

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michael A. Bradley

v.

Duquesne Light Company

C-20055291

ORDER DENYING MOTION TO DISMISS

DOCUMENT
FOLDER

Before
Veronica A. Smith
Chief Administrative Law Judge

DOCKETED
APR 7 2005

On September 16, 2005, Michael A. Bradley (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent). Complainant alleged that Respondent is unwilling to work out a payment plan that he can afford. As relief, Complainant requests the Commission to give him a reasonable payment plan.

Respondent filed an Answer to the Complaint, which included New Matter, on October 13, 2005¹. On that same date, Respondent filed a Motion to Dismiss (Motion) which moved to dismiss the Complaint on the grounds that the Complaint is barred by the doctrine of res judicata -- Complainant is attempting to relitigate matters already litigated in Commission Docket No. Z-01505399. Complainant failed to respond to the New Matter by November 2, 2005, the twenty (20) day time limit, pursuant to 52 Pa. Code § 5.26(c) therefore, the relevant facts set forth

¹ Respondent was served a copy of the Complaint on September 19, 2005.

SECRETARY'S BUREAU

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in the New Matter are deemed admitted.² Respondent also did not respond to the Motion by October 24, 2005, the ten (10) day time limit, pursuant to 52 Pa. Code § 5.101(d). The Motion was assigned to me by Motion Judge Assignment Notice dated October 21, 2005 and is procedurally ready for a ruling.

Before the Commission are a Complaint, an Answer to the Complaint and a Motion to Dismiss the Complaint.

When considering a motion to dismiss, the Commission must view the Complaint in the light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

In the Motion, Respondent requests that the Complaint be dismissed on the grounds that the Complaint is barred by the doctrine of res judicata. Specifically, Respondent

² The Commission's regulation states: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code § 5.62(c).

states that the Complainant is attempting to re-litigate matters already litigated in Michael Bradley v. Duquesne Light Company, Commission Docket No. Z-01505399 (Order entered November 30, 2004) (the Prior Case). A party asserting a defense of res judicata must show the concurrence of four conditions: (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 or capacity of the parties suing or being sued. Once it is determined that these conditions have been met, the only remaining inquiry is to determine whether the ultimate and controlling issues have been actually decided in a prior proceeding, in which the parties had an opportunity to appear and assert their rights. Thompson v. Karastan Rug Mills, 228 Pa. Super. 260, 323 A.2d 341 (1974); 1974 Pa. Super. LEXIS 1581.

In this case, the issues are the same as the Prior Case; however, the law has changed. Therefore, for the reasons set forth below, Respondent's Motion to Dismiss must be denied.

The Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401, *et seq.*, (Chapter 14) became effective December 14, 2004, and applies to this proceeding. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(d) of the Public Utility Code reads as follows:

(d) Number of Payment Agreements. – Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa. C.S. § 1405(d). The Commission has the authority to review a payment arrangement to ensure compliance with Chapter 14 of the Public Utility Code but the General Assembly has made it clear that the Commission lacks the authority to establish a second or subsequent payment arrangement for customers who have defaulted on a previous payment arrangement established under Chapter 14.

The Commission recently revisited its interpretation of the payment arrangement restrictions of §1405(d) of the Act and determined that the Commission is not precluded from establishing one payment arrangement for a customer who has defaulted on a prior payment arrangement. Accordingly, the Commission has the authority to establish a single payment arrangement for a customer pursuant to the guidelines established in §1405((b). Reconsideration of Implementation Order, Order entered October 31, 2005 at Docket No. M-00041802F0002. Complainant has not received a Commission payment arrangement since the enactment of Chapter 14. Accordingly, Complainant is entitled to one Commission ordered payment arrangement and a hearing is necessary to determine the appropriate payment terms. Therefore, the Motion to Dismiss must be denied and this case will be set for a hearing.

Complainant is advised that he bears the burden of proof at the hearing and must present evidence sufficient to demonstrate that he is entitled to the relief requested in the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the instant complaint.
2. The Commission may establish one payment arrangement that meets the requirements of Chapter 14, even if the customer has defaulted on a previous payment arrangement.

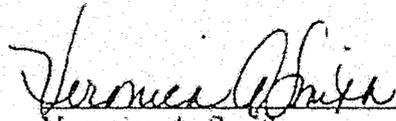
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by Duquesne Light Company to dismiss the Complaint filed by Michael A. Bradley at Docket No. C-20055291 is denied.
2. That this matter be set for hearing.

Dated: January 18, 2006



Veronica A. Smith
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
January 24, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-20055291

(See attached list)

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JAN 27 2006

**DOCUMENT
FOLDER**

Michael A. Bradley v. Duquesne Light Company

Requests payment arrangements.

Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial telephone hearing

Date: Tuesday, March 7, 2006

Time: 10:00 a.m.

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: 412.565.3550
Fax: 412.565.5692

The judge will be presiding as authorized by 52 Pa. Code §56.174.

At the above date and time, the Presiding Officer will contact the parties as follows:

Michael A. Bradley	412.896.4172
Regina M. Sestak, Esquire	412.393.1546

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 3 days before the hearing.

Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Corbett
Susan Licon
Beth Plantz
Docket Section
Calendar File