

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Barrick	:	
	:	C-2022-3031575
v.	:	
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint for lack of jurisdiction because the Complainant’s Chapter 13 bankruptcy proceeding remains active.

**HISTORY OF THE PROCEEDINGS**

On March 22, 2022, John Barrick, Complainant, filed a Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL”). On the Complaint form, Mr. Barrick checked the box indicating that he would like a payment arrangement. As relief, Mr. Barrick states in the Complaint that he would like the Commission to reinstate his original payment arrangement with PPL that required him to pay the monthly bill plus \$120.

On April 13, 2022, PPL filed an Answer, denying all material allegations, specifically denying that the company did not honor a previous payment agreement. PPL also stated in the Answer that the Complainant and PPL have entered into over 20 payment

agreements since 2012 and that the Complainant defaulted on these payment agreements. PPL averred that Mr. Barrick previously filed two informal Complaints with the Commission's Bureau of Consumer Services, Case Nos. 3695808 and 3784068, and that they were dismissed because the Commission lacked jurisdiction due to the Complainant's active bankruptcy proceedings.

PPL's Answer also included New Matter in which PPL stated that the Complainant and Danelle Barrick filed a Chapter 13 Bankruptcy Petition on December 20, 2016 and that it remains active. PPL attached a copy of the Petition to the Answer and asserted that the Commission lacks jurisdiction to order a payment arrangement due to the active Chapter 13 proceedings.

Also on April 13, 2022, PPL filed a Preliminary Objection, reiterating that the matter should be dismissed due to lack of jurisdiction because the Complainant is seeking a payment arrangement but has a Chapter 13 bankruptcy petition that remains active. The Preliminary Objection included a Notice to Plead which advised the Complainant that he had ten days from the date of service to file an answer.

On May 19, 2022, a Motion Judge Assignment Notice was issued assigning the Preliminary Objection to me for disposition.

On May 24, 2022, the Complainant filed another copy of his Complaint with a copy of a letter to the Commission stating that PPL is "not living up to their payment arrangement with me" and that he was trying to reinstate a previous payment agreement.

#### FINDINGS OF FACT

1. The Complainant is John Barrick, a PPL customer at 1015 Topview Drive, Harrisburg, Pennsylvania.
2. The Respondent is PPL Electric Utilities Corporation.

3. On December 20, 2016, John Barrick and Danelle Barrick filed a petition for Chapter 13 bankruptcy with the U.S. Bankruptcy Court for the Middle District of Pennsylvania at Docket No. 1:16-bk-05140-HWV (Chapter 13 Petition).

4. On March 22, 2022, Mr. Barrick filed a Complaint with the Commission seeking a payment arrangement consistent with a payment agreement that he entered into with PPL.

5. On April 13, 2022, PPL filed an Answer, New Matter and Preliminary Objection.

6. The Preliminary Objection filed by PPL states that the Complaint has an active Chapter 13 bankruptcy and therefore the matter before the Commission should be dismissed because the Commission does not have jurisdiction to award a payment arrangement.

7. On May 24, 2022, the Complainant filed another copy of his Complainant with a copy of an email to the Commission attached.

8. The Complainant did not dispute that his Chapter 13 bankruptcy remains active.

9. The Complainant did not file a response to the New Matter or the Preliminary Objection.

10. The Complainant's Chapter 13 Bankruptcy remains active.

### DISCUSSION

The grounds for granting Preliminary Objections are found in Section 52 Pa. Code § 5.101(a). It states in pertinent part:

**§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

The Commission must view the facts in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18,

1994); *see also*, *Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Therefore, a preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

PPL contends that the matter should be dismissed because the Complainant only seeks a payment arrangement and the Commission lacks subject matter jurisdiction due to the Complainant's active Chapter 13 bankruptcy proceeding. PPL attached to its Preliminary Objection a copy of documentation showing activity in the Complainant's Chapter 13 bankruptcy proceedings. PPL Preliminary Objection, Exhibit B.

The Complainant has not disputed that his Chapter 13 bankruptcy proceeding remains active, as stated in the New Matter and the Preliminary Objection. The Complainant did not file a reply to the New Matter or to the Preliminary Objection. Commission Regulations provide that 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). Therefore, it is deemed admitted that the Complainant's Chapter 13 Bankruptcy remains active.

Further, PPL notes, the Complainant's only request for relief is that the Commission grant him a new payment agreement that is consistent with the terms of his "original" payment agreement. Complaint ¶5. As the Commission has stated, "[I]t is well established that the Commission lacks jurisdiction to order a payment arrangement for a customer with an active Chapter 13 bankruptcy proceeding." *Kessler v. PECO Energy Co.*, 2020 Pa. PUC LEXIS 277, at \*10 (Order entered Mar. 18, 2020) (citing *Matronics v. W. Penn Power Co.*, Docket No. C-2017-2617235 (Order entered Jan. 9, 2020)).

Federal District Courts and United States Bankruptcy Courts, under 28 U.S.C. § 1334, have jurisdiction over all civil proceedings arising under Title 11, including a Chapter 13 petition for bankruptcy. Further, Section 1334 provides that the bankruptcy court has exclusive jurisdiction of all property of the debtor. 28 U.S.C. §1334 (a) and (e).

The Third Circuit of the United States Court of Appeals has also determined that in a Chapter 13 reorganization, a bankruptcy court retains jurisdiction over both pre-petition and post-petition income and obligations. See *Begley v. Phila. Elec. Co.*, 760 F.2d 46 (3d Cir. Pa. 1985), discussing Commission proceeding *Anyanwu v. Phila. Electric Co.*, 55 Pa.P.U.C. 221 (1981).

The Commission more recently confirmed that the Commission does not have jurisdiction to order a payment arrangement when the customer has an active Chapter 13 bankruptcy proceeding. *Lekawa v. W. Penn Power Co. and Titan Gas & Power, LLC*, Docket No. F-2017-2629733 (Final Order entered January 17, 2019), citing *Perez v. PECO Energy Co.*, Docket No. C-2016-2551605 (Final Order entered May 18, 2017). This includes arrearages incurred following the bankruptcy filing. *Id.*; see also, *Danjou v. W. Penn Power Co.*, Docket No. F-2018-3006430 (Opinion and Order entered July 22, 2019). Therefore, the Preliminary Objection of PPL will be sustained, and the Complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. A party may file preliminary objections alleging that there is lack of Commission jurisdiction or pleadings contain impertinent matters. 52 Pa. Code § 5.101(a)(1) and (2).

2. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

3. The Complainant has an active Chapter 13 bankruptcy proceeding and therefore the Commission lacks jurisdiction to order a payment arrangement. *Lekawa v. W. Penn Power Co. and Titan Gas & Power, LLC*, Docket No. F-2017-2629733 (Final Order entered January 17, 2019).

4. The Commission does not have jurisdiction to order a payment arrangement regarding either pre- or post-filing arrearages of the Complainant's active Chapter 13 bankruptcy petition. *Danjou v. W. Penn Power Co.*, Docket No, F-2018-3006430 (Opinion and Order entered July 22, 2019).

ORDER

THEREFORE,

IT IS ORDERED

1. That the Preliminary Objection filed by PPL Electric Utilities Corporation, Inc. in the matter of John Barrick v. PPL Electric Utilities Corporation at Docket Number C-2022-3031575 is sustained.

2. That the Complaint in the matter of John Barrick v. PPL Electric Utilities Corporation at Docket Number C-2022-3031575 is dismissed.

3. That this matter be marked closed.

Date: June 17, 2022

\_\_\_\_\_/s/  
Darlene D. Heep  
Administrative Law Judge