

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonathan DiBello	:	
	:	
v.	:	C-2024-3050533
	:	
PECO Energy Company	:	

**ORDER
GRANTING IN PART AND DENYING IN PART
THE PRELIMINARY OBJECTION OF PECO ENERGY COMPANY**

HISTORY OF THE PROCEEDING

On July 19, 2023, Jonathan DiBello (Complainant or Mr. DiBello) filed a Formal Complaint (2023 Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO), which was docketed at C-2023-3041825. In the 2023 Complaint, Mr. DiBello requested a payment arrangement on his post Chapter 13 bankruptcy petition debt.

On December 7, 2023, the Commission issued a final Opinion and Order in *DiBello v. PECO Energy Co.*, Docket No. C-2023-3041825, finding that the Commission lacks jurisdiction to address the Complainant’s request for a payment arrangement regarding his post-bankruptcy petition account and arrearages with PECO while in an active Chapter 13 bankruptcy. *DiBello v. PECO Energy Co.*, Docket No. C-2023-3041825 (Opinion and Order entered December 7, 2023) (*DiBello 2023*).

On August 2, 2024, Mr. DiBello filed the instant Formal Complaint (2024 Complaint) with the Commission against PECO, requesting a payment arrangement on his post bankruptcy petition debt, disputing his scheduled service termination, and requesting low income assistance regarding the same address and account in his 2023 Complaint.

On August 15, 2024, PECO filed an Answer and New Matter (Answer) to the 2024 Complaint, along with a Notice to Plead. In its Answer, PECO denied all material allegations of fact in the 2024 Complaint. PECO admitted that on July 23, 2024, the Complainant received a Ten-Day Shut Off Notice, for a past due balance of \$2,695.26. PECO argued that it is not required to stay a termination pending an appeal in the Commonwealth Court of Pennsylvania and this request is without merit. PECO further alleged that due to the Complainant's pending Chapter 13 bankruptcy petition, he is not eligible for a payment arrangement and the Commission lacks jurisdiction to issue a payment arrangement. Finally, regarding low income assistance, PECO states that on August 6, 2024, the Complainant submitted a completed Customer Assistance Program (CAP) application, which is under review.

In its New Matter, PECO reiterated its position that the Commission does not have jurisdiction over the Complainant's request for a payment arrangement because he has an active Chapter 13 Bankruptcy petition pending. Further, PECO argues that the Commission has already ruled on this issue in *DiBello 2023*. Accordingly, PECO requested that the Complaint be dismissed based on the grounds of *res judicata*.

Also on August 15, 2024, PECO filed a Preliminary Objection to the Complaint, along with a Notice to Plead. In its Preliminary Objection, PECO reiterated its arguments that: the Commission lacks jurisdiction to order a payment arrangement since the Complainant has an active Chapter 13 bankruptcy petition pending, the 2024 Complaint should be dismissed based on the grounds of *res judicata*, and the Commission does not have jurisdiction to stay a termination pending an appeal.

On August 28, 2024, the Complainant filed an Answer to PECO's Preliminary Objection. The Complainant reiterated his arguments that the Commission does have jurisdiction to order a payment arrangement on post-bankruptcy petition debt and any termination proceedings should be stayed while his appeal of the Commission's decision in *DiBello 2023* is pending before the Commonwealth Court.

On September 5, 2024, the Complainant filed a Reply to PECO's Answer and New Matter setting forth the same arguments made in his Answer to PECO's Preliminary Objection. Further, the Complainant stated that "This matter is also regarding ongoing collection efforts such as Shut Off." Reply, p. 2.

On September 18, 2024, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

The Respondent's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed further below, PECO's Preliminary Objection will be granted in part and denied in part and the case will be scheduled for a hearing solely on the termination portion of the Complaint.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). PGW averred in its Preliminary Objection that the Commission lacks jurisdiction over the claims raised in the Complaint. The Commission's Rules provide, in relevant 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).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen., et al v. State. Emps. Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party (Ms. Sims) by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002). 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. Cmwlt. 1997).

