

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

IN THE MATTER OF THE COMPLAINT OF)
CHARLES AND PHYLLIS SMITH AGAINST)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 370-10
CONCERNING IMPROPER BILLING AND)
THREATENED TERMINATION)
(FILED OCTOBER 4, 2010))

ORDER NO. 8188

This 17th day of July, 2012, 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";

AND NOW, this 17th day of July, 2012, the Delaware Public Service Commission (the "Commission") having reviewed the record in this case; and having received and reviewed the "Findings and Recommendations of the Hearing Examiner" dated June 11, 2012, which document is attached as Attachment "A"; having noted that the Hearing Examiner submitted such document after conducting a duly-noticed evidentiary hearing; and having deliberated in public at the July 17, 2012, meeting;

**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 June 11, 2012 ("HE's Report"), attached as Attachment "A", as the Commission's own decision with the following changes and clarifications:

a. Charles and Phyllis Smith (the "Smiths") have the burden of proof for their allegations that (i) Conectiv Power Delivery (n/k/a Delmarva Power & Light Company) ("Delmarva") wrongfully transferred the amount of \$4,711.16 to their current account balance and (ii) Delmarva wrongfully terminated electric service on October 14, 2009. See 29 *Del. C.* §10125(c) and 26 *Del. Admin. C.* §1001-2.12.3. However, Delmarva has the burden of proof regarding the Smiths' allegations that Delmarva wrongfully terminated electric service on February 25, 2010. See 26 *Del. Admin. C.* §3001-7.2.

b. The Commission approves the Smiths' request to remove the transferred amount of \$3,699.64, plus accrued interest, from their bill for utility services provided by Delmarva at their various residences.

c. The Commission denies the Smiths' request to remove the transferred amount of \$1,011.52, plus accrued interest, from their bill for electric service provided by Delmarva.

d. The Commission denies the Smiths' claim that their termination of electricity service at 114 West Mispillion Street, Harrington, Delaware, on October 14, 2009, was improper.

e. The Commission denies the Smiths' request for reimbursement of out-of-pocket expenditures incurred after Delvarva shut off their electric service on February 25, 2010, at 114 West Mispillion Street in Harrington, Delaware.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

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

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT)
OF CHARLES AND PHYLLIS SMITH)
AGAINST DELMARVA POWER & LIGHT) PSC COMPLAINT
COMPANY CONCERNING IMPROPER BILLING) DOCKET No. 370-10
AND THREATENED TERMINATION)
(FILED October 4, 2010))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Ruth Ann Price, 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, hereby reports to the Commission as follows:

I. APPEARANCES

On behalf of the Complainants:

Charles Smith, *pro se*.

Charles Smith Jr.

On behalf of the Respondent, Delmarva Power & Light Company ("Delmarva" or "the Company"):

TODD L. GOODMAN, ESQUIRE.

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

REGINA A. IORII, Esquire, Deputy Attorney General assigned to the Commission.

II. BACKGROUND

1. On October 4, 2010, Charles and Phyllis Smith¹ ("the Smiths" or "the Complainants") filed with the Delaware Public Service Commission a formal complaint against Delmarva under Rule 15 of the Commission's Rules of Practice and Procedure. Under cover letter dated November 16, 2010, the Secretary of the Commission formally served the Complaint on Delmarva by first class mail, return receipt requested.

2. On December 15, 2010, Delmarva filed its Answer to the Complaint in which it cited a number of defects. The Answer alleged that the Complaint was not in the required form of numbered paragraphs, it did not provide a description of the facts and it did not set forth the relief sought by the Complainants. Delmarva stated that the Complaint provided a number of dates, names, addresses, dollar amounts and other information but failed to contain a narrative of Delmarva's alleged wrongful conduct. Delmarva asserted that it was unable to provide a more detailed Answer to the Complaint because of the general and unspecific nature of Complainants Answer.

3. The Executive Director of the Commission, William O'Brien, referred this matter to me on March 1, 2011, with notice to the parties.

4. In order to obtain further information regarding the facts and allegations asserted by the Complainants, I requested that they provide detailed answers to four questions regarding their residences

¹ For purposes of this Report, "the Smiths" or "the Complainants" include Charles and Phyllis Smith as well as their son, Charles Smith, Jr. The formal complaint was filed by Mr. and Mrs. Smith, but as you will find in the following the facts and circumstances of this matter pertain to Charles Smith, Jr.

and the utility services at those locations. I did this in order to clarify the allegations of their complaint and to provide a statement of the relief they requested. Ex. 5. On April 15, 2011, Mr. Smith submitted a document that purported to cure the defects of his original formal complaint. Ex.6².

