

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

Adam Kessler

Public Meeting March 12, 2020

2630792-OSA

v.

Docket No. C-2017-2630792

PECO Energy Company

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Commission for consideration are the Exceptions of Adam Kessler to an Initial Decision which dismissed Mr. Kessler's complaint against PECO Energy Company (PECO).

In his October 2017 complaint, Mr. Kessler requested a payment arrangement on his account. The ALJ dismissed the complaint for lack of jurisdiction because Mr. Kessler has an active Chapter 13 bankruptcy proceeding. It is well established that the Commission lacks jurisdiction to order a payment arrangement for a customer with an active Chapter 13 bankruptcy proceeding.¹

In his Exceptions, Mr. Kessler asserts that his bankruptcy proceeding has been discharged since the time of the hearing. Mr. Kessler did not supply any documentary evidence in support of his assertion, but he invited the Commission to contact the bankruptcy trustee to verify his claim. PECO, in its Reply Exceptions, disputes that the bankruptcy has been discharged, and requests that the ALJ's Initial Decision be sustained.

Based on a review of the record and the Exceptions and Replies thereto, Mr. Kessler's Exceptions should be denied and the ALJ's Initial Decision should be affirmed. As the Complainant, Mr. Kessler bears the burden of proof in this proceeding.² Mr. Kessler must prove that his bankruptcy has been discharged in order to be eligible for a payment arrangement from the Commission, but he has failed to do so. Mr. Kessler has not provided any new evidence related to the status of his bankruptcy proceeding.

As the ALJ correctly concluded in the Initial Decision, and as Mr. Kessler does not dispute, the Commission lacks jurisdiction to order a payment arrangement for a debtor with an active Chapter 13 bankruptcy proceeding. Since Mr. Kessler has not proved that his bankruptcy has been discharged, the Commission does not have jurisdiction to consider his request for a payment arrangement. Mr. Kessler is free to request a payment arrangement when he can demonstrate that his bankruptcy has been discharged.

¹ *Carla Matronics v. West Penn Power Company*, Docket No. C-2017-2617235 (Order entered January 9, 2020)

² 66 Pa.C.S. § 332(a)


I would also note that since the filing of this complaint, Mr. Kessler's account balance has increased from approximately \$3,000 to over \$8,000 at the time of the hearing. This is Mr. Kessler's post-bankruptcy petition balance, so it does not include his approximately \$5,600 balance that PECO set aside after being notified of the bankruptcy filing. At the time of the hearing on remand in May 2019, Mr. Kessler had not made any payments on his account since March 2018.

Mr. Kessler is responsible for paying the undisputed portion of his bills on or before the billing due date while this complaint is pending³, and PECO may pursue termination of service for Mr. Kessler's failure to make those payments.⁴ The Commission's complaint process should not be used to avoid paying bills or to avoid termination for non-payment.

THEREFORE, I MOVE THAT:

1. The Exceptions are denied.
2. The ALJ's Initial Decision is affirmed.
3. The Formal Complaint of Adam Kessler is dismissed.
4. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: March 12, 2020



JOHN F. COLEMAN, JR.
COMMISSIONER

³ 52 Pa.Code § 56.181

⁴ 52 Pa.Code §§ 56.81, 56.164