

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT)
FILED BY BRIDGETTE FRAZIER AGAINST)
DELMARVA POWER & LIGHT COMPANY)
CONCERNING DISPUTED BILL CHARGES) PSC Complaint Docket 396-14
FOR NATURAL GAS IN THE AMOUNT OF)
\$212.13 (FILED JANUARY 6, 2014))

ORDER NO. 8610

This 9th day of September, 2014, the Delaware 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 evidentiary hearing and which is attached to this Order as **Attachment "A"**;

WHEREAS, the Commission having reviewed the record in this case; and having received and reviewed the "Findings and Recommendations of the Hearing Examiner" dated July 3, 2014, which document is attached as **Attachment "A"**; having noted that the Hearing Examiner submitted such document after conducting a duly-noticed evidentiary hearing; having reviewed the Exceptions sent by Ms. Bridgette Frazier dated September 2, 2014; having revised the Exceptions filed by Delmarva on September 2, 2014; and having deliberated in public at the Commission's meeting on both August 19th and September 9, 2014;¹

¹ Ms. Frazier was notified by mail on August 4, 2014, that the Commission would consider this matter at its September 9, 2014 meeting; however, this matter was erroneously placed on our agenda for consideration at our August 19, 2014 meeting. Hence, the Commission reviewed and discussed this matter on both meeting dates.

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

1. That the Commission hereby adopts the "Findings and Recommendations of the Hearing Examiner" dated July 3, 2014 ("HE's Report"), attached as Attachment "A", as the Commission's own decision, with certain minor revisions to address the corrections identified in Delmarva's exceptions, specifically finding as follows:

a. Bridgette Frazier has the burden of proof for her allegations that she is not responsible for the subject utility charges regarding the 800 Bennett Street house account as billed by Delmarva Power & Light Company. See 29 Del. C. §10125(c) and 26 Del. Admin. C. §1001-2.12.3.

b. The Commission finds that Bridgette Frazier has failed to meet her burden of proof regarding either claim. Thus, the Commission finds that Bridgette Frazier is responsible for the subject \$212.13 and \$66.75 electric bills.

c. Both bills should be paid in full within thirty (30) days of the date of this Order.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Harold B. Gray
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

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

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: July 3, 2014

R. CAMPBELL HAY
HEARING EXAMINER

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

R. Campbell Hay, duly appointed Hearing Examiner in this docket pursuant to 26 *Del. C.* §502 and Rule 17(b) of the Commission's *Rules of Practice and Procedure* as reassigned from Mark Lawrence in response to a complaint filed by Ms. Bridgette Frazier on Wednesday, May 28, 2014, hereby reports to the Commission as follows:

I. APPEARANCES

On Behalf of the Complainant:

Bridgette Frazier, *pro se*

On Behalf of the Respondent, Delmarva Power & Light Company:

PAMELA J. SCOTT, ESQUIRE

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II. BACKGROUND

1. On January 7, 2014, Bridgette Frazier ("the Complainant" or "Mrs. Frazier") filed with the Delaware Public Service Commission ("the Commission") a second, unrelated formal complaint against Delmarva Power & Light Company ("Delmarva").² Under cover letter dated January 16, 2014, the Secretary of the Commission formally served the Complaint on Delmarva by first class mail, return receipt requested.

2. On February 11, 2014, Delmarva filed its Answer and Motion to Dismiss the Complaint. The Executive Director of the Commission, Robert Howatt, referred this matter to Senior Hearing Examiner Mark Lawrence on February 18, 2014, with notice to the parties.

3. In order to obtain further information regarding the facts and allegations asserted by the Complainant, the parties engaged in substantial discovery regarding the Complainant's properties and the electric and natural gas ("gas") utility services provided by Delmarva at those properties.

4. An evidentiary hearing was held on May 27, 2014 at the Commission's offices in Dover. No members of the public attended the hearing, although members of Commission Staff did. At the conclusion of the hearing, which included the testimony of one witness appearing on behalf of the Complainant and one for Delmarva, the record consisted of a transcript of 103 verbatim pages and 15 exhibits.

² References to the Exhibits admitted into evidence at the Evidentiary Hearing ("EH") are referred to as "Exh.- number." References to EH testimony transcribed on the EH transcript are referred to as "Tr.-page number."

