

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Raintree Farm Solar	:	
	:	
v.	:	C-2017-2621826
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS  
AND DISMISSING COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against its electric utility alleging that the utility failed to properly reimburse it for electricity it generated through its solar array. This decision dismisses the customer’s complaint because the customer previously filed a complaint with the Pennsylvania Public Utility Commission (Commission) raising the same issues and the utility filed a certificate of satisfaction to which the customer did not object.

**HISTORY OF THE PROCEEDING**

On August 18, 2017, Raintree Farm Solar through its owner, A. Edward Schwartz, (Complainant) filed a complaint with the Commission against PPL Electric Utilities Corporation (Respondent). Mr. Schwartz signed the complaint as the owner of Raintree Farm Solar. Therefore, I will treat Raintree Farm Solar as a fictitious name used by A. Edward Schwartz.

Attached to the complaint is a cover letter. The cover letter states that the Complainant wishes to reopen its claim against the Respondent. The letter asserts that after two

years of production of its 45.5 kWhr system, it can now prove that the Respondent was not capable of taking production for the first years it was producing electricity. According to the letter, the Complainant has fought the Respondent for over eight years to have it correct problems with its transformer and wires.

The letter avers that the Complainant lost revenue for the first eight years it produced electricity. The letter states that the Complainant had to pay the Respondent approximately \$300,000.00 but in the last two years the Respondent has paid the Complainant approximately \$8,000.00. In addition, the letter alleges that the Complainant incurred costs in retaining an engineer and attorney. The letter states that since the Respondent has now installed the correct wire and transformer, the Complainant's generation system is working properly and the Complainant is entitled to a refund of all the money it paid to the Respondent.

The complaint form at paragraph four reiterates that the Respondent initially had the incorrect wires and transformer installed to receive electricity generated by the Complainant. The complaint form at paragraph five requests that the Commission direct the Respondent to reimburse the Complainant for all its lost revenue. Paragraph five reiterates that the Respondent did not have the proper equipment installed to receive electricity generated by the Complainant.

Paragraph five further states that in the last two years, since the Respondent installed the proper equipment, the Complainant's electric production has increased and from 2015 through 2017 the Respondent has paid the Complainant for electricity it has generated.

Paragraph five claims that the payments the Complainant has received in 2015 through 2017 prove that the Respondent had previously installed the wrong equipment. Paragraph five requests that the Commission order the Respondent to pay the Complainant all the amounts it has paid to the Respondent because the Respondent failed to install the proper equipment for the prior seven years.

On September 18, 2017, the Respondent filed an answer with new matter in response to the Complainant's complaint. The answer admits that the Complainant previously

experienced some problems with having its solar generation accepted onto the Respondent's system. According to the answer, the Respondent investigated the Complainant's concerns and replaced its facilities to accommodate the Complainant's modification to its solar array.

The answer asserts that the Complainant is attempting to relitigate issues and claims that were previously raised and fully resolved in the proceeding at C-2013-2375440. A copy of the complaint at C-2013-2375440 is attached to the answer and marked as Appendix A. The answer points out that in its cover letter, the Complainant states that it wishes to reopen its claim against the Respondent. The answer contends that there is currently no issue with its service because the cover letter states that the Respondent has installed the correct equipment and that the Complainant's system is working properly.

The answer asserts that the prior complaint at C-2013-2375440 was resolved when the Complainant and Respondent executed a settlement agreement. A copy of the settlement agreement is attached to the answer and marked as CONFIDENTIAL Appendix B. The Respondent filed a certificate of satisfaction at C-2013-2375440 on November 18, 2015. A copy of the certificate of satisfaction is attached to the answer and marked as Appendix C. The Complainant did not file an objection to the certificate of satisfaction.

The answer alleges that, pursuant to the settlement agreement, the Respondent paid the Complainant an agreed upon amount in exchange for it releasing and relinquishing its rights to bring any claims that were brought or could have been brought as part of the complaint at C-2013-2375440. The answer argues that in filing the current complaint, the Complainant is attempting to retain the benefit of the settlement agreement at C-2013-2375440 and relitigate the issues and claims raised at C-2013-2375440.

The answer contends that the Complainant cannot relitigate the issues and claims that were settled at C-2013-2375440. According to the answer, the Complainant has waived his rights to file the current complaint and to raise for a second time the issues and claims concerning the interconnection between the Complainant's solar array and the Respondent's electric distribution system.

