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Utility shutoff practices in Philadelphia are found *not* to be racially neutral. (2 of 2)

NOTE TO READERS

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PECO shutoff practices found to disproportionately adversely affect persons of color, though utility remains largely indifferent to determining "why."

PECO (electric), an Exelon company providing electric service to residents of the City of Philadelphia, is an excellent example of an electric utility whose credit and collection practices have a disparate adverse impact on households of color. While PECO asserts that its collection practices are racially neutral, a review of PECO's internal policies and procedures, as well as the data, indicates to the contrary.

PECO's Collection Policies and Procedures

PECO places its customers into one of four risk classifications. The Company explains: "Residential customers are placed into one of four risk classifications depending on the presence of a combination of risk factors."[1] Risk Classifications include: (1) High Risk; (2) Medium/High Risk; (3) Medium/Low Risk; and (4) Low Risk.[2] While PECO (Electric) asserts a confidentiality protection for the "number of days difference in timing that a notice of disconnection of service for nonpayment is accelerated for customers deemed to be higher risk through application of various factors," the Company does publicly state that there *is* a difference.[3] As can

[1] OCA-II-039 (attached as Exhibit RDC-6).

[2] Id.

[3] OCA-II-040 (attached as Exhibit RDC-7).

be seen, PECO (Electric) states that the timing of a notice of disconnection "is accelerated for customers deemed to be higher risk. . ."

PECO concedes that two of the factors it considers in deciding whether to accelerate the disconnection of service include: (1) the level of arrears; and (2) the age of arrears. The risk assessment tool used by PECO has never been presented to the Pennsylvania Public Utility Commission for review and approval.

As will be discussed below, the policies identified above are not racially neutral. The impacts, however, are exacerbated, however, by the policies PECO uses to actually schedule disconnections. While PECO (Electric) states that: "Geographic location is not considered when creating a list of eligible customers for collections, nor is geography a factor in the customer notice phase of collections," that is not entirely accurate.

The Company states that "when scheduling disconnections, work is assigned to field crews based on the area they support each day, across all five counties. Work is then scheduled in each county based upon the number of accounts that are eligible to be disconnected for nonpayment as well as proximity to available technicians.

The Company goes on to explain, in response to a question to provide information on the extent to which, and the order in which factors are taken into account in scheduling crews performing nonpayment disconnections:

Work is scheduled for crews performing service disconnections in the following manner:

- Identify termination goal for shift date in question. (Termination targets are set annually to achieve certain levels of bad debt reduction so as to reduce the amount of money that other customers have to pay for those customers that do not pay.)
- Identify how many terminations per Field Technician will be needed to achieve termination goal.
- Consult the eligible job list developed by the Market Switch system,. . .which consists of the accounts that have been reviewed and approved for termination:
- Review eligible job list to assign work in most efficient manner, reducing drive time for each technician.
- Review those routes to determine if there are accounts near the routes that are eligible for 72hr/48hr notifications; the Field Technicians will pivot to providing these required notices if/when the shift goal for terminations is reached.
- Assign the routes to the Field Technicians; terminations are assigned first and then 72hr/48hr notifications.

A summary of these policies and procedures begins the racial impact analysis. The impacts of the PECO (Electric) process need to be assessed as an interconnected whole, rather than as a series of independent decisions.

First, PECO (Electric) establishes a "termination goal" for each shift. To meet this goal, PECO (Electric) then identifies "how many terminations per Field Technician will be needed to achieve termination goal."

Second, one of the factors that is then explicitly considered in deciding how to reach this "termination goal" is the size of arrears. Another factor that is explicitly considered in deciding how to reach this "termination goal" is the "proximity" of potential disconnections to available technicians.

Third, that proximity is "based upon the number of accounts that are eligible to be disconnected for nonpayment. . ."

Fourth, the "number of accounts that are eligible to be disconnected" is based on the size and age of arrears.

PECO (Electric) states that it has undertaken no study or survey that examines the demographic characteristics (e.g., race, ethnicity, income, age) of the Company's disconnections for nonpayment, payment-troubled customers, incidence of arrears, or level of arrears (amongst other things).

