

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonathan DiBello

v.

PECO Energy Company

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C-2025-3054440

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Jonathan DiBello because the Pennsylvania Public Utility Commission lacks jurisdiction to grant a stay of proceedings pending an appeal before the Commonwealth Court of Pennsylvania.

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 Dec. 7, 2023) (*DiBello 2023*). The Complainant appealed this decision to the Commonwealth Court of Pennsylvania (Commonwealth Court) at Docket No. 159 CD 2024. This appeal is pending.

On April 7, 2025, Mr. DiBello filed the instant Formal Complaint (2025 Complaint) with the Commission against PECO, which was docketed at C-2025-3054440. In the 2025 Complaint, Mr. DiBello requests the Commission enter a stay of any termination proceedings by PECO pending the outcome of his appeal before the Commonwealth Court.

On April 25, 2025, PECO filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, PECO admitted in part, and denied in part, various material allegations of the Complaint. In its New Matter, PECO averred, *inter alia*, that the Commission lacks jurisdiction to issue a stay over an appeal outside of its jurisdiction.

Also on April 25, 2025, PECO filed a Preliminary Objection to the Complaint along with a Notice to Plead. In its Preliminary Objection, PECO reiterated its argument that the Commission lacks jurisdiction to issue a stay over an appeal outside of its jurisdiction. Thus, PECO requests the case be dismissed.

On May 5, 2025, the Complainant filed an Answer to PECO's Preliminary Objection. The Complainant reiterated his argument that any termination proceedings

should be stayed while his appeal of the Commission's decision in *DiBello 2023* is pending before the Commonwealth Court.

On May 15, 2025, 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.

By Motion Judge Assignment Notice dated May 22, 2025, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

PECO's Preliminary Objection is now ready to be ruled upon. For the reasons discussed herein, PECO's Preliminary Objection shall be granted, and the Complaint shall be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Jonathan DiBello.
2. The Respondent is PECO Energy Company.
3. On July 19, 2023, the Complainant filed a Formal Complaint against PECO, which was docketed at C-2023-3041825.
4. 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 Dec. 7, 2023).

5. The Complainant filed an appeal from the Commission's Final Order in *DiBello 2023* to the Commonwealth Court of Pennsylvania at Docket No. 159 CD 2024, which is still pending.

6. On April 7, 2025, the Complainant filed the instant Formal Complaint with the Commission against PECO, which was docketed at C-2025-3054440.

7. On April 25, 2025, PECO filed an Answer with New Matter along with a Notice to Plead.

8. Also on April 25, 2025, PECO filed a Preliminary Objection to the Complaint along with a Notice to Plead.

9. On May 5, 2025, the Complainant filed an Answer to PECO's Preliminary Objection.

10. On May 15, 2025, the Complainant filed a Reply to PECO's Answer and New Matter.

DISCUSSION

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). A complaint is properly dismissed when no relief or recovery is possible. *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). When considering preliminary objections, the

Commission may not rely upon the factual assertions of the moving party, but must accept as true, for purposes of disposing of the motion, all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections for, *inter alia*, lack of Commission jurisdiction. 52 Pa. Code § 5.101(a). As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §101–3316; *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Indeed, subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

In this case, the Complainant requests a stay of all termination proceedings pending his appeal of the *DiBello* 2023 decision to the Commonwealth Court. However, PECO is correct 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, stating:

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.

Pa.R.A.P. 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.

Accordingly, PECO's Preliminary Objection shall be granted, and the Complaint shall be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101.

2. Preliminary objections are available to parties and may be filed in response to a pleading when the Commission lacks jurisdiction. 52 Pa. Code § 5.101(a)(1).

3. 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. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

4. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945).

5. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

6. 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).

7. The Commission lacks jurisdiction to issue a stay of the termination proceedings pending an appeal before the Commonwealth Court of Pennsylvania. 210 Pa.R.A.P. 1701(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PECO Energy Company is granted.
2. That the Formal Complaint of Jonathan DiBello in Jonathan DiBello v. PECO Energy Company, at Docket No. C-2025-3054440, is dismissed with prejudice.
3. That the Docket No. C-2025-3054440 be marked closed.

Date: June 12, 2025

/s/
F. Joseph Brady
Administrative Law Judge