public Advocate ("DPA") and the Delaware Energy Users Group ("DEUG"), which is an ad hoc group of several large industrial customers, intervened as parties. Commission Staff ("Staff") also participated in the case. No other entities intervened or participated. On May 30, 2003, pursuant to 26 Del. C. § 306, (and PSC Order No. 6141) Delmarva put \$2.5 million of its proposed rate increase into effect subject to refund, pending evidentiary hearings and further proceedings.

3. Pursuant to the approved procedural schedule, the parties engaged in discovery with respect to the application and accompanying testimony and other materials filed with the Application. On August 15, 2003, Staff, DPA and DEUG each submitted direct testimony, which was followed by further discovery. On September 10, 2003, Delmarva

filed rebuttal testimony with respect to certain contested positions taken by the other parties. On the same day, DEUG and Staff filed cross-rebuttal testimony with respect to certain positions that each had taken in their testimony of August 15, 2003.

4. A duly noticed public comment session and evidentiary hearing were conducted on September 24 and 25, 2003, in Wilmington, Delaware. No member of the public appeared. Twenty-seven customers, however, submitted written comments, which are summarized below. The affidavits of publication of notice of the hearing and of the filing of the application, are collected in Exhibit 1.¹ The public notice of the evidentiary hearing noted the possibility that the hearing may be used for the purpose of taking testimony with respect to a proposed settlement.

5. At the beginning of the evidentiary hearing on September 24, 2003, the parties to the proceeding informed the Hearing Examiner that recent discussions regarding a potential settlement indicated a strong possibility that the proceeding could be resolved by agreement. The parties asked, therefore, that the evidentiary hearings be temporarily adjourned so that settlement discussions could continue. The discussions continued until September 25, 2003, at which time the evidentiary hearing was reconvened and the parties indicated that they had reached a settlement in principle on all issues in the proceeding. The parties indicated that an executed written settlement would be

¹ Exhibits will be cited as "Ex.____" and references to the hearing transcript will be cited as "Tr.____."

submitted to the Hearing Examiner documenting the settlement in principle once a written settlement was drafted and approved by each party as consistent with the settlement in principle.

6. On September 25, 2003, the pre-filed direct, rebuttal, and cross-rebuttal testimony of the witnesses for the parties was stipulated into evidence and all parties waived cross-examination with respect to that pre-filed testimony. Each party then called a witness who testified in favor of the settlement and recommended its approval. The hearing was adjourned and the record closed, with the exception that the written settlement would be accepted into evidence once it was received. The record in this proceeding consists of 23 exhibits and 41 pages of transcript.

7. A post-hearing procedural schedule was established that called for the parties to submit the written settlement and proposed Findings and Recommendations of the Hearing Examiner ("Report") on October 6, with the Report itself being issued by October 10, 2003. The parties waived a portion of the statutory time period for the filing of written Exceptions to the Report, such that Exceptions, if any, would be due no later than 2:00 p.m., on October 16, 2003. The parties agreed to this schedule in order to allow for the matter to be placed on the Commission's agenda for its regularly scheduled meeting of October 21, 2003, so that, depending on the Commission's resolution of the matter, revised rates could be put in place for usage on and after November 1, 2003.

8. On October 8, 2003, the parties submitted a settlement proposal, dated October 7, 2003 ("Proposed Settlement"), which is

attached to the original hereof as "Attachment A." I have considered all of the record evidence as well as the Proposed Settlement and, based thereon, I submit for the Commission's consideration these findings and recommendations. This Report closely reflects the proposed Findings and Recommendations submitted by the parties.

III. THE PROPOSED SETTLEMENT

9. While the Proposed Settlement identifies the overall base revenue increase, the distribution of that increase among customer classes, and the rates for each class of customer, it does not specifically address or resolve many of the underlying, individual issues that were raised by the parties in response to the Company's initial filing. This type of settlement is commonly referred to as a "black-box" settlement. Unless specified in the Settlement, therefore, no proposal by any party with respect to the underlying issues is deemed to be accepted or rejected. The Settlement itself makes clear that it is the overall end-result that the parties believe is just and reasonable and in the public interest.

10. Settlement section I sets forth a procedural history of the case. Settlement paragraph II.A.1 states that no refunds are necessary or warranted with respect to the interim rate increase. (As noted above, a \$2.5 million interim rate increase was put into effect on May 30, 2003, pursuant to 26 Del. C. § 306.)

11. Settlement paragraph II.A.2 specifies that the total base revenue increase will be \$7.75 million, which is an increase of approximately 15.43% on gas base revenues or about 5.8% on total gas revenues. This increase does not include the proposed environmental

remediation surcharge, which will be the subject of a future filing, if this Settlement is approved by the Commission. The surcharge mechanism would be equivalent to that previously approved by the Commission for Chesapeake Utilities Corporation. This paragraph also specifies that, if the subsequent filing regarding the environmental surcharge is approved by the Commission, then the initial amount to be collected through the surcharge mechanism would be \$522,988. In addition, paragraph II.A.2 notes that the Company's proposed surcharge for research and development projects has been withdrawn and would not be approved in this proceeding.

