

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                     |   |                |
|---------------------|---|----------------|
| Dontaya Sellers     | : |                |
|                     | : |                |
| v.                  | : | F-2017-2583820 |
|                     | : |                |
| PECO Energy Company | : |                |

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

In this Initial Decision, the Complaint requesting a payment arrangement is denied, in part, with regard to Ms. Sellers’ arrearages accumulated during her participation in PECO’s customer assistance program, and granted, in part, with regard to the remainder of her outstanding balance.

**HISTORY OF THE PROCEEDING**

On January 11, 2017, Dontaya Sellers (Complainant or Ms. Sellers) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Sellers alleged that the utility is threatening to shut off her electric service and that she is unable to pay her electric bills. As relief, the Complainant requested a payment arrangement.

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, dated November 30, 2016, at BCS No. 3491960, that dismissed the Complainant's informal complaint.

On January 30, 2017, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated March 9, 2017, a hearing was scheduled for Tuesday, April 13, 2017, at 9:30 a.m., and the matter was assigned to me.

A Prehearing Order was issued on March 29, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on April 13, 2017. The Complainant appeared *pro se* and testified in support of the Complaint. Margaret Morris, Esq. represented the Respondent, and presented the testimony of Renee Tarpley, who is a customer review officer in charge of investigating formal and informal complaints filed against PECO. The Respondent sponsored nine exhibits which were admitted into the record.

The record in this matter closed on May 12, 2017.

#### FINDINGS OF FACT

1. The Complainant is Dontaya Sellers, who resides at 8119 Frankford Avenue, Apartment # 11, Philadelphia, PA 19136 (Service Address). Tr. 8-9.
2. The Respondent is PECO Energy Company.
3. Ms. Sellers initiated service at the Service Address on August 17, 2011.

Tr. 23.

4. On March 12, 2012, Ms. Sellers enrolled in PECO's Customer Assistance Program (CAP). Tr. 31, PECO Exhibit 6.
5. In September 2013, Ms. Sellers recertified into the CAP program with a verified income of \$606.66 per month for a household of one individual. Tr. 31.
6. On June 24, 2014, PECO terminated service at the Service Address for nonpayment. Tr. 23.
7. Ms. Sellers' outstanding balance at the time of service termination was \$3,700.35. Tr. 23.
8. Of the \$3,700.35 balance, \$3,539.32 consisted of CAP arrears. Tr. 29-31, PECO Exhibit 6.
9. From the day Ms. Sellers first initiated services to the Service Address on August 17, 2011, to June 24, 2014, Ms. Sellers made only eight payments to her account with PECO, three of which were through LIHEAP grants. PECO Exhibit 5.
10. Ms. Sellers made one additional payment on May 9, 2015, while her electric service was terminated. Tr. 43.
11. Between 2013 and 2014, Ms. Sellers had entered into and defaulted on three Company-issued payment arrangements. PECO Exhibit 7.
12. On November 18, 2015, the Complainant's sister, Tamika Sellers placed service at the Service Address in her name. Tr. 24.
13. On August 3, 2016, Tamika Sellers contacted PECO and requested to have service discontinued under her name. Tr. 25.

14. On August 3, 2016, Tamika Sellers indicated to PECO that someone else was still residing at the Service Address. Tr. 25.

15. After PECO removed service from Tamika Sellers' name, it left service on at the Service Address under a "user without a contract" account. Tr. 25, 34.

16. On August 15, 2016, the Complainant applied to place electric service at the Service Address in her name. Tr. 20.

17. By letter dated August 15, 2016, PECO informed the Complainant that her application for service was denied due to her outstanding balance. Tr. 22.

18. In March 2017, PECO made a business decision to approve Ms. Sellers' application for service at the Service Address. Tr. 34.

19. On March 14, 2017, PECO back-billed Ms. Sellers for services rendered at the Service Address during the period from August 15, 2016, through March 9, 2017. Tr. 34.

20. As of the day of the hearing, Ms. Sellers' outstanding balance with PECO was \$5,450.02, which included the prior outstanding balance of \$3,700.35. Tr. 34-35, PECO Exhibit 8.

