

01 March 2017

To: The Pa Public Utility Commission Secretary
400 North Street
Harrisburg, PA 17120

From: Ross E. Schell
203 Knollwood Drive
Harrisburg, PA 17109-5515
PH# 717-651-0824
Fax# same but call First.

C-2016-2578809 C-2016-2578804

To whom this may Concern

Notice of exceptions

First of all to, dismiss my complaints out right means Judge Watson is biased against me and on the side of the utility instead of impartial. Since the Secretary accepted the complaints, I filed in first place. Each of my complaints are about a different law or subject. Yes I mention Dirty water in all of them. But Judge Watson has ignored all my fillings including evidence of the dirty water that I have pictures of. But he will use those same pictures in his decisions to suppress ligament complaints without properly reading them. All because the Suez Attorney asks him too. And files paper asking the same which I have filed objections and petitions too. Which Judge Watson rejects, my objections and petitions out of hand but not Suez's objections or petitions? I still cannot drink any water coming into my house neither can anyone

else unless it is filtered. Which are expensive to buy. And it is not the water pipe that bring water in my house as the judge say and Suez say. The judge takes this as evidence when there is no evidence that my water pipe is leaking. Nor was any summited to prove this by Suez. Even if it did they violated the Rules of Emanate Domain or right of way by ripping up my property to install a meter that is on my property after they cut 4 feet of that same pipe. And the meter is on my property not the street right of way. According to all letters the water company give me regarding this issue.



Here is proof you will notice where the shut off valve is and the meter. Road is to the left of this picture.

According to What the water company say this is my property and not theirs.

Ross E. Schell

Certificate Of Service

I do Herby Certify That I have This Day 01 March 2017 I Have Served a true And correct copy of the Exceptions 01 March 2017 upon The person's and manner Set Forth Below.

Via Fax exceptions

Thomas T Niesen
Thomas, Niesen & Thomas LLC

212 Locust Street

Suite 600

Harrisburg, PA 17101

The Honorable Jeffery A. Watson

Piatt Place

Suite 220

301 5th Avenue

Pittsburg, Pa 15222

Will not except any form of communication from me

Ross E. Schell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ross E. Schell

v.

Suez Water Pennsylvania Inc.

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C-2016-2578809

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This initial decision sustains the preliminary objections filed by Suez Water Pennsylvania Inc., and dismisses the formal complaint filed by Ross E. Schell.

HISTORY OF PROCEEDING

On December 7, 2016, Ross E. Schell (Complainant or Mr. Schell) filed a formal complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) dated December 5, 2016 against Suez Water Pennsylvania Inc., (Respondent or Suez). In his complaint, Mr. Schell checked boxes on the formal complaint form alleging incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and "other." Complainant further averred that his inside meter has not been read since September of 1999 and attached what purports to be a copy of 52 Pa.Code § 56.12 relating to meter reading. As relief, Complainant requests a refund of the bills paid for the past seventeen years.

Respondent filed an answer to the complaint on December 23, 2016. The answer essentially denies the allegations set forth in the complaint.

Respondent also filed and served preliminary objections on December 23, 2016. The preliminary objections included a notice to Complainant to file an answer to the preliminary objections within ten days of the date of service. The preliminary objections aver that, in addition to the instant complaint filed at Docket No. C-2016-2578809, Complainant filed four other complaints against Suez at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 (four complaints) presently pending before the Commission for review and final order. A consolidated hearing on the four complaints was held on October 4, 2016.¹ Respondent asserts that Complainant had a full and fair opportunity to address any and all issues related to his inside meter at that hearing. Respondent points out that three complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 (three complaints) were dismissed by Interim Order, without hearing, based on preliminary objections filed by Suez. These three complaints are pending final Commission actions.

Respondent also asserts that Complainant is essentially asking for money damages. The Commission, however, has no authority to award money damages. *See Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995); *Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-2566322, (Initial Decision dated October 27, 2016).

Respondent further asserts that Complainant is abusing the regulatory process by continuing to complain of the same matters, as outlined in *Newberry v. Pennsylvania Electric Company*, Docket No. C-2013-2358544, (Final Order entered January 30, 2014).

On December 28, 2016, Complainant filed a "Preliminary Objection Answer" (answer to preliminary objections) which essentially requests that the answer and preliminary objections filed by Respondent be dismissed.

