

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz	:	
c/o Raintree Farm Solar	:	
	:	
v.	:	C-2018-3000475
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility alleging that the utility failed to properly reimburse him for electricity generated through his solar array. This decision dismisses the customer’s complaint because the customer previously filed two complaints with the Pennsylvania Public Utility Commission (Commission) raising identical issues which have already been adjudicated.

HISTORY OF THE PROCEEDING

On February 28, 2018, A. Edward Schwartz (Complainant), owner of Raintree Farm Solar, filed a complaint with the Commission on the behalf of Raintree Farm Solar against PPL Electric Utilities Corporation (Respondent).

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

production of its 45.5 kWh system, Complainant can now prove that the Respondent was not capable of taking production for the first years his solar array 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 his array produced electricity. The letter states that the Complainant had to pay the Respondent approximately \$30,000.00 but in the last two years the Respondent had 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 he paid to the Respondent.

The complaint also includes another attachment in which the Complainant makes similar averments regarding the installation and operation of his solar array. Complainant states that he did not receive adequate credit from the Respondent due to the Respondent's technical issues. Complainant alleges that these circumstances caused him a loss of credit worth over \$200,000 and many thousands of dollars spent on an attorney and efforts to resolve his issues with the Respondent. The complaint states that the Complainant is now on a single bi-directional meter but that because Respondent was not prepared to implement virtual meter aggregation, the Complainant endured years of expense and lost generation because he was punished for choosing virtual meter aggregation. The Complainant feels that he should be compensated for the expense and loss.

On April 4, 2018, the Respondent filed an answer with new matter in response to the complaint. The answer admits that the Complainant previously experienced some problems with having his 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 his solar array. The answer also denies that the Complainant has experienced incorrect charges on his bill.

The answer also argues that the Complainant is attempting to relitigate issues and claims that were previously raised and fully resolved in two previous proceedings at C-2013-2375440 (First Complaint) and at C-2017-2621826 (Second Complaint). The Respondent attached the following documents from the previous proceedings to its answer:

Appendix A - a copy of the First Complaint

Appendix B - a copy of the Second Complaint

Appendix C - a CONFIDENTIAL copy of the settlement agreement in the First Complaint

Appendix D - a copy of the certificate of satisfaction filed in the First Complaint

Respondent stated the First Complaint was resolved via a certificate of satisfaction which was filed on November 18, 2015 to which the Complainant never objected. Respondent argues that the complaint in this matter (Third Complaint) is identical to the Second Complaint and it not only utilizes the same letter written by the Complainant, but it also seeks precisely the same relief – “to reopen” the Complainant’s previous claim against the Respondent. The Respondent notes the Second Complaint was recently dismissed with prejudice by the Commission.¹ The answer contends that there is currently no issue with the Complainant’s service because the Complainant’s cover letter states that the Respondent has installed the correct equipment and that the Complainant’s system is working properly.

The answer alleges that, pursuant to the settlement agreement reached in the First Complaint, the Respondent paid the Complainant an agreed upon amount in exchange for his release and relinquishment of his rights to bring any claims that were brought or could have been brought as part of the First Complaint at C-2013-2375440. In addition, the answer argues that the Complainant is simply refileing the Second Complaint filed in C-2017-2621826 which was dismissed with prejudice by the Commission. According to the answer, the Complainant has waived his rights to file the current complaint and to raise, for a third time, the issues and claims

¹ Raintree Farm Solar v. PPL Elec. Utils. Corp., Docket No. C-2017-2621826 (Final Order entered January 16, 2018).

concerning the interconnection between the Complainant's solar array and the Respondent's electric distribution system.

The Respondent denies that the Complainant has ever been a virtual meter aggregation customer-generator and that since he began participating in the Respondent's net metering program the Complainant has always been a traditional net metering customer-generator. The answer also denies that the Complainant is entitled to any relief that he is seeking in form of monetary damages.

The Respondent's new matter reiterates the facts set forth above. The new matter, accompanied by a notice to plead, alleges that the Complainant previously filed two complaints at C-2013-2375440, which was settled, and C-2017-2621826, which was dismissed with prejudice by the Commission. The Respondent's new matter reiterates that the Complainant is seeking to relitigate the issues and claims raised in both the First Complaint and the Second Complaint. The Complainant did not file an answer to the Respondent's new matter.

The Respondent also filed preliminary objections accompanied by a notice to plead on April 4, 2018. The preliminary objections contend that the Commission should dismiss the complaint because it raises the same issues and claims raised in the previous two complaints at C-2013-2375440 and C-2017-2621826, because the complaint is barred by the statute of limitations, because the complaint requests monetary damages and because the Complainant lacks standing to represent the interests of virtual meter aggregation customer-generators and to request relief on their behalf. The preliminary objections request that the Commission dismiss the Complainant's Third Complaint.

By notice dated May 30, 2018, 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, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is A. Edward Schwartz, owner of Raintree Farm Solar.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On February 28, 2018, the Complainant filed a complaint against the Respondent with the Commission.
4. On April 4, 2018, 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 April 4, 2018, the Respondent also filed preliminary objections.
7. The Complainant did not file an answer to the Respondent's preliminary objections.
8. The Complainant previously filed a formal complaint (First 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 Respondent paid the Complainant an agreed upon amount pursuant to the settlement in that matter.
11. The Complainant never filed an objection to the certificate of satisfaction.

12. The Respondent filed another formal complaint (Second Complaint) on August 18, 2017 with the Commission docketed at C-2017-2621826.

13. The Commission dismissed the Second Complaint in C-2017-2621826 with prejudice because it attempted to relitigate matters which were already addressed and settled in the First Complaint.

14. The instant complaint filed on February 28, 2018, or Third Complaint, is identical to the Second Complaint filed by the Complainant in C-2017-2621826.

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 contend that the Commission should dismiss the complaint because it raises the same issues and claims raised in the previous

two complaints at C-2013-2375440 and C-2017-2621826, because the complaint is barred by the statute of limitations, because the complaint requests monetary damages which the Commission has no authority to award and because the Complainant lacks standing to represent the interests of other virtual meter aggregation customer-generators and to request relief on their behalf.

- A. The Complainant lacks standing to represent the interests of virtual meter aggregation customer-generators and to request relief on their behalf.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A-212285F0046/47 and A-210870F01 (Ordered entered July 9, 1998); William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. PUC 342 (1993); Re Equitable Gas Co., 76 Pa. PUC 23 (1992); Manufacturers' Association of Erie v. City of Erie - Bureau of Water, 50 Pa. PUC 43 (1976); Waddington v. Pa. Pub. Util. Comm'n, 670 A.2d 199 (Pa. Cmwlth. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552 (1990).

Here, the Complainant has requested certain relief within his complaint. The only averment contained in the complaint relating to other individuals lies within the portion of the complaint identifying how the Complainant would like his complaint resolved. In it, the Complainant states, "I would also like the PUC to require better customer service for virtual metering customers." While the Complainant mentions other customers, it is not clear that he is seeking relief on their behalf. Even assuming he is, the Complainant has failed to provide any

information to show that he would meet the criteria above to provide him with standing to seek any relief on the behalf of any other individuals.

B. The complaint raises the same issues and claims raised in the previous two complaints at C-2013-2375440 and C-2017-2621826.

In its preliminary objections, the Respondent provides a lengthy history of the two previous complaints filed by the Complainant and argues that the instant, or Third Complaint, simply raises the same issues and claims which have already been adjudicated. The Respondent asks that this complaint be dismissed in its entirety with prejudice under 52 Pa. Code § 5.101(a)(4) relating to legal insufficiency.

It is noted that 66 Pa.C.S. § 316 can serve as a bar to a complaint. It states in relevant part:

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.

The factual averments in the instant complaint and cover letter will be viewed as true for purposes of addressing Respondent's preliminary objections. The 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 he produced electricity. The Complainant had to pay the Respondent approximately \$30,000.00, but in the last two years the Respondent had paid the Complainant approximately \$8,000.00. It is imperative to note that these are the identical averments raised in the Second Complaint which were previously dismissed with prejudice by the Commission on January 16, 2018 in C-2017-2621826.

In addition to the facts alleged in the complaint, the facts alleged in the Respondent's new matter must be considered as 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's failure to file a timely reply to new matter may be deemed in default, and the facts stated in the new matter may be deemed to be admitted. Since the Complainant has not filed an answer to the Respondent's new matter denying its factual allegations, those allegations will be deemed admitted pursuant to 52 Pa.Code § 5.63(b).

The facts alleged in the new matter are that the Complainant previously filed complaints at C-2013-2375440 (First Complaint) and C-2017-2621826 (Second Complaint).

The First Complaint was fully resolved through settlement, the Respondent filed a certificate of satisfaction on November 18, 2015 to which the Complainant never objected and the Respondent paid the Complainant an agreed upon amount pursuant to the settlement. The Complainant released and relinquished all rights to bring any claims that were brought, or could have been brought, as part of the First Complaint.

In the Second Complaint, the Complainant sought to reopen the First Complaint and relitigate the same issues and claims. The Second Complaint was dismissed with prejudice because the Complainant was barred under 66 Pa.C.S. § 316 from relitigating the same issues and claims addressed in the First Complaint. A final order dismissing the Second Complaint with prejudice was issued by the Commission on January 16, 2018. The instant Third Complaint filed by the Complainant seeks to relitigate the same issues and claims addressed in the First Complaint and resolved via a settlement between the parties, and which were dismissed with prejudice by the Commission in the Second Complaint.

The issues in the Second Complaint docketed at C-2017-2621826 and the complaint in this proceeding are identical. The cover letters attached to both complaints are identical and state that the Complainant wishes to reopen his claim against the Respondent. The issue in both proceedings is that the Respondent was not capable of taking production for the first several years the Complainant 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 causes of action are identical since both are complaints before the

Commission involving the claim that the Respondent was not capable of taking production for the first several years the Complainant was producing electricity and the Complainant's request that he receive lost revenue.

The Respondent filed a certificate of satisfaction on November 18, 2015 in the First Complaint at C-2013-2375440. The Complainant did not file an objection to that certificate of satisfaction.

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.

In 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.

In the Second Complaint at C-2017-2621826, which was ultimately dismissed with prejudice by the Commission, the initial decision utilized this same reasoning and analysis. Applying the holdings in Reynolds, Creehan and Wright to this case, which is identical to the case decided in the Second Complaint, 66 Pa.C.S. § 316 prohibits the Complainant from raising the same issues before the Commission in this case for a third 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. These same issues were again raised in the Complainant's Second Complaint at C-2017-2621826. These issues were dismissed with prejudice by the Commission because it was held that the Complainant could not file a second complaint raising the same issues that had already been resolved through the certificate of satisfaction. It stands to reason that this same reasoning and conclusion would now apply to the Complainant's identical Third Complaint. The Complainant can not file a third complaint raising the same issues that have already been resolved through the certificate of satisfaction.

Applying the Commission's holdings in Reynolds, Creehan and Wright to this proceeding, the Complainant cannot again raise the same claims in his Third Complaint which he

has already raised in his two prior complaints. The provision at 66 Pa.C.S. § 316 precludes the Complainant from pursuing the same claims raised in the prior complaints at C-2013-2375440 and C-2017-2621826.

Since the statute at 66 Pa.C.S. § 316 bars the claims raised in the Complainant's complaint, the complaint will be dismissed. It is therefore not necessary to address the Respondent's preliminary objections concerning the statute of limitations and damages.

This matter is the third occasion where the Complainant has filed a formal complaint regarding the same issues. In particular, the complaint filed by the Complainant in this matter is identical to the complaint which the Complainant filed in the Second Complaint at C-2017-2621826. A final order dismissing the Second Complaint with prejudice was issued by the Commission on January 16, 2018. The Complainant then filed an identical Third Complaint with the Commission on February 28, 2018 which is again being dismissed for identical reasons. The Complainant is warned to refrain from misuse of the Commission's processes or face the possibility of being barred from filing further complaints because of an abuse of process.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant lacks standing to represent the interests of virtual meter aggregation customer-generators and to request relief on their behalf. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991).
3. 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).

4. 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).

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

6. A complainant is precluded from pursuing the same claims that have previously been resolved before the Commission through a certificate of satisfaction to which the complainant never objected. Reynolds v. PPL Electric Utilities Corporation, Docket No. C-2011-2255268 (Opinion and Order entered January 5, 2012); Creehan v. Duquesne Light Company, Docket No. C-2012-2297124 (Opinion and Order entered May 23, 2013); Wright v Philadelphia Gas Works, Docket No. C-2013-2368462 (Opinion and Order entered October 23, 2014).

7. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2018-3000475 is dismissed without hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of PPL Electric Utilities Corporation at Docket No. C-2018-3000475 are sustained.

2. That the complaint of A. Edward Schwartz c/o Raintree Farm Solar against PPL Electric Utilities Corporation at Docket No. C-2018-3000475 is dismissed with prejudice.

3. That the docket at Docket No. C-2018-3000475 is marked closed.

Dated: June 4, 2018

/s/
Benjamin J. Myers
Administrative Law Judge