

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---------------------|---|----------------|
| Jonathan DiBello | : | |
| | : | |
| v. | : | C-2023-3041825 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision sustains the Preliminary Objection of PECO Energy Company and dismisses the Complaint because the Commission does not have jurisdiction to address Jonathan DiBello’s request for a payment arrangement regarding his post-bankruptcy petition account and arrearages with PECO Energy Company.

HISTORY OF THE PROCEEDING

On July 20, 2023, the Complainant, Jonathan DiBello, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). The Complainant avers: 1) that he is unable to pay his PECO bills; 2) that PECO is threatening to shut off his electric service or has already shut off his service; and 3) that he was denied a payment arrangement on the erroneous assumption that the Commission has no jurisdiction to establish a payment arrangement on an outstanding balance

accrued after the filing of a Chapter 13 bankruptcy petition. As relief, the Complainant requests that the Commission establish a payment arrangement for him.

On August 7, 2023, PECO filed an Answer denying the material allegations of the Complaint. Along with the Answer, PECO filed New Matter alleging that the Complainant has an active Chapter 13 Bankruptcy petition pending in the Eastern District of Pennsylvania under Docket Number 22-12547. The New Matter was accompanied by a Notice to Plead stating that a written response was due within 20 days from service of the Notice, or by August 28, 2023.

Also on August 7, 2023, PECO filed a Preliminary Objection seeking to dismiss the Complaint because the Commission does not have jurisdiction to issue a payment agreement for a customer with an active Chapter 13 bankruptcy. The Preliminary Objection included a Notice to Plead stating that a written response was due within 10 days from service of the Notice, or by August 17, 2023.

On August 17, 2023, Mr. DiBello filed a Response to the Preliminary Objection arguing that the post-petition amount due to PECO is not covered under his Chapter 13 Plan. He explained that the Chapter 13 Plan does not provide for the post-petition amount due to PECO, and he could only include that amount in his Chapter 13 Plan with PECO's consent.

On August 25, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On September 5, 2023, Mr. DiBello filed an untimely Response to New Matter denying the material averments of the New Matter. Mr. DiBello averred that he is entitled to a payment arrangement the same as any other Pennsylvania resident under state law. He argued that the Commission has jurisdiction to grant the relief that he has requested.

Respondent's Preliminary Objection is procedurally ready for disposition. For the reasons discussed below, the Preliminary Objection will be sustained, and the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Jonathan DiBello.
2. The Respondent is PECO Energy Company.
3. On September 22, 2022, the Complainant filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania, under Docket Number 22-12547. New Matter ¶ 1; Response to New Matter ¶ 1.
4. The Bankruptcy Petition filed by Complainant is still active. New Matter ¶ 2; Response to New Matter ¶ 2.
5. On July 20, 2023, Mr. DiBello filed a Complaint averring: 1) that he is unable to pay his PECO bills; 2) that PECO is threatening to shut off his electric service or has already shut off his service; and 3) that he was denied a payment arrangement on the erroneous assumption that the Commission has no jurisdiction to establish a payment arrangement on an outstanding balance accrued after the filing of Chapter 13 bankruptcy petition.
6. As relief, the Complainant requests that the Commission establish a payment arrangement for him.
7. On August 7, 2023, PECO filed an Answer with New Matter denying the material allegations of the Complaint.
8. On August 7, 2023, PECO filed a Preliminary Objection seeking to dismiss the Complaint because the Commission does not have jurisdiction to issue a payment agreement for a customer with an active Chapter 13 bankruptcy.
9. On August 17, 2023, Mr. DiBello filed a Response to the Preliminary Objection arguing that the post-petition amount due to PECO is not covered under his Chapter 13 Plan.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). A preliminary objection in civil practice seeking dismissal of a pleading 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); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Phila. Elec. Co.*, 66 Pa.P.U.C. 24 (1988).