5. An evidentiary hearing was held on August 2, 2011, at the Commission's offices in Dover. No members of the public attended or otherwise participated in the hearing. At the conclusion of the hearing, which included the testimony of witnesses appearing on behalf of the Complainants and Delmarva, the record consisted of a transcript of 141 verbatim pages and 29 exhibits. Briefs were deemed unnecessary in this complaint case. I have carefully considered the entire record of this proceeding. Based upon my review of the record in its entirety, I submit for the Commission's consideration these Findings and Recommendations.

III. POSITIONS OF THE PARTIES

A. The Smiths' Residences

6. For purposes of clarity in reading this Report, I have provided the following chart³ with the addresses of the Smiths during the course of events that are pertinent to this docket.

² References to the exhibits in the Report will be designated as Ex. _____. The transcript pages of the August 2, 2011 evidentiary hearing will be referred to as Tr. _____.

³ The addresses contained in this chart are taken from the testimony and exhibits of record.

Charles and Phyllis Smith Residential Address and DPL Account List		
Address	Effective Date of Address	DPL Account Number
2417 Wharton Street, Philadelphia, PA	Left address approx. 4-5/1999	
604 West Fifth Street, Wilmington, DE*	6/4/99 - 4/31/2001	2599050-9999**
3 Mifflin Meadows Lane, Harrington, DE*	4/1/2001 approx.	2599050-9976**
129 President Drive, Dover, DE	10/21/02	
13 Thorpe Street, Harrington, DE	01/06/04	
24 Rubeon May Drive, Felton, DE*	03/03/05	
304 Jefferson Street, Middletown, DE	05/12/06	
114 West Mispillion Street, Harrington, DE*	10/29/08	3347798-9997-3***
255 Webbs Lane, Apt. E14, Dover, DE	07/03/11	

*The asterisk denotes all addresses where the Smiths obtained utility service from Delmarva.

**The account holder for this location is Phyllis Smith.

***The account holder for this location is Charles Smith Jr., son of Charles and Phyllis Smith.

B. Position of Complainants, Charles and Phyllis Smith

1. Transferred Balance of \$4,711.16

7. At the evidentiary hearing, Mr. Smith provided testimony for the complainants. Mr. Smith was accompanied by his son, Charles Smith, Jr. Mrs. Smith did not attend the hearing. Mr. Smith's first complaint was that Conectiv Power Delivery (Delmarva's predecessor company) in a bill dated October 19, 2001, to November 17, 2001 transferred the amount of \$4,711.16 to his then residence at 33503 Mifflin Meadows in Dover, Delaware. Tr. 12-13⁴. Ex. 13. Mr. Smith

⁴ As the chart in Paragraph 6 reveals, during the course of their residence in Delaware, the Smiths have had several addresses. Tr. 95. From May 2001 until the date of the evidentiary hearing, the Smiths have had at least eight addresses. Ex. 27. When these moves were within Delmarva's service territory, as is its practice, Delmarva changed their account number to reflect the name of the account holder and the type of service Delmarva provided to the residence. Tr. 53. For example, on West Fifth Street in Wilmington and at Mifflin Meadows in Dover, the Smiths had service with Delmarva under the name of Phyllis Smith, account number 2599-0509-9976. When the Smiths moved to 114 West Mispillion Street in Harrington, service with Delmarva was opened under the name of Charles and Phyllis Smith's son, Charles Smith, Jr., account number 3347-7989-9957. Delmarva's witness, Marianne Murphy, describes at paragraph 14, *infra*, the method used to assign and configure account numbers.

asserted that he requested an explanation and documentation from Delmarva about the origin of this bill but the Company failed to provide the detail he sought. Tr. 5, L 21-24; Tr. 13-14.

8. Mr. Smith further asserted that his electricity was wrongfully shut off twice, on October 14, 2009 and February 25, 2010, when there was a medical certification in effect. Tr. 15.

