

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherry Dixon	:	
	:	
v.	:	C-2015-2513652
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

This Initial Decision (ID) dismisses a formal complaint because the Complainant failed to prove by a preponderance of the evidence that the utility discriminated against her, or that it improperly refused to offer her a payment agreement or otherwise denied her access to emergency funds to help pay her outstanding arrearage.

**HISTORY OF THE PROCEEDING**

On November 5, 2016, Sherry Dixon (Ms. Dixon or Complainant) filed a formal complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). At paragraph five of her complaint form, the Complainant checked box for “other.” By way of explanation, she alleged that PECO had false and outdated information in its system. In addition, Ms. Dixon alleged that the Commission did not listen to her complaint. Rather, it merely took the information provided by PECO and closed her case.<sup>1</sup>

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<sup>1</sup> The Complainant filed an informal complaint against PECO on October 21, 2015, at BCS Case No. 003395127. The BCS closed this informal complaint on October 26, 2015, finding that the Complainant was not eligible for a Commission ordered payment arrangement due to CAP arrears on her account.

Subsequently, on November 30, 2015, the Complainant filed an amended formal complaint against PECO. At paragraph 4 of the amended complaint form Ms. Dixon checked the boxes indicating, “the utility is threatening to shut off my service or has already shut off my service,” and “other.” In paragraph 5 of her complaint, the Complainant stated that she believes the utility is discriminating against her because representatives talk rudely to her and do not answer her questions. She further alleged that, no matter what she does to pay her bill, the utility will not work with her. She alleged that CRISIS offered her money to keep her services on but PECO refused to accept the payment.

On December 14, 2015, PECO filed an answer to Ms. Dixon’s amended complaint. In its answer, PECO averred that it terminated the Complainant’s service on November 30, 2015, due to outstanding charges on the account. PECO further averred that the Complainant’s outstanding account balance was \$17,073.30 and that it would not accept a crisis grant payment because her balance was well over the company’s \$5,500.00 threshold above which PECO will not accept a crisis grant payment. PECO also averred that the Complainant did not make regular payments and that she is not eligible for a Commission ordered payment arrangement because her outstanding balance includes CAP arrears. PECO requested that Ms. Dixon’s formal complaint be dismissed.

By hearing notice dated January 28, 2016, an initial telephonic hearing was scheduled for March 25, 2016, at 10:00 a.m. and the matter was assigned to me. I issued a prehearing order on February 4, 2016, in which I explained various procedural requirements associated with participation in the initial hearing. Paragraph five of the prehearing order instructed the parties that, “a request for a change of the scheduled hearing date should be submitted in writing no later than five (5) days prior to the hearing . . . . Requests for changes of the scheduled hearing date must be sent to me with copies to all parties of record.”

On March 15, 2016, I received a letter from PECO’s counsel, Shawane Lee, informing me that she was in receipt of a request by the Complainant for a continuance of the March 25, 2016 hearing. Ms. Lee indicated that PECO objected to the Complainant’s request. I informed Ms. Lee that I had not received a request from Ms. Dixon for a continuance, nor had

any document making such a request been filed with the Commission. I further informed Ms. Lee that, unless either the Commission or I received a continuance request directly from the Complainant, I intended to conduct the hearing as scheduled. Neither the Commission nor I received a continuance request prior to the date of the initial hearing.

The telephonic hearing convened as scheduled on March 25, 2016. Ms. Dixon appeared *pro se*. Ms. Dixon stated at the beginning of the hearing that she had hoped the hearing would be rescheduled and that she had talked to various people about having someone appear on her behalf to help explain her complaint. I informed her that neither I nor the Commission received a request from her for a continuance, as directed in my February 4<sup>th</sup> prehearing order. I stated that PECO's counsel and a witness were present and prepared to proceed, as was a Court Reporter, and that the hearing would proceed as scheduled.

