

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT FILED)
BY MARIE BOUMAN T/A ACT 1 FRAMING)
AGAINST DELMARVA POWER & LIGHT) PSC COMPLAINT
COMPANY CONCERNING METER REPLACEMENT) DOCKET NO. 386-12
(FILED NOVEMBER 26, 2013))

ORDER NO. 8375

AND NOW, this 18th day of June, 2013, the Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner issued in the above captioned docket, which was submitted after a duly-noticed, formal evidentiary hearing on April 3, 2013, and which is attached to the original hereof as Attachment "A"; and

WHEREAS, the Complainant filed exceptions on May 28, 2013, which are attached hereof as Attachment "B", and the Commission has considered those exceptions. The Complainant specifically asks the Commission to reject the Hearing Examiner's recommendation that Delmarva be permitted access to remove the existing, functioning meter. Complainant asserts that Delmarva does not have an absolute right to replace a functioning meter with a smart meter. Under Complainant's construction, the applicable tariffs and orders grant Delmarva ownership of the meters and access but the right to replace is limited to non-functioning equipment; and

WHEREAS, the Commission determines that the Complainant's exceptions are unfounded. The Commission has inherent powers to supervise and regulate utilities pursuant to 26 Del. C. §201(a); and

WHEREAS, the Commission approved a regulatory asset to deploy smart meters (Advanced Metering Infrastructure) by Order No. 7420 (September 16, 2008). Delmarva has a right of ownership in the meters. *P.S.C. Del. No. 8-Electric First Revised Leaf No. 20*. Further, Delmarva maintains a broad right to access the premises "for the purpose of reading the Company's meters, connecting and discontinuing service, operating, testing, inspecting, repairing, removing and replacing any and all of the Company's apparatus used in connection with the delivery of electricity." *P.S.C. Del. No. 8-Electric First Revised Leaf No. 29*. These tariffs facilitate the Commission's Order to deploy the Advanced Metering Infrastructure. The tariffs are a means for the Commission to implement the regulation of utilities. *Georgia-Pacific Corp. v. Delmarva Power & Light Company*, Del. Ch., 1992 WL 396307; and

WHEREAS, the Complainant bears the burden of proof pursuant to Section 2.12.3 of the Commission's Rules of Practice and Procedure (the "Commission's Rules"), 26 Del. Admin. C. §1001, which is consistent with the Delaware Administrative Procedures Act, 29 Del. C. §10125. See, e.g., *Weinfeld v. Del. Bd. Of Med. Practice*, Del. Super., 1999 WL 743803 (Moving party in an administrative proceeding has the burden of proof); and

WHEREAS, the Complainant has not met the burden of proof by a preponderance of the evidence that Delmarva should be restricted from installing the smart meter in her business because of disruption; and

WHEREAS, Delmarva has filed exceptions to the Hearing Examiner's Findings and Recommendations, attached hereto as **Attachment "C"**. Delmarva asserts that this Complaint should be barred by 26 Del. C. §510 because the Complainant did not intervene in Commission Order No. 7420 Docket concerning the Advanced Metering Infrastructure and did not file an appeal within thirty (30) days of service of the final order in that Docket; and

WHEREAS, the Commission determines that Order No. 7420 does not bar Complainant from raising issues related to the replacement of her meter as a complaint under Section 2.3.2 of the Commission's Rules. While Complainant has not established that Delmarva violated any of the Commission's Rules, a Complaint raising concerns about the installation of a smart meter at a business location is not prohibited by the Complainant's failure to participate in the Commission's initial docket proceedings considering the deployment of Advanced Metering Infrastructure;

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

1. That, the exceptions filed by the Complainant are hereby denied.

2. That, the exceptions filed by Delmarva are hereby denied.

3. That, the Complainant has failed to meet her burden of proof in this Complaint.

4. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the May 6, 2013 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A."

5. That, Complainant shall allow Delmarva to access the interior of her business to remove the existing meter and replace it with a smart meter within thirty (30) days of the Commission's Order, or Delmarva is permitted to terminate service in accordance with its Tariff.

6. The meter replacement shall be performed on a mutually convenient day and at a mutually agreeable time. If scheduling becomes an issue for the parties, the Commission authorizes Hearing Examiner Mark Lawrence to resolve any scheduling matter.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

ATTACHMENT "A"

Findings and Recommendations of the Hearing Examiner

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT FILED BY)
MARIE BOUMAN T/A ACT 1 FRAMING AGAINST) PSC COMPLAINT DOCKET
DELMARVA POWER & LIGHT COMPANY CONCERNING) NO. 386-12
METER REPLACEMENT)
(FILED NOVEMBER 26, 2012))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: May 6, 2013

MARK LAWRENCE
HEARING EXAMINER

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT FILED BY)
MARIE BOUMAN T/A ACT 1 FRAMING AGAINST) PSC COMPLAINT DOCKET
DELMARVA POWER & LIGHT COMPANY CONCERNING) NO. 386-12
METER REPLACEMENT)
(FILED NOVEMBER 26, 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 Complainant, Marie Bouman T/A Act 1 Framing
ANTHONY R. ARCARO, ESQUIRE,

On behalf of the Respondent, Delmarva Power & Light Company
PAMELA J. SCOTT, ESQUIRE

On behalf of the Public Service Commission Staff
BY: LAWRENCE LEWIS, ESQUIRE, Deputy Attorney General

II. BACKGROUND

1. This matter arises out of a formal complaint filed by Maria Bouman T/A Act 1 Framing, a sole proprietorship, ("the Complainant") on November 26, 2012 against Delmarva Power & Light Company ("Delmarva").¹ (TR.-5.) The Complainant is a Delmarva electric customer, specifically a legal trial exhibit printing and retail

¹ 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." One exhibit is attached to this Report. That Exhibit will be referred to as "Exhibit 1," using the complete word "Exhibit."

custom picture framing business, located in Wilmington, Delaware. (Exh. 1; Tr.-9-10.) The Claimant's electric service classification is Small General Service-Secondary Non-Demand ("SGS-ND"). (*Id.*; P.S.C. Del. No. 8, 31st Rev. Leaf No. 43; 4th Rev. Leaf No. 60.)

2. In April, 1995, Delmarva installed an Elster A1B Electronic Meter inside of the Complainant's business premises.² (Tr.-32-33;16.) This meter has an electronic display for the customer's use. (Tr-32.) For Delmarva's billing purposes, the Claimant's meter is manually read by a Delmarva meter reader who must be afforded access to the business premises by the customer to use a hand-held device which reads the meter. (Tr.34-35.) This particular meter cannot be read by a meter reader located outside of the business premises. (*Id.*)

3. The Complainant refuses to permit Delmarva to install a "smart meter" at the business premises. (Exh. 1.) Smart meters are part of the Advanced Metering Infrastructure ("AMI"). (Tr.-32) Smart meters are electric, digital display meters which transmit two-way, near real-time communication through a radio frequency and over a network, transmitting consumption and lost signal data between customers and their electric supplier, Delmarva. (Tr.-32-33; 57-58.) With a smart meter, Delmarva can remotely read the customer's use without a meter reader visiting the premises. (Tr.-33.) Also, if the customer's electric service is interrupted, the smart meter immediately notifies Delmarva that a repair may be needed. (*Id.*)

4. The Complainant makes four (4) arguments as to why the Commission should not compel her to allow Delmarva to install a smart

² Delmarva installed a smart meter at Maria Bouman's personal residence in May, 2009. (Tr.-51.)

meter: 1) the current meter is accurately reflecting her electric consumption, which the parties do not now dispute;³ 2) smart meters are "repetitive and "a waste of money;"⁴ 3) a smart meter could "short out," resulting in a power interruption at the Complainant's business; and 4) one of Delmarva's Tariffs permits the Complainant to continue using the meter currently installed at the premises.