12. Settlement paragraph II.A.3 references Appendix A, where the increase in base revenues by class is summarized. Settlement paragraph II.A.4 states that a 10.5% return on equity is reasonable and should be adopted for this proceeding and that this results in an overall rate of return of 7.81%. Settlement paragraph II.A.5 references Appendix B, where tariff leaves with the final proposed rates are attached.

13. Settlement paragraph II.A.6 references a currently approved margin sharing procedure under which the margins associated with certain non-firm services are split between customers and the Company, generally 80% to customers and 20% to the Company. Paragraph 6 specifies that the current margin sharing mechanism will remain in effect, with a modification that calls for the same margin sharing

formula to be applied to non-firm services provided in the future to customers who were previously firm customers.²

14. Settlement paragraphs II.B. 1-3, set forth a procedure by which the Company will present information regarding weather normalization in its next base rate case. This procedure requires the Company to use a normalization method based on a rolling average of 30 years of data for sales quantities and customer classes that are weather sensitive. The data used may be collected by the Company based on temperature observations made within the City of Wilmington's boundaries or it may be acquired from the National Oceanic and Atmospheric Administration. The Settlement also notes that no weather normalization adjustment for transportation services is required, but permits the Company or other parties to propose such a process. The Settlement also provides that the Company, in addition to the materials required to be filed using the 30-year method, may propose an alternative method including the use of a different time period.

15. Settlement paragraph II.C. states that miscellaneous tariff language modifications proposed by the Company, as summarized in Appendix C of the Settlement, should be approved.

16. Settlement paragraphs II.D. 1-4 contain standard language indicating that the terms of the Settlement are not severable, that the Settlement is a compromise among the parties establishing no

² In a prior proceeding, a transition rule was established for customers switching from firm to non-firm service, which provided that the Company would retain the revenues associated with the non-firm service provided to the switching customer until the Company's next base rate case. Ex. 21 (Kalcic) at 19.

precedent as to the treatment of any particular issue in the case, that no findings or positions are being made with respect to the various recommendations made in pre-filed testimony, and that the Settlement shall terminate at the time of the filing of the next base rate case except with respect to the filing requirement in section II.B.

17. Paragraph II.D.2 also states that: "[T]he Parties agree that the resolution of the issues herein taken as a whole results in just and reasonable rates and that the non-rate tariff changes are reasonable and in the public interest."

IV. SUMMARY OF PRE-FILED TESTIMONY

A. Delmarva's Pre-filed Direct and Rebuttal Testimony

18. Company Vice-President J. Mack Wathen presented direct testimony (Ex. 2) that outlined the major elements of the Company's filing and identified the overall revenue increase request that the Company had proposed of \$16,794,000. Mr. Wathen noted that the Company's last base rate filing was in 1994 and that since that time sales and revenue growth had not increased at the same rate as the increase in the Company's rate base. Id. at 4. In his rebuttal testimony, Mr. Wathen addressed issues raised by Staff witness Henkes and/or DPA witness Crane regarding incentive compensation plans, potential O&M savings related to the Company's merger involving Potomac Electric Power Company, and post-test period growth possibilities. Ex. 3.

19. The Company's Manager of Gas Operations & Planning, Charles L. Driggs, presented direct testimony (Ex. 4) generally describing the Company's gas business and operations over the last several years, including capital additions. Mr. Driggs also testified with respect to certain adjustments made to the Company's test period data, including weather normalization, loss of certain customers' load, the sharing of margins associated with non-firm services, uncollectible expenses, the Gas Pilot program, costs associated with increased security, an environmental remediation project that is being developed with the Delaware Department of Natural Resources and Environmental Control, and research and development. Ex. 4 at 4-37. Mr. Driggs' pre-filed direct testimony also presented the Company's proposed rate design methodology and the resulting rates to customers. Id. at 38-44. Additionally, Mr. Driggs sponsored the miscellaneous non-rate tariff changes that were proposed by the Company. Id. at 44.

20. Mr. Driggs' rebuttal testimony (Ex. 5) addressed issues raised by Staff witness Henkes and/or DPA witness Crane regarding weather normalization, lost sales adjustments, uncollectible expenses, the Gas Pilot program, environmental remediation, and research and development programs. Mr. Driggs responded to Staff witness Kalcic with respect to the margin sharing mechanism proposed for customers switching from firm to interruptible services. Id. Mr. Driggs also responded to Staff witness Kalcic, DPA witness Crane and DEUG witness Rosenberg with respect to certain rate design issues. Id.