Shawane L. Lee, Esq., appeared on behalf of PECO and presented one witness who sponsored six exhibits, all of which were admitted, without objection, into the record. The record in this case consists of a 59-page transcript and the six PECO exhibits. The record closed on April 20, 2016, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The complainant in this proceeding is Sherry Dixon.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant resides at 1701 Walnut Ridge Street, Pottstown, PA 19464. Tr. 7.
4. PECO provides residential electric service to Ms. Dixon at the Walnut Ridge Street address. Tr. 25.

5. PECO's witness, Dana McCollum, is a Regulatory Assessor who has been employed by PECO for twenty years. Tr. 24.

6. PECO Exhibit No. 1 is an account activity statement for the Complainant's PECO account showing the billing and payment history on the account from January, 2012 through February, 2016. Tr. 25; PECO Ex. 1.

7. PECO Exhibit No. 2 contains screen shots from the company's customer management information system showing the Complainant's enrollment history in PECO's Customer Assistance Program (CAP) from 2007 to the present. Tr. 28-29; PECO Exhibit No. 2.

8. PECO Exhibit No. 3 contains documents showing income related information associated with the Complainant's attempts to enroll in PECO's CAP. Tr. 30-31; PECO Ex. 3.

9. PECO Exhibit No. 4 is a collection history on the Complainant's account showing that a ten day termination notice was sent on November 4, 2015, and a 72 hour termination notice was sent on November 23, 2015, prior to the termination of her service on November 30, 2015. Tr. 38; PECO Ex. 4.

10. PECO Exhibit No. 5 is a printout of information about an informal complaint filed by the Complainant with the Commission's Bureau of Consumer Services (BCS) on October 21, 2015, at BCS Case No. 003395127, wherein she complained about being denied enrollment in PECO's CAP. Tr. 41; PECO Ex. 5.

11. PECO Exhibit No. 6 is a printout showing the decision of the BCS on the Complainant's informal complaint, wherein the informal complaint was dismissed, finding that the company had mailed the necessary CAP enrollment application materials to the Complainant and also finding that she was not eligible for a payment arrangement on her outstanding balance since the balance included CAP arrearages. Tr. 42; PECO Ex. 6.

12. The Complainant's total outstanding account balance with PECO as of the date of the hearing in this matter was \$16,411.62. Tr. 25-26; PECO Ex. 1.

13. The Complainant was first enrolled in PECO's CAP on December 3, 2007. Tr. 26.

14. When a customer first enrolls in PECO's CAP, he/she is eligible for a one time, pre-program arrearage forgiveness, where the customer's account balance at the time of enrollment may be forgiven. Tr. 27.

15. When the Complainant was enrolled in PECO's CAP on December 3, 2007, her then balance of \$491.03 was forgiven. Tr. 27.

16. Customers who are enrolled in PECO's CAP are required to re-certify their income to PECO at least every two years to demonstrate that their total household income remains within the eligibility limits for the program. Tr. 28.

17. The Complainant was removed from the CAP on October 27, 2010, due to her failure to re-certify her income with PECO. PECO Ex. 2.

18. The Complainant was re-enrolled in PECO's CAP on November 27, 2011. Tr. 27; PECO Ex. 2.

19. At the time of the Complainant's re-enrollment in November of 2011, she was eligible for an in-program arrearage forgiveness, where her outstanding balance at the time of re-enrollment would be reduced to \$1,000.00. Tr. 27; PECO Ex. 2.

20. As a result of the in-program arrearage forgiveness in November of 2011, \$7,907.61 of the Complainant's outstanding balance at that time was forgiven, thereby reducing the remaining balance on her account to \$1,000.00. Tr. 27; PECO Ex. 2.

21. A 60 month payment arrangement was established with the Complainant for payment of the remaining \$1,000.00 balance, whereby she would pay her monthly bill plus an additional \$16.66 toward the balance. Tr. 27.

