

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Hattie Beatrice Howell**

**Public Meeting held April 6, 2017**

**v.**

**2578426-ALJ**

**Philadelphia Gas Works**

**Docket No. C-2016-2568426**

**MOTION OF COMMISSIONER DAVID W. SWEET**

The case of Hattie Beatrice Howell v. Philadelphia Gas Works, Docket No. C-2016-2568426, raises the issue of whether or not a final Commission Order dismissing a case with prejudice after the complainant failed to attend the scheduled hearing and prosecute her case will act as a bar to a second complaint filed with the same allegations.<sup>1</sup> Res judicata requires a 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 sued.<sup>2</sup> The Pennsylvania Supreme Court merged this doctrine with the related doctrine of collateral estoppel, adding the requirement that the case acting as a bar must have been a final judgment rendered by a court of competent jurisdiction.<sup>3</sup>

PGW filed a motion for summary judgment relying on res judicata to support its request to dismiss the second complaint. The administrative law judge addressed the motion for summary judgment and determined that the doctrine of res judicata applied to support dismissal of the second complaint. There is considerable debate and even confusion regarding whether a Commission decision dismissing a complaint with prejudice for failure to appear and prosecute a complaint is a "final judgment" for purposes of the application res judicata. I do not believe that this line of analysis is necessary to resolve this case.

The purpose of the doctrine of res judicata is "to minimize the judicial energy devoted to individual cases, establish certainty and respect for court judgments, and protect the party relying on the prior adjudication from vexatious litigation." *Mintz v. Carlton House Partners, Ltd.*, supra at 474, 595 A.2d 1240, quoting *Lebeau v. Lebeau*, 258 Pa. Super. 519, 524, 393 A.2d 480, 492 (1978).

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<sup>1</sup> Ms. Howell alleges in both complaints that PGW shut off her gas service, that she would like her service restored, that she had made a payment of \$400 to PGW that was not credited to her account, that she talked with a Mr. Smith at PGW, and that she was sent from the PGW office on 52<sup>nd</sup> Street to the PGW office on Sedgley to speak with someone there.

<sup>2</sup> *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super 225, 234, 464 A.2d 1313, 1317 (1983).

<sup>3</sup> *McNeil v. Owens-Corning Fiberglas Corp.*, 545 Pa. 209, 680 A.2d 1145, 1147-48 (1996).

The goal of Section 316 of the Public Utility Code appears to be the same:

**§ 316. Effect of commission action**

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. . . .

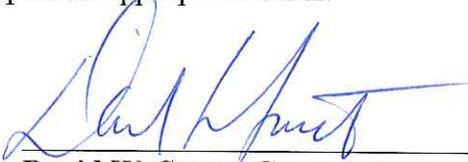
66 Pa.C.S.A. § 316 (in pertinent part)

In other words, whether or not to dismiss a complaint brought on the same allegations as a complaint which was already dismissed with prejudice is answered by the Public Utility Code, 66 Pa.C.S. § 316. The Commission Order dismissing the first complaint remains as a bar unless set aside by this Commission or modified on judicial review. Here, the order dismissing Ms. Howell's prior complaint with prejudice was not set aside by the Commission or by the courts and thus, has conclusive effect. This means that Ms. Howell is barred by Section 316 from relitigating the issues raised in her prior complaint. Consequently, the analysis regarding the application of the doctrine of res judicata, collateral estoppel, or their newer names of issue and claim preclusion, has been rendered unnecessary by the application of Section 316 of the Public Utility Code. Pursuant to the equally compelling doctrine of judicial efficiency, whereby a case can be disposed of in the least invasive way, the above-captioned Complaint should be dismissed with prejudice under Section 316 of the Public Utility Code.

**THEREFORE, I MOVE THAT:**

1. The Initial Decision of Administrative Law Judge Darlene Davis Heep in the case captioned *Hattie Beatrice Howell v. Philadelphia Gas Works*, Docket No. C-2016-2568426, is affirmed insofar as it dismisses the complaint and is vacated insofar as it relies on the doctrine of res judicata.
2. The Complaint of Hattie Beatrice Howell is dismissed based on Section 316 of the Public Utility Code. 66 Pa. C.S. § 316.
3. The Office of Special Assistants prepare an appropriate order.

Date: April 6, 2016

  
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David W. Sweet, Commissioner