21. PECO did not transfer Tamika Sellers' balance to the Complainant's new account. Tr. 35, 41.

22. Ms. Sellers resides at the Service Address by herself. Tr. 50-51.

23. Ms. Sellers works two part-time jobs. Tr. 51.

24. Ms. Sellers works 20 hours a week for Coria Services at a pay rate of \$12.00 per hour. Tr. 51.

25. Ms. Sellers works for the School District of Philadelphia 15 hours per week at a pay rate of \$11.00 per hour. Tr. 51-52.

26. Ms. Sellers receives \$194.00 per month in food stamps. Tr. 52.

### DISCUSSION

In the present formal Complaint, Ms. Sellers alleged her inability to pay her electricity bills to PECO. As relief, she requested a payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Ms. Sellers testified that she initiated electric service at the Service Address in August of 2011 and that her service was terminated for nonpayment in June of 2014. She stated that in November of 2015 her sister, Tamika Sellers moved in at the Service Address with her three children and placed electric service under her name. The Complainant moved to her mother's house during this time. Tr. 11. In August, Tamika Sellers moved out of the Service Address and requested that PECO remove service from her name. PECO did not turn service off at the Service Address. After her sister vacated the Service Address, the Complainant moved back in and contacted PECO requesting to have service established in her name. PECO denied her application. Electric service was on at the Service Address as of the day of the hearing.

In addition, Ms. Sellers testified that she resides at the Service Address by herself and that she currently works two part-time jobs. Ms. Sellers explained that she works 20 hours a week for Coria Services at a pay rate of \$12.00 per hour, and 15 hours per week for the School District of Philadelphia at a pay rate of \$11.00 per hour. Ms. Sellers also receives \$194.00 per month in food stamps.

In response, PECO's witness, Ms. Tarpley, testified that Ms. Sellers initiated service at the Service Address on August 17, 2011. On March 12, 2012, Ms. Seller's enrolled in

PECO's CAP program. In September 2013, she recertified into the CAP program with a verified income of \$606.66 per month for a household of one individual.

On June 24, 2014, PECO terminated service at the Service Address for non payment. Ms. Sellers' outstanding balance at the time of service termination was \$3,700.35. Ms. Tarpley explained that \$3,539.32 of the \$3,700.35 balance consisted of CAP arrears.

On November 18, 2015, the Complainant's sister, Tamika Sellers placed service at the Service Address in her name. On August 3, 2016, Tamika Sellers contacted PECO and requested to have service discontinued under her name. On August 3, 2016, Tamika Sellers indicated to PECO that someone else was still residing at the Service Address. Ms. Tarpley testified that PECO did not terminate service at the Service Address after removing it from Tamika Sellers' name. Instead, PECO left the service on under a "user without a contract" account.

Ms. Tarpley testified that on August 15, 2016, the Complainant applied to place electric service at the Service Address in her name. By letter dated August 15, 2016, PECO informed the Complainant that her application for service was denied due to her outstanding balance. However, Ms. Tarpley also explained that in March 2017, PECO made a business decision to approve Ms. Sellers' application for service at the Service Address. On March 14, 2017, PECO back-billed Ms. Sellers for services rendered at the Service Address during the period from August 15, 2016 through March 9, 2017. Tr. 34.

As of the day of the hearing, Ms. Sellers' outstanding balance with PECO was \$5,450.02, which included the prior outstanding balance of \$3,700.35, which in turn includes \$3,539.32 in CAP arrears. Ms. Tarpley made a point of clarifying that PECO did not transfer Tamika Sellers' balance to the Complainant's new account. Tr. 35, 41.

Ms. Tarpley also explained that between 2013 and 2014, Ms. Sellers had entered into and defaulted on three Company-issued payment arrangements. From the day Ms. Sellers first initiated services to the Service Address on August 17, 2011 to June 24, 2014, she made

only eight payments to her account with PECO, three of which were through LIHEAP grants. In addition, Ms. Sellers made one payment on May 9, 2015, while her electric service was terminated.

The Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This law provides strict guidelines that the Commission must follow in handling customer complaints.

#### Customer Assistance Program Balance

The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program (CAP) rates. Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definition of “Customer Assistance Program”).

The provision at 66 Pa.C.S. § 1405(c) states as follows:

(c) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

PECO's CAP program meets the requirements of 66 Pa.C.S. § 1403, and therefore, the Commission lacks the authority to establish a payment arrangement on that portion of Ms. Sellers' outstanding balance which consists of CAP arrears. The amount of \$3,539.32 must be timely paid, pursuant to 66 Pa.C.S. § 1405(c).