2. First Service Termination- October 14, 2009

9. At the time of the service termination on October 14, 2009, Mr. Smith and his family lived at 114 West Mispillion Street, Harrington, Delaware. Mr. Smith asserted that a medical certification for Phyllis Smith had been in effect since October 30, 2008. Tr. 16. Mr. Smith testified that his electricity was shut off from October 14, 2009 through October 16, 2009. The Smiths contacted Mrs. Smith's pulmonary physician, Dr. David Jawahar, who contacted the Company regarding the termination. Tr. 18. As explained infra, after a payment arrangement was agreed to the Smiths service was restored.

3. Second Service Termination- February 25, 2010

10. The second shut off occurred four months later, on February 25, 2010, and service was restored on March 5, 2010. Tr. 19. At this time, the Smiths still reside on West Mispillion Street. Mr. Smith stated that the first Certification of Medical Need regarding this shut off was submitted on January 7, 2010, the second certification was submitted on January 11, 2010 and a third one was dated February 25, 2010. Tr. 19.

11. As a result of the service termination on February 25, 2010, Mr. Smith claimed that he expended \$171.13 for food that spoiled

and \$272.12 for shelter because the family could not stay at their residence because of extreme cold. Tr. 22. Mr. Smith testified that the day after the cutoff there was a severe winter storm. Tr. 19.

12. Mr. Smith contended that except for the transferred balance of \$4,711.16 and the interest accruing on the balance, he had always paid the amount due on time. Tr. 32, L 11-19. However, on cross-examination, Mr. Smith was shown a bill for the amount of \$8,707. Ex. 17. Mr. Smith conceded that after the large balance was transferred onto his bill, he sought help from different agencies to obtain money to pay the bill, but he was unable to pay the full balance. Therefore, he "paid on" the outstanding bill as he could. Tr. 34-35.

B. Delmarva's Position

13. Delmarva proffered only one witness, Marianne Murphy, a senior analyst with Delmarva's regulatory and executive customer relations department. Tr. 47-48. Ms. Murphy testified that her job responsibilities included handling customer complaints. Tr. 48. Further, Ms. Murphy stated that she was trained in using the Company's billing system and the customer care recordkeeping system, both of which she used regularly in performing her job duties. *Id.*

1. Transferred Balance of \$4,711.16

14. With regard to the Smiths complaint concerning the transferred balance of \$4,711.16, Ms. Murphy stated that the balance transferred was a result of unpaid bills for gas and electricity service from the Smith's residence at 604 West Fifth Street, Wilmington, Delaware. The balance was transferred to their residence at 33503 Mifflin Meadows, Dover, Delaware. Tr. 50; Ex. 13.

15. Ms. Murphy further explained that on November 6, 2001, there were two unpaid balance transfers placed on the Smith's account at Mifflin Meadows. The first transfer was for the amount of \$3,699.64 and the second transfer was for the amount of \$1,011.52; both amounts total \$4,711.16. Tr. 52; Exs. 13 and 22.

16. Ms. Murphy testified that when a customer initially applies for service they are asked for their social security number. Ms. Murphy explained the procedure by which the Company identifies the social security number with an account number:

MS. MURPHY: When a person applies for service, we require them to place their Social Security Number - provided us with their Social Security Number. Ms. Phyllis Smith had service at 3 Mifflin Meadows Lane. When her Social Security Number was provided, we run that through our system. If anything matches that Social Security Number, that balance is transferred over. In addition, the first seven digits of an account number identify a customer. There are a total of 12 digits in an account number. The first seven digits of an account number follow you as a customer. The only thing that changes is the last five digits. Those digits give us internally at the electric company a way to differentiate between different premise locations or addresses.

Tr. 54.

17. Ms. Murphy stated that the first seven digits of the Smith's account is 2599050, which are the first seven digits that appear on the ICS View Accounts Receivable History (Ex. 22, p. 4) and these same seven digits appear on the Smith's bill at Mifflin Meadows where the transferred balance of \$4,711.16 appears (Ex.13). Tr. 54.

ICS View Accounts Receivable History (Ex. 22) is a "screen print of the internal computer application" used at Delmarva to track all payments, transfers and charges on every customer's accounts. Tr. 55.