21. Mr. Paul M. Normand, an outside consultant, testified on behalf of the Company with respect to the Company's cost of service

study. Ex. 6. On rebuttal, Mr. Normand addressed issues raised by Staff witness Kalcic and DEUG witness Rosenberg with respect to the Company's cost of service study and alternative proposals of Staff and DEUG. Ex. 7.

22. W. Michael VonSteuben, a Senior Regulatory Leader in Planning, Finance and Regulation for the Company, submitted testimony identifying the test period in this case as the 12 months ended September 2002, described the development of the "per books" rate base and earnings and certain adjustments made with respect to the "per books" data. Ex. 8. In his rebuttal testimony, Mr. VonSteuben addressed issues raised by Staff witness Henkes and/or DPA witness Crane regarding association dues, advertising expenses, an adjustment for future wage and associated FICA increases, normalization of regulatory commission expense, gas in storage balances, and unbilled revenues. Ex. 9.

23. Company Vice President and Controller James P. Lavin presented direct testimony on the outside audit reports relating to the Company's financial records and reports, organizational changes within the Company as the result of the merger, and the Company's expenses for pension and Other than Pension Employee Benefits ("OPEB"). Ex. 10. On rebuttal, Mr. Lavin addressed an issue raised by DPA witness Crane relating to the effect of the merger on the Company's pension and OPEB expense. Ex. 11.

24. Company witness Kelly J. Riley, a Senior Regulatory Accountant, presented direct testimony on certain adjustments made to the Company's books and records and its test period data and the

Company's cash working capital calculations. Ex. 12. On rebuttal, Mr. Riley testified with respect to issues raised by Staff witness Henkes and/or DPA witness Crane on the treatment of a deferred prepaid pension asset, working capital calculations, Construction Work in Progress ("CWIP"), medical expenses, and certain miscellaneous adjustments. Ex. 13.

25. Paul R. Moul, an outside consultant testifying on behalf of the Company, presented direct testimony on the Company's capital structure, cost of debt and preferred stock, and cost of equity. Mr. Moul used a variety of methods and data sources to develop his recommendation of 12.5% for the cost of equity. Ex. 14. On rebuttal, Mr. Moul addressed issues raised by Staff witness Parcell and DPA witness Crane with respect to the Company's requested cost of common equity and the alternative proposals made by Mr. Parcell and Ms. Crane. Ex. 15.

B. DPA Pre-filed Testimony

26. Andrea C. Crane, an outside consultant representing the DPA, presented pre-filed testimony (Ex. 16) on a wide number of issues relating to the Company's revenue requirement and proposed an overall revenue increase of \$4,038,464. Ms. Crane's proposed revenue requirement was calculated using, as a starting point, the Company's test period books and records and the various adjustments proposed by the Company. Ms. Crane accepted certain adjustments and opposed other adjustments that the Company had proposed. In addition, Ms. Crane proposed certain additional adjustments. Ms. Crane presented testimony on rate of return issues and took issue with the Company's

proposals in that regard in the area of the cost of equity. Ms. Crane used a variety of methods and data sources to compute an alternative cost of equity and proposed that the Company's cost of equity be set at 9.71%.

27. Other issues raised or proposals made by Ms. Crane were in areas including: gas in storage costs, cash working capital requirements, working funds, the treatment of a deferred pension asset, prepayments made for insurance, CWIP, plant held for future use, weather normalization, test period revenue associated with customer losses and customer growth, salary and wage adjustments, incentive compensation, expenses for pension and OPEB, medical expenses, environmental remediation costs, association dues, projected expenses for future refinancings and the amortization of such costs, and research and development project costs. Ms. Crane took no position in her pre-filed testimony relating to the Company's cost of service study, proposed spread of revenues among customer classes, or rate design.

C. DEUG Pre-filed Direct and Rebuttal Testimony

28. Alan Rosenberg, an outside consultant testifying on behalf of DEUG, presented direct testimony (Ex. 17) on issues relating to the Company's cost of service study, the spread of the proposed revenue increase among customer classes, and the design of rates for the larger firm sales and transportation customer classes (i.e., the MVG, LVG, MVFT, and LVFT classes). Mr. Rosenberg also proposed modifications to the Company's cost service methodology, proposed a methodology for spreading the revenue increase across customer classes

and quantified that spread at different illustrative revenue requirement levels, and proposed specific sets of rates for the MVG, LVG, MVGT and LVFT customer classes. Mr. Rosenberg submitted pre-filed rebuttal testimony addressing various cost of service study and rate design proposals made by Staff witness Kalcic. Ex. 18. DEUG took no position with respect to the computation of the Company's revenue requirement.