22. The Complainant defaulted on this payment arrangement. Tr. 27-28.

23. The Complainant was removed from the CAP on October 3, 2013 due again to her failure to re-certify her income with PECO. Tr. 28; PECO Ex. 2.

24. The Complainant attempted to enroll in PECO's CAP again in 2015, but was denied enrollment because the income information submitted by her was insufficient to prove her total household income. Tr. 28-31.

25. The income information submitted by the Complainant as part of her attempt to re-enroll in CAP in 2015 did not include necessary income information for all of the members of her household. Tr. 28-31; PECO Ex. 3.

26. The Complainant's total outstanding account balance includes CAP arrears of \$2,446.56. Tr. 35, 43; PECO Ex. 2.

27. The Complainant was given a payment arrangement of current charges plus \$16.66 for payment of the \$1,000.00 balance that remained on her account after the forgiveness of \$7,907.61 was issued in November of 2011. Tr. 27, 34.

28. The Complainant defaulted on this payment arrangement. Tr. 27-28.

29. PECO established another payment arrangement with the Complainant in July of 2012 for the payment of her outstanding account balance at the time of \$1,301.24. Tr. 34; PECO Ex. 1.

30. The Complainant defaulted on this payment arrangement. Tr. 34.

31. PECO established a payment arrangement with the Complainant in September of 2012 for the payment of her outstanding account balance at the time of \$1,277.14. Tr. 34; PECO Ex. 1.

32. The Complainant defaulted on this payment arrangement. Tr. 34-35.

33. PECO agreed to reinstate the September 2012 payment arrangement for the Complainant after she made a \$200.00 payment on November 5, 2012. Tr. 35; PECO Ex. 1.

34. The Complainant defaulted on this reinstated payment arrangement. Tr. 35.

35. PECO will not offer any more payment arrangements to the Complainant because she defaulted on every prior payment arrangement established with her. Tr. 35, 46.

36. PECO's policy of not offering any further payment arrangements to customers who have defaulted on a number of prior arrangements is applicable to all PECO customers, not just the Complainant. Tr. 40.

37. The Complainant made four payments toward her account in 2012. Tr. 46; PECO Ex. 1.

38. The Complainant made three payments toward her account in 2013. Tr. 46; PECO Ex. 1.

39. The Complainant made seven payments toward her account in 2014. Tr. 47; PECO Ex. 1.

40. The Complainant made six payments toward her account in 2015. Tr. 47; PECO Ex. 1.

41. The payments made by the Complainant were not for the full amount of the bill to which they were applied. Tr. 36.

42. Crisis grant payments are available to eligible customers to help reduce outstanding balances to a point where a payment arrangement may be established to either prevent service termination or restore service that has already been terminated. Tr. 37.

43. A customer can have a balance of no more than \$5,500.00 to be eligible for a crisis grant. Tr. 37.

44. PECO witness Dana McCollum has seen crisis grant payments ranging from a couple hundred dollars to as high as one thousand dollars. Tr. 44.

45. PECO refused to accept a crisis grant payment on behalf of the Complainant and establish a new payment arrangement because of the amount of her outstanding balance. Tr. 36.

46. Even if the Complainant had received a crisis grant in the amount of \$1,000.00, her remaining outstanding balance outstanding would have been well above PECO's \$5,500.00 threshold and would not have prevented service termination or allowed for service restoration. Tr. 44.

47. The Complainant's service was terminated by PECO on November 30, 2015, due to non-payment of outstanding charges on her account. Tr. 38; PECO Ex. 4.

48. The Complainant's service was restored by PECO on December 17, 2015, following receipt of a payment from her in the amount of \$1,709.00. Tr. 38.

49. PECO witness Dana McCollum was helpful in working with the Complainant to explain various options for assistance to her and in getting her service restored after it was terminated in November of 2015. Tr. 17-18, 39.

50. Ms. McCollum assisted the Complainant in obtaining a LIHEAP grant payment of \$170.00. Tr. 39.

### DISCUSSION

Before addressing the substantive allegations raised in the complaint, I will briefly address the Complainant's request for a hearing continuance. As noted above, my prehearing order dated February 4, 2016, directed that any request for a change of the scheduled hearing date must be sent to me with copies sent to the other parties. Ms. Dixon sent a request for a continuance directly to PECO's counsel, but did not send the request to me or to the Commission's Secretary's Bureau. Although I was informed by PECO's counsel that Ms. Dixon had made a request for a continuance directly to her, I stated that, unless I received a request directly from the Complainant as required in my prehearing order, I intended to conduct the hearing as scheduled on March 25, 2016. In fact, I did not receive a request for a continuance directly from the Complainant prior to the date of the hearing.

Ms. Dixon stated at the beginning of the hearing that she was hoping the hearing would be continued so that she could find someone to help her and speak on her behalf at the hearing. Tr. 7. I informed her that, since she did not send a request directly to me prior to the hearing, and because PECO's counsel, its witness and the Court Reporter were present and ready to proceed, the hearing would be proceed as scheduled. Tr. 7-8.

I also note here that in a previous formal complaint filed by Ms. Dixon at Docket No. F-2015-2472513, she requested a hearing continuance, arguing that she had recently retained an attorney to assist her, but the attorney needed additional time to prepare for the hearing. Judge Salapa granted Ms. Dixon's request and continued the hearing. Ms. Dixon failed to appear at the rescheduled hearing time and date and, consequently, her complaint was ultimately

dismissed on the basis of failure to prosecute. Accordingly, Ms. Dixon has some familiarity with the Commission's procedures, having been through the formal complaint process at least four times since 2010.<sup>2</sup> Under these circumstances, I was unwilling to grant Ms. Dixon's request to reschedule the hearing in this proceeding.

I will now address the substantive allegations raised in the complaint.

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Selling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pennsylvania Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pennsylvania Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pennsylvania Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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<sup>2</sup> Ms. Dixon filed two other formal complaints since 2010 concerning her service from PECO, at Docket Nos. F-2013-2353645 (allegation of incorrect charges dismissed for failure to carry her burden of proof) and C-2010-2192741 (settlement reached prior to hearing).

In her complaint and at the hearing, the Complainant alleged that she was being discriminated against by PECO because, as she argued, the company would not work with her to establish a payment agreement or help get money from organizations to pay her outstanding charges because her balance was so high. Tr. 10. Ms. Dixon testified, “I just feel like I have asked PECO numerous times about agreements. I have tried to get money from different organizations. And I’m aware of certain things that, you know, they have to abide by, but it’s like, because of my bill being so high, I felt like I was like, we don’t care about what you are trying to do.” Tr. 10.

When asked by me to identify the specific actions PECO is doing or not doing that she believes are wrong, she merely stated, “I think that I’m being discriminated against as far as the high bills, the high bills.” Tr. 13. She believes that, because of her high balance, which at the time of the hearing was \$16,411.62, PECO will not give her a payment arrangement or help or allow her to obtain other assistance. Beyond this general allegation of discrimination, however, she offered no testimony that she was being treated differently than any other customer, or otherwise unfairly by PECO.

PECO’s witness, on the other hand, testified at length about the Complainant’s account history, current status and payment history in explaining why the company will not establish any further payment arrangements with her, and why it would not accept a crisis grant payment toward the balance on her account. Ms. McCollum testified that the Complainant’s total balance at the time of the hearing was \$16,411.62. Tr. 25. She testified that the Complainant has a poor payment history, having made only four payments in 2012, three payments in 2013, seven payments in 2014 and six payments in 2015. Tr. 47. She further testified that the payments the Complainant does make are not enough to cover the charges on the bills to which they apply. Tr. 36.