5. On January 7, 2013, Delmarva filed its Answer to the Complaint. (Exh.2.) The Commission Staff has also actively participated in this docket. I held an evidentiary hearing on April 3, 2013 in Dover. The evidentiary record consists of six (6) exhibits and an eighty (80) page transcript. I hereby close the evidentiary record.⁵

6. As will be described later herein, I recommend that the Commission compel the Complainant to install a smart meter.

III. DISCUSSION

A. Delmarva's Position

7. Delmarva strongly maintains that the Commission ordered the change to smart meters and no customer can "opt-out" or keep their current meter. Delmarva first relies on Commission Order No. 7420 (Sept. 16, 2008), wherein the Commission ordered as follows:

3. "The Commission approves the diffusion of the advanced metering technology into the electric and natural gas

³ On April 17, 2013, after the evidentiary hearing, Delmarva tested the meter for accuracy and found that the meter is accurately reflecting electric consumption. (Delmarva's Filing dated April 24, 2013.)

⁴ The U.S. Department of Energy estimated that over 60 million smart meters would be operating in the U.S. by 2012. (U.S. Dep't of Energy, *Smart Grid System Report*, July, 2009; www.parksassociates.com .)

⁵ I did not close the evidentiary record at the evidentiary hearing because I ordered that the current meter be tested for accuracy. That test took place on April 17, 2013.

distribution system networks and the Commission permits Delmarva to establish a regulatory asset to cover recovery of and on the appropriate operating costs associated with the deployment of Advanced Metering Infrastructure and demand response equipment. The Commission, Staff, and other parties remain free to challenge the level or any other aspects of the asset's recovery in rates when Delmarva seeks recovery of the regulatory asset in base rates. For ratemaking purposes, the Commission may wish to consider an appropriately valued regulatory asset for advanced metering infrastructure investment consistent with the matching principle giving consideration to both costs and savings in the context of its next base rate case proceeding..."⁶

8. Next, Delmarva relies on its Tariff, arguing that the current meter is Delmarva's property, and Delmarva has the right to access the business premises, remove the current meter and install a smart meter. (Tr.-72-75.) Leaf 29 of the Tariff provides as follows:

RULES AND REGULATIONS
SECTION XIII - ACCESS TO PREMISES

A. Access to Premises

The authorized agents or representatives of the Company having the proper Company identification shall have access at all reasonable times to the premises of the Customer for the purpose of reading the Company's meters, connecting and disconnecting service, operating, testing, inspecting, repairing, removing and replacing any all of the Company's

⁶ All underlining of orders, statutes and tariffs in this Report was supplied by me.

apparatus used in connection with the delivery of electricity.⁷

(P.S.C. Del. No. 8 - Electric Delmarva Power & Light Company Leaf No. 29.)

B. Complainant's Position

9. Instead of Leaf 29 described above, the Complainant relies upon Leaf 20 of Delmarva's Tariff. Leaf 20(C) provides, in pertinent part, as follows:

P.S.C. Del. No. 8 - Electric
Delmarva Power & Light Company First
Revised Leaf No. 20

RULES AND REGULATIONS
SECTION VIII - METER INSTALLATIONS

C. Right to Remove Company's Equipment

⁷ Since the Claimant was not a party to the Docket resulting in Commission Order No. 7420 (Sept. 16, 2008) establishing AMI implementation, I reject Delmarva's argument that the Complainant's claim is time barred according to 26 Del. C. §510(a), which provides as follows:

§ 510. Appeal from Commission's order.

(a) Any public utility affected by any final order made by the Commission, or any other original party to or any intervenor in the proceedings before the Commission in which such order was entered and affected thereby, may appeal from such order to the Superior Court within 30 days from the date upon which such order is served. The appeal shall be filed with the Prothonotary of the Court and summons in the appeal shall be served upon the secretary of the Commission either personally or sent by certified mail to the office at Dover, Delaware, and shall be served upon all other parties to the proceeding below, other than the appellant.

All meters, instrument transformers or other service equipment supplied by the Company shall remain its exclusive property. The Company shall have the right to remove all its property from the premises of the Customer at any time after the termination of service, whatever may have been the reason for such termination. (Tr-68-72.)

