

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shirley Elliott	:	
	:	
v.	:	C-2016-2553242
	:	
PECO Energy Company	:	

INITIAL DECISION
GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS
AND DISMISSING COMPLAINT

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

A customer filed a complaint requesting a payment arrangement. This decision dismisses the complaint because the Commission lacks jurisdiction to order a payment arrangement where the customer has filed a Chapter 13 bankruptcy petition and is subject to the jurisdiction of the United States Bankruptcy Court.

HISTORY OF THE PROCEEDING

On June 14, 2016, Shirley Elliott (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent), at Docket Number C-2016-2553242. The Complaint was a timely appeal of a decision of the Commission's Bureau of Consumer Services in case number 3436767. In her Complaint, Ms. Elliott requested a payment arrangement with PECO. No other relief was requested in the Complaint.

The Commission served the Complaint on PECO on June 27, 2016. On July 8, 2016, PECO filed an Answer to Ms. Elliott's Complaint. In its Answer, PECO admitted or denied the various averments Ms. Elliott made in her Complaint.

The case was originally scheduled for a telephonic hearing before Presiding Special Agent Tiffany L. Tran on August 24, 2016, via telephonic hearing notice dated July 26, 2016 mailed to the parties.

Ms. Elliott requested a continuance of the initial telephonic hearing and the request was not opposed by PECO. The request was approved by Special Agent Tran via an interim order granting Complainant's request for continuance of hearing issued on August 23, 2016. A hearing cancellation / reschedule notice was sent to the parties on August 26, 2016, indicating that the new telephonic hearing date would be October 18, 2016.

On September 26, 2016, PECO sent a letter to Special Agent Tran, requesting a stay of the proceedings due to the fact that Ms. Elliott had filed a Chapter 13 bankruptcy petition in the Eastern District Court of Pennsylvania. The letter attached docket entries in the bankruptcy case.

In light of the intervening bankruptcy proceedings, it was determined that this case should be assigned to an Administrative Law Judge, and the matter was assigned to my office. In light of the bankruptcy filing, I issued a cancellation notice dated October 11, 2016, cancelling the October 18, 2106 hearing.

On March 29, 2017, in response to my request for a status update, counsel for PECO advised that the bankruptcy proceeding was still active and that the matter should continue to be held in abeyance.

On May 24, 2017, PECO filed a Motion for Judgment on the Pleadings, on the basis that the Commission does not have jurisdiction to order a payment arrangement where a customer is subject to an active Chapter 13 bankruptcy proceeding. The Motion contained a

Notice to Plead, indicating that a response was due no later than June 13, 2017. Ms. Elliott did not file a response to the Motion.

The Motion for Judgment on the Pleadings is ready for a decision. For the reasons discussed below, I will grant the Motion.

FINDINGS OF FACT

1. The Complainant in this case is Shirley Elliott.
2. The Respondent in this case is PECO Energy Company.
3. On June 14, 2016, the Complainant filed a Complaint against the Respondent.
4. The Respondent filed an Answer to the Complaint on July 8, 2016.
5. The Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on September 2, 2016 at Petition Number 16-16215-jkf.
6. The Respondent filed a Motion for Judgment on the Pleadings on May 24, 2017.
7. The Complainant has not filed an Answer to the Motion for Judgment on the Pleadings.
8. The Complainant's Chapter 13 bankruptcy case is ongoing.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code §5.102 govern motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. Williams v. Lewis, 466 A.2d 682 (Pa. Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Order entered December 19, 2003). In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa. Super. 1985).

Viewing the averments in the Complainant's complaint as true for purposes of disposing of the Motion for Judgment on the Pleadings, the complaint simply requests that the Commission order a payment arrangement for the Complainant.

The Respondent asserts in its Motion that the Complainant filed for protection under Chapter 13 of the United States Bankruptcy Code on September 2, 2016. The Complainant's Chapter 13 bankruptcy is an active proceeding. Since the Complainant's Chapter 13 bankruptcy is active, the Respondent argues that the Commission lacks the authority to order a payment arrangement for the Complainant. The Respondent is correct.

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 debtors 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. The Commission followed Chavous in McGrath v. PECO Energy Co., Docket No. C-2012-2284024 (Final Order Entered July 2, 2012).

The Complainant has not denied that she filed for protection under Chapter 13 of the United States Bankruptcy Code on September 2, 2016. The Complainant has not denied that her Chapter 13 bankruptcy is an active proceeding.

Since no factual issue pertinent to the resolution of this case exists, a hearing is unnecessary. The Respondent is entitled to judgment as a matter of law. The Commission's ruling in Chavous controls the outcome of this case. Granting the Respondent's Motion for Judgment on the Pleadings is appropriate in these circumstances.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this proceeding. 66 Pa.C.S. § 701.

2. In this case there are no material facts in dispute. 52 Pa.Code § 5.102.
3. The Respondent is entitled to judgment as a matter of law. 52 Pa.Code § 5.102.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by PECO Energy Company at Docket Number C-2016-2553242 is granted.
2. That the Complaint filed by Shirley Elliott at Docket Number C-2016-2553242 is dismissed.
3. That the record at Docket Number C-2016-2553242 is marked closed.

Dated: June 27, 2017

/s/
Andrew M. Calvelli
Administrative Law Judge