D. Staff's Pre-filed Direct and Rebuttal Testimony

29. Robert J. Henkes, an outside consultant on behalf of Staff, submitted pre-filed testimony (Ex. 19) on a wide number of issues relating to the Company's revenue requirement and proposed an overall revenue increase of \$5,360,149. In addition to that revenue increase, Mr. Henkes proposed the development of a separate surcharge rider to recover costs associated with an environmental remediation project. Mr. Henkes' proposed revenue requirement was calculated using as a starting point the Company's test period books and records and the various adjustments proposed by the Company. Mr. Henkes accepted certain adjustments and opposed other adjustments that the Company had proposed and, in addition, Mr. Henkes proposed certain additional adjustments.

30. The issues raised or proposals made by Mr. Henkes were in areas including: gas in storage costs, plant materials and supplies, cash working capital requirements, the treatment of a deferred pension asset, CWIP, plant held for future use, the treatment of an injury and damages reserve account, unbilled revenue, test period revenue associated with customer losses and customer growth, an adjustment for

certain non-firm services, weather normalization, potential O&M savings associated with the Pepco merger, uncollectible expenses, interest on customer deposits, projected expenses for future refinancings and the amortization of such costs, gas pilot program costs, regulatory commission expense, research and development expenses, and certain miscellaneous expenses. Mr. Henkes' proposed revenue increase reflected a return on equity of 10%, which is the mid-point of the range of return on equity that Staff witness Parcell had recommended.

31. Mr. David C. Parcell, an outside consultant on behalf of Staff, submitted pre-filed direct testimony with respect to the Company's capital structure, cost of debt and preferred stock, and its cost of common equity. Ex. 20. He calculated the cost of equity using several different methods and sources of data and recommended that the return on equity be in the range of 9.5% - 10.5%.

32. Mr. Brian W. Kalcic, an outside consultant on behalf of Staff, submitted pre-filed direct testimony identifying issues with the Company's cost of service study, spread of revenues among customer classes, and rate design. Ex. 21. In addition, Mr. Kalcic presented the results of the Company's cost of service study with modifications proposed by Mr. Kalcic and proposed methodologies for spreading a revenue increase among customer classes and for designing rates. He also quantified the end-results of how those methodologies would operate using the revenue increase sponsored by Mr. Henkes. In rebuttal testimony, Mr. Kalcic addressed the testimony of DEUG witness

Rosenberg with respect to DEUG's proposed cost of service study modifications, spread of revenue, and design of large customer rates.

V. SUMMARY OF PUBLIC COMMENT

33. While no members of the public appeared at the September 24, 2003 public comment session, Staff received six form letters signed by twenty-four customers, another letter, and two e-mails. In the form letter, dated June 13, 2003, the customers object to the proposed increase in the customer charge, which they characterize as a charge for meter reading.³ William Zeitler of Wilmington, in a letter dated May 7, 2003, objects to the "massive percentage increase in charges," and Edmond Brown, in an e-mail dated May 27, 2003, asserts that the savings generated by the Pepco/Conectiv merger should be reflected in the approved rates in this case.

VI. TESTIMONY IN SUPPORT OF THE SETTLEMENT

34. Each of the parties presented a witness who testified in support of the settlement in principle and urged its approval by the Commission. The testimony related to the settlement in principle, rather than the Proposed Settlement itself, because the Proposed Settlement was not finalized and reduced to writing until after the evidentiary hearing.

35. Company witness Wathen summarized the settlement in principle. Tr. 28-30. Mr. Wathen testified that the settlement represented a fair and balanced result given the range of positions taken on the issues by the parties in this proceeding and that the

³ William C. Schaffer, of Commission Staff, responded to each letter.

Settlement is in the public interest. Tr. 30-31. He noted that the Settlement, relative to continued litigation, also results in an increased potential of putting rates into effect on November 1, 2003, and would reduce litigation expenses. Tr. 31. He urged that the Commission approve the Settlement as being in the public interest. Tr. 31.

36. DPA witness Crane testified that the end result of a \$7.75 million increase was acceptable to the DPA and was closer to the revenue increase originally proposed by the DPA than to the amount originally proposed by the Company. Tr. 34-35. She also testified that the environmental remediation surcharge was acceptable to DPA and involved an amortization of actual out-of-pocket costs over five years. Tr. 35-36. She testified that the Settlement, overall, is a good settlement and in the public interest and she recommended that the Commission adopt it. Tr. 36.

37. DEUG witness Rosenberg noted that DEUG had not taken a position in pre-filed testimony regarding revenue requirements, but that, based on his review of the testimony of other parties, the overall revenue increase is within the range of reasonableness and that the revenue spread among the customer classes strikes a reasonable balance between the twin principles of cost of service and rate moderation. Tr. 37. Mr. Rosenberg testified that with respect to the larger customers that DEUG represents, the revenue requirement increase is a step in the direction of more closely aligning rates with cost of service. Tr. 38.

38. Staff presented Mr. William C. Schaffer, Public Utility Analyst, who testified in support of the Settlement. Mr. Schaffer had not provided pre-filed testimony in this proceeding, but was the Staff's co-manager of the case and had participated in the Settlement discussions. Tr. 39. He testified that, as with any settlement, no party won every issue of interest to it, but that the Settlement is in the public interest and results in the best possible result without incurring additional litigation costs that would result from a trial. Tr. 40. He recommended that the Settlement be approved. Tr. 40.

VII. DISCUSSION

39. The Commission is charged with the responsibility of determining, after a hearing, rates that are "just and reasonable." 26 Del. C. § 311. In addition, the Commission has been directed to encourage the resolution of matters brought before it through the use of stipulations and settlements and may approve such stipulations and settlements where the Commission finds such resolutions to be in the public interest. 26 Del. C. § 512. Applying the evidence admitted into the record, including the oral testimony of the parties, to these statutory standards, I conclude as a matter of law that the statutory standards have been met. I recommend, therefore, that the Commission approve the Proposed Settlement.

40. In reaching the above conclusion, certain intermediate findings are significant and should be noted. First, I find that the Proposed Settlement (Ex. 23) is consistent with the settlement in principle that was described by and supported by the parties at the evidentiary hearing. Second, the pre-filed testimony fully describes

the issues in this case and, I note, the parties to this proceeding represent diverse interests whose good faith and competence in negotiating a settlement is not in question. Therefore, consistent with 26 Del. C. § 512 and under the standards developed by Delaware courts, the Commission can reasonably evaluate the overall fairness of the Proposed Settlement. In Re Amsted Industries, Inc. Litigation, Del. Ch., 521 A.2d 1104, 1107-08 (1986).

41. Third, the undisputed testimony of normally diverse parties in support of the Settlement as in the public interest and resulting in just and reasonable rates supports a finding that the Settlement is as described -- a fair and balanced settlement that will result in just and reasonable rates. Fourth, this testimony is further buttressed by an examination of the various rate proposals in this proceeding that verifies that the Settlement rates are within the range of the proposals made by the parties in the case as supported by their pre-filed testimony. Compare Ex. 23, Appendix C with Ex. 5 (Driggs-Rebuttal), Sch. CLD-5-R, which sets forth the originally proposed rates sponsored and supported by the Company, Staff, and DEUG.⁴ Fifth, no party objected to any of the non-rate tariff

⁴ While DPA sponsored extensive testimony on revenue requirement issues, DPA did not propose a particular set of rates. Because its proposed revenue requirement was somewhat below the level proposed by Staff, a reasonable assumption is that rates designed using the DPA proposed revenue requirement number would have been somewhat below the level of Staff's proposed rates. Thus, the Settlement rates would also be between the level proposed by DPA and the level proposed by the Company.

modifications proposed by the Company and summarized in Ex. 5 (Driggs), Sch. CLD-12.

42. In addition to these findings that apply to the Settlement as a whole, I find nothing unreasonable, or contrary to Commission policy, with respect to any individual provision within the Proposed Settlement.

VIII. RECOMMENDATIONS

43. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- A. That the Commission adopt as reasonable and in the public interest the attached Proposed Settlement ("Attachment A");
- B. That the Commission, therefore, approve as just and reasonable the rates, as well as the non-rate tariff modifications, as set forth in the attached Proposed Settlement, which reflect an increase in gas base revenue requirements of \$7.75 million (or approximately 15.43% of gas base revenues and approximately 5.8% of total gas revenues), effective with meter readings on and after November 1, 2003.

A proposed Order, which will implement the foregoing recommendations, is attached hereto.

Respectfully submitted,

/s/ William F. O'Brien
William F. O'Brien
Hearing Examiner

Dated: October 9, 2003

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OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
D/B/A CONECTIV POWER DELIVERY, FOR) PSC DOCKET NO. 03-127
A CHANGE IN ITS NATURAL GAS BASE)
RATES (FILED MARCH 31, 2003))
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SUPPLEMENTAL REPORT OF THE HEARING EXAMINER

DATED: NOVEMBER 17, 2003

WILLIAM F. O'BRIEN
HEARING EXAMINER

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
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SUPPLEMENTAL REPORT OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* Ch. 101, by Commission Order No. 6141, dated April 15, 2003, reports to the Commission as follows:

I. BACKGROUND

1. On March 31, 2003, Delmarva Power & Light Company, d/b/a Conectiv Power Delivery ("Conectiv" or "the Company"), filed an application with the Commission seeking to increase its natural gas (non-fuel) rates by 12.7%, based on total revenue. The Company last sought an increase in natural gas base rates in 1994. (PSC Docket No. 94-22.)