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. *Raynor v. D'Annunzio*, 243 A.3d 41 (Pa. 2020); *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume that the factual allegations of the Complaint are true. *Id.* Any doubt must be resolved in favor of the non-

moving party by refusing to sustain the preliminary objections. *Commonwealth v. UPMC*, 208 A.3d 898 (Pa. 2019); *Dep't of Auditor Gen. v. State Emps. Retirement Sys.*, 836 A.2d 1053 (Pa. Cmwlt. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002)).

Here, PECO has filed a Preliminary Objection on the grounds of 52 Pa. Code § 5.101(a)(1), asserting that the Commission does not have jurisdiction to issue a payment agreement for a customer with an active Chapter 13 bankruptcy. In response, Mr. DiBello argues that the post-petition amount due to PECO is not covered under his Chapter 13 Plan. He explains that the Chapter 13 Plan does not provide for the post-petition amount due to PECO, and he could only include that amount in his Chapter 13 Plan with PECO's consent.

The Commission, as a creation of the General Assembly has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code ("Code"). *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992).

Pursuant to 28 U.S.C. § 1334, federal district courts (and their bankruptcy courts) have jurisdiction over all civil proceedings arising under Title 11, and the bankruptcy court has exclusive jurisdiction of all property of the debtor:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

* * *

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code,

or rules relating to disclosure requirements under section 327.

28 U.S.C. § 1334(a), (e).

It is undisputed that Mr. DiBello has an active Chapter 13 Bankruptcy proceeding before the United States Bankruptcy Court for the Eastern District of Pennsylvania under Docket Number 22-12547. New Matter ¶¶ 1- 2; Response to New Matter ¶¶ 1- 2. Because the pending Chapter 13 bankruptcy petition denies the Commission the ability to order disbursement of Mr. DiBello's assets, the Commission lacks jurisdiction to establish a payment arrangement for Mr. DiBello's utility service.

As referenced above, 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. *See*, Title 28 of the United States Code Section 1334, 28 U.S.C. §1334 (a), (e) (pertaining to jurisdiction of the Federal District Courts and their bankruptcy courts).

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 (based on determinations of the debtor's income and expenses) 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-petition 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. 1985), discussing a Commission proceeding, *Anyanwu v. Philadelphia Electric Co.*, 55 Pa. P.U.C. 221 (1981),

“*Anyanwu* involved a Chapter 13 reorganization, under which the bankruptcy court retains jurisdiction over both pre-petition and post-petition income and obligations[.]”

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. *See, Danjou v. West Penn Power Co.*, Docket No. F-2018-3006430 (Opinion and Order entered July 22, 2019); *see also, Lekawa v. West Penn Power Co.*, Docket No. F-2017-2629733 (Order entered Jan. 17, 2019) (citing *Perez v. PECO Energy Co.*, Docket No. C-2016-2551605 (Order entered May 18, 2017); *Chavous v. PECO Energy Co.*, Docket No. F-2010-2215689 (Final Order entered Dec. 20, 2011); *Kossman v. PECO Energy Co.*, Docket No. C-2017-2583425 (Order entered Aug. 31, 2017)).

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.

Accordingly, the Commission lacks jurisdiction to address a request for a payment arrangement regarding Mr. DiBello’s post-bankruptcy petition account and arrearages with PECO. Therefore, the Complaint of Jonathan DiBello against PECO Energy Company is dismissed.

CONCLUSIONS OF LAW

1. A preliminary objection seeking dismissal of a pleading 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).

2. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008).

3. Federal district courts and their bankruptcy courts have jurisdiction over all civil proceedings arising under Title 11, and the bankruptcy court has exclusive jurisdiction of all property of the debtor. 28 U.S.C. § 1334.

4. 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. *Danjou v. West Power Co.*, Docket No. F-2018-3006430 (Opinion and Order entered July 22, 2019).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PECO Energy Company is sustained.
2. That the Complaint of Jonathan DiBello in *Jonathan DiBello v. PECO Energy Company* at Docket No. C-2023-3041825 is dismissed.
3. That the Secretary shall mark this docket closed.

Date: September 27, 2023

/s/
Eranda Vero
Administrative Law Judge