

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT)	
FILED BY BRIDGETTE FRAZIER)	PSC COMPLAINT
AGAINST DELMARVA POWER & LIGHT COMPANY)	DOCKET No. 380-12
CONCERNING DISPUTED BILLING CHARGES)	
(FILED JANUARY 25, 2012))	

ORDER NO. 8234

This 5th Day of November, 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 5th day of November 2012, the Delaware Public Service Commission (the "Commissioner") having reviewed the record in this case; and having received and reviewed the "Findings and Recommendations of the Hearing Examiner" dated September 17, 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 Commission's 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 September 17, 2012

("HE's Report"), attached as Attachment "A", as the Commission's own decision, specifically ordering as follows:

- a. Bridgette Frazier has the Burden of Proof for her allegations that (i) Delmarva Power & Light Company ("Delmarva") wrongfully transferred the amount of \$902.44 from her Bennett Street property to her account balance at the East Eighth Street property; and (ii) Bridgette Frazier's claim that she is not responsible for any gas and electric utility charges at the East Eight Street property. See 29 Del. C. §10125(c) and 26 Del. Admin. C. §1001-2.12.3.
- b. The Commission denies Bridgette Frazier's request to remove the transferred amount of \$902.44 from the Bennett Street property.
- c. Regarding the East Eighth Street property:
 - i. The Commission holds that Bridgett Frazier is liable for the gas and electric bills issued in the names of Bridgette Frazier and Hykija Frazier as joint account holders totaling \$3,425.51 as of April 15, 2009, including the \$902.44 unpaid amount transferred from the Bennett Street account, of which Bridgette Frazier was the sole account holder.
 - ii. The Commission holds that Bridgette Frazier is not liable for the gas and electric bills issued solely in the name of Hykija Frazier regarding the East Eighth Street property.
- d. The Commission approves the installment payment plan recommended by the Hearing Examiner in his Report.
- e. The Commission reserves jurisdiction in accordance with 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

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: September 17, 2012

MARK LAWRENCE
HEARING EXAMINER

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, 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 Complainant:
Bridgette Frazier, *pro se*
Gerald Hornbuckle, Complainant's brother

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

On behalf of the Delaware Public Service Commission:
JULIE DONOGHUE, ESQUIRE, Deputy Attorney General assigned to the Commission

II. BACKGROUND

1. On January 25, 2012, Bridgette Frazier ("the Complainant" or "Mrs. Frazier") filed with the Delaware Public Service Commission ("the Commission") a formal complaint against Delmarva Power & Light company ("Delmarva").¹ Under cover letter dated February 2, 2012, the Secretary of the Commission formally served the Complaint on Delmarva by first class mail, return receipt requested.

2. On March 2, 2012, Delmarva filed its Answer and Motion to Dismiss to the Complaint in which it alleged a number of defects. Delmarva alleged that the Complaint did not provide an accurate description of the facts. Delmarva also stated that the Complaint failed to differentiate between properties which the Complainant owns. Finally, Delmarva asserted that it was unable to provide a more detailed Answer to the Complaint because of the general and unspecific nature of Complainant's Answer.

3. The Executive Director of the Commission, William O'Brien, referred this matter to me on March 7, 2012, with notice to the parties. Although originally represented by a lawyer, Mrs. Frazier eventually began representing herself.

4. 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

¹ The formal complaint was filed by Bridgette Frazier, but as you will find, the following facts and circumstances of this matter also pertain to Mrs. Frazier's daughter, Hykija Frazier. However, since Hykija Frazier is not a party in this case, this Report does not address Hykija Frazier's liability other than what is necessary to resolve Bridgette Frazier's liability.

at those properties. Prior to the evidentiary hearing, each party claimed discovery violations. Nevertheless, neither party filed a Motion to Compel and both appeared at the evidentiary hearing. Although the Complainant sought additional discovery post-hearing, I deny that request finding it untimely, duplicitous and unnecessary.