¹ An initial decision was entered on January 31, 2017, dismissing the four complaints.

The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Ross E. Schell.
2. Respondent in this case is Suez Water Pennsylvania Inc.
3. On December 7, 2016, Complainant filed a formal complaint with the Commission against Respondent at Docket No. C-2016-2578809.
4. On December 23, 2016, Respondent filed preliminary objections.
5. On December 28, 2016, Complainant filed an answer to Respondent's preliminary objections.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

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 of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwth. 1988). The Commission must view the complaint in this case in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not in the public interest and authorizes preliminary objections to be filed in response to a complaint. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util.*

Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlth. 1988).

Pendency of Prior Proceedings (*Lis Pendens*)

In the instant complaint, Mr. Schell checked boxes on the formal complaint form alleging incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and “other.” Complainant further averred that his inside meter has not been read since September of 1999 and attached what purports to be a copy of 52 Pa.Code § 56.12 relating to meter reading. The complaint was dated December 5, 2016. Complainant presented no other factual explanation regarding the issues raised in the formal complaint and failed to articulate any specific facts to support his claims. As relief, Complainant requested a refund of the bills paid for the past seventeen years.

Complaints Pending at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040

In its preliminary objections, Respondent avers that Complainant previously filed four complaint proceedings pending at Docket Nos. C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040, which were the subject of an evidentiary hearing held on October 4, 2016.

In the proceeding at Docket No. C-2016-2558244, Complainant raised this same concern that Respondent has not read his inside meter since 1999. There, Complainant checked the “utility is threatening to shut off my service” box, the “incorrect charges” box and the “other” box of the formal complaint form and averred that there are incorrect charges on his bill and that Suez has not tested Complainant’s meter. As relief, he requested a refund for a period of five years and forgiveness of his bills for the next three years.

In the proceeding at C-2016-2559741, Complainant checked the “reliability, safety or quality” box and the “other” box of the formal complaint form and complained that his water was shut off on August 3, 2016 without notice. As relief, he requested a refund for bills paid over the past ten years.

In the proceeding at C-2016-2563040, Complainant checked the “utility is threatening to shut off my service” box, the “incorrect charges” box, the “reliability, safety or quality” box and the “other” box of the formal complaint form and expressed concern with the accuracy of the outside meter installed by Suez in April of 2016.

In the proceeding at C-2016-2551544, Complainant checked the “reliability, safety or quality” box and the “other” box of the formal complaint form and complained of dirty water.

The above-described four prior complaint proceedings were consolidated and an evidentiary hearing was held October 4, 2016, in the consolidated proceeding. Respondent argues that Complainant participated in the hearing on October 4, 2016 and testified about his claim that Respondent had not read his inside meter since 1999. Complainant further had a full and fair opportunity to testify about service issues and other issues regarding his meter. Respondent argues Complainant attended the hearing and had a full and fair opportunity to address any and all service and billing matters, including the averments set forth in the instant complaint.

In addition, three other complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 are pending before the Commission for final action based on Initial Decisions of the undersigned presiding officer granting Suez’ preliminary objections and dismissing the complaints without a hearing.

Pendency of Prior Proceedings

Suez contends that the doctrine of *lis pendens* should be applied to dismiss the instant complaint. Respondent argues that the wording of the instant complaint does not vary in any material way from the formal complaint filed at Docket No. C-2016-2558244, which asserted the same issues regarding Mr. Schell's claims regarding his meter that was alleged in the instant complaint. Respondent further argues in that proceeding and the instant case. In addition, in the proceeding filed at Docket No. C-2016-2563040, Complainant alleged the existence of incorrect charges on his bill, reliability, safety or quality problems and expressed concern with the accuracy of the outside meter installed by Suez in April of 2016.

Mr. Schell and Suez are the same parties to the proceedings; and the rights asserted by Mr. Schell under the Public Utility Code and the relief that he seeks are the same.²

The complaints previously filed by Mr. Schell, and specifically the complaint filed at Docket No. C-2016-2558244, provided Complainant a full and fair opportunity to address the same issues raised in the instant complaint. The wording of the instant complaint does not vary in any material way from the four pending complaints outlined above.

Complainant essentially avers that the service that he receives from Respondent constitutes a violation of 52 Pa.C.S. § 1501. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5). A complaint should contain information specific enough to allow the respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense. In addition, service related claims were previously addressed in the four complaint proceedings pending at C-2016-2551544, C-2016-2558244,

² Further, Respondent argues that Mr. Schell seeks monetary relief in all of the complaints, to which he is not entitled and the Commission has no authority to entertain.

C-2016-2559741 and C-2016-2563040 which were the subject of an evidentiary hearing held on October 4, 2016.

The purposes of recognizing the doctrine of *lis pendens* are to prevent a respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” *Hillgartner v. Port Authority of Allegheny Cty.*, 936 A.2d 131, 137 (Pa.Cmwth. 2007) “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” *Hillgartner*, 936 A.2d at 138 [quoting *Hessenbruch v. Markle*, 194 Pa. 581, 45 A. 669 (1900)].

Complainant alleged incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and “other.” Complainant further averred that his inside meter has not been read since September of 1999. The instant complaint was dated December 5, 2016. Viewing the complaint in this proceeding in the light most favorable to Complainant, the complaints previously filed by Mr. Schell regarding these same issues provided Complainant a full and fair opportunity to address any and all issues raised in the instant complaint. In addition, as relief, Complainant requests a refund of the bills paid for the past seventeen years.³ The wording of this claim in the instant complaint and his request for such monetary relief does not vary in any material way from the four pending complaints outlined above.

³ 66 Pa.C.S. § 3314(a).

The claims set forth in the instant complaint have been the subject of complaints pending before the Commission and for which, Complainant was afforded a full opportunity to litigate. Accordingly, the preliminary objections will be granted and the complaint will be dismissed.

Lack of Commission Jurisdiction – 52 Pa.Code § 5.101(a)(1)

The instant complaint seeks, as relief, a refund of the bills paid for the past seventeen years. Respondent argues that the Commission has no jurisdiction to order a refund of bills for a period of seventeen years nor to relieve Complainant from paying tariff charges for his water service.

As the formal complaint must be dismissed based upon the pendency of the prior proceeding as discussed above, this argument advanced by Respondent as a basis to dismiss the complaint is moot.

Accepting as true all of the facts alleged in the instant complaint, Mr. Schell is not entitled to relief as a matter of law, as set forth above.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. To support a claim of pendency of a prior proceeding, known as *lis pendens*, the moving party must allege and prove that in both actions, the same parties are involved, the same rights asserted, and the same relief sought. *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

3. Review of the instant complaint filed at Docket No. C-2016-2578809 and the previously filed complaints filed at Docket Nos. C-2016-2551544, C-2016-2558244,

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ross E. Schell

v.

Suez Water Pennsylvania Inc.

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C-2016-2578804

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This initial decision sustains the preliminary objections filed by Suez Water Pennsylvania Inc., and dismisses the formal complaint filed by Ross E. Schell.

HISTORY OF PROCEEDING

On December 7, 2016, Ross E. Schell (Complainant or Mr. Schell) filed a formal complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) dated December 5, 2016 against Suez Water Pennsylvania Inc., (Respondent or Suez). In his complaint, Mr. Schell checked boxes on the complaint form alleging incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and that Respondent improperly shut off his water service without notice. Complainant further averred that he was without water on August 23, 2016, without proper notice. As relief, Complainant requests a refund of the bills paid for the past seventeen years.

Respondent filed an answer to the complaint on December 23, 2016. The answer essentially denies the allegations set forth in the complaint.

C-2016-2559741 and C-2016-2563040 show that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought are the same.

4. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2016-2578809 be dismissed.

5. The complaint filed at Docket No. C-2016-2578809 must be dismissed based upon the doctrine of pendency of a prior proceeding under 52 Pa.Code § 5.101(a)(6).

6. Respondent must charge and Complainant must pay the tariff rate for service. *Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-2566323, "Initial Decision Granting Respondent's Preliminary Objections and Dismissing the Complaint."

7. The Commission has no authority to award money damages. *Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Suez Water Pennsylvania Inc. at Docket No. C-2016-2578809 are sustained.