2. On October 21, 2003, the Commission considered a proposed settlement in this case that would result in a 5.8% rate increase, or \$4.32 on the winter bill for the average residential

gas heating customer (assuming 120 ccf of use).⁵ After hearing objections from members of the Association of Community Organizations for Reform Now ("ACORN"), who sought an additional opportunity to provide customer input, the Commission directed the Hearing Examiner to conduct a public comment session in "the neighborhood of the ACORN membership." (Transcript of October 21, 2003 Commission Meeting at 88, 89, 99.)

3. A public comment hearing ("hearing") was conducted from 7:00 p.m. until 10:00 p.m. on November 3, 2003, in southeast Wilmington at Bancroft Intermediate School.⁶ Public notice of the hearing consisted of: (a) newspaper publication in *The Delaware State News* and *The News Journal*; (b) a press release, which was picked up and run by *The News Journal* and WDEL and WILM radio stations; and (c) the Company's mailing of the press release to the approximately 50 community groups in Wilmington that it deals with through its Outreach Program.⁷

4. Approximately 150 people attended the hearing, 33 of which offered public comment.⁸ When the hearing was adjourned,

⁵ See, Findings and Recommendations of the Hearing Examiner, dated October 9, 2003.

⁶ Representatives of ACORN selected the location of the hearing.

⁷ See, Exhibit 24, which consists of the affidavits of publication of notice from the newspapers, a copy of the press release, and a copy of the Company's October 27, 2003 letter to the community groups in Wilmington.

⁸ The sign-up sheet for the hearing consists of 7 pages and has been marked and entered into the record of this proceeding as Exhibit No. 25. The transcript of the November 3, 2003 hearing, which consists of 108 pages, will be cited as "Tr. at ____." The transcript was completed on November 17, 2003.

at 10:00 p.m., there were, in all likelihood, many more customers who wished to make comment.⁹ Representatives from Commission Staff, the Public Advocate, and the Company appeared at the hearing.¹⁰ In addition, Commissioner Jay Lester, Commissioner Joann Conaway, and Commission Chair Arnetta McRae were in attendance.

5. At the onset of the hearing, the Company announced that several customer service representatives were present and were available to take individual complaints. In addition, the attendees were informed that both Commission Staff and the Public Advocate were prepared to take contact information from customers so that an investigation of particular complaints could be initiated. (Tr. at 113-115, 131, 214-215.) From what the parties reported at the conclusion of the hearing, one customer contacted the available customer service representatives or complaint investigators.

II. SUMMARY OF PUBLIC COMMENT

6. Darlene Battle, an ACORN representative, objected to a rate increase and called for more funding for the "crisis agency," so it is better able to help customers with temporary hardships. She also called for placement of a Conectiv service center in Wilmington and a strong policy regarding terminations

⁹Custodial staff from the school indicated that the building closed at 10:00 p.m. (Tr. at 215-216.)

of service for nonpayment. (Tr. at 136.) Ms. Battle asserted that no terminations should occur for customers with billing disputes or customers who have a doctor's certification for a medical condition. She also objected to any terminations occurring between December 1 and March 31. In addition, Ms. Battle recommended that Conectiv spread payment plans over a three-year period and base the amount of the payment on a percentage of the customer's income, with lower income customers paying a lower percentage thereof. (Tr. at 137-138.) Arrearages should be decreased by one-third for every month that a customer stays on a payment plan. Increases to the customer charge, she asserted, should be limited to increases in the Consumer Price Index. In addition, the Company should pay for remote meter reading devices for those customers who receive estimated bills and all outside meters should be updated. (Tr. at 138-139.)

7. Shenekqua Baines, speaking on behalf of the West Center City Neighborhood Planning Advisory Committee, Inc. ("WCCNPAC"), reported an increasing number of excessively high bills among WCCNPAC's clients, even though such clients live in small homes and use little energy. (Tr. at 183-184.) There are also many low-income or unemployed residents who cannot afford to pay their utility bills. When customers miss a payment by a day or a few dollars, Conectiv revokes the payment plan and demands a higher payment or will terminate service. Many clients have

¹⁰The only other party to this case, the Delaware Energy Users' Group, indicated, prior to the hearing, that it

\$2,000 to \$5,000 outstanding balances. Ms. Baines asserted that she pays, as part of a payment plan, \$200 over her monthly usage, \$70 of which is the finance charge. As a result, she must decide whether her children will eat or whether to send them to someone else's house to eat. Ms. Baines also noted that her clients who live in federally subsidized housing are required to leave their residences upon termination of utility service. When they find a new home, they still have no utilities and must "lie, steal, and cheat" to survive. (Tr. at 186-187.)

8. The other 31 speakers, many of whom were ACORN members, complained of the following:

- Conectiv's rude and unsympathetic customer service representatives (Tr. at 140, 168, 169.)
- Service terminations for disabled or ill customers (Tr. at 140, 150, 151-152, 157, 170, 188-189, 190, 199-200.)
- Transfer of outstanding balances from one customer to another (Tr. at 141-142, 160-161, 191, 202-203, 207-208.)
- Excessively high and unaffordable bills (ranging from \$2,000 to \$11,000) (Tr. at 141, 151, 159, 162, 167, 177-178, 189, 194, 202-203.)
- Unreasonable payment plans (Tr. at 147, 160, 162, 166-167, 190.)
- No payment plans allowed for those with poor credit (Tr. at 163.)
- Meter readers who do not show up or who leave cards without knocking on the door (Tr. at 148-149, 157, 188, 205-206.)

would not be appearing.

- Estimated readings (Tr. at 153, 155, 156-157, 162-163, 170, 178, 194, 206.)
- Outdated, inaccurate meters (Tr. at 154.)
- Large bills despite low usage (Tr. at 155, 170, 190, 192.)
- Excessive reconnection fee (Tr. at 159.)
- No local pay center (Tr. at 154, 160, 176.)

9. In addition to the public comment made at the hearing, approximately twenty customers sent e-mails and letters to the Commission objecting to the proposed rate increase. Rashmi Rangan of Wilmington noted, among other things, that (1) the Company provides a 9:00 a.m. to 4:00 p.m. time range for when a meter reader will arrive, which makes it difficult to be present, and (2) the Company will not allow her to call in her own reading, even though her meter is digital and, therefore, easily read without error. (November 7, 2003 letter.)

III. DISCUSSION

10. This summary of the public comment cannot accurately reflect the level of frustration and hopelessness conveyed by the Company's gas and electric customers at the hearing. Furthermore, while I recommend that the Commissioners review the transcript of the hearing itself, even the transcript is limited in communicating the emotional distress experienced by those with large overdue balances, little hope of ever becoming current, either no service or pending termination of service, and children at home.

11. Commission denial of the jointly proposed 5.8% gas rate increase, of course, will not solve the problems experienced by the relatively small number of customers who have excessive, overdue balances. It is clear from the comments made at the hearing, however, that some type of action by the Commission is necessary, in response to the complaints regarding the unmanageable balances, as well as ongoing Company practices relating to estimated bills, indoor meters, payment plans, assigning outstanding balances from one customer to another, medical certifications, and locations of payment centers.

12. While the parties have yet to make specific recommendations concerning the customer service and affordability issues raised by customers at the hearing,¹¹ my understanding is that Commission Staff and, perhaps, the other parties will submit comments regarding possible courses of action prior to Commission deliberation in this matter. Whether it's a one-time write-down of outstanding bills for certain customers,¹² a universal service surcharge on all customers (that may require legislation), a system of prepaid cards that will allow customers to maintain electric or gas service while dealing with arrearages or credit

¹¹In a November 4, 2003 submission, the Company indicated that it continued to support the proposed settlement and noted that many of the issues raised at the hearing were addressed by the Commission on October 21, 2003, in Docket No. 02-231. None of the other parties have withdrawn their support for the proposed settlement.

¹²Some customers' large bills may result, in part, from the long-term moratorium on terminations that the Company instituted in

problems, load limiters, better education regarding energy conservation and available social services, or something else, I agree that further review of this matter is warranted, in a separate case or rulemaking.

Respectfully submitted,

/s/ William F. O'Brien
William F. O'Brien
Senior Hearing Examiner

Dated: November 17, 2003

response to its 2000-2001 billing problems (PSC Docket No. 00-108) or to repeated, underestimated readings.

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

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
D/B/A CONECTIV POWER DELIVERY, FOR) PSC DOCKET NO. 03-127
A CHANGE IN ITS NATURAL GAS BASE)
RATES (FILED MARCH 31, 2003))

PROPOSED SETTLEMENT

On this day, October 7, 2003, Delmarva Power & Light Company ("Delmarva" or the "Company"), the Delaware Public Service Commission Staff (the "Staff"), the Division of the Public Advocate ("DPA"), and the Delaware Energy Users Group ("DEUG") all of whom together are the "Parties" or "Settling Parties," hereby propose a complete settlement of all issues that were raised or could have been raised in this proceeding and to establish final rates as follows.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On March 31, 2003, Delmarva filed an application with the Delaware Public Service Commission (the "Commission") to increase its gas base rates, inclusive of a proposed research and development surcharge, and certain modifications to its gas tariff. The application was accompanied by various schedules, tables, and data required by the Commission's minimum filing requirements and the pre-filed testimony of several witnesses. On April 16, 2003, in Order No. 6141, the Commission suspended the proposed rate and tariff changes for a period of seven months, required public notice through newspaper publication, established a time for interventions, and assigned the

matter to a Hearing Examiner for evidentiary hearings and further proceedings. DEUG intervened and the DPA gave notice of its intent to participate. Staff also participated in the case. No other entities intervened or participated. On May 30, 2003, pursuant to 26 Del. C. § 306, Delmarva put \$2.5 million of its proposed rate increase into effect subject to refund, evidentiary hearings and further proceedings.