D. Staff's Position

10. Staff relies upon a different portion of Leaf 20 of Delmarva's Tariff than the Complainant, arguing that the Complainant is entitled to keep her current meter according to Tariff 20(A)'s alternative metering provisions, which provide as follows:

A. Meters Provided by the Company

The Company shall normally furnish, install, maintain, and own one (1) set of metering equipment for measurement of the service provided under each contract.

When a Customer, Electric Supplier or other party wants the Company to install alternative metering and associated equipment that is different than that which is normally provided under the Customer's Service Classification, the Customer shall make the request to the Company. The Customer shall be informed before the alternative metering equipment is installed of the amount that they will be charged for the meter exchange and any cost differential between the normally furnished meter and the alternative metering equipment, including any applicable taxes associated with a Contribution in Aid of Construction or otherwise. The Company shall make reasonable efforts to furnish, install and maintain such metering equipment for the Customer, provided that such alternative metering equipment meets the Company's electrical and data processing standards. The Company shall own such alternative metering equipment. When the Customer wants an electronic

communication link for remote access of the alternative metering equipment, the Customer shall make all arrangements and shall maintain that communication link at its expense. Unless authorized by the Company, only the Company shall have access, directly or remotely, to the alternative metering equipment. Upon the Customer's authorization, the metered data from such alternative metering equipment shall be provided to its designee at the Customer's expense. (Tr-75-77)

E. Hearing Examiner's Position

11. Delmarva is correct. Commission Order No. 7420 (Sept. 16, 2008) and Tariff Leaf No. 29 require the Commission to compel Complainant to permit Delmarva to install a smart meter at the business premises or risk termination of her electric service.⁸

12. The Complainant has not demonstrated that Leaf 20(C), entitled SECTION VIII - METER INSTALLATIONS, nullifies the provisions of Leaf 29 entitled "SECTION XIII - ACCESS TO PREMISES." Leaf 29 provides that Delmarva owns the subject meter and has the right to access to the meter and replace it with the smart meter previously

⁸ The Tariff's termination provisions applicable to this case are:

P.S.C. Del. No. 8 - Electric Delmarva Power & Light Company First Revised Leaf No. 31

RULES AND REGULATIONS
SECTION XV - COMPANY'S RIGHT TO DISCONTINUE
SERVICE

1. With Prior Notice

c. Violation of or non-compliance with these Rules and Regulations or the effective Service Classification or Contract. The Company may refuse to provide any service until the Customer has corrected the conditions constituting such violation or non-compliance.

f. Repeated refusal to grant access, during reasonable working hours, for maintenance, meter reading or removal of equipment, inspection or replacement of equipment.

authorized by the Commission. According to the Complainant's unpersuasive construction of Delmarva's entire Tariff, Delmarva can only remove a meter after service is terminated as described in Leaf 20. However, Delmarva removes electric meters every day for a variety of reasons i.e. an inoperable meter, an older meter which needs to be replaced, a change in service classification, etc. It reasons that Leaf 29 permits Delmarva to replace the Claimant's current meter owned by Delmarva with a smart meter owned by Delmarva.

13. Staff has not demonstrated that the alternative metering tariff applies to this customer's smart meter. No Commission Order or testimony from 2008 through the present which I reviewed supports Staff's position. If some history related to smart meters support Staff's position, Staff should bring it to the Commission's attention.

14. Moreover, as testified to by Staff's witness Gary Cohen, according to the alternative metering Tariff, the current meter must "meet the Company's ... data processing standards." (Tr. 60-61.) Delmarva wants the Complainant's electric consumption and signal data processed by computer via smart meter, while the Complainant's current meter requires that the data be processed by a meter reader who must be afforded access the premises. Thus, the Complainant's meter does not meet the Company's "data processing standards."

