

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Hattie Beatrice Howell

Public Meeting held April 6, 2017

v.

2568426-ALJ

Philadelphia Gas Works

Docket No. C-2016-2568426

Statement of Chairman Gladys M. Brown

Although I support dismissal of a case for failure to appear, I do not necessarily support dismissal of a case, with prejudice, for failure to appear absent a showing of abuse of process.¹ In this case, dismissal with prejudice is not based on any facts nor is it equitable or legal.

Hattie Beatrice Howell filed a Complaint against PGW on September 24, 2016, alleging that PGW did not credit a payment to her account and requesting that her service be restored. This Initial Decision grants PGW's Motion for Summary Judgment on the basis of the doctrine of *res judicata*.

The first complaint, filed in 2015, raised concerns about a \$400 payment. The instant Complaint again raises the issue of the \$400 payment but also discusses a \$2700 demand for payment. Given these different factual allegations and claims, there is no identity of the causes of action long-required by precedent before *res judicata* applies as a matter of law. *Delaware River Port Authority v. Pa. PUC*, 408 Pa. 169, 18 A.2d 982 (1962).

The ALJ also determines that the Commission's prior dismissal, with prejudice, of the 2015 complaint served to dispose of the claimant's rights to pursue any further remedy on a claim, being the equivalent of an action on the merits of the case. I do not agree that a dismissal of a complaint for failure to appear is equal to a dismissal on the merits. I base my conclusion on the fact that the courts of general jurisdiction do not agree that dismissal for failure to appear constitutes a decision on the merits. *Scharf v. DeCou Co.*, 320 Pa. 552, 183 A.41, 553-554 (1936); *Farabiugh Chevrolet v. Covenant Management, Inc.*, 361 Pa. Super. 234, 522 A.2d 100, 101 (1987); *Gutman v. Giordano*, 384 Pa. Super 78, 557 A.2d 782, 783 (1989); and, *Monroeville v. Liberatore*, 1999 Pa. Commw. LEXIS 537, 736 A.2d 31, 34 (1999).

¹ Dismissal *with prejudice* of a case should not be done as a matter of course. See, *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS, Docket No. Z-00269892 (December 26, 1995) (dismissing a case, with prejudice, for abuse of the administrative process).

I have previously expressed concern regarding the Commission's practice of dismissing *pro se* complaints, with prejudice, as being inconsistent with Section 1.2 of our Regulations, 52 Pa. Code § 1.2, and the Commission's own case precedent regarding due process.² The recommendation in this case, to use a dismissal with prejudice, for failure to appear as a basis for *res judicata* concerns me even more as it places this Commission's practice even further afield from Pennsylvania case law.

My concerns are not alleviated by reliance on Section 316 of the Code, 66 Pa. C.S. § 316. Section 316 addresses *prima facie evidence of facts found* which are conclusive unless set aside. This creates a presumption that prior facts, such as tariffed rates, are reasonable and precludes collateral attacks upon those facts absent a showing of changed circumstances. *McLaughlin v. DQE*, Docket No. C-20065798 (2009) *Duquesne Light Co. et al. v. Pa. PUC.*, 715 A. 2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. PUC*, 669 A. 2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), rev'd in part on other grounds, 550 Pa. 449, 706 A. 2d 1197 (1997); *Zucker v. Pa. PUC*, 401 A. 2d 1377, 1380 (1979); *Schellhammer v. Pa. PUC*, 157 Pa. Cmwlth. 86, 629 A. 2d 189, 193 (1993).

There were no facts entered into a record here other than Complainant's failure to appear. Since there are no facts to create *prima facie evidence* under Section 316, Section 316 cannot sustain this decision.

April 6, 2017
Date


Gladys M. Brown, Chairman

² This Commission has long recognized the mitigating effect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *Carlock v. The United Telephone Co. of Pa.*, Docket No. F-00163617 (July 14, 1993). Most important, from my perspective, the Commission has stated that it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. *Amir V. Williams v. PECO Energy Co.*, Docket No. C-2010-2190024 (January 13, 2011).