Pursuant to the procedural schedule established by the Hearing Examiner, the Parties engaged in discovery with respect to the application and accompanying testimony and other material filed with the Application. On August 15, 2003, Staff, DPA and DEUG each submitted testimony. The Parties engaged in discovery with respect to that testimony. On September 10, 2003, Delmarva filed rebuttal testimony with respect to certain contested positions taken by the other Parties. On the same day, DEUG and Staff filed cross-rebuttal testimony with respect to certain positions that each had taken in their testimony of August 15, 2003.

Pursuant to the Hearing Examiner's directive, a public notice through newspaper publication was made of a public and evidentiary hearings beginning on September 24, 2003 and continuing through September 26, 2003. The public notice also indicated that the hearing may be used for the purpose of taking testimony on a settlement. The public notices of the filing and of the hearings are Exhibit 1.

II. SETTLEMENT PROVISIONS

The Settling Parties recommend approval of the following:

A. Rates and Charges.

1. No refunds with respect to the interim \$2.5 million revenue increase are necessary or warranted.
2. The total base rate revenue increase should be \$7.75 million, exclusive of an environmental remediation surcharge. This will result in an increase of about 15.43% on the Company's gas base revenues and about 5.8% of the Company's total gas revenues. The Parties agree that, should the Commission approve this Settlement, the Company will file an application for a change in its tariffs to implement an environmental remediation surcharge, equivalent to the mechanism that Chesapeake Utilities currently has in effect. The Company will file this request separately, including \$522,988 (actual incremental "out-of-pocket" expenses as described in Staff witness Henkes' testimony, Ex. 19 at 63) as the initial amount to be recovered under the surcharge mechanism. The proposed surcharge rider for research and development projects has been withdrawn from this proceeding and will not be reflected in tariffs as an outcome of this proceeding.
3. The Parties have agreed to the base rate revenue increases shown in Appendix A.
4. A cost of equity of 10.5% for the Company is reasonable and should be adopted for this proceeding. This produces an overall rate of return of 7.81%.
5. The rates approved for usage on and after November 1, 2003, shall be as set forth in the tariff leafs attached as Appendix B.

6. The current margin sharing arrangements should continue in effect until changed by the Commission upon the application of Delmarva or any other Party, with the following modification: an 80%/20% split between customers and the Company for margins associated with non-firm service shall apply irrespective of whether or not the customer taking non-firm service was considered a firm customer in this proceeding.

B. Weather Normalization.

1. In the Company's next base rate case, the application, schedules and other aspects of the initial filing, including the cost of service study, computations relating to class rates of return, billing determinants by class, and proposed spread of revenue shall use a weather normalization methodology for sales quantities and customer classes that are weather sensitive. The weather normalization methodology shall use the most recently available 30-years of data (rolling average) based on temperature observations made within the City of Wilmington's boundaries. If the Company opts to subscribe to National Oceanic and Atmospheric Administration ("NOAA") data, it shall use the most recently-available 30 years of NOAA data (rolling average) for the weather normalization adjustment in its filing.

2. The filing requirement above shall not require a weather normalization adjustment for transportation services, but one may be proposed within the application or by other Parties.

3. Delmarva shall have the right, but not obligation, to propose an alternative weather-normalization methodology, including the use of a different period of time for the development of the base line for "normal" weather. However, such a proposal shall not relieve Delmarva of the requirement in section II.B.1. above to make its initial filing,

including all the aspects of such filing listed above, using the methodology set forth in that section.

C. Miscellaneous Issues.

1. The Company's proposed tariff modifications to Leaf Nos. 2, 7, 13, 15, 20, 23, 26-30, 43, 44, 44a, 45, 47 , 47a, 51, 57-61, and 70-80 should be approved. A summary of those modifications is attached as Appendix C.

D. Additional Provisions

1. The provisions of this settlement are not severable.

2. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case. No Party to this settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this settlement other than as specified herein, except that the Parties agree that the resolution of the issues herein taken as a whole results in just and reasonable rates and that the non-rate tariff changes are reasonable and in the public interest.

3. To the extent opinions or views were expressed or issues were raised in the pre-filed testimony that are not specifically addressed in the Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

4. This settlement shall terminate as of the date that Delmarva files its next general base rate increase, except with respect to the filing requirements set forth in section II.B. above.

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Parties have caused this Proposed Settlement to be signed by their duly-authorized representatives.

/s/ Randall V. Griffin
Delmarva Power & Light
Company

/s/ Connie S. McDowell
Delaware Public Service
Commission Staff

/s/ G. Arthur Padmore
Division of the Public Advocate

/s/ Louis R. Monacell
Delaware Energy Users Group