

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

JEANENE DENLINGER
VS
PPL ELECTRIC UTILITIES
CORPORATION

PUBLIC MEETING MAY 21, 2020
3014786-ALJ
DOCKET NO. C-2019-3014786

STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

Before the Commission today is the Complaint of Jeanene Denlinger filed on November 29, 2019, seeking to litigate claims about installation of a smart meter and the accompanying concerns about public health and privacy. Previously, the Complainant's spouse had raised challenges regarding the installation of an AMI meter at the same service property in *Kