

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Carla Matronics**

**Public Meeting December 19, 2019**

**2617235-OSA**

**v.**

**Docket No. C-2017-2617235**

**West Penn Power Company**

**MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission are the Exceptions filed by the Complainant to the Initial Decision (ID) dismissing the above-captioned Formal Complaint against West Penn Power Company (West Penn). The Complaint alleges (1) West Penn was threatening to disconnect electric service and (2) there were incorrect charges on the Complainant's electric bill. For relief, the Complaint requests a Commission payment arrangement. The ID denies the billing and service termination portions of the Complaint, finding that the Complainant did not meet her burden of proof. The ID also denies the request for a Commission payment arrangement based on the Complainant's poor payment history. The Complainant filed five Exceptions to the ID relating to the denial of her payment arrangement request. West Penn filed Replies to Exceptions.

In each case before it, the Commission cannot act unless it has jurisdiction over both the parties to a dispute and the subject matter of a dispute. It is fundamental that the Commission must act within, and cannot exceed, its jurisdiction.<sup>1</sup> Moreover, lack of subject matter jurisdiction is an issue that cannot be waived, may be raised at any stage of a case, and may be raised by the Commission *sua sponte*.<sup>2</sup> Here, it is clear from the record that the Commission lacks subject matter jurisdiction to grant the requested Commission payment arrangement.

In this case, the record is clear that the Complainant has an active Chapter 13 Bankruptcy proceeding before the United States Bankruptcy Court for the Western District of Pennsylvania. Tr. at 24-25. It is well established that the Commission lacks jurisdiction to order a payment arrangement for a debtor with an active Chapter 13 bankruptcy proceeding, even where the balance is a post-bankruptcy filing arrearage.<sup>3</sup> Therefore, the Commission cannot order disbursement of the Complainant's assets and does not have jurisdiction to establish a payment arrangement for the Complainant's electric service.

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<sup>1</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

<sup>2</sup> *Commonwealth v. Little*, 455 Pa. 163, 314 A.2d 270 (1974).

<sup>3</sup> See, *Danjou v. West Power Company*, F-2018-3006430 (Final Order Entered July 22, 2019); see also, *Lekawa v. West Penn Power Company and Titan Gas & Power, LLC*, Docket No. F-2017-2629733 (Final Order entered January 17, 2019), citing *Perez v. PECO Energy Company*, Docket No. C-2016-2551605 (Final Order entered May 18, 2017); *Chavous v. PECO Energy Company*, Docket No. F-2010-2215689 (Final Order entered December 20, 2011); *Kossmann v. PECO Energy Company*, Docket No. C-2017-2583425 (Final Order entered August 31, 2017).

Pursuant to 28 U.S.C. § 1334, federal district courts and their United States Bankruptcy Courts have jurisdiction over all civil proceedings arising under Title 11, including a Chapter 13 petition for bankruptcy. Section 1334 further establishes that the bankruptcy court has exclusive jurisdiction of all property of the debtor.<sup>4</sup>

Unlike a Chapter 7 bankruptcy proceeding (in which a debtor's estate is expeditiously liquidated and distributed to creditors), a Chapter 13 bankruptcy allows a debtor to repay debts under the management of a bankruptcy trustee, who controls the debtor's estate and makes the distributions until the bankruptcy petition is discharged or dismissed. Pursuant to Chapter 13 of the 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, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title [11 USCS §§ 701 et seq., 1101 et seq., or 1201 et seq.], whichever occurs first." By statute, the debtor's assets (with certain limited exceptions not relevant here), whether acquired pre- or post-petition, are included within the estate for disposition by the Bankruptcy Court. As explained by the United States Court of Appeals for the Third Circuit in *Begley v. Philadelphia Electric Co.*, 760 F.2d 46, 50 (3d Cir. Pa. 1985), discussing a Commission proceeding (*Anyanwu v. Philadelphia Electric Co.*, 55 Pa. P.U.C. 221 (1981)), "Further, *Anyanwu* involved a Chapter 13 reorganization, under which the bankruptcy court retains jurisdiction over both pre-petition and post-petition income and obligations . . .". *Id.*

A Chapter 13 bankruptcy is an on-going repayment plan in which all of a debtor's assets (including property, income and debts acquired pre-petition and post-petition) are included in the debtor's estate under the exclusive control of the bankruptcy trustee, and the bankruptcy court retains jurisdiction over both pre-petition and post-petition income and debts. Thus, the Commission lacks jurisdiction to issue an order that affects the disposition of the income or assets of a debtor with an active Chapter 13 bankruptcy proceeding, even where the subject of the payment arrangement is a post-petition arrearage.

Accordingly, the Commission lacks jurisdiction to address the Complainant's request for a Commission payment arrangement;

**THEREFORE, I move that:**

1. The Exceptions filed by Carla Matrunics are denied, consistent with this Motion.
2. The Initial Decision is adopted, in part, and modified, in part, consistent with this Motion.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**DATE: December 19, 2019**

  
**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**

<sup>4</sup> See, Title 28 of the United States Code Section 1334, 28 U.S. C. §1334 (a) and (e) (pertaining to jurisdiction of the federal district courts and their bankruptcy courts).