

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Genevieve K. Froehlich,	:	
	:	
v.	:	F-2022-3034545
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a Formal Complaint against her electric distribution company wherein she is seeking a more affordable payment arrangement for the payment of outstanding charges on her account. The Complainant currently has an active Chapter 13 bankruptcy proceeding. In this Initial Decision, I will grant the Preliminary Objections filed by the Respondent and dismiss the Formal Complaint because the Commission does not have jurisdiction to order a payment arrangement for a customer with an active Chapter 13 bankruptcy proceeding.

HISTORY OF THE PROCEEDING

On July 16, 2022, the Complainant, Genevieve K. Froehlich, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) at Docket Number F-2022-3034545. The Formal Complaint is a timely appeal from the decision of the Commission’s Bureau of Consumer Services on Ms. Froehlich’s Informal Complaint at BCS Case No. 3832668.

On her Formal Complaint form, Ms. Froehlich checked the boxes indicating that the utility was threatening to shut off her service and requesting a payment arrangement. Ms. Froehlich stated in her complaint that she filed for bankruptcy several years ago and was currently paying approximately \$1,500 per month on her mortgage. She averred that her bankruptcy proceeding should be discharged in about 12-13 months. She requested that she be permitted to pay \$200 per month on her PPL account.

On September 12, 2022, PPL filed an Answer with New Matter and Preliminary Objections (POs) to Ms. Froehlich's complaint. In its Answer, PPL admitted that it issued a termination notice to the Complainant due to an outstanding balance of \$5,560.99. PPL averred that it stayed termination of her PPL account upon receiving notification of the filing of the Formal Complaint. PPL further averred that Ms. Froehlich defaulted on several previous payment arrangements established with the company. In its New Matter, to which was attached a Notice to Plead, PPL argues that due to the pending Chapter 13 bankruptcy proceeding, the Commission lacks jurisdiction to order a payment arrangement for Ms. Froehlich. PPL requests that the complaint be dismissed. Ms. Froehlich did not file an Answer to PPL's New Matter.

In its POs, to which was attached a Notice to Plead, PPL again argues that, because of the pending Chapter 13 bankruptcy proceeding, the Commission does not have jurisdiction to order a payment arrangement for the payment of the outstanding charges on Ms. Froehlich's PPL account. PPL requests, therefore, that the Commission dismiss the Complaint. Ms. Froehlich did not file an Answer to PPL's POs.

By Motion Judge Assignment Notice dated October 12, 2022, PPL's POs were assigned to me. The POs are ready for disposition.

FINDINGS OF FACT

1. The Complainant is Genevieve K. Froehlich.

2. The Respondent is PPL Electric Utilities Corporation, a jurisdictional public utility providing electric distribution service in the Commonwealth of Pennsylvania.

3. Respondent provides electric distribution service to Ms. Froehlich.

4. On September 12, 2018, the Complainant filed a Chapter 13 Bankruptcy Petition. Complaint ¶5; PPL New Matter ¶¶4-7.

5. On July 16, 2022, the Complainant filed her Formal Complaint against PPL in which she is requesting a payment arrangement for the payment of outstanding charges on her PPL account.

6. On September 12, 2022, PPL filed an Answer with New Matter to Ms. Froehlich's complaint.

7. On September 12, 2022, PPL filed Preliminary Objections to Ms. Froehlich's complaint.

8. Ms. Froelich did not file a response to either PPL's New Matter or PPL's Preliminary Objections.

DISCUSSION

PPL provides electric distribution service to the Respondent. As of the date of the filing of PPL's answer to her complaint, Ms. Froehlich had an outstanding balance on her PPL account in the amount of \$5,560.99. On September 27, 2018, Ms. Froehlich filed a Chapter 13 Bankruptcy Petition. Her bankruptcy proceeding is still active. Ms. Froehlich requests a payment arrangement for her PPL charges whereby she would pay \$200 per month.

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435

(Opinion and Order entered July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. ” *Dept. of Auditor General v. State Emps.’ Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (first citing *P. J. S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa. Cmwlth. 1996); and then citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

The rules regarding preliminary objections are as follows:

§ 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).

In reviewing preliminary objections, only the facts in the pleadings filed by the nonmoving party can be presumed to be true in order to determine whether recovery is possible. *Pa. State Lodge, Fraternal Order of Police v. Dept. of Conservation & Nat. Res.*, 909 A2d 413 (Pa. Cmwlth. 2006), *aff'd*, 924 A.2d 1203 (Pa. 2007). The reviewing authority must accept as true the well-pled averments set forth in the complaint and any responsive documents filed by Complainants, and all inferences reasonably deducible therefrom. Conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion will not be accepted as true for purposes of evaluating preliminary objections. "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections." *Corman. v. The Nat'l Collegiate Athletic Ass'n*, 74 A.2d 1149 (Pa. Cmwlth. 2013).

In order for the Complainant to prevail, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Respondent in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a).

As an administrative agency, the Commission must act within and cannot exceed its jurisdiction. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996). For example, the Commission is not authorized to grant monetary damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996).