The first Complaint filed by Mrs. Frazier against Delmarva was Docket No. 380-12, which was decided by PSC Order No. 8234, dated November 5, 2012. The events relating to the current docket were not addressed in Docket No. 380-12 because they occurred after the evidentiary hearing was held. (Tr. 64-65.)

5. On May 28, 2014, Mrs. Frazier filed a complaint with the Commission's Executive Director Robert Howatt alleging prejudice and bullying by Senior Hearing Examiner Lawrence.

6. On June 16, 2014, after an extensive review, Mr. Howatt issued a written report finding that "there is no evidence that the Complainant was bullied or harassed during the evidentiary process." According to Mr. Howatt's Report, six (6) witnesses, including myself, reported that Mr. Lawrence "was polite at all times and went out of his way to accommodate Mrs. Frazier and to help her identify which materials she wanted to submit for evidence." Mr. Howatt's Report is attached hereto as Exhibit "1."

7. Mr. Howatt also stated that "to allay any concerns with the possible prejudice of Mr. Lawrence which was not evident during the hearing," Mr. Howatt would assign a different Hearing Examiner to review the evidentiary record in this case, and issue the Hearing Examiner's Report, including Findings and Recommendations. Thereafter, Mr. Howatt appointed me as the Hearing Examiner.

8. By virtue of this Report and Recommendations, I hereby close the evidentiary record. Based upon my review of the record in its entirety, I submit for the Commission's consideration these Findings and Recommendations.

III. EVIDENCE AT THE EVIDENTIARY HEARING

A. Mrs. Frazier's Claim Regarding Natural Gas Bill

9. Mrs. Frazier first disputes a charge of \$212.13 for natural gas service. (Tr. 89.) According to Mrs. Frazier, Delmarva improperly charged this amount because: a) she "was under the impression that the service was

turned off at 800 Bennett Street, Apartment No. 2"; and b) she was not timely notified of this bill. (Tr. 31, 32.)

10. On cross-examination, witness Salomie Frazier-Cooper, testified that, while helping Mrs. Frazier clean the property in October 2009, she observed Delmarva trucks visit Mrs. Frazier's property located at 800 Bennett Street, Wilmington, Delaware. Ms. Frazier-Cooper testified that two (2) Delmarva employees entered the property's basement, however, she did not observe what the Delmarva employees did in the basement because she was standing outside conversing with the tenant of Apartment 1 at the property. (Tr. 5-8.) Thus, Ms. Frazier-Cooper's testimony was not dispositive of any issue relating to the state of natural gas service being supplied to any portion of the two-unit apartment building.

11. Mrs. Frazier did not testify that she requested that the gas service to Apartment 2 be terminated or disconnected. However, Mrs. Frazier testified that: a) she assumed that the service was turned off; and b) Delmarva should have disconnected the service at the time that the tenant of Apartment 2 terminated his Delmarva account.³ (Tr. 81-83.)

12. Delmarva's Senior Analyst, Marianne Murphy, testified that the unpaid gas bill does not relate to the 800 Bennett St., Apartment No. 2 as claimed by Mrs. Frazier. Rather, the bill reflects service registered by the "house meter" located at 800 Bennett St., and involves the period as of October, 2012. (Tr. 62.) The house meter is a meter which involves common area usage, and is billed separately from the meters which service the interior of Apartments 1 and 2. (Tr. 8, 62; Exhs. 7, 8, 10, 11, 14.)

³ Mrs. Frazier also claimed that Delmarva Power improperly charged her tenant Mr. Seth Adjaye \$188. (Tr. 22.) I find that: a) Mrs. Frazier does not have standing to file on a claim on Mr. Adjaye's behalf; b) any testimony relating to this issue is inadmissible hearsay evidence in this case; and c) the issue is irrelevant to Mrs. Frazier's claims. (Tr. 60, 77.)

13. According to Exhibit 14, Mrs. Frazier incurred monthly charges which were not paid for the Bennett Street house account from at least the beginning of 2012 through and including November 14, 2012. (Exh. 14.) Mrs. Murphy testified that, although properly billed monthly to Mrs. Frazier's house meter account, Delmarva mistakenly transferred the balance to Mrs. Frazier's 631 East Eighth St. account on November 14, 2012. (Tr. 89-90; Exh. 14) According to Mrs. Murphy, on October 7, 2013, "those charges were transferred back to its rightful account [the house account at 800 Bennett Street]." (Tr. 89.)