2. That the complaint of Ross E. Schell at Docket No. C-2016-2578809 against Suez Water Pennsylvania Inc. is dismissed.

Respondent also filed and served preliminary objections on December 23, 2016. The preliminary objections included a notice to Complainant to file an answer to the preliminary objections within ten days of the date of service. The preliminary objections aver that, in addition to the instant complaint filed at Docket No. C-2016-2578804, Complainant filed four other complaints against Suez at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 (four complaints) presently pending before the Commission for review and final order. A consolidated hearing on the four complaints was held on October 4, 2016.¹ Respondent asserts that Complainant had a full and fair opportunity to address any and all service and billing matters at that hearing. Respondent points out that three other complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 (three complaints) were dismissed by Interim Order, without hearing, based on preliminarily objections filed by Suez. These three complaints are pending final Commission actions.

Respondent also asserts that Complainant is essentially asking for money damages. The Commission, however, has no authority to award money damages. See *Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995); *Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-2566322, (Initial Decision dated October 27, 2016).

Respondent further asserts that Complainant is abusing the regulatory process by continuing to complain of the same matters, as outlined in *Newberry v. Pennsylvania Electric Company*, Docket No. C-2013-2358544, (Final Order entered January 30, 2014).

On December 28, 2016, Complainant filed a "Preliminary Objection Answer" (answer to preliminary objections) which essentially requests that the answer and preliminary objections filed by Respondent be dismissed.

The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

¹ An initial decision was entered on January 31, 2017, dismissing the four complaints.

FINDINGS OF FACT

1. The Complainant in this case is Ross E. Schell.
2. The Respondent in this case is Suez Water Pennsylvania Inc.
3. On December 7, 2016, Complainant filed a formal complaint with the Commission against the Respondent at Docket No. C-2016-2578804.
4. On December 23, 2016, Respondent filed preliminary objections.
5. On December 28, 2016, Complainant filed an answer to Respondent's preliminary objections.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
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- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
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Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

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 of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not in the public interest and authorizes preliminary objections to be filed in response to a complaint. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util.*

Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlth. 1988).

Pendency of Prior Proceedings (*Lis Pendens*)

In the instant complaint, Complainant checked boxes on the complaint form alleging incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and that Respondent improperly shut off his water service without notice. Complainant further averred that he was without water on August 23, 2016, without proper notice. The complaint was dated December 5, 2016. Complainant presented no other factual explanation regarding the issues raised in the formal complaint and failed to articulate any specific facts to support his claims. As relief, Complainant requested a refund of the bills paid for the past seventeen years.

Complaints Pending at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040

In its preliminary objections, Respondent avers that Complainant previously filed four complaint proceedings pending at Docket Nos. C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 which were the subject of an evidentiary hearing held on October 4, 2016.

In the proceeding at C-2016-2551544, Complainant checked the “reliability, safety or quality” box and the “other” box of the complaint form and complained of “dirty water.”

In the proceeding at C-2016-2558244, Complainant checked the “utility is threatening to shut off my service” box, the “incorrect charges” box and the “other” box of the complaint form and averred that there are incorrect charges on his bill and that Suez has not tested Complainant’s meter.

In the proceeding at C-2016-2559741, Complainant checked the “reliability, safety or quality” box and the “other” box of the formal complaint form and complained that his water was shut off on August 3, 2016 without notice. As relief, he requested a refund for bills paid over the past ten years.

In the proceeding at C-2016-2563040, Complainant checked the “utility is threatening to shut off my service” box, the “incorrect charges” box, the “reliability, safety or quality” box and the “other” box of the complaint form and expressed concern with the accuracy of the outside meter installed by Suez in April of 2016.

The above-described four prior complaint proceedings were consolidated and an evidentiary hearing was held October 4, 2016, in the consolidated proceeding. Respondent argues that Complainant participated in the hearing on October 4, 2016 and had a full and fair opportunity to testify about service shut offs and the lack of notice provided by Respondent. Respondent avers that Complainant testified about an August 3, 2016 outage but presented no testimony about a shut off or other alleged outage on August 23, 2016. Respondent argues Complainant attended the hearing and had a full and fair opportunity to address any and all service and billing matters, including an alleged water outage on August 23, 2016.

In addition, three other complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 are pending before the Commission for final action based on Initial Decisions of the undersigned presiding officer granting Suez’ Preliminary Objections and dismissing the complaints without a hearing.

