

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maribel Perez

v.

PECO Energy Company

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C-2016-2551605

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

This decision dismisses a formal Complaint filed by Maribel Perez (Complainant) against PECO Energy Company (PECO or Respondent). Complainant alleged that PECO has improperly billed her for an arrearage that should be a part of her bankruptcy case; however, the parties resolved all issues save whether Complainant is eligible for a Commission directed payment arrangement. The Complaint must be dismissed as the Commission lacks the jurisdiction to order a payment arrangement.

**HISTORY OF THE PROCEEDING**

On June 9, 2016, Complainant filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO alleging improper billing.

PECO filed an Answer to the Complaint on July 5, 2016. In that Answer, PECO asserted that Complainant's bankruptcy was dismissed, and that \$1,038.33 was placed back onto Complainant's account. PECO stated that Complainant's current balance is post-petition debt.

On July 22, 2016, a notice of hearing was sent to the parties setting August 26, 2016, as the date for a telephonic hearing in this case.

I issued a standard form Prehearing Order dated July 25, 2016.

I convened a telephonic hearing on August 26, 2016, at 10:00 a.m. as scheduled. The Complainant appeared and presented testimony but no exhibits. Shawane L. Lee, Esquire, appeared on behalf of PECO, and three exhibits were offered and received into evidence: PECO Exhibit 1, an account activity statement; PECO Exhibit 2, a Customer Assistance Program (CAP) History; and, PECO Exhibit 3, a summarized bankruptcy history. The parties stipulated to the facts of the case, leaving only the issue of whether Complainant is entitled to a Commission directed payment agreement.

The record in this case closed on November 15, 2016, with the filing of the hearing transcript. The case is ready for resolution.

#### FINDINGS OF FACT

1. The Complainant in this case is Maribel Perez who resides at 376 Dieber Road, Schwenksville, Pennsylvania.
2. The Respondent in this case is PECO Energy Company.
3. On July 25, 2012, PECO was notified that Complainant filed for bankruptcy at Docket No. 12-16685 under Chapter 13 of the United States Bankruptcy Code, 11 USC. §§ 101 *et seq.* PECO Exhibit 3.
4. As a result of that Chapter 13 filing, a \$1,038.33 arrearage was transferred from Complainant's account. PECO Exhibit 3.

5. On January 24, 2013, the Complainant's bankruptcy proceeding was dismissed. PECO Exhibit 3.

6. On March 25, 2013, PECO placed the \$1,038.33 arrearage back on Complainant's account. PECO Exhibit 3.

7. On April 13, 2013, PECO was notified that Complainant filed for bankruptcy at Docket No. 13-11378 under Chapter 13 of the United States Bankruptcy Code on February 18, 2013.

8. On April 13, 2013, PECO transferred \$1,989.77 from Complainant's account.

9. As of August 10, 2016, the bankruptcy case at Docket No. 13-11378 was still active.

#### DISCUSSION

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

It is uncontested that the Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on February 18, 2013. When the Respondent became aware of the Complainant's Chapter 13 bankruptcy filing, it transferred \$1,989.77 from Complainant's

account. The Complainant's Chapter 13 bankruptcy is an active proceeding. Since the Complainant's Chapter 13 bankruptcy is active, the Commission lacks the authority to order a payment arrangement for the Complainant.

The Commission has previously addressed this issue. In *Chavous v. PECO Energy Company, Complaint-Appellant*, Docket No. F-2010-2215689 (Order entered December 20, 2011) (*Chavous*), the Commission allowed the initial decision of Administrative Law Judge (ALJ) Marlane R. Chestnut to become final without further action. In *Chavous*, ALJ Chestnut ruled that the Commission lacked jurisdiction to order a payment arrangement to a debtor with an active Chapter 13 bankruptcy proceeding, even where the subject of the payment arrangement is a post-petition arrearage.

ALJ Chestnut explained that a Chapter 13 bankruptcy is an ongoing payment plan in which all of the debtor's assets are included in the estate under the control of the bankruptcy trustee. A Chapter 13 bankruptcy allows the debtor to repay his or her debts under the management of the bankruptcy trustee, who controls the debtor's estate and makes the payments until the bankruptcy petition is discharged or dismissed. Pursuant to Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. §1306(a)(1) and (2), the debtor's estate includes both property and earnings acquired after the commencement of the case but before the case is closed or dismissed.

ALJ Chestnut concluded that the Commission was without jurisdiction to issue an order that affects the disposition of the debtor's income or assets since all of the debtor's estate is subject to the exclusive control of the bankruptcy trustee. All of the debtor's assets are included in the estate for disposition by the Bankruptcy Court, whether those assets were acquired before or after the debtor filed for protection under Chapter 13.

Under the reasoning in *Chavous*, the Complaint must be dismissed as the Commission lacks the jurisdiction to order a payment arrangement. Those parts of the Complaint alleging misbilling by PECO are dismissed as the parties stipulated that the amount at issue is, in fact, owed by Complainant.

## CONCLUSIONS OF LAW

1. The parties to and the subject matter of this proceeding are outside the jurisdiction of the Commission. *Chavous v. PECO Energy Company, Complaint-Appellant*, Docket No. F-2010-2215689 (Order entered December 20, 2011).

2. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

4. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa Super. 1945).

5. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Maribel Perez at Docket No. C-2016-2551605 against PECO Energy Company is dismissed.