15. In the most recent Delmarva electric rate case, the Commission again explained some of the benefits of the AMI technology to Delmarva's customers:

With respect to AMI, Mr. Ziminsky testified that AMI deployment had saved over \$2.3 million in meter reading costs, which were then offset against the AMI regulatory asset,

and which the Company's customers would continue to realize annually. (*Id.* at 114-16). He described the business case for AMI deployment discussed in the Company's 2007 Blueprint for the Future, and testified that the Company and the Commission had concluded that the benefits of AMI outweighed the costs. (*Id.* at 117-18). He identified two categories of savings that customers would realize from AMI: (a) operational savings, which the Company estimated to be \$6.44 million annually, and (b) supply-side savings, which on a 15-year net present value basis ranged from \$36 million to \$107 million based on the level of customer participation in dynamic pricing and other energy efficiency initiatives. (*Id.* at 118-19, 130-31). He provided examples of the benefits of AMI deployment, such as the Company's ability to "ping" meters during storms to determine the status of service at a particular address; he noted that during Hurricane Irene this allowed the Company to avoid sending 582 trucks and related personnel to particular addresses or areas, and resulted in faster service restoration when outages did occur. (*Id.* at 134-36). Mr. Ziminsky testified that the regulatory asset is being amortized over 15 years, and the effect of the phase-in on the typical residential consumer's total bill is approximately \$1.53 per month once the entire regulatory asset was phased into rates. (*Id.* at 120-28, 160-61). He also observed that if the Company did not achieve the functionalities identified in the Settlement at the time it sought recovery, it would not be permitted to place the portion of the regulatory asset associated with those functionalities into rates until the following year. In addition, he explained that a non-recoverable financial penalty to Delmarva in the form of bill credits would result from any failure by Delmarva to achieve AMI functionalities in a timely manner. He further noted that Staff and the Public Advocate would review the Company's filing to determine that those functionalities were in fact being realized before Delmarva could recover that portion of the AMI regulatory asset. (*Id.* at 125-28, 133-34, 163-64). Finally, he testified that Delmarva, Staff and the Public Advocate had negotiated the method

of and conditions on the recovery of the AMI regulatory asset over the course of two and one-half weeks. (*Id.* at 159-60). (PSC Order No. 8265 (Dec. 18, 2012) HE's Report ¶75.)

16. A major financial reason behind smart meters was to eliminate the need for Delmarva to employ meter readers, thus not having to pay their salaries, benefits and pensions. (Tr.-58-59.)

17. Additionally, Delmarva's meter readers have had a difficult time accessing the Complainant's business to read the current meter. From January 2011 through and including March 2013, Delmarva was forced to estimate the Complainant's bill 20 out of 27 times. (Exh. 6.) In addition to customers often complaining about estimated bills, from an accounting standpoint, utilities prefer actual bills derived from smart meters over estimated bills.

18. According to the Supervisor of Delmarva's Power Meter Services Group, approximately 99.8% of Delmarva's Delaware customers have permitted the installation of smart meters. (Tr.-38.) The Complainant's installation would take only forty-five (45) minutes and the electricity for the business would not even have to be turned off. (Tr.-37.)

19. The Supervisor of the Delmarva Power Services Group, Robert Ciritella, testified that, to date, no Delaware business has complained to Delmarva that the installation of a smart meter interfered with or caused an interruption of the business' electricity. (Tr.-43.)

IV. JURISDICTION

20. Clearly, the Commission has jurisdiction over this issue.

26 Delaware Code §201(a) provides as follows:

§ 201. General jurisdiction and powers.

- (a) The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title. Such regulation shall include the regulation of the rates, terms and conditions for any attachment (except by a governmental agency insofar as it is acting on behalf of the public health, safety or welfare) to any pole, duct, conduit, right-of-way or other facility of any public utility, and, in so regulating, the Commission shall consider the interests of subscribers, if any, of the entity attaching to the public utility's facility, as well as the interests of the consumer of the public utility service. (emphasis supplied.)

21. Second, 26 Delaware C. §211 provides as follows:

§ 211. Meters and measuring appliances.

- (a) The Commission may, after hearing, by order in writing, establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements and may provide for the examination and test of all appliances used for the measuring of any products or service of a public utility.

22. Finally, 26 Delaware C. §209 provides as follows:

§ 209. Standards, classifications, regulations, practices, measurements, services, property and equipment of public utility.

(a) The Commission may, after hearing, by order in writing:

(1) Fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any public utility;

(2) Require every public utility to furnish safe and adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so.

Thus, the Commission has jurisdiction in this docket.

