

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Deborah L. Anderson v PECO Energy
Company**

Public Meeting – May 19, 2011
2136754-OSA
Docket No. C-2009-2136754

DISSENTING STATEMENT OF COMMISSIONER TYRONE J. CHRISTY

I dissent from the majority's decision to remand this case to the Office of Administrative Law Judge (OALJ) for further proceedings. The Complainant's account history illustrates why a remand in this case is unwarranted.

Ms. Anderson established an account with PECO Energy Company (PECO) for gas and electric service in 1982. By January 1998 her account balance was \$9,240.62. She was given a payment arrangement by PECO on which she defaulted. In January 1999 her account balance was \$11,321.14. By 2001, her account balance was \$17,939.80. The Commission gave the Complainant another payment arrangement, on which she again defaulted. By December 2003 her account balance was \$21,972.22. In 2004, she made one payment of \$30.24 on charges of \$3,192.97. In April 2005, PECO gave her another payment arrangement when her account balance was \$25,924.86, on which she again defaulted.

PECO terminated the Complainant's electric service for nonpayment in April 2006. Service was restored with a medical certificate. PECO again terminated the Complainant's service for nonpayment in June 2006. Service was self-restored and terminated a third time in July 2006 for unauthorized usage and theft of service.

The Complainant filed an informal complaint with the Bureau of Consumer Services on June 12, 2006, when her account balance was \$26,367.75. This complaint was dismissed because the prior PUC and Company payment arrangements were not kept. The Complainant filed another informal complaint on November 2, 2007. BCS issued its decision on February 11, 2008, finding that the Complainant's account balance was "correct as rendered." At that time, her arrearage was \$32,251.84.

The Complainant next filed a formal complaint on February 28, 2008, questioning the amount of her arrearage.¹ PECO's Answer filed on April 25, 2008, stated that the Complainant's balance of \$33,004.02 was due to a history of missed and late payments. The ALJ in that proceeding issued an Initial Decision on January 30, 2009, in which she found that the Complainant's allegation that her bills were too high was without merit.² The ALJ also found that another payment arrangement that PECO had offered in June 2008 was more generous than

¹ Anderson v. PECO Energy Company, Docket No. F-2008-2133574.

² The ALJ also ordered PECO to credit the Complainant's account by \$1,146.13 due to series of estimated bills that had been rendered following a meter change.

any payment arrangement that could be ordered by the Commission. The Complainant filed Exceptions to the ALJ's Initial Decision, stating that she had received a termination notice and could not meet the terms of the payment arrangement that had been offered by PECO. The Complainant asked that PECO be required to expunge all late charges and deposit amounts from her bill. The Complainant's Exceptions were denied by the Commission's Opinion and Order entered April 30, 2009.

On August 21, 2009, the Complainant filed another informal complaint with BCS, disputing PECO's refusal to issue a medical certificate. This complaint was dismissed by BCS on August 27, 2009. The BCS decision stated that the complaint was dismissed because the Complainant has had three medical certificates, two or more payment arrangements including one PUC payment arrangement, and a recent decision on a formal complaint

On September 24, 2009, PECO prepared a ten-day termination notice, after which the Complainant filed the instant formal complaint with the Commission on October 13, 2009, when her arrearage was \$33,696.75. She checked all but one of the boxes on the formal complaint form, indicating that there are incorrect charges on her bill; that there is a reliability, safety or quality problem with her service; that she had received a termination notice; that she would like a payment arrangement; and "other." A review of the materials attached to the complaint shows that the issues raised by the Complainant are related to her large account balance, which was the subject of her complaint that was dismissed on April 30, 2009. The Complainant also alleged that PECO improperly had denied her a medical certificate. The attached "medical certificate" was prepared by her attorney, and was not certified by a physician or nurse practitioner.

PECO's Answer stated that it properly had rejected the alleged medical certificate because it was not certificated by a physician or nurse practitioner as required by the Commission's regulations. Further, PECO stated that it previously had placed three medical extensions on the Complainant's account in May 2007, August 2007, and July 2009. Because the Complainant did not make equitable payments as required by the Commission's regulations, she is not entitled to further medical extensions. PECO's New Matter stated that the Commission previously adjudicated a formal complaint filed by the Complainant regarding the same outstanding balance, and that the instant complaint is barred under the doctrines of collateral estoppels and *res judicata*. The Complainant did not respond to PECO's New Matter.

A hearing was scheduled on April 19, 2010, but was cancelled and rescheduled to May 19, 2010 at the Complainant's request. The Complainant appeared at the May 19, 2010, hearing but relayed a request for a second continuance from her attorney. As a result, no evidence was received. On May 21, 2010, PECO filed a Motion for Judgment on the Pleadings. The Complainant did not file a response to PECO's Motion. In an Initial Decision issued December 30, 2010, ALJ Buckley granted PECO's Motion and dismissed the Complaint with prejudice.

The Complainant's Exceptions filed on January 21, 2011, reiterate issues previously raised in her numerous prior informal and formal complaints relating to her inability to pay the large account balance she has accumulated, late fees, deposits, etc. The Complainant also complains about her attorney. Notably, the Complainant's Exceptions do not mention PECO's

refusal to accept another medical certificate in August 2009, nor do they mention the accuracy of billings issued after those reviewed by the Commission in the prior formal complaint proceeding.

To summarize, the Complainant has amassed an arrearage in excess of \$33,000 through a long history of nonpayment. She has been granted several payment arrangements by PECO and by the Commission, all of which she has broken. Her service has been terminated at least three times for nonpayment. Her service has been restored with medical certificates and once by an illegal connection. PECO has issued at least three medical extensions to the Complainant, and she has not made equitable payments on her bill during the extensions. She has filed at least three informal complaints with BCS, all of which have been dismissed. She previously filed a formal complaint with the Commission, raising essentially the same issues that she has raised in the instant complaint, which was dismissed by a final order only a few months before the instant complaint was filed. In the instant case, the Commission has scheduled two evidentiary hearings, both of which were canceled because the Complainant requested an extension or was not prepared to testify. She did not file a response to PECO's New Matter.

ALJ Buckley issued an Initial Decision dismissing Ms. Anderson's latest Complaint with prejudice on the grounds of *res judicata* and collateral estoppel. In my view, there is no question that this was the correct decision. The majority, however, have decided that the ALJ's Initial Decision was incorrect because the Commission's prior order did not address bills issued after February 2008 or PECO's denial of the Complainant's medical certificate in August 2009. This is an unfortunate decision. A customer always will have a new bill, and always will be able to produce yet another medical certificate. Today's decision indicates that the doctrines of *res judicata* and collateral estoppels will never lead to the dismissal of a complaint so long as the complaint includes allegation regarding the newest bill and the latest medical certificate. The message that this decision sends is that customers successfully may avoid paying their utility bills by manipulating the Commission's regulations and procedures for a prolonged period of time.

5-19-11
DATE

Tyrone J. Christy
TYRONE J. CHRISTY, COMMISSIONER