18. Ms. Murphy advised that Delmarva was not able to provide an identical copy of the original bill sent to the Smiths because the Company purges its records after ten years. Tr. 57. Upon delving deeper into her investigation, she was able to find two orders from the 604 West Fifth Street address that had the same account number as the bill for Mifflin Meadows. *Id.*

2. First Service Termination- October 14, 2009

19. Regarding the service termination that occurred on October 14, 2009, Ms. Murphy produced four letters addressed to Charles Smith at his 114 West Mispillion Street, Harrington address.⁵ These letters are dated September 21, 2009, September 24, 2009, October 15, 2009, and October 16, 2009. Ex. 24. There is also a copy of a Certification of Medical Need signed by Mrs. Smith bearing the date of August 19, 2009. The letter dated September 21, 2009, advised Mr. Smith that he had been removed from the Medical Certification program because the certification had expired. Further, the letter informed him that his service was subject to termination if there was an outstanding balance on the account. The letter further advised Mr. Smith that he should contact Customer Care to prevent termination of services if there was a delinquent balance. Ex. 24, page 1. The letters dated September 24, 2009, October 15, 2009, and October 16, 2009, all advise Mr. Smith

⁵ Although the letters at West Mispillion Street are addressed to Charles Smith, they are actually directed to Charles Smith, Jr. in whose name the Delmarva account that address was opened.

that his application for admission into Delmarva's Emergency Medical and Life Support Program were denied because his application was incomplete. Tr. 66-67; Ex. 24.

20. Ms. Murphy noted that the Certification of Medical Need signed by Dr. David Jawahar (date illegible) and by Mrs. Smith (bearing the date of August 19, 2009 for Mrs. Smith's signature) included a fax line from Kent Pulmonary Associates showing that it was faxed to Delmarva on October 14, 2009, the day the Smith's service was terminated. Ex. 24. In addition, the Certification was not properly completed because the section where it provides the name of the person who resides at the service location and the subject of the physician's certification was not completed. Tr. 69, L 12-17; Ex. 24, p. 5.

21. Ms. Murphy further stated that letters advising customers of the expiration of their medical certifications are routinely issued to customers in the program when their certifications are about to expire or their applications are not completed properly. Tr. 71.

22. After the service termination on October 14, 2009, the Smith service was reinstated two days later on October 16, 2009. The reinstatement was due to an agreement negotiated between the Delaware Public Service Commission and Delmarva. Tr. 73. Ms. Murphy stated that the negotiated agreement resulted in a payment plan for the Smiths to pay their outstanding balance of \$5,356.21 the amount of \$5,356.21 was the outstanding balance at the time of the termination on October 14, 2009. Tr. 73, L 10-24 Ms. Murphy noted that the amount owed when the Smiths service was terminated on October 14, 2009, \$5,356.21, was higher than the transferred balance of \$4,711.16,

which showed that the Smiths were not current with their monthly bill at their West Mispillion Street address. Tr. 74.

23. Further, Ms. Murphy stated that Delmarva reconnected the Smith's service on October 16, 2009 without any payment. Under the negotiated arrangement, the Smiths were supposed to make a payment of \$219.84 on or before November 1, 2009 for current charges for the October billing. Tr. 74. However, the Smiths failed to make that payment. After service was restored on October 16, 2009, the next payment that posted on the Smith's account was in the amount of \$613.26 on January 15, 2010. The balance on the account at the time prior to the payment of \$613.26 posting was \$6,795.48. Tr. 76. Further, Ms. Murphy noted that this payment was the only payment made on the Smith's account between the first termination on October 14, 2009 and the second termination on February 25, 2010.

3. Second Service Termination- February 25, 2010

24. Ms. Murphy testified that between the first service termination and the second termination on February 25, 2010, the Smiths did not supply a completed or valid Certification of Medical Need. Tr. 75-76. Ms. Murphy stated that on January 7, 2010, Delmarva mailed to the Smiths a two page (double sided) letter, the first page of which describes the Certification program, requirements and eligibility for the program and the length of the program. Tr.78; Ex. 16, pg. 1. The second page of the letter is the Delmarva's Certification of Medical Need application. Ex. 16, pg. 2. The first half of the application requires the applicant to complete the name of the person living at the service location who the physician is

certifying has a medical need. The second half of the application requires the physician to provide certain information concerning his practice, license number and to sign and date the form. Ex. 16, pg. 2. On the January 7, 2010 application, only the customer information relating to the Smith's had been completed. The physician section had not been completed.

25. In addition, Ms. Murphy stated that Delmarva sent the Smiths the identical cover letter and form on January 11, 2010, and February 25, 2010, neither of which were completed. Tr. 79-80. Ms. Murphy also stated that a Certification of Medical Need application dated October 11, 2010, was received but only the customer portion was completed, which Ms. Murphy noted is not acceptable. Tr. 81, L 1-7. Ms. Murphy observed that the last page of Exhibit 16 is a completed application for Certification of Medical Need, dated November 4, 2010, that appears to have a rubber stamp signature for the physician, which is not a proper signature. Tr.81.