The answer denies that the Complainant is entitled to the relief it is seeking in its complaint. The answer observes that the complaint is requesting damages as relief. The answer asserts that the Commission lacks the authority to award monetary damages.

The new matter reiterates the facts set forth above. The new matter alleges that the Complainant previously filed a complaint at C-2013-2375440, that the complaint at C-2013-2375440 was settled, that the Respondent filed a certificate of satisfaction on November 18, 2015 at C-2013-2375440 and that the Respondent paid the Complainant an agreed upon amount, pursuant to the settlement. The new matter asserts that the Complainant is seeking to relitigate the issues and claims raised in C-2013-2375440

The new matter asserts that the Complainant installed a solar facility in approximately 2009 and modified the installation in 2012. The new matter states that the Respondent replaced conductors connecting its facilities to the Complainant's system and replaced a transformer in 2010. Subsequently when the Complainant modified its system in 2012 another problem occurred and in May 2013 the Respondent replaced the transformer again. According to the new matter, the Respondent has not replaced any of the facilities at issue since May 2013. The answer with new matter requests that the Commission deny the Complainant's complaint. The Complainant did not file an answer to the Respondent's new matter.

Also on September 18, 2017, the Respondent filed preliminary objections. The preliminary objections contend that the Commission should dismiss the complaint because it raises the same issues and claims raised in the complaint at C-2013-2375440, because the complaint is barred by the statute of limitations and because the complaint requests damages. The preliminary objections request that the Commission dismiss the Complainant's complaint.

By notice dated November 3, 2017, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to the preliminary objections. 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. The Complainant in this case is Raintree Farm Solar.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On August 18, 2017, the Complainant filed a complaint against the Respondent.
4. On September 18, 2017, the Respondent filed an answer with new matter in response to the Complainant's complaint.
5. The Complainant did not file an answer to the Respondent's new matter.
6. On September 18, 2017, the Respondent filed preliminary objections.
7. The Complainant did not file an answer to the Respondent's preliminary objections.
8. The Complainant filed a formal complaint on July 18, 2013 with the Commission docketed at C-2013-2375440.
9. The complaint at C-2013-2375440 was settled by certificate of satisfaction filed on November 18, 2015.
10. The Complainant did not file an objection to the certificate of satisfaction.
11. The Respondent paid the Complainant an agreed upon amount pursuant to the settlement.

## 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

Here, the Respondent's preliminary objections assert that the complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4), in that the complaint fails to allege that the Respondent violated the Public Utility Code, Commission regulations or orders or its tariff provisions because it raises the same issues and claims raised in the complaint at C-2013-2375440. I disagree that the Respondent may raise the defense of res judicata through preliminary objections.

The Commission has previously held that res judicata is not properly raised through preliminary objections alleging legal insufficiency. Cuff v. PECO Energy Co., Docket No. C-2013-2370894 (Final Order entered October 7, 2013) (Cuff). In her initial decision in Cuff, ALJ Kandace F. Melillo held that res judicata was an affirmative defense and should properly be raised in new matter, not preliminary objections. ALJ Melillo found that res judicata

could nonetheless be raised in preliminary objections and serve as a basis for dismissing a complaint.

In reaching the conclusion that an affirmative defense such as res judicata could be raised in preliminary objections and serve as a basis for dismissing a complaint, ALJ Melillo cited Wroblewski v. Pennsylvania Electric Company, Docket No. C-2008-2058385 (Opinion and Order entered May 15, 2009) (Wroblewski), where the Commission concluded that a preliminary objection asserting the affirmative defense of lack of standing could appropriately be treated as a motion for judgment on the pleadings rather than preliminary objections, under certain circumstances. In Wroblewski, the Commission held that treating preliminary objections raising standing as a motion for judgment on the pleadings was appropriate since the respondent had raised the issue of standing in its new matter.

ALJ Melillo followed Wroblewski in her initial decision in Cuff and treated the preliminary objections in Cuff raising res judicata as a motion for judgment on the pleadings even though the respondent in Cuff had not asserted the affirmative defense of res judicata in its new matter. ALJ Melillo granted the motion for judgment on the pleadings and dismissed the complaint on the basis of res judicata. ALJ Melillo's initial decision became final without further Commission action, pursuant to 66 Pa.C.S. § 332(h).