Pendency of Prior Proceedings

Suez contends that the doctrine of *lis pendens* should be applied to dismiss the instant complaint. Respondent argues that the wording of the instant complaint does not vary in any material way from the formal complaint filed at Docket No. C-2016-2559741, which objected to an alleged water shut off without notice to Complainant. Respondent further argues that, in that proceeding and the instant case, Mr. Schell and Suez are the same parties to the

proceedings; and the rights asserted by Mr. Schell under the Public Utility Code and the relief that he seeks are the same.²

The complaints previously filed by Mr. Schell, and specifically the complaint filed at Docket No. C-2016-2559714, provided Complainant a full and fair opportunity to address any and all additional billing and service related issues and claims of interruptions of water service without notice to Complainant.

The wording of the instant complaint does not vary in any material way from the four pending complaints outlined above.

Complainant essentially avers that the service that he receives from Respondent, specifically an alleged termination of water service without notice on August 23, 2016, constitutes a violation of 52 Pa. Code Section 1501. A formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4). The Commission’s regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5). A complaint should contain information specific enough to allow the respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense. In addition, service related claims were previously addressed in the four complaint proceedings pending at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 which were the subject of an evidentiary hearing held on October 4, 2016.

The purposes of recognizing the doctrine of *lis pendens* are to prevent a respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law

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is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” *Hillgartner v. Port Authority of Allegheny Cty.*, 936 A.2d 131, 137 (Pa.Cmwlt. 2007) “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” *Hillgartner*, 936 A.2d at 138 [quoting *Hessenbruch v. Markle*, 194 Pa. 581, 45 A. 669 (1900)].

Viewing the complaint in this proceeding in the light most favorable to the Complainant, the complaints previously filed by Mr. Schell regarding billing and meter reading and service issues provided Complainant a full and fair opportunity to address any and all billing matters and service issues related to Respondent’s provision of water service and billing practices. In addition, as relief, Complainant requests a refund of the bills paid for the past seventeen years.³ The wording of this claim in the instant complaint and his request for such monetary relief does not vary in any material way from the four pending complaints outlined above, and specifically as set forth in the formal complaint filed at Docket No. C-2016-2559714.

Mr. Schell averred the existence of reliability, safety or quality problems with his billing and water quality as well as alleged terminations of service without notice. These claims have been the subject of complaints pending before the Commission and for which, Complainant was afforded a full opportunity to litigate. Accordingly, the preliminary objections will be granted and the complaint will be dismissed.

Lack of Commission Jurisdiction – 52 Pa.Code § 5.101(a)(1)

The instant complaint seeks, as relief, a refund of the bills paid for the past seventeen years. Respondent argues that the Commission has no jurisdiction to order a refund of

³ 66 Pa.C.S. § 3314(a).

bills for a period of seventeen years nor to relieve Complainant from paying tariff charges for his water service.

As the formal complaint must be dismissed based upon the pendency of the prior proceeding as discussed above, this argument advanced by Respondent as a basis to dismiss the complaint is moot.

Accepting as true all of the facts alleged in the instant complaint, Mr. Schell is not entitled to relief as a matter of law, as set forth above.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. To support a claim of pendency of a prior proceeding, known as *lis pendens*, the moving party must allege and prove that in both actions, the same parties are involved, the same rights asserted, and the same relief sought. *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

3. Review of the instant complaint filed at Docket No. C-2016-2578804 and the previously filed complaints filed at Docket Nos. C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 show that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought are the same.

4. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2016-2578804 be dismissed.

5. The complaint filed at Docket No. C-2016-2578804 must be dismissed based upon the doctrine of pendency of a prior proceeding under 52 Pa.Code § 5.101(a)(6).

6. Respondent must charge and Complainant must pay the tariff rate for service. *Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-2566323, "Initial Decision Granting Respondent's Preliminary Objections and Dismissing the Complaint."

7. The Commission has no authority to award money damages. *Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Suez Water Pennsylvania Inc. at Docket No. C-2016-2578804 are sustained.

2. That the complaint of Ross E. Schell at Docket No. C-2016-2578804 against Suez Water Pennsylvania Inc. is dismissed.

3. That the record at Docket No. C-2016-2578804 is marked closed.

Date: February 8, 2017

/s/
Jeffrey A. Watson
Administrative Law Judge