

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Shymar McBride
v.
UGI Utilities, Inc.

Public Meeting held March 20, 2014
2391525-ALJ
Docket No. C-2013-2391525
Docket No. F-2013-2345438

JOINT STATEMENT OF COMMISSIONERS JAMES H. CAWLEY
AND GLADYS M. BROWN

We disagree with denying the Complainant, Mr. Shymar McBride, a hearing based on *res judicata* or *collateral estoppel*.¹ The first complaint's issue and claim challenged the removal of the meter and termination of service based on an arrearage owed by a prior occupant of his residence.² The second complaint's issue and claim challenged a denial of service to his residence based on an arrearage owed by his mother for service at another residence. Neither the issue nor the claim is identical in the proceedings. Neither doctrine is applicable.

The record shows that the first complaint challenged UGI's refusal to provide service at 125 Royal Terrace unless he paid for a prior occupant's arrearage. Complainant never raised the issue about service to his mother in his complaint and the Respondent did not raise it as new matter. As such, this issue was not addressed in the first case.

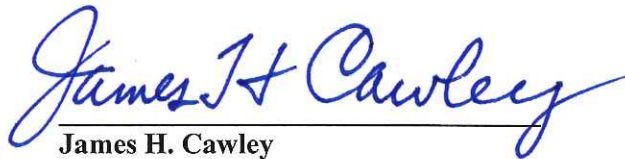
The second complaint before us today challenges UGI's refusal to provide service to Mr. McBride at 125 Royal Terrace unless he assumed responsibility for an arrearage for service to his mother's address at 218 South 20th Street. This is a new issue which merits fact finding and should not be dismissed as previously decided.

Today's result penalizes a *pro se* complainant for failing to address every allegation that a utility's lawyer makes in its Answer. This Commission has long recognized the mitigating effect *pro se* status confers upon litigants less familiar with the law on violations of the technical requirements of our procedural rules. *Carlock v. The United Telephone Company of Pa.*, Docket No. F-00163617 (July 14, 1993). This result also contravenes this Commission's rule and precedent involving *pro se* complainants. Section 1.2(d) of our rules, 52 Pa.Code § 1.2(d). The rule requires a liberal construction when *pro se* litigants are involved.

We believe that due process, which requires notice and a *meaningful* opportunity to be heard, warrants a hearing. This gives the parties a chance to present more detail for the Commission's benefit.

Accordingly, we dissent.

March 20, 2014
Date


James H. Cawley


Gladys M. Brown

¹ *Res judicata* is legal doctrine holding that final judgment by an agency or court on the rights of parties on a *claim* prohibits subsequent proceedings involving the same claim. *Black's Law Dictionary*, (6th ed. 1990). *Collateral estoppel* precludes relitigation of an *issue* already litigated against the same party in another case involving virtually identical facts. See also *Hopewell v. Kent*, 646 A.2d 1192 (Pa. Super. 1994); *Day v. Volkswagenwerk*, 474 A.2d 1313 (Pa. Super. 1983).

² The concerns about service to his mother only emerged in the first proceeding in Respondent's improperly plead Answer when it should have been plead as New Matter with an accompanying Notice to Plead. And, even then, the Respondent would have the burden of proof, not the complainant. The concern then arose in untimely filed exceptions that were treated as a Petition for Reconsideration, which the Commission denied, and in a July 2013 filing which the Commission dismissed. There was an inadequate opportunity to litigate by either party.