Here, unlike Cuff, the Respondent raised res judicata in its new matter as well as its preliminary objections. The regulation at 52 Pa.Code § 1.2(a) provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Since the Respondent raised the issue of the previously litigated case in its new matter and preliminary objections in this case, the Complainant had notice of the issue.

I will treat the Respondent's preliminary objections concerning res judicata as a motion for judgment on the pleadings and will consider the issue of the previously litigated case at C-2013-2375440 to secure a just, speedy and inexpensive determination of this proceeding, pursuant to 52 Pa.Code § 1.2(a). This will not adversely affect the Complainant's substantive

rights, pursuant to 52 Pa.Code § 1.2(c), since the Complainant has had notice of the issue and an opportunity to respond. For consistency and clarity, I will refer to the Respondent's preliminary objections concerning res judicata as a motion for judgment on the pleadings in the remainder of this decision.

Having addressed the issue of whether the Respondent has properly raised res judicata in preliminary objections and determined that it is appropriate to treat the preliminary objections as a motion for judgment on the pleadings, I will now review the standards for granting a motion for judgment on the pleadings. The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.102 govern motions for judgment on the pleadings. Generally, the moving party bears a heavy burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law.

The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlth. 1978). It must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. Weik v. Estate of Brown, 794 A.2d 907 (Pa.Super. 2002). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979).

The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. Williams v. Lewis, 466 A.2d 682 (Pa.Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Opinion and Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa.Super 1985).

Having reviewed the standards for granting a motion for judgment on the pleadings, I will now address the merits of the Respondent's motion for judgment on the pleadings. The Commission has previously addressed the issue of whether a complainant can refile the same complaint after failing to timely object to a certificate of satisfaction resolving his or her dispute. In Reynolds v. PPL Electric Utilities Corporation, Docket No. C-2011-2255268 (Opinion and Order entered January 5, 2012) (Reynolds), the Commission reviewed an initial decision which had dismissed a complaint on the grounds of res judicata, for raising matters previously resolved through a certificate of satisfaction. While ruling that res judicata was not an appropriate ground for dismissal since there had been no final judgment on the merits, the Commission found that 66 Pa.C.S. § 316 prohibited a complainant from raising the same issues before the Commission a second time. The statute at 66 Pa.C.S. § 316 states in part:

Whenever the [c]ommission 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.

In its ruling that 66 Pa.C.S. § 316 was applicable, the Commission concluded that a certificate of satisfaction, which was not objected to, and resulted in the closing of the case, conclusively determined that the issues had been resolved to the satisfaction of the complainant. Accordingly, a complainant could not file another complaint raising the same issues because the issues had already been resolved through the certificate of satisfaction.

Similarly, in Creehan v. Duquesne Light Company, Docket No. C-2012-2297124, (Opinion and Order entered May 23, 2013) (Creehan), the Commission affirmed its prior ruling in Reynolds, and held that 66 Pa.C.S. § 316 precluded a complainant from raising issues a second time that had been settled in a previous proceeding. In Creehan, the complainant attempted to relitigate the same issues that he had raised in a prior case. The complainant in Creehan became dissatisfied with his prior settlement of the issues, but did not object to the certificate of satisfaction filed in the previous action within ten days.

In addition, the complainant in Creehan accepted a credit in the settlement of the prior case. The Commission ruled in Creehan that a complainant cannot accept the prior settlement credit, fail to object to the certificate of satisfaction, and then file a second complaint to pursue the same claims.

Finally, in Wright v Philadelphia Gas Works, Docket No. C-2013-2368462 (Opinion and Order entered October 23, 2014) (Wright), the Commission followed Reynolds and Creehan and held that where the disputed amounts in the complainant's complaint had been the subject of prior complaints filed by the complainant and the prior complaints had been resolved through a certificate of satisfaction, the complainant in Wright was precluded by 66 Pa.C.S. § 316 from pursuing the same high bill claims in his subsequent complaint.

Having set forth the statute at 66 Pa.C.S. § 316 and the cases applying it, I will now view the factual averments in the complaint and cover letter as true for purposes of disposing of the Respondent's motion for judgment on the pleadings. Those averments in the complaint are that the Respondent initially had the incorrect wires and transformer installed to receive electricity generated by the Complainant. The Complainant lost revenue for the first eight years it produced electricity. The Complainant had to pay the Respondent approximately \$300,000.00 but in the last two years the Respondent has paid the Complainant approximately \$8,000.00.