14. Ms. Murphy also testified that, in a multi-unit building like Mrs. Frazier's building, when a tenant terminates gas service, it is not Delmarva's practice to disconnect gas service to the entire property as the remaining tenant(s)' gas service would then cease. (Tr. 82-83.) Based on Ms. Frazier-Cooper's testimony that she was speaking with the person renting Apartment 1 when the Delmarva employees visited the property, Apartment 1 was occupied at the time that the tenant of Apartment 2 terminated his Delmarva account.

15. Next, Mrs. Frazier claims that she never received any of the subject gas bills. (Tr. 91-92.) However, Delmarva's Marianne Murphy testified that the bills were being mailed to Mrs. Frazier at 909 North Church St., Wilmington, DE. (*Id.*) Hearing Exhibit 15 is a Delmarva gas bill for \$212.13 with bill issue date of October 23, 2013 for service at the 800 Bennett Street house meter, addressed to Bridgette Frazier at "909 N. Church St., Wilmington, DE 19801-4340." The bill reflects the service period of September 24, 2012 through October 23, 2012. (Exh. 14, 15.) Mrs. Frazier did not dispute that this was her correct mailing address at the time.

B. Mrs. Frazier's Claim Regarding Electric Bill

16. Mrs. Frazier has also disputed the electric usage charged on her Delmarva electric bill for the same 800 Bennett Street house account. (Tr. 65, 80.) According to Mrs. Frazier, although there was some usage, she did not use \$66.75 in electric service from November 21, 2013 through December 10, 2013. She testified as follows:

"I am disputing the fact that's regular consumption. There is no way I can use that type of [electric] service. I don't care what your graphs are saying. Your graphs can depict anything you want to. I did not use that service. That bill down there at 800 Bennett, house meter registered each and every month for \$11 to \$15 a month. There is no way I can use that kind of service. There's no spike. There's none of that. It's just normal usage. Hall light in the hallway. That's it. It is turned out at night. People don't like it at night. They don't like it during the day because they work." (Tr. 80.)

17. According to Delmarva's Marianne Murphy, Mrs. Frazier has a smart meter for electric service at the property. (Tr. 65.) Delmarva admitted into evidence a computer-generated chart called a "Bill Analyzer CSR." This document details daily electric service at the subject property for the subject month period, reflecting that the service billed by Delmarva was indeed used. (Tr. 66; Exh. 12.)

18. Additionally, Delmarva admitted into evidence a second, larger, computer-generated graph reflecting the same information - increased use during a thirty (30) day period - but also lesser use before and after this period, along with an uncontested two (2) day spike after the subject month

period. (Tr. 69-70; Exh. 13.) Ms. Murphy of Delmarva testified that "Delmarva bases the usage on the readings that are obtained." (Tr. 72.) Except for her allegation that not as much as \$66.75 of usage occurred - at a property she does not reside in - Mrs. Frazier offered no additional evidence in support of this claim.

IV. JURISDICTION: BURDEN OF PROOF

19. The Commission has jurisdiction in this matter pursuant to 26 Del. C. §201, 26 Del. C. §502 and 26 Del. C §10122.

20. 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, Bridgette Frazier has the Burden of Proof in this case. (See 26 Del. C. §10121, 10125(c); 26 Del. Admin. C. §1001-2.12.3.)

V. RECOMMENDATIONS

21. Based upon the evidence presented above, the Complainant has not met her Burden of Proof. Therefore, I recommend that the Commission order that the Complainant is responsible for the \$212.13 natural gas bill and the \$66.75 electric bill issued by Delmarva. I also recommend that the Commission order that Mrs. Frazier pay these amounts to Delmarva Power within thirty (30) days of the date of the Commission's Order.

22. A proposed Order implementing the foregoing recommendations is attached hereto for the Commission's consideration as Exhibit "2."

Respectfully Submitted,

Dated: July, 3, 2014

/s/ R. Campbell Hay

R. Campbell Hay
Hearing Examiner