V. BURDEN OF PROOF

23. 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 Complainant has the Burden of Proof in this case. (See 26 Del. C. §§10121, 10125(c)(3).) I incorporate all prior sections of this Report as my Findings of Fact and Law. I find that Complainant has not met her Burden of Proof in this case.

VI. RECOMMENDATIONS

24. I recommend that the Commission order that the Complainant allow Delmarva access to the subject business premises to remove the current electric meter and replace it with a smart meter within thirty (30) days of the Commission's Order. Once Delmarva notifies the Commission that it installed the smart meter, the Complaint will be

dismissed with prejudice without further Order of the Commission. A proposed Order is attached as Exhibit "1."

Respectfully submitted,

A handwritten signature in blue ink that reads "Mark Lawrence". The signature is written in a cursive style with a large initial 'M'.

Dated: May 6, 2013

Mark Lawrence
Hearing Examiner

ATTACHMENT "B"

Exceptions filed by Complainant

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF MARIE BOUMAN)
T/A ACT I FRAMING AGAINST DELMARVA)
POWER & LIGHT COMPANY CONCERNING)
REPLACEMENT OF METER)
(FILED NOVEMBER 26, 2012)

PSC Complaint Docket
No. 386-12

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DELAWARE P.S.C.

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Petitioner

EXCEPTIONS OF MARIE BOUMAN T/A ACT I FRAMING
TO HEARING EXAMINER'S REPORT DATED MAY 6, 2013

ORIGINAL

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Dated: May 24, 2013

INTRODUCTION

Marie Bouman t/a Act I Framing (the Complainant) filed a Complaint on November 26, 2012, against Delmarva Power & Light Company (Delmarva). (TR.- 5) The Complainant has a Elster A1B Electronic Meter in her business premises. (Tr.-16; 32-33). The meter can be manually read from inside the Complainant's business premises by a hand held device. (Tr.-34-34) That meter was tested by Delmarva on April 17, 2013, and it tested 100.03% accurate for a light load and 100.02% accurate for a full load. The results of the test were submitted to the Hearing Officer on April 24, 2013. Marie Bouman does not want Delmarva to install a "smart meter" at her place of business. (Ex. 1). The Hearing Examiner found that Complainant stated four reasons for her refusal to let Delmarva install a smart meter: (1) The current meter is accurate which is not in dispute; (2) smart meters are repetitive and waste of money; (3) a smart meter could "short out" resulting in a power interruption at the Complainant's business; and (4) one of Delmarva's Tariffs permits Marie Bouman to continue using the meter currently installed. The Hearing Officer recommends that the Commission compel the Complainant to install a smart meter.

The Complainant, Marie Bouman's, exceptions to the Findings and Recommendations of the Hearing Officer are as follows:

1. The Hearing Officer's recommendation that the Complainant allow Delmarva access to the premises to remove the current electric meter and replace it with a smart meter should be rejected, and the existing electric meter should remain in place.
2. Delmarva does not have the absolute, unilateral right to replace a fully functioning and positively accurate electric meter with a smart meter.

DISCUSSION

First, the Hearing Officer misconstrued Complainant's testimony regarding what could "short out" and consequently misstated one of the reasons for her refusal to let Delmarva install a smart meter. The Hearing Officer believed that Marie Bouman testified that a smart meter could "short out" causing a power interruption to her business. (Tr.-11) However, a careful reading of the transcript will show that Marie Bouman was being asked if the signals from a smart meter could interfere with her scanners or printers output. (Tr-10-12) Complainant answered that she was concerned because the "radio transmission could absolutely short out" the electromagnetic field that is generated by her very sensitive equipment and stop a download in mid-print. (Tr.-11) Marie Bouman also testified that she was concerned that a smart meter could interrupt a printing job. (Tr-12) Complainant did not say that the smart meter itself could short out causing her to be without electricity. (Tr. 11)