5. An evidentiary hearing was held on June 28, 2012 at the Commission's offices in Dover. No members of the public attended the hearing. At the conclusion of the hearing, which included the testimony of witnesses appearing on behalf of the Complainant, Commission Staff and Delmarva, the record consisted of a transcript of 199 verbatim pages and 14 exhibits. By virtue of this Report, the evidentiary record is closed. At my request, the parties each submitted post-hearing briefs. Based upon my review of the record in its entirety, I submit for the Commission's consideration these Findings and Recommendations.²

III. POSITIONS OF THE PARTIES & DISCUSSION

A. Two Properties & the Delmarva Account Holders

6. For clarity purposes, I have provided the following chart³ which describes: a) the two (2) subject properties; b) when Complainant Bridgette Frazier was the sole Delmarva account holder; c) when Bridgette's daughter Hykija Frazier was the sole Delmarva account holder; and d) when Bridgette and Hykija were joint account holders. In addition to addressing Bridgette Frazier's liability for certain

² References to the exhibits in the Report will be designated as "Ex. ___." The transcript pages of the June 28, 2012 evidentiary hearing will be referred to as "Tr. ___."

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

electric and natural gas charges, this Report also addresses Mrs. Frazier's request that Delmarva re-connect her service.

NAME(S) OF DELMARVA ACCOUNT HOLDER(S) FOR ELECTRIC & GAS SERVICE	PROPERTY ADDRESS	TIME PERIOD	COMMENTS
Bridgette Frazier	800 Bennett Street ("Bennett Street")	Dec. 2006 - Aug. 2008 (Service terminated by Bridgette 7/25/08)	Unpaid balance of \$902.44 transferred from Bennett St. Account of Bridgette Frazier to E. 8 th St. account of Bridgette Frazier & Hykija Frazier in Aug. 2008; previously account was in the name of Bridgette only
Bridgette Frazier	631 E. 8 th Street ⁴ ("East 8 th Street")	Dec. 2006 - Aug. 2008	On May 30, 2008, Hykija executes a Quit Claim Deed transferring her 50% interest in the property to Bridgette. Deed is not recorded in the public records until April 17, 2012.
Bridgette Frazier and Hykija Frazier	E. 8 th Street	Aug. 2008 - April, 2009 ⁵	In August, 2008, Hykija submits lease to Delmarva indicating that Hykija is leasing the property from Bridgette
Hykija Frazier	E. 8 th Street	April, 2009 until electric and gas service disconnected due to non-payment	Electric service disconnected 8/18/11; Gas service disconnected 10/6/11
Bridgette Frazier	E. 8 th Street	Now	Bridgette argues that she is not responsible for any of the above charges for either property and seeks to re-establish electric and gas service at 631 E. 8 th St.

⁴ In August 2008, Samuel Carter, Mrs. Frazier's deceased husband was removed as an account holder, leaving Bridgette as the sole account holder. (Tr. 174) Samuel Carter passed away on August 27, 2000. (Tr. 77) Thus, the issue of Samuel Carter's liability is not an issue.

⁵ For one month, March 2009 to April 2009, the account was in the name of Bridgette Frazier only. (Tr. 174) For purposes of Bridgette Frazier's liability, this fact does not change my findings. Thus, this issue will not be discussed any further.

B. Transferred Balance of \$902.44 from Bennett Street Property to East Eighth Street Property

7. At the evidentiary hearing, Bridgette Frazier testified on behalf of herself. Although not a party, Mrs. Frazier's daughter, Hykija Frazier, did not attend the hearing.

8. Bridgette Frazier's first asserts that she is not responsible for a balance transfer of \$902.44 for electric and gas charges transferred from apartment no. 2 at her Bennett Street duplex property to her property located at East Eighth Street in Wilmington, Delaware.⁶ (Tr. 7, 12-13, 71, 110-11, Exs. 9,10,11) Mrs. Frazier has used the Bennett Street property strictly as a two (2) apartment rental property. (Tr. 5-9, Ex. 11)

9. Mrs. Frazier argues that she is not liable for the balance transfer, which occurred in August, 2008, because Mrs. Frazier claims that she first attempted to disconnect this service telephonically in June, 2006. (Tr. 10) At the hearing, Mrs. Frazier testified that she requested that this service be disconnected on June 12, 2006, November 29, 2007, January 12, 2007 and May, 2008. (Tr. 10-14, 16) However, not only do these dates conflict with the dates in Mrs. Frazier's Complaint,⁷ but they also conflict with the dates in Delmarva's business records.