The Complaint is denied as to the Complainant's request for a payment arrangement on the \$3,539.32 portion of her balance that is subject to Customer Assistance Program rates. See *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013) (*Hewitt*).

#### Non-Customer Assistance Program Balance

The issuance of a payment arrangement for the non-CRP portion of the arrearage is a matter within the Commission's discretion. *Hewitt*. It is Commission policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007).

Between 2013 and 2014, Complainant entered into and defaulted on three payment arrangements issued by PECO. However, the Complainant has never received a Commission-issued payment arrangement. Relying on *Hewitt, supra*, and on *Kisha Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679, (Opinion and Order entered Nov. 22, 2013) (*Dorsey*), the Respondent argued at the hearing that the Commission should not establish a payment arrangement on behalf of the Complainant because she has defaulted on multiple Company-issued payment arrangements. Although Ms. Sellers has received a comparable number of Company-issued payment agreements to those issued in *Hewitt* and *Dorsey* – three versus four and two, respectively - on balance, this case is distinguishable from *Hewitt* and *Dorsey*. First, Ms. Sellers' total arrearage (\$5,450.02) is considerably less than the arrearages that accrued in *Hewitt* (\$15,244) and *Dorsey* (\$6,737), especially when one considers that

\$1,749.67<sup>1</sup> of Ms. Sellers' balance accrued while PECO refused to establish service in her name. Second, record evidence demonstrates that, while Ms. Sellers' payment history was poor, she made a conscious effort to control her outstanding balance. She testified that while she found herself unable to pay PECO's bills, she went without electricity at her residence for over a year and even tried to make payment to lower the outstanding balance. See Tr. 10, and PECO Exhibit 5. In contrast, in *Dorsey*, for example, the complainant had not made any payments for services rendered in the 18 months prior to the hearing. *Dorsey* at 5. As a result, *Hewitt* and *Dorsey* are distinguishable from the present Complaint.

Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(a) *General rule.* --The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) LENGTH OF PAYMENT ARRANGEMENTS-- The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

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<sup>1</sup> \$5,460.02 - \$3,700.35 = \$1,749.67.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

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66 Pa.C.S. § 1405(a) and (b). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

The Complainant's monthly household income is \$1,755.00<sup>2</sup> from her employment in addition to \$194.00 per month in food stamps. Ms. Sellers' household income falls between 150% and 250% of the Federal poverty level. As a level 2 income customer, Ms. Sellers is required to retire her non-CAP balance with PECO within three years, or 36 months. See 66 Pa.C.S. § 1405(b)(2). Ms. Sellers' Complaint is granted regarding the portion of her outstanding balance which represents non-CAP arrears.

Consequently, the Complainant's request for a payment arrangement is denied in part, and granted, in part, pursuant to the above discussion.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

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<sup>2</sup> [(\$12/hour x 20 hours/week) + (\$11/hour x 15 hours/week)] x 52 weeks/ year ÷ 12 months/year = \$1,755/month.

4. The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program rates. 66 Pa.C.S. § 1405(c).

5. A customer assistance program is defined as a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program. 66 Pa.C.S. § 1403.

6. The Commission has authority to establish a payment agreement for the non-CAP portion of a mixed arrearage. *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Dontaya Sellers against PECO Energy Company at Docket No. F-2017-2583820 is granted, in part, and denied, in part, in accordance with the discussion section, *supra*.

2. That the formal Complaint is denied as to Dontaya Sellers' request for a payment arrangement on the portion of her balance that is subject to Customer Assistance Program rates.

3. That the formal Complaint is granted as to Dontaya Sellers request for a payment arrangement on the portion of her balance that is not subject to Customer Assistance Program rates.

4. That Dontaya Sellers shall make monthly payments consisting of her current charges or budget bill plus one thirty-sixth ( $1/36^{\text{th}}$ ) of the balance accrued on her account that is not subject to Customer Assistance Program rates, beginning with the first billing due date following the entry of a final Commission Order in this case.

5. That as long as Dontaya Sellers keeps the payment schedule stated in this order, PECO Energy Company shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

6. That, if Dontaya Sellers does not keep the payment schedule stated in this order, PECO Energy Company is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.

7. That the Secretary mark this docket closed.

Date: October 17, 2017

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/s/  
Eranda Vero  
Administrative Law Judge