The of PECO Policies on Low-Income

The PECO (Electric) focus on the dollar and age of arrears will, by its very nature, tend to focus collection efforts on low-income customers. Consider that, as documented in the Table below, the average arrears of Confirmed Low-Income customers in 2021 was $1,679 as compared to the average arrears of residential customers as a whole ($688). In 2022, the average arrears of Confirmed Low-Income customers was $1,479 as compared to the average arrears of residential customers as a whole ($533).

Moreover, PECO (Electric) data shows that while over the most recent 37 months for which data is available, an average of 56.1% of residential arrears were 60+ days old,[4] 74.4% of the arrears of Confirmed Low-Income customers were.[5] In 31 of the 37 months, more than 50% of the residential arrears were 60+ days old, with no month exceeding 67.2%.[6] In contrast, in 35 of the 37 months, more than 70% of Confirmed Low-Income arrears were 60+ days old, with no month being <u>*less*</u> than 68.5%.[7]

Given the "termination goals" identified by PECO (Electric) each year, and the fact that those goals are set in part by the size and age of arrears, and by the "proximity" of potential disconnections to available technicians. . .based upon the number of accounts that are eligible to be disconnected for nonpayment. . .," it thus comes as no surprise that the nonpayment disconnection rate for residential customers in 2021 was 5.3% (compared to the nonpayment disconnection rate for Confirmed Low-Income customers of

[4] OCA-II-032.

[5] OCA-II-033.

[6] OCA-II-032.

[7] OCA-II-033.

14.8%), while the nonpayment disconnection rate for residential customers in 2022 was 5.6% (compared to the nonpayment disconnection rate for Confirmed Low-Income customers was 18.7%.

The Racial Implications

The PECO policies and procedures have a demonstrable adverse impact on housholds of color. On average, 21.2% of householders in the zip codes served by PECO (Electric) are Black or African-American alone. Of the 236 PECO (Electric) zip codes with matching Census data, 38 have a percentage of Black householders that equals or exceeds this 21.2% number. These 38 zip codes have 29.9% of the total number of householders in the PECO (Electric) service territory.

In contrast, of the 237,997 residential nonpayment disconnections that PECO (Electric) performed in the months of January 2021 through January 2024 (37 months), 148,448 (62.4%) occurred in these 38 zip codes. At the same time, 862,141 of the 1,606,949 nonpayment disconnection notices (53.7%) were issued in these 38 zip codes.

Not only were these disproportionately Black zip codes receiving a disproportionate share of the disconnection notices, in other words, they were experiencing a disproportionate rate of disconnections. Indeed, while residential customers generally experienced roughly 14.8 disconnections for each 100 disconnection notices issued, customers in the disproportionately Black zip codes experienced 17.2 disconnections for each 100 disconnection notices issued.

The Proposed Remedy.

In the 2024 PECO rate case, testimony filed by the Office of Consumer Advocate recommended a multi-step set of remedies. The OCA testimony recommended:

- That PECO (Electric) conduct a root cause analysis to determine what is driving this disproportionate level of utility disconnections within the zip codes with the highest penetration of Black households.

- That once this root cause analysis is conducted, PECO (Electric) should commit to taking steps to address the cause with the commitment of reducing disproportionate disconnections within these zip codes.

- That the extent to which PECO (Electric) mitigates the disproportionate disconnection of service for nonpayment in zip codes with high penetrations of Black households should be reviewed in the next PECO (Electric) base rate case.

- Finally, that the PECO (Electric) risk analysis methodology, both that which underlies its disconnection of service and that which underlies its cash security deposits, be subject to a public review by the Commission’s Bureau of Consumer Services (BCS) with an opportunity provided to stakeholders to assess whether those risk assessment methodologies directly discriminate, or have the effect of discriminating, based on prohibited classes (of which race is only one).

Racial Impacts of Cash Security Deposits

The testimony offered by other public interest intervenors further found that PECO's cash security deposit practices were not racially neutral. That testimony found that the amount collected in security deposits per customer in minority zip codes was nearly twice as much as was collected per customer in White zip codes. The intervenor CAUSE-PA reported that "PECO collects significantly different amounts of security deposits in similarly sized majority White and majority Minority ZIP codes."

That testimony reported that for ZIP codes that are 75% White or greater, the total amount of security deposits collected divided by the total number of customers in those ZIP codes is $6.76. However, in ZIP codes that are 75% Minority or greater, the total amount of security deposits collected divided by the total number of customers in those ZIP codes is $11.71, nearly double the amount collected per customer.

CAUSE-PA illustrated. It noted, for example, that in zip codes 19067 and 19380, both of which have a similar racial composition (84% and 86% White), in 2023, PECO collected security deposits of about $167,000 from 21,398 customers and $110,000 from 21,246 customers respectively. However, in zip code 19134, which has about the same number of customers but is 66% Minority, PECO collected about $295,000 in security deposits from 21,380 customers. Even in zip code 19140, which has fewer customers than 19067 and 19380 but is 89% Minority, CUASE-PA reported that PECO collected about $261,000 in security deposits from 19,615 customers.

CAUSE-PA concluded that "With such a strong racially disparate impact, PECO's policies related to security deposits need to change."[8]

The PECO Response

In PECO's rebuttal to OCA's analysis of the racial impact of its collection policies and procedures, PECO witnesses did not seek to rebut the fact that the nonpayment service disconnections of PECO Electric disproportionately affect neighborhoods of color.

The most PECO did was to advance the conclusory claims that "PECO does not target specific zip codes or classes of customers," that "PECO does not target specific zip codes or classes of individuals," and that "PECO does not know, nor does it track, customers by demographics such as race or ethnicity for purposes of disconnection."

The PECO witness stated that "PECO's termination procedures, credit scoring, and other processes are applied equally to all customers. . ."

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[8] CAUSE-PA stated that its use of the term "minority" referenced an aggregation of "non-white" populations reported by the U.S. Census Bureau. The OCA analysis was focused on "Black" populations as reported by the Census.

The OCA Response

OCA responded that the PECO protestations "are eerily similar to the observation of the philosopher Anatole France, who once observed: 'The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.'"

OCA noted that "even if what [the PECO witness] asserts is true, she simply does not come to grips with the impacts of the policies and practices of PECO Electric. She does not dispute the fact that 38 zip codes have a higher than average percentage of Black residents."

Moreover, OCA noted, PECO witnesses disputed the OCA findings that while the 38 zip codes with concentrated populations of .color had 29.9% of the total number of householders in the PECO (Electric) service territory, they had 62.4% of PECO nonpayment disconnections, and 53.7% of the nonpayment disconnect notices.

The PECO Rate Case Settlement

The PUC rate case resulted in a settlement presented to the Commission in late August 2024. In that settlement, PECO agreed to, within 12 months of the date rates go into effect, to "conduct an assessment" of the racial issues presented in the rate case. PECO further agreed to "meet with" the OCA and other public interest intervenors "to discuss PECO's efforts to ensure that Environmental Justice communities are not inadvertently disproportionately impacted by terminations of service or requests for security deposits."

Summary

OCA's response to PECO"s assertions that it does not discriminate was appropriate. OCA responded to PECO denials by noting that "it is one thing for PECO Electric to assert that it did not know or realize that its credit and collection policies and practices are having a disproportionate adverse effect on persons of color. It is, however, quite another thing to learn of the impact and then choose to ignore it as [the Company's witness] suggests."

The meaningfulness of the PECO settlement remains to be seen. More will be known in 2025 and beyond as it becomes evident whether PECO (electric) seeks to determine in good faith how it may address the identified racial disparities or whether it seeks only to justify its historic actions and policies.

Persons interested in obtaining more information about assessing the racial impacts of utility credit and collection policies and practices can write:

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Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, local planning and zoning, energy efficiency planning, community economic development, poverty, regulatory economics, and public welfare policy.