C. TESTIMONY OF COMMISSION STAFF INVESTIGATOR

26. Charmaine Johnson, the Complaint Investigator for the Commission, testified that her job responsibilities include taking complaints from customers of utilities regulated by the Commission regarding billing or service disputes. Tr. 111-112. Ms. Johnson stated that she usually receives these complaints when customers have not received the outcome they desired after speaking directly with the utility. Customers call the Commission to ask an investigator to intervene and "escalate the issue to the utility's executive office." Tr. 112.

27. Ms. Johnson testified that she received a telephone call from Phyllis Smith on March 16, 2009, who stated that she was the mother of the account holder. Tr. 111. Mrs. Smith stated that the account was in the name of Charles, Smith, Jr. Mrs. Smith related that she was calling because \$6,000 had been added to her account from 2002. *Id.* Mrs. Smith complained that there was no one in the home where the charges came from. Further, she stated that the charges at her current address appeared to be high. Tr. 112.

28. Ms. Johnson reported that she referred the complaint to Delmarva's customer relations department. Tr. 112. She received a response from Delmarva's Maryanne Murphy who advised Ms. Johnson that on March 17, 2009, she had left two messages at the Smith's residence. Further, Ms. Murphy left a voicemail on March 18, 2009. Ms. Murphy stated that the outstanding bill on the Smith's account was \$6,073.43 of which \$5,642.51 was transferred to the account of Charles Smith, Jr. located at 3 Mifflin Meadows Lane in Dover from a prior account in the name of Phyllis Smith. Tr. 113. Further, Ms. Murphy stated that a representative from the Delaware Housing Authority also confirmed that Phyllis Smith had resided at Mifflin Meadows Lane in May 2001. *Id.*

29. Ms. Johnson was told that Delmarva would accept the current charges of \$430.96 at 114 Mispillion Street in Harrington, but the transferred balance of \$5,642.51 would require a 37-month payment arrangement. Tr. 114. The payment arrangement acceptable to Delmarva would be 36 monthly installments of \$156, plus the current bill, and a final installment payment of \$26.51. *Id.*

30. Further, the Smiths came to the Commission's offices in April 2009 asking for a detailed breakdown of the transferred balance. Ms. Murphy sent Ms. Johnson a list of the charges including the amounts for the transferred balances. Tr. 117. After April 2009, Ms. Johnson received several calls from the Smiths regarding this issue, including a telephone call from legal aide who was assisting them with this claim. Tr. 117. Ms. Johnson stated that she received a telephone call from Mrs. Smith accusing her of not properly investing the claim. Tr. 118. Since Mrs. Johnson was unable to satisfy Mrs. Smith, she advised her that at this point in the process her recourse was to file a formal complaint. *Id.*

IV. DISCUSSION

A. Transferred Balance of \$4,711.16

31. Complainants claim they should not be required to pay the amount of \$4,711.16 because they do not know where this charge originated and, despite their requests, Delmarva has not provided them with information concerning the amount. Tr. 5. Mr. and Mrs. Smith are seeking more than the origin of the charge; they are requesting a detailed breakdown of all the various balances that total the amount of \$4,711.16. At the time this amount appeared on their bill, the Smiths were residing at 3353 Mifflin Meadows, Dover, Delaware. Tr. 6. When asked where he lived before Mifflin Meadows, Mr. Smith responded:

Mr. Smith: I don't know offhand.

Hearing Examiner Price: You don't know?

Mr. Smith: I don't remember.

However, Mr. Smith was able to recite in chronological order several addresses where he had lived after Mifflin Meadows. Tr. 8, L 10-21.

32. On cross-examination, Mr. Smith acknowledged that he lived at 604 West Fifth Street, Wilmington, Delaware before moving to Mifflin Meadows. Tr. 38-39. Further, Mr. Smith initially testified that he did not recall whether he had an outstanding balance when he moved from the West Fifth Street address. Tr. 40, L5-6. Mr. Smith then stated that he was certain that he did not leave an outstanding balance upon moving from that address. Tr. 40, L22.

33. Delmarva asserts that the transferred balance was the outstanding unpaid balance remaining for gas and electricity service provided when the Smiths moved from 604 West Fifth Street in Wilmington to 33503 Mifflin Meadows in Dover. Upon examination of Delmarva's ICS View Accounts Receivable History records, Delmarva's witness, Marianne Murphy, stated that based on the Company's records on November 6, 2001 there were two unpaid balance transfers made to the Smiths account for their gas and electricity service at Mifflin Meadows. The transfers in the amount of \$3,699.64 and \$1,011.52, respectively, total \$4,711.16, which is the amount of the transferred balance that appears on the Smith's bill at Mifflin Meadows. Tr. 52; Exs. 13 and 22.

34. Ms. Murphy determined that the transferred balance originated from the 604 West Fifth Street address based upon two orders she found from that address that had the same account number, 259905099976, as the Smiths address at Mifflin Meadows. Tr. 57-59, Exs. 13, 22, 23. Further, Ms. Murphy explained at the hearing that Delmarva was not able to provide a copy of the original bill from the 604 West Fifth Street address because the records had been purged (Tr.

57), but the ICS View Accounts Receivable History is "a screen print of the internal computer application that [is used by Delmarva]. It tracks all payments, transfers and charges that are assessed on [an] account." Tr. 55, L12-15.

35. Further, Ms. Murphy testified that the amount of the first transfer of \$3,699.64 was for gas service and the second transfer of \$1,011.52 was for electric service. Tr. 52; Exs. 13 and 22. However, Mr. Smith disputed the assertion that he had gas service at 604 West Fifth Street. Tr. 101, L13-19. On closer examination, Ms. Murphy stated that she was not certain which transferred balance applied to which type of service - electric or gas. Tr. 106.

Hearing Examiner Price: But as far as we know, the \$3,699 could be electric and the \$1,011 could be gas. Right?

Ms. Murphy: It is possible. I'm going just based on memory.

Hearing Examiner Price: Okay.

Ms. Murphy: I mean one is going to be the electric. One is going to be the gas. I have a 50/50 chance of being correct.

Hearing Examiner Price: How do you reconcile that fact with the fact that he says he never has gas service at 604 West Fifth Street?

Ms. Murphy: I can't speak to that. I can say that, I can only go by the account information.

Hearing Examiner Price: Okay. All right.

Tr. 107.

36. Given Mr. Smith's uncertainty concerning whether he left an outstanding balance upon leaving West Fifth Street and the records

produced by Delmarva that clearly and convincingly demonstrate that the transferred balance originated while the Smiths lived on West Fifth Street, I conclude that Delmarva properly transferred one of the balances to the Smith's account at 33503 Mifflin Meadows, Dover, Delaware. Since Mr. Smith disputed the fact that he had gas service at his West Fifth Street rental unit and Delmarva is unable (1) to prove that Mr. Smith was a gas customer at that location and (2) which of the two transferred balances are gas charges and which are electric charges, I conclude that the amount of \$3,699.64 is attributable to gas service. Further, I find Mr. Smith's assertion that he did not have gas service at his West Fifth Street address to be credible. My conclusion is bolstered by the fact that the Smiths must have had some kind of utility service while residing at West Fifth Street because they had a Delmarva account. Consequently, I will take Mr. Smith at his word that he was an electric service customer at West Fifth Street. Therefore, I conclude that the amount of \$3,699.64 was improperly transferred to the Smith's bill at 114 Mispillion Street, Harrington, Delaware.⁶

37. Accordingly, I recommend to the Commission that it: (a) deny Complainants request to remove both transferred balances, plus interest, from their bill; (b) approve Delmarva's transfer of

⁶ It appears that Delmarva attempted to give Mr. Smith a detailed accounting of the charges from his various account numbers. Exhibit 26 is a document that shows the Smiths charges from October 19, 2001. This document still does not provide each of the separate charges and payments for the West Fifth Street account that the Smiths are seeking. At this juncture, I believe that a breakdown of these charges is unnecessary. As stated above, Mr. Smith concedes that he was an electric customer while living in Wilmington. Based upon her professional experience in customer complaints at Delmarva, Marianne Murphy testified that she believed that the larger transferred balance of \$3,699.64 was probably for gas service. Tr.105, L 13-15. Accordingly, I find Ms. Murphy's testimony on this issue to be credible.

\$1,011.52, plus accrued interest, for electric service to the Smiths bill; and (3) reject Delmarva's transfer of the amount of \$3,699.64, plus accrued interest thereon, to the Smiths charges.

B. First Service Termination- October 14, 2009

38. The Smiths assert that their service termination on October 14, 2009 for nonpayment was improper because they had submitted several Certifications of Medical Need for Mrs. Smith. The record is replete with letters to the Smiths advising them that their applications were not complete. Exs. 15, 24. The application that is most nearly complete is the Certification of Medical Need signed by Dr. David Jawahar and by Mrs. Smith (bearing the date of August 19, 2009 for Mrs. Smith's signature). Ex. 24, p. 5. At the bottom of this application is a fax line from Kent Pulmonary Associates that reveals the document was faxed to Delmarva on October 14, 2009, the day the Smiths service was terminated. Ex. 24. This application was not timely. The record contains a letter to Charles Smith dated August 17, 2009 in which Delmarva advises Mr. Smith that his medical certification form must be provided by September 16, 2009 or he will no longer be a participant in the program. Had Mr. Smith completed this form by the due date he would never have experienced a shut off in October 2009.

39. Despite the fact that the Certification was not timely, it was also not properly completed. The section that requires the applicant to provide the name of the person who resides at the service location was not filled in. Tr. 69, L 12-17; Ex. 24, p. 5. Therefore, even if it had been submitted in a timely manner, it is

likely that Delmarva would have rejected the application as not completed; thereby, exposing the Smiths to shutoff for delinquent payment. It is the Complainants sole responsibility to ensure that their applications for medical need certification are fully and accurately completed and provided to Delmarva before the service termination date.

40. The record demonstrates that the Smiths did not provide Delmarva with a timely or properly completed Certification of Medical Need prior to their service termination date of October 14, 2009. Consequently, I recommend that the Commission deny the Complainants claim that their service shutoff e on October 14, 2009 was improper.

C. Second Service Termination- February 25, 2010

41. The Smiths contend that Delmarva wrongfully shutoff their service on February 25, 2010. The documents relating to the Smiths certifications of medical need were provided by Mr. Smith and are contained in Exhibit 16. There is evidence that although the Smiths did make a payment of \$613.20 on January 13, 2010, they did not fulfill their obligations to make timely payments on their billing arrangement. Further, there is no evidence provided by either party that demonstrates that at the time of the February 25, 2010 service termination the Smiths had in effect a valid and proper Certification of Medical Need application. In fact, Ms. Murphy affirmatively testified that prior to the service termination on February 25, 2010 Delmarva had not received a completed Certification of Medical Need. Tr. 83. I conclude that Delmarva's exercise of its right to terminate the Smith's service for nonpayment on February 25, 2010 was proper.

Accordingly, I recommend to the Commission that it deny the Smith's request for reimbursement of out-of-pocket expenditures occasioned by the shutoff.

IV. SUMMARY OF RECOMMENDATIONS⁷

42. In summary, and for the reasons discussed above, I recommend to the Commission that it:

- a. Deny the Complainants request to remove both the transferred balances of \$3,699.54 and \$1,011.52, plus interest from their bill.
- b. Approve Delmarva's transfer of \$1,011.52, plus accrued interest, for electric service to the Smiths outstanding bill; and
- c. Approve the Complainants request to remove Delmarva's transfer of the amount of \$3,699.64, plus accrued interest, to the Smiths charges.
- d. Deny the Complainants claim for improper service termination on October 14, 2009, for service at their residence located 114 West Mispillion Street, in Harrington, Delaware.

⁷While the following information is not directly pertinent to the facts or conclusions reached in the instant matter, on information and belief, the undersigned hearing examiner provides for the edification and reflection of the Commission the fact that on March 8, 2012 H. B. 261 was introduced in the Delaware House. This bill amends Delmarva's current utility medical certification program that protects customers with a medical certification from termination of utility services. Among other things, the proposed legislation clarifies the scope for a utility medical certification. This bill also widens the class of medical professionals able to certify a condition to include both advanced nurse practitioners and physician assistants. HB 261 passed the House on May 3, 2012. On June 6, 2012, the bill was approved by the Senate Energy & Transit Committee. It will now be transmitted to the full Senate for a vote, and if approved, forwarded to the Governor for signature.

- e. Deny the Complainants request for reimbursement of out-of-pocket expenditures incurred after their service was terminated at 114 West Mispillion Street, Harrington, Delaware on February 25, 2010.

A form of order setting forth the recommendations stated above is attached as "Exhibit B."

Respectfully submitted,



Ruth Ann Price
Senior Hearing Examiner

Date: June 11, 2012