

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Lorrie Reynolds

v.

Public Meeting: December 15, 2011
2255268-ALJ

Docket No. C-2011-2255268

PPL Electric Utilities Corp.

Motion of Commissioner James H. Cawley

Before the Commission for consideration today is an Initial Decision (ID) granting Preliminary Objections filed by PPL (Company) and dismissing the Complaint filed by Lorrie Reynolds (Complainant) against that company. In May of 2009, at Docket No. F-2009-2113220, Complainant filed a prior complaint against PPL alleging the same facts that she alleges in the instant proceeding. The prior Complaint was resolved through a settlement. A Certificate of Satisfaction (Certificate) was filed with the Commission on September 4, 2009. In the Certificate, it was represented that Ms. Reynolds was withdrawing her Complaint with prejudice. Had Complainant disagreed with or objected to the terms of that settlement, she was given notice that she had ten days from the date she was served with the Certificate to object in writing. She did not do so. Consequently, the complaint was subsequently marked closed by Order of the Commission, dated September 15, 2009.

On July 27, 2011, over two years after the Commission marked the prior proceeding closed; Ms. Reynolds filed another complaint against PPL making the same allegations of fraudulent billing that she raised previously in May of 2009.

The Administrative Law Judge found that Ms. Reynolds was barred by *res judicata* from raising the same complaint anew.¹ The doctrine of *res judicata*, however, does not apply here because there was never a decision by the Commission on the merits. Rather, the Certificate, approved by the Commission, precludes the complainant from raising the same claims before the Commission a second time.²

¹ Section 316 of the Public Utility Code prohibits a complainant from raising issues previously decided by the Commission. See 66 Pa.C.S. § 316.

² 52 Pa. Code §5.233(d) provides that the Commission or presiding officer may, among other things, "limit or deny further participation by the party" in a situation where a party refuses to comply with an order after it becomes final. See also 52 Pa. Code § 5.62(a) (providing that a respondent, here PPL, may seek relief against other parties in a proceeding if common questions of law or fact are present). Such an affirmative defense must be pleaded in an Answer raising New Matter, which PPL did (¶¶ 4b & 9).

As the ALJ noted, a final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties, on the same cause of action³. In the instant matter, however, the Commission did not hear the case on its merits and did not issue a decision based upon the merits of the case. Rather, a settlement was reached, from which neither party objected, resulting in the Commission entering a final Order closing the action. While it is true that the other four elements of the doctrine of *res judicata* were met, specifically: 1) identical issues; 2) identical causes of action; 3) identical parties to the action; and 4) identical quality and capacity of the parties suing or sued, the threshold consideration in determining whether the doctrine applies was not met. That threshold inquiry is whether the Commission reached a final valid judgment on the merits of the case. In the instant case, this did not happen because the parties settled their dispute making a hearing unnecessary and not requiring an ALJ to write an order disposing of the allegations raised in the case.

The ALJ did reach the correct result by granting the Preliminary Objections of PPL and treating them as a Motion for Judgment on the Pleadings; dismissing the Complaint, and marking the record at Docket Number C- 2011-2255268 closed. Dismissal at the pleadings stage was appropriate because there was no genuine issue of material fact and, based on the language of the Certificate, Complainant was precluded from bringing her 2011 Complaint. Therefore, PPL is entitled to judgment as a matter of law.

Therefore I move that:

- 1.) The Initial Decision and Order be modified consistent with this Motion.
- 2.) This matter be referred to the Office of Special Assistants for the preparation of an Order consistent with this Motion.

Dated: December 15, 2011



James H. Cawley, Commissioner

³ *McCarthy, et al. v. Township of McCandless*, 7 Pa. Commonwealth Ct. 611, 300 A. 2d 815 (1973); *Martin v. Poole*, 232 Pa. Superior Ct. 263, 177 A. 2d 339 (1975).