In addition to the facts alleged in the complaint, I must consider the facts alleged in the Respondent's new matter since the Complainant has admitted those facts by failing to answer the Respondent's new matter. The Commission's regulation at 52 Pa.Code § 5.63(b) states that a party failing to file a timely reply to new matter may be deemed in default and the facts stated in the new matter may be deemed admitted. Since the Complainant has not filed an answer to the Respondent's new matter denying its factual allegations, I will deem the allegations in the Respondent's new matter admitted, pursuant to 52 Pa.Code § 5.63(b).

The facts alleged in the new matter are that the Complainant previously filed a complaint at C-2013-2375440, that the complaint at C-2013-2375440 was settled, that the

Respondent filed a certificate of satisfaction at C-2013-2375440 and that the Respondent paid the Complainant an agreed upon amount pursuant to the settlement. These facts are deemed admitted.

Having reviewed the facts set forth in the Complainant's complaint and deemed admitted in the Respondent's new matter, I will now review the facts set forth in the prior complaint docketed at C-2013-2375440 to determine whether the complaint in this case is barred by 66 Pa.C.S. § 316. The complaint at C-2013-2375440 alleges that the Respondent had replaced transformers to solve its problems with accepting the electricity generated by the Complainant. The complaint at C-2013-2375440 requested that the Commission order the Respondent to pay the Complainant for loss of its generation and for payments to the Respondent for power the Complainant had to purchase because the Respondent's facilities would not accept the electricity the Complainant was generating.

Applying the holdings in Reynolds, Creehan and Wright to this case, the failure of the Complainant to object to the Respondent's certificate of satisfaction at C-2013-2375440 does not constitute a judgment on the merits and res judicata is not an appropriate ground for dismissal. While res judicata is not an appropriate ground for dismissal, 66 Pa.C.S. § 316 prohibits the Complainant from raising the same issues before the Commission a second time.

The certificate of satisfaction filed by the Respondent at C-2013-2375440 was not objected to by the Complainant and resulted in the closing of the case at C-2013-2375440. The issues at C-2013-2375440 were resolved to the satisfaction of the Complainant. In addition, the Complainant accepted an agreed upon payment from the Respondent, pursuant to a settlement agreement. Accordingly, the Complainant cannot file another complaint raising the same issues because the issues had already been resolved through the certificate of satisfaction.

I will apply the Commission's holdings in Reynolds, Creehan and Wright to this proceeding. Consistent with Reynolds, Creehan and Wright, the Complainant in this case cannot again raise the claim in this complaint that it raised in the complaint at C-2013-2375440, particularly where it has accepted a payment from the Respondent to settle the prior complaint.

The provision at 66 Pa.C.S. § 316 precludes the Complainant from pursuing the same claims it raised in the prior complaint at C-2013-2375440.

Since the statute at 66 Pa.C.S. § 316 bars the claims raised in the Complainant's complaint, I will dismiss the complaint. Since I am dismissing the complaint on that basis, I will not address the Respondent's preliminary objections concerning the statute of limitations and damages.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 702.

2. Res judicata is not properly raised through preliminary objections alleging legal insufficiency. Cuff v. PECO Energy Co., Docket No. C-2013-2370894 (Final Order entered October 7, 2013).

3. Res judicata is an affirmative defense and should properly be raised in new matter, not preliminary objections. Cuff v. PECO Energy Co., Docket No. C-2013-2370894 (Final Order entered October 7, 2013).

4. An affirmative defense such as res judicata may be raised in preliminary objections and serve as a basis for dismissing a complaint. Wroblewski v. Pennsylvania Electric Company, Docket No. C-2008-2058385 (Opinion and Order entered May 15, 2009).

5. In ruling on a motion for judgment on the pleadings, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlth. 1978).

6. The Commission must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. Weik v. Estate of Brown, 794 A.2d 907 (Pa.Super. 2002).

7. All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979).

8. A complainant will be prohibited from raising the same issues before the Commission a second time. 66 Pa.C.S. 316.

9. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2017-2621826 is dismissed without hearing. 66 Pa.C.S. § 703(b)

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of PPL Electric Utilities Corporation at Docket No. C-2017-2621826 are sustained.

2. That the complaint of Raintree Farm Solar against PPL Electric Utilities Corporation at Docket No. C-2017-2621826 is dismissed with prejudice.

3. That the docket at Docket No. C-2017-2621826 is marked closed.

Dated: November 9, 2017

\_\_\_\_\_  
/s/  
David A. Salapa  
Administrative Law Judge