

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Floyd Tillman**

v.

**Philadelphia Gas Works**

**Public Meeting February 11, 2016**

**2445229-ALJ**

**Docket No. C-2014-2445229**

**JOINT MOTION OF CHAIRMAN GLADYS M. BROWN AND  
COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission is the Initial Decision (I.D.) dismissing the Formal Complaint filed by Floyd Tillman against Philadelphia Gas Works (PGW). The Complaint was dismissed based on the doctrine of *res judicata*<sup>1</sup> and Section 316 of the Public Utility Code (Code).<sup>2</sup> The I.D. reasoned that the same billing had been the subject of a prior adjudication in *Martha Tillman v. Philadelphia Gas Works*, Docket No. F-2009-2146728, which was dismissed with prejudice for failure to prosecute.<sup>3</sup> Because there are issues raised in Floyd Tillman's Complaint that may not have been previously litigated in Martha Tillman's prior Complaint, it is premature to conclude that *res judicata* and Code Section 316 apply here. Therefore, this matter should be remanded to the Commission's Office of Administrative Law Judge (OALJ) for further proceedings.

First, Mr. Tillman's Complaint raised a termination of service issue that was not raised in Mrs. Tillman's Complaint. Mr. Tillman attached to his Complaint a copy of a shut-off notice that was dated subsequent to the Final Order in the matter brought by Mrs. Tillman. Based on this timing, the propriety of the shut-off notice could not have been litigated in Mrs. Tillman's prior complaint proceeding.

Second, based on the pleadings, the amount in controversy in Mr. Tillman's Complaint does not appear to be the same as in Mrs. Tillman's Complaint. PGW Answer at ¶ 4. The amount in controversy with Mr. Tillman potentially is much larger than with Mrs. Tillman. However, it is unclear under this record whether Mr. Tillman disputes any of the amounts billed to the account after the conclusion of Mrs. Tillman's Complaint.

Consequently, we do not believe it is clear that all of the issues raised in Mr. Tillman's Complaint were or should have been litigated in Mrs. Tillman's Complaint. For this reason, the I.D. dismissing the case should be reversed, and the matter should be remanded to OALJ for

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<sup>1</sup> For the doctrine to apply, the following four elements must be met: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action; and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316, 1317 (Pa. Super. Ct. 1983); *Pa. Public Utility Commission v. Katrina V. Waddington, t/d/b/a Waddington Tours*, Docket No. A-00108279C0101 (Order entered Feb. 1, 2002).

<sup>2</sup> 66 Pa. C.S. § 316. Section 316 gives conclusive effect to and precludes a collateral attack upon a Commission order that has not been reversed upon appeal.

<sup>3</sup> Mrs. Tillman's Complaint was filed in 2009 and dismissed by Final Order entered on January 10, 2011. For a discussion of the reasoning behind the dismissal, see the Initial Decision.

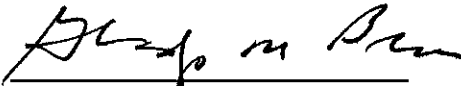
further proceedings so that the Complainant may have an opportunity to further articulate his claims.

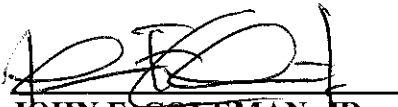
Similarly, because it is not clear that all of the issues raised in Mr. Tillman's Complaint were or should have been litigated in Mrs. Tillman's prior Complaint, it is premature at this time to dismiss Mr. Tillman's Complaint as barred under Section 316 of the Code.

**THEREFORE, WE MOVE THAT:**

1. The Initial Decision be reversed, and this matter be remanded to the Office of Administrative Law Judge for further proceedings, consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**DATE: February 11, 2016**

  
GLADYS M. BROWN  
CHAIRMAN

  
JOHN F. COLEMAN, JR.  
COMMISSIONER