In this case, PECO contends that the Commission does not have jurisdiction over the Complainant's request for a payment arrangement because he has an active Chapter 13 Bankruptcy petition pending. More importantly, PECO argues that the Commission has already ruled on this issue in *DiBello 2023*.

I concur with PECO regarding the Complainant's request for a payment arrangement on his post-bankruptcy petition debt. This issue has already been decided by the Commission in *DiBello 2023*, therefore, it is barred by 66 Pa.C.S. § 316 and the doctrine of *res judicata*. See *Howell v. Phila. Gas Works*, Docket No. C-2016-2568426 (Opinion and Order

entered May 2, 2017); see also *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316, 1317 (Pa. Super. 1983), and *O'Toole v. Bell Tel. Co. of Pa.*, 77 Pa. P.U.C. 98 (1992)(holding the doctrine of *res judicata* reflects the refusal of the law to tolerate the relitigation of a matter decided by a court of competent jurisdiction). Thus, this issue should be stricken from the Complaint.

Relatedly, the Complainant also seeks a stay of all termination proceedings pending his appeal of the *DiBello* 2023 decision to the Commonwealth Court. Again, I concur with PECO in that the Commission lacks jurisdiction to grant a stay of the termination proceedings pending the appeal before the Commonwealth Court. The rules pertaining to the effect of an appeal are clear that:

Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

210 Pa. Code Rule 1701(a). Thus, the Commission is barred from “proceeding further” and issuing a stay of the termination proceedings. The proper forum for a petition for stay based on an appeal would be the forum where that appeal is pending. In this case, that would be the Commonwealth Court.

However, I do not find that the Mr. DiBello’s Complaint should be dismissed in its entirety. In its Answer, PECO admitted that on July 23, 2024, the Complainant received a Ten-Day Shut Off Notice, for a past due balance of \$2,695.26. In his Complaint, Mr. DiBello checked the box next to “the utility is threatening to shut off my service or has already shut off my service” for reason for complaint. Mr. DiBello further averred that his income had changed and requested low income assistance. When accepting as true all well pleaded material facts in the Complaint, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to Mr. DiBello, the Complainant has raised a jurisdictional “adequacy of service” issue regarding the proposed termination of his service and provision of low income assistance. These issues implicate PECO’s “reasonableness of service” obligations under Section 1501 of the Code, 66 Pa. C.S. § 1501. As a result, the Commission has

jurisdiction over these issues.

Additionally, it is also relevant that Mr. DiBello is not represented by counsel. Commission precedent supports allowing unrepresented complainants an opportunity to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. *Richard Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617, Order (entered July 14, 1993)(holding that in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority); citing, *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950, Order (entered October 1992) and *William Schleisher v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (adopted at Public Meeting December 17, 1992); see also, *John M. Gera v. PPL Electric Utilities Corporation*, Docket No. C-20054657, Opinion and Order (entered November 2, 2005).¹ As a result, and in light of the above discussion, PECO's Preliminary Objection will be denied in part, and Mr. DiBello will be given the opportunity to be heard orally regarding his Complaint against PECO on the issues of his proposed service termination and low income assistance.

Accordingly, Mr. DiBello will be allowed the opportunity to prove whether PECO's actions violate any provision of the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff limited to the proposed service termination and low income assistance only. Mr. DiBello is advised that any hearing on his Complaint will require him to carry his burden of proof by a preponderance of the evidence and that all decisions of the Commission must be supported by substantial evidence. This is a different standard of review than when addressing Preliminary Objections.

¹ The Commission's decision in Carlock was subsequently clarified to allow ALJ's the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557, Opinion and Order (entered June 12, 1996).

C-2024-3050533 - JONATHAN DIBELLO v. PECO ENERGY COMPANY

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