In her complaint, Ms. Froehlich requests that she be permitted to pay "\$200 a month including some of the past due bill." Complaint ¶5. She explains that she filed for bankruptcy several years ago and is required, as part of the bankruptcy, to pay an additional \$750 a month toward her mortgage in addition to the regular \$750 she pays each month for her mortgage. She attached to her complaint a 2018 document from the Bankruptcy Court indicating a Chapter 13 proceeding and scheduling a hearing on December 5, 2018.

PPL argues in its POs that, because of the pending Chapter 13 Bankruptcy proceeding, the Commission does not have jurisdiction to grant the relief sought by Ms. Froehlich. PPL cites to several case decisions in support of its position that the Commission lacks subject matter jurisdiction over Ms. Froehlich's complaint due to her active Chapter 13 Bankruptcy case. I agree with PPL and, as explained below, will sustain its POs and dismiss the Formal Complaint.

The Commission has held in several recent cases that it lacks subject matter jurisdiction to order a payment arrangement for a customer with an active Chapter 13 bankruptcy proceeding. *See, e.g., Kessler v. PECO Energy Co.*, 2020 Pa. PUC LEXIS 277 (Opinion and Order entered Mar. 18, 2020) (citing *Matronics v. West Penn Power Co.*, Docket No. C-2017-2617235 (Opinion and Order entered Jan. 9, 2020)). "Generally, any bankruptcy petition filed pursuant to the U.S. Bankruptcy Code will operate as a stay and bars either the commencement or continuation of a judicial or administrative proceeding against the debtor where the proceeding was commenced prior to the start of the bankruptcy proceeding or to recover a claim against the debtor that arose before the commencement of the bankruptcy proceeding." *Steele v. Metro. Edison Co.*, 2020 Pa. PUC LEXIS 444, at *11 (Opinion and Order entered Aug. 27, 2020) (citing 11 U.S.C. § 362(a)(1)). In fact, when there is an active Chapter 13 bankruptcy proceeding, the Commission lacks jurisdiction over both pre- and post-bankruptcy filing arrearages. *Danjou v. West Penn Power Co.*, Docket No. F-2018-3006430, pp. 8-9 (Opinion and Order entered July 22, 2019).

The Commission explained its reasoning in *Danjou* as follows:

Since the nature of 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, the Commission is without jurisdiction to issue an order that affects the disposition of the income or assets of a debtor who has an active Chapter 13 bankruptcy proceeding even where the subject of the payment arrangement is a post-petition arrearage.

Id.

Here, it is clear and undisputed from the Complainant's Formal Complaint that her Chapter 13 bankruptcy proceeding is currently active. The Complainant's request for relief is that the Commission grant her a new payment agreement of "\$200.00 a month including some of the past due bill." Complaint ¶ 5. Therefore, under established Commission precedent, the Commission lacks subject matter jurisdiction over the instant matter. Thus, I will sustain PPL's POs and dismiss the Formal Complaint pursuant to 52 Pa. Code § 5.101(a)(1) and (a)(4).

CONCLUSIONS OF LAW

1. Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

2. When considering preliminary objections, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible." *Dept. of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *P. J. S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996)).

3. "Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections." *Dept. of Auditor General v. State Emps.' Ret. Sys., et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)); 52 Pa. Code § 5.101.

4. In reviewing preliminary objections, only the facts in the pleadings filed by the nonmoving party can be presumed to be true in order to determine whether recovery is possible. *Pa. State Lodge, Fraternal Order of Police v. Dept. of Conservation & Nat. Res.*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 924 A.2d 1203 (Pa. 2007).

5. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary

objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections. *Corman v. The Nat'l Collegiate Athletic Ass'n*, 74 A.2d 1149 (Pa. Cmwlth. 2013).

6. In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Respondent in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a).

7. The Commission lacks jurisdiction to order a payment arrangement for a customer with an active Chapter 13 bankruptcy proceeding. *See, e.g., Kessler v. PECO Energy Co.*, 2020 Pa. PUC LEXIS 277 (Opinion and Order entered Mar. 18, 2020) (citing *Matronics v. West Penn Power Co.*, Docket No. C-2017-2617235 (Opinion and Order entered Jan. 9, 2020)).

8. When there is an active Chapter 13 bankruptcy proceeding, the Commission lacks jurisdiction over both pre-and post-bankruptcy filing arrearages. *Danjou v. West Penn Power Co.*, Docket No. F-2018-3006430 (Opinion and Order entered July 22, 2019).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PPL Electric Utilities Corporation in the case captioned Genevieve K. Froehlich v. PPL Electric Utilities Corporation at Docket No. F-2022-3034545 are granted.

2. That the Formal Complaint captioned Genevieve K. Froehlich v. PPL Electric Utilities Corporation at Docket No. F-2022-3034545 is dismissed.

3. That the Secretary mark this docket closed.

Dated: November 8, 2022

_____/s/
Steven K. Haas
Administrative Law Judge