Ms. McCollum testified that PECO has established four payment arrangements with the Complainant for the payment of the outstanding balance on her account, but that the Complainant has defaulted on every agreement. Tr. 34-35. It is because of the Complainant having defaulted on all of her prior payment agreements with PECO that the company will not offer her any further agreements. Tr. 35.

Ms. McCollum also explained why PECO would not accept a crisis grant payment on behalf of the Complainant toward her outstanding balance and set up a new payment agreement with her. She explained that crisis grants are intended to help customers whose service is being threatened with termination, or to restore the service of customers that has already been terminated. Tr. 36. PECO has established a maximum account balance of \$5,500.00 in order for the company to accept a crisis grant on behalf of the customer and establish a payment agreement and maintain or restore service. Tr. 37. Ms. McCollum testified that, because the Complainant's account balance is so high (\$16,411.62), application of a crisis grant would not have reduced her balance enough to prevent service termination and allow for the establishment of an affordable payment arrangement. Tr. 44. PECO also argued that, due to the Complainant's high balance, poor payment history and failure to comply with prior payment arrangements established by PECO, she should not be eligible for a Commission-ordered payment arrangement. Tr. 56-57.

In considering all of the record evidence in this proceeding, I find that the Complainant has failed to prove by a preponderance of the evidence that PECO discriminated against her or acted improperly in any way in its refusal to establish any further payment arrangements with her. As noted above, she has made a total of only twenty payments toward her account in the four years from 2012 through 2015, and the payments she did make were not enough to cover the current charges on the bills to which they were applied. In addition, the Complainant has defaulted on every payment arrangement established by PECO. Under these circumstances, I do not find it unreasonable that PECO refuses to establish any further payment arrangements with Ms. Dixon.

I also agree with PECO that the Complainant's poor payment history and lack of good faith in meeting her payment obligations should preclude the establishment of a Commission ordered payment arrangement for her. The Commission has held in a number of prior decisions that it may refuse to order a payment arrangement for customers who do not make good faith efforts to pay their bills. See, e.g., *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-2014-2459964 (Final Order entered May 28, 2015); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). In both of these cases, the

Commission refused to exercise its discretion to order a payment arrangement for a customer where the customer had a poor payment history and/or demonstrated an inability or unwillingness to comply with payment arrangements established by the utility.

Here, the Complainant made only twenty payments from 2012 through 2015, and those payments were not enough to cover the amount of the bills to which they applied. Tr. 47. In addition, the Complainant defaulted on every payment arrangement established for her by PECO. Tr. 34-35. Finally, as noted above, the Complainant has filed at least four formal complaints against PECO since 2010 in which she raised allegations against the company associated with her PECO electric service, thereby allowing her to continue to receive service while her outstanding balance increases dramatically. From these facts, I conclude that the Complainant has not made reasonable or good faith efforts to pay her bills in a timely fashion and, therefore, is not entitled to a Commission-ordered payment arrangement.

In summary, I conclude that the Complainant has failed to prove by a preponderance of the evidence that PECO discriminated against her or improperly refused to work with her to establish a payment arrangement for the payment of outstanding charges on her account. Accordingly, I will deny the complaint and enter the following order.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa. C.S. § 332(a).
3. In order to satisfy the burden of proof, a Complainant must prove, by a preponderance of the evidence, that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.

Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

4. The Complainant failed to prove by a preponderance of the evidence that the Respondent discriminated against her.

5. The Complainant failed to prove by a preponderance of the evidence that the Respondent is improperly refusing to establish any further payment arrangements for her.

6. The Commission may refuse to order a payment arrangement for customers who do not make good faith efforts to pay their bills. *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-2014-2459964 (Final Order entered May 28, 2015); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Sherry Dixon v. PECO Energy Company at Docket No. C-2015-2513652 is denied; and

2. That the proceeding at Docket No. C-2015-2513652 be marked closed.

Date: June 20, 2016

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/s/  
Steven K. Haas  
Administrative Law Judge