Commission Order No. 7420 (Sept. 16, 2008) and *Tariff Leaf No. 29* do not compel Complainant to install a smart meter or risk termination of her electric service. First, *Leaf No. 29*: is a Rule and Regulation regarding Access to Premises. It establishes that the Company "shall have access at all reasonable times to the premises of the Customer for the purpose of reading the Company's meters, connecting and disconnecting service, operating, testing, inspecting, repairing, removing and replacing any [or] all of the company's apparatus..." However, *Revised Leaf No. 29*, by its plain language is clearly and merely a rule and regulation on access to premises; it does not give Delmarva the right to remove or replace existing, fully operational equipment any time that Delmarva wants to. The Rule does not give Delmarva the authority to do anything other than enter the premises of the Customer for specific purposes; the Rule only incidentally refers to removing and replacing equipment. Further, *Commission Order No. 7420*, says nothing about mandatory

installation of smart meters; the Order only approves the use of advanced metering technology into the electric distribution system. The Order is silent on whether customers must allow Delmarva to install a smart meter over the customer's objection when a fully functioning and completely accurate meter is already in place.

Pursuant to *P.S.C. Del. No. 8 - Electric First Revised Leaf No. 20*, Delmarva may own the meters. However, *Leaf No. 20* only states that Delmarva "shall have the right to remove all its property from the premises of the Customer at any time after termination of service...;" *Leaf No. 20* says nothing about removing "its property" at any time Delmarva desires to do so. In fact, the leaf does not address replacing equipment at all. Further, *Leaf No. 20* does not need to nullify *Leaf No. 29*, because as argued above, *Leaf No. 29* does not give Delmarva the right to remove or replace existing, fully operational equipment any time that Delmarva wants to; the Rule only gives Delmarva the authority to enter the premises of the Customer for specific purposes.

Petitioner never implied that alternative metering was necessary since she has a Delmarva owned meter which Delmarva installed that can be read by a meter reader at this time. (Tr.-16; 32-33; ,34-35) Although, Petitioner does agree with Staff's position that the alternative metering tariff could apply to Petitioner's Elster A1B Electronic Meter remaining at her business premises

The current meter does meet the Company's data processing standards since it can be read by a hand held device and whenever the meter is read a bill is issued. (Tr. 34-35; Exh. 6) Also, a customer can call in a meter reading to Delmarva. (Tr. 52)

The rate case that the Hearing Examiner makes reference to, *PSC Order No. 8265* (Dec. 18, 2012) has no bearing on the issue of whether Petitioner can be compelled to have a smart meter installed in her business; it merely addresses cost savings for deploying AMI technology.

Delmarva's financial reasons for installing smart meters does not necessarily give them the unfettered right to do so. (Tr.-58-59) Also, the fact that it has been difficult at times for Delmarva to read the meter, or that some customers prefer a bill from a smart meter, is not any basis for establishing Delmarva's right to install one. Further, that 99.8% of Delmarva's customers have permitted the instillation of smart meters seems to imply that in addition to Petitioner, there are at least 2% of Delmarva's customers who have not permitted the installation. (Tr.-38) While the 2% may seem like a small number, it may represent thousands of customers. That no one has complained to Delmarva that installing a smart meter has caused the interruption of a businesses electricity, does not substantiate Delmarva the absolute right to install one which is the issue before the PSC. (Tr.-43)

CONCLUSION

For the reasons discussed above, Petitioner takes exception to the recommendation that Complainant allow Delmarva access to the premises to remove the current electric meter and replace it with a smart meter.

Respectfully Submitted,



Anthony R. Arcaro, I.D. No. 2716
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Attorney for Petitioner

Dated: May 24, 2013

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

IN THE MATTER OF MARIE BOUMAN)	PSC Complaint Docket
T/A ACT I FRAMING AGAINST DELMARVA)	No. 386-12
POWER & LIGHT COMPANY CONCERNING)	
REPLACEMENT OF METER)	
(FILED NOVEMBER 26, 2010))	

CERTIFICATE OF SERVICE

I, Anthony R. Arcaro, Attorney for Petitioner in the above captioned action do hereby certify that on May 24, 2013, copies of the Exceptions of Marie Bouman t/a Act I Framing to Hearing Examiner's Report dated May 6, 2013, were served by First Class Mail, postage prepaid, upon the following:

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Attorney for Petitioner

Dated: May 24, 2013

ATTACHMENT "C"

Exceptions Filed by Delmarva Power & Light Company

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

In The Matter of the Complaint Filed by)
Marie Bouman T/A Act I Framing against)
Delmarva Power & Light Concerning) PSC Complaint Docket 386-12
Meter Replacement)
(Filed November 26, 2012))

EXCEPTIONS TO HEARING EXAMINER'S REPORT

Delmarva Power & Light Company ("Delmarva"), by and through its undersigned counsel, would like to complement the Hearing Examiner on his well-reasoned and thorough Report for this Docket, dated May 6, 2013 (the "Report"). In that regard, Delmarva supports the findings of the Report, with one exception, as set forth below:

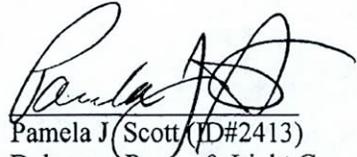
1. On Page 5 of the Report, Footnote Number 7 states as follows: "Since the Claimant was not a party to the Docket resulting in Commission Order No. 7420 (Sept. 16, 2008) establishing AMI implementation, I reject Delmarva's argument that the Complainant's claim is time barred according to 26 *Del. C.* §510(a), as follows:

§510. Appeal from Commission's order.

- (a) Any public utility affected by any final order made by the Commission, or any other original party to or any intervenor in the proceedings before the Commission in which such order was entered and affected thereby, may appeal from such order to the Superior Court within 30 days from the date upon which such order is served. The appeal shall be filed with the Prothonotary of the Court and summons in the appeal shall be served upon the secretary of the Commission either personally or sent by certified mail to the office at Dover, Delaware, and shall be served upon all other parties to the proceeding below, other than the appellant".

If one were to follow this line of thinking, every issued decided by an order of the Delaware Public Service Commission ("Commission") could be appealed at any time by someone who was not "a party" to the underlying proceedings, even though the issues being raised are the same and had been thoroughly litigated in the underlying proceedings. If that were true, arguably no order of the Commission would be considered a "final" order as it could be subject to challenge at any time by a non-party seeking redress of their grievances. This would violate the intent and spirit of 26 *Del. C.* §510, which is to, among other things, establish the finality of an order for purposes of pursuing an appeal. Petitioner had the opportunity to file a Petition to Intervene in Docket No. 07-28 for which Order No. 7420 was rendered, assuming that she could meet the requirement that her interest "will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest." 26 *DE Administrative Code* §2.9.1.3. Further, the interests of the public were represented in this matter by the Delaware Public Advocate who was a party in the underlying proceedings and who has the statutory authority, "To appear before the Public Service Commission on behalf of the interest of the consumers in any matter or proceeding over which the Commission has jurisdiction and in which the Public Advocate deems the interest of consumers requires such participation." 29 *Del. C.* §8716(d)(1). The fact that Petitioner was not a party in Docket No. 07-28 and did not participate in the proceedings which resulted in the issuance of Order No. 7420 (September 16, 2008) which approved "the diffusion of the advanced metering technology into the electric and natural gas distribution system networks . . .", does not now give her the right, almost five (5) years later, to challenge the findings of the Commission as set forth in that Order.

WHEREFORE, Delmarva moves that the Exceptions to the Report outlined herein be incorporated into the Commission's final order in this Docket.

By: 
Pamela J. Scott (ID#2413)
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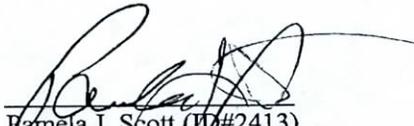
Dated: May 28, 2013

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

In The Matter of the Complaint Filed by)
Marie Bouman T/A Act I Framing against)
Delmarva Power & Light Concerning) PSC Complaint Docket 386-12
Meter Replacement)
(Filed November 26, 2012))

CERTIFICATE OF SERVICE

I, Pamela J. Scott, hereby certify that on May 28, 2013, I caused a copy of the Exceptions to Hearing Examiner's Report to be served upon the parties listed on the attached service list dated 2013, by electronic mail and overnight delivery.

By: 

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