

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kristopher Haddad	:	
	:	
v.	:	C-2019-3008472
	:	
Duquesne Light Company	:	

INITIAL DECISION
GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision grants a Motion for Judgment on the Pleadings filed in this matter by Duquesne Light Company (DLC or Company) with respect to the formal Complaint of Kristopher Haddad (Complainant). The Complaint must be dismissed for lack of jurisdiction.

HISTORY OF THE PROCEEDINGS

On March 6, 2019, Complainant filed a formal Complaint against DLC with the Pennsylvania Public Utility Commission (Commission) in which Complainant stated that DLC had threatened to disconnect his electric service. Complainant contested DLC's demand for a \$362 security deposit.

On April 2, 2019, DLC filed an Answer to the Complaint and New Matter. The Answer and New Matter were properly served on Complainant with a Notice to Plead. In its Answer, DLC denied any violation of the Public Utility Code (Code) or of the rules and regulations of the Commission. DLC asserted that the deposit referred to by Complainant was assessed on Complainant's account after he filed a Chapter 13 Bankruptcy Petition on

August 28, 2018 at Docket No. 18-23387-TPA, United States Bankruptcy Court for the Western District of Pennsylvania. See DLC Exhibit A to New Matter. DLC contends that the deposit was assessed pursuant to 11 U.S. Code § 366(b) of the Federal Bankruptcy Code which permits a utility company to assess a security deposit on a customer who files bankruptcy and that the Commission consequently lacks the jurisdiction to adjudicate the present Complaint.

Also on April 2, 2019, DLC filed Preliminary Objections to the Complaint, properly endorsed with a Notice to Plead. DLC advanced the same arguments in its Preliminary Objections as those set forth in its New Matter. DLC asked that the Complaint be dismissed with prejudice.

On May 8, 2019, DLC filed a Motion for Judgment on the Pleadings.

Complainant has not filed an Answer or responsive pleading to DLC's New Matter, to DLC's Preliminary Objections, or to DLC's Motion for Judgment on the Pleadings.

DLC's Motion for Judgment on the Pleadings is ready for decision.

FINDINGS OF FACT

1. Complainant is Kristopher Haddad who receives electric service at 645 Duquesne Blvd., Floor 2, Duquesne, Pennsylvania.

2. Respondent is Duquesne Light Company, a Commission jurisdictional electric distribution company.

3. On August 28, 2018, Complainant filed for bankruptcy at Docket No. 18-23387-TPA, United States Bankruptcy Court for the Western District of Pennsylvania.

4. By letter dated September 26, 2018, DLC informed Complainant that a \$362 security deposit was being assessed against his account and that failure to pay the deposit would result in termination of electric service.

DISCUSSION

From the outset, I note that DLC is seeking dismissal of the Complaint based upon assertions in New Matter; therefore, the appropriate filing is DLC's Motion for Judgment on the Pleadings rather than its Preliminary Objections. As this case is resolved through a ruling on the Motion for Judgment on the Pleadings, the Preliminary Objections are moot and will be dismissed.

I will consider the issue of the Commission's jurisdiction in this matter in order to secure a just, speedy and inexpensive determination of this proceeding pursuant to 52 Pa.Code § 1.2(a). This will not adversely affect the Complainant's rights since he has had notice of the issue and an opportunity to respond.

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 that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa.Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company*, 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 admitted. 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).

The facts alleged in the Complaint are that Complainant objects to paying a \$362 security deposit and that DLC has given Complainant notice that his service may be terminated if he does not pay the deposit.

The facts alleged in DLC's New Matter and Motion that are not contested or refuted by Complainant are: (1) that Complainant is responsible for \$1,539.57 balance on his electric account for service at 645 Duquesne Blvd., Floor 2, Duquesne, Pennsylvania; (2) that on August 28, 2018, Complainant filed for Chapter 13 bankruptcy at Docket No. 18-23387-TPA, United States Bankruptcy Court for the Western District of Pennsylvania; and (3) that by letter dated September 26, 2018, DLC informed Complainant that a \$362 security deposit was being assessed against his account and that failure to pay the deposit would result in termination of electric service. Since Mr. Haddad failed to file an answer to the new matter, these facts can be deemed admitted. *See*, 52 Pa.Code § 5.63(b) (providing that the “[f]ailure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.”)

There is no genuine issue as to a material fact in this case, and DLC is entitled to judgment as a matter of law as will be explained, below.

Citing the United States Bankruptcy Code at 11 U.S. Code § 366(b), DLC maintains that it is permitted to assess a security deposit on a customer who files for bankruptcy as adequate assurance that the customer will make future payments. Further, without adequate assurance, a utility is permitted to terminate a customer's electric service. *Berkey v. Metropolitan Edison Co.*, Docket No. F-2018-3000765 (Final Order entered December 12, 2018). DLC avers that it notified Complainant of the assessment of a deposit on his account by letter dated September 26, 2018. See DLC Exhibit B to New Matter. Asserting that the Commission lacks subject matter jurisdiction over Complainant's post-petition debt, DLC asks that the Complaint be dismissed with prejudice. DLC contends that the deposit was assessed as part of the bankruptcy proceeding and that the Commission consequently lacks the jurisdiction to adjudicate the present Complaint.

In ruling on a jurisdictional issue, it is clear that the Commission is bound by the express provisions of the Pennsylvania Public Utility Code (Code) and "possesses only the authority the state legislature has specifically granted to it in the Code[s] . . . express language or necessary implication therefrom." *Sowers v. PPL Gas Utilities Corp.*, Docket No. C-20066530, (entered January 26, 2007) (citing 66 Pa C.S. §§ 1011, et seq.); See *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Auth. v. Pa. Public Util. Comm'n.*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa.Super. 1978); *Pa. Dep't of Highways v. Pa. Public Util. Comm'n.*, 182 A.2d 267 (Pa.Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

The Commission lacks subject matter jurisdiction over Complainant's post-petition debt. Section 701 of the Code (66 Pa.C.S § 701) permits any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission. 66 Pa. C.S. § 701; See also, 52 Pa. Code § 5.21(a). However, as provided by Section 1334 of Title 28, United States Code, 28 U.S.C. § 1334, a United States District Court and its bankruptcy court has jurisdiction over all civil proceedings arising under Title 11, and the bankruptcy court has exclusive jurisdiction of all property of the debtor, wherever located, as of the commencement of the proceeding. See, *Anyanwu v. Philadelphia Electric Company*, 55 Pa. PUC 221, 222 (1981). A petition for bankruptcy preempts the Commission from establishing any payment arrangement with respects to any amounts owed by the Complainant to the Respondent. *Id.* All claims against the debtor, including claims arising subsequent to the filing of a petition (11 U.S.C. Section 1305), are to be adjusted and paid in accordance with the plan required by Chapter 13, Subchapter II, 11 U.S.C. § 1321, et seq. *Tookes v Philadelphia Electric Co.* C-S12573.

Accordingly, Complainant must seek the requested relief in bankruptcy court as the Commission lacks jurisdiction in this matter.

CONCLUSIONS OF LAW

1. The failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa.Code § 5.63(b).

2. The Commission has no jurisdiction to adjudicate Complainant's objection to a request for a post-bankruptcy security deposit. 28 U.S.C. § 1334.

3. A petition for bankruptcy preempts the Commission from establishing any payment arrangement with respects to any amounts owed by the Complainant to the Respondent. 28 U.S.C. § 1471.

4. All claims against a debtor in bankruptcy, including claims arising subsequent to the filing of a petition (11 U.S.C. § 1305), are to be adjusted and paid in accordance with the plan required by Chapter 13, Subchapter II, 11 U.S.C. § 1321, *et seq.* *Tookes v. Philadelphia Electric Co.* C-S12573.

5. It is just, reasonable and in the public interest that the Complaint filed at Docket No. C-2019-3008472 be dismissed with prejudice.

ORDER

THEREFORE,

IT IS ORDERED:

1. The Motion for Judgment on the Pleadings filed by Duquesne Light Company at Docket No. C-2019-3008472 is sustained.

2. The Preliminary Objections filed by Duquesne Light Company at Docket No. C-2019-3008472 are dismissed as moot.

3. That the formal Complaint filed by Kristopher Haddad against Duquesne Light Company at Docket No. C-2019-3008472 is dismissed with prejudice for lack of jurisdiction.

4. That the Secretary mark this docket closed.

Dated: July 2, 2019

/s/
Dennis J. Buckley
Administrative Law Judge