10. According to Delmarva's business records, on December 21, 2006, Ms. Frazier first requested that service be disconnected at the

⁶ Of the total unpaid balance, \$643.28 was for electric service and \$259.16 was for gas service. (Tr. 111, Ex. 2.)

⁷ In her Complaint, Mrs. Frazier alleged that she telephoned to disconnect the Bennett Street service on June 10, 2006, June 12, 2006, January 12, 2007 and November 29, 2007. (Ex. 1) Thus, two (2) of the four dates in the Complaint do not comport Mrs. Frazier's testimony at the evidentiary hearing.

Bennett Street property. (Ex 7.) However, Delmarva's records reflect that Delmarva was prevented from disconnecting service because, when Delmarva's service technician performed his service call, there was no answer at the door and Delmarva's technician could not gain access to the meter inside of Mrs. Frazier's rental property. (Tr. 51-52; 69, 102; Ex. 7)

11. Delmarva's policy is that, if a disconnect request cannot be completed due to non-entry, the request is closed. (Tr. 129) According to Delmarva, after Delmarva's technician closed Mrs. Frazier's disconnect request due to non-entry, to disconnect her service, Mrs. Frazier was required to place a second disconnect order which she failed to do. (Tr. 129-130) A second disconnect order was required although the hearing revealed that a different Delmarva employee replaced the gas meter on January 5, 2007. (Tr. 126-30)

12. Eventually, Mrs. Frazier successfully canceled her Delmarva service at the Bennett Street property effective July 25, 2008. (Tr. 105-06) However, the fallacy with Mrs. Frazier's argument that she is not liable for the balance transfer is, although Delmarva's service technician could not gain access to the Bennett Street property in December, 2006, thereafter the electric and gas service continued until it was cancelled in July, 2008, with the balance transfer occurring in August 2008. (Tr. 18-19, 126; Ex. 9)

13. During that twenty (20) month period between December, 2006 and August 2008, Mrs. Frazier admitted that she was receiving bills at her East Eighth Street property in her name for the continuing

electric and gas usage at the Bennett Street property.⁸ (Tr. 14-15, 78, 164) Also, Mrs. Frazier never visited a Delmarva walk-in center to attempt to terminate the Bennett Street account. (Tr. 51-52)

14. Mrs. Frazier claims that, prior to the balance transfer, she telephoned Delmarva four (4) times to disconnect service, including speaking with Marianne Murphy in May, 2008. (Tr. 14-15) Ms. Murphy is an experienced Senior Analyst in Delmarva's Customer Relations Department. (Tr. 95) She has been employed by Delmarva for approximately thirteen (13) years. (Tr. 95-96)

15. Ms. Murphy testified that she never spoke with Mrs. Frazier until August, 2008. (Tr. 96) Ms. Murphy's co-worker Judy Rogozinski had spoken with Mrs. Frazier in July, 2008. (Tr. 96-97) Unlike Mrs. Frazier, however, Delmarva admitted its business records into evidence confirming that, after the disconnect failed due to non-entry in December, 2006, Ms. Rogozinski of Delmarva first spoke with Mrs. Frazier about the unpaid balance transfer in July, 2008. (Ex. 11)

16. Ms. Murphy also testified that, contrary to Bridgette Frazier's testimony, Ms. Murphy never told Frazier that the Bennett Street account was in "administrative turnoff" and not incurring monthly charges. (Tr. 13-14, 123-26) Rather, Ms. Murphy testified that Delmarva does not perform "administrative turnoffs" and that she was not even familiar with the term "administrative turnoff" despite being employed by Delmarva **for** approximately thirteen (13) years. (Tr. 95-96, 123-26)

⁸ Regarding the East Eighth Street account, Mrs. Frazier was the sole account holder from December, 2006 through August, 2008. Thereafter, Mrs. Frazier and her daughter were joint account holders from August, 2008 through April, 2009. (Tr. 174)

17. Regarding her Bennett Street account, Bridgette Frazier satisfies the definition of a "customer" according to Delmarva's Tariff, which provides as follows:

Delmarva Power & Light Company P.S.C. Del. No.8-Electric
Second Revised Leaf No.4

DEFINITION OF TERMS

...

Company - Delmarva Power & Light Company.

Customer - Any adult person, partnership, association, or other entity: (i) in whose name an account is listed, (ii) who occupies or is the ratepayer for a premises, building, structure, etc., and (iii) who is primarily responsible for payment of bills. A Customer includes anyone taking Delivery Service or combined Electric Supply & Delivery Service from the Company under one service classification for one account or premises. Multiple premises under the same name are considered multiple Customers.

...

Filed June 12, 2006

Effective with Meter Readings
On and After July 1, 2006

Filed in Compliance with Order Nos. 6903 and 6930 in Docket No. 05-304

18. Since Bridgette Frazier satisfies the Tariff's definition of "customer", she is responsible for paying the \$902.44 balance from the Bennett Street property, of which she was the sole account holder.

C. EAST EIGHTH STREET ACCOUNT

19. I find that Mrs. Frazier was the sole "customer" for the Bennett Street property until August, 2008, and a joint "customer" for the East Eighth Street property along with her daughter Hykija Frazier from August, 2008 until April, 2009. (Tr. 12-13, Ex. 9,10; Tr. 174).

Thus, I find that Mrs. Frazier is liable for the gas and electric bills for both properties through and including April, 2009.⁹ This includes the August, 2008 balance transfer of \$902.44 from the Bennett Street property.

20. As of April 15, 2009, the total unpaid balance for both properties was \$3,425.51 (Tr. 174, Ex. 11 - Bill dated March, 2009). This consists of \$2,475.37 in unpaid electric charges, plus \$950.14 in unpaid gas charges. (*Id.*)

21. Hykija Frazier was residing at the East Eighth Street property in 2008. (Tr. 62) Bridgette Frazier argues that she is not liable for any bills related to her East Eighth Street property because Hykija Frazier provided a Residential Lease to Delmarva in August 2008, indicating that Hykija was leasing the premises from Bridgette. (Tr. 21-22; Ex. 5) According to Bridgette, Delmarva should have opened a new account in Hykija's name only in August, 2008. (*Id.*, 153)

22. However, in August, 2008, Delmarva researched the title to the property through the public records and credit searches and determined that both Bridgette and Hykija owned the property.¹⁰ (Tr. 133, 160-61) Ms. Murphy of Delmarva testified that, since both Bridgette and Hykija owned the property, and Bridgette had an outstanding balance from Bennett Street, Delmarva initially made

⁹ Because Hykija Frazier is not a party in this case, I am not able to address her liability in this Report.

¹⁰ Hykija Frazier conveyed her 50% interest in the property to Bridgette by virtue of a Quitclaim Deed dated May 30, 2008. (Ex. 4) However, the Deed was not recorded until April 17, 2012, after Bridgette filed her Complaint in this case. (*Id.*) Thus, I find that Delmarva was not bound by the terms of the Deed until April 17, 2012. (See Title 25, Delaware Code.) It would be unwise public policy to require Delmarva to rely upon unrecorded Deeds.

Bridgette Frazier and Hykija Frazier joint account holders. (Tr. 160-61) Delmarva does not employ a written application for service. (Tr. 140-41) In any event, according to Ms. Murphy, in addition to Bridgette's outstanding balance from Bennett Street, Delmarva also made Bridgette and Hykija joint account holders because "as an owner, Bridgette could not lease the property to herself." (Tr. 155, 160-61)

23. Delmarva mailed monthly bills in both names to the East Eighth Street address from August 2008 until April 2009, when Hykija was named the sole account holder.¹¹ (Ex. 11) To this day, Bridgette continues to use the East Eighth Street address as her mailing address for her bills and as her Delaware Driver's License address. (Tr. 88-93.)

24. Thus, according to Delmarva's Tariff, I find that Bridgette Frazier was a "customer" for the East Eighth Street property from August, 2008 until April, 2009.¹² (Tr. 12-13, Exs. 9,10; Tr. 174)

25. In its post-hearing Brief, Staff argues that Delmarva did not comply with its Transferred Balances Service Level Guarantee. (See PSC Order No. 6328, ¶V (B)(1) (Dec. 9, 2003.) Delmarva argues that it complied because this Service Guarantee which requires Delmarva "to make every effort to ensure that a customer is only billed for balances accrued on his/her account, including joint accounts." (*Id.*)

¹¹ Bridgette's argument that she was residing in Atlanta, Georgia from about August through December 2008 does not change my findings regarding her liability for either account. (Tr. 22,87)

¹² For the foregoing reasons, I find that, for purposes of Bridgette Frazier only, Delmarva complied with its termination procedures for failure to pay and deferred payment arrangement requirements as described in Delmarva's filing dated July 31, 2012.

26. I find that Delmarva complied with the Service Guarantee because, as I previously found, Bridgette Frazier and Hykija Frazier voluntarily established a joint account at the East Eighth Street property. Bridgette knew of the \$902.44 transferred balance from the Bennett Street property because Delmarva mailed monthly bills in both Bridgette's and Hykija's names to the East Eighth Street address from August 2008 until April 2009, when Hykija was named the sole account holder. (Ex. 11) To this day, Bridgette continues to use the East Eighth Street address as her mailing address for her bills and as her Driver's License address. (Tr. 88-93.)

27. From August 2008 through April 2009, Hykija was occupying the East Eighth Street property, but Bridgette was an owner, with an unpaid balance from the Bennett Street property. (Tr. 143, Ex. 4) Contrary to Staff's position, this is a situation where a utility *should* establish a joint account - to get paid for the terminated Bennett Street account and to get paid for the continuing East Eighth Street account. Reducing receivables saves money for the utility's paying customers.

28. As to Delmarva's claim that Bridgette Frazier is also liable for any bills related to the East Eighth Street Property issued solely in the name of her daughter, Hykija Frazier, I agree with Staff that Bridgette is not liable. According to Delmarva's Tariff, if Hykija is the sole account holder, Hykija Frazier is the only "customer" and her mother Bridgette Frazier is not liable for Hykija's bills. (See Delmarva Tariff eff. 7/1/06, P.S.C. Del. No. 8-Elec; 2nd Rev. Leaf No. 4.)

29. In 2011, Hykija Frazier's East Eighth Street gas and electric accounts were terminated due to non-payment. (Tr. 174.) In her Complaint, Bridgette Frazier requests that Delmarva again supply electric and gas service to her at the East Eighth Street property. (Ex. 1) Bridgette Frazier would be the sole account holder. (*Id.*) Delmarva has refused to re-establish service at the East Eighth Street property if full payment is not made. (Tr. 175)

IV. JURISDICTION; BURDEN OF PROOF

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

31. 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

32. I recommend that the Commission hold that Bridgette Frazier currently owes \$3,425.51. This amount was due as of April 15, 2009 at the East Eighth Street property of which she was a joint account holder, and also includes the balance transfer from the Bennett Street property, of which she was the sole account holder.

33. I recommend that the Commission hold that, after April 15, 2009, a) Hykija Frazier was the sole account holder at the East Eighth Street property; and b) Bridgette Frazier is not responsible for any

electric or gas charges incurred by Hykija Frazier on or after April 15, 2009.

34. However, due to the tangled circumstances regarding these accounts between Bridgette Frazier and her daughter Hikija Frazier, I recommend that the Commission approve a payment plan for Bridgette Frazier.

35. I recommend that the Commissioner order that:

- a) after Bridgette Frazier pays a \$1,000 down payment to Delmarva, Delmarva shall re-establish Mrs. Frazier's electric and gas service at the East Eighth Street property;
- b) the remaining unpaid balance of \$2,425.51 would be paid as follows: in addition to her normal monthly electric and gas bills, beginning the month following payment of the down payment, Mrs. Frazier shall pay an additional \$200 per month for 11 months, plus a final payment of \$225.51;
- c) interest shall not be charged on the \$2,425.51 amount if timely paid; and
- d) if Mrs. Frazier does not timely pay her electric or gas bill as described herein, including but not limited to any portion of the \$2,425.51 unpaid balance, Delmarva may disconnect all service in

compliance with its Tariff, Delaware law and the
Commission's Order.¹³

36. A proposed Order implementing the foregoing recommendations
is attached for the Commission's consideration.

Respectfully Submitted,

Dated: September 17, 2012

/s/ Mark Lawrence
Mark Lawrence
Hearing Examiner

¹³ After Mrs. Frazier pays her \$1,000 down payment and her service is re-connected, Mrs. Frazier should pay her normal monthly bills like any other Delmarva customer. However, payments of the unpaid balance of \$2,425.51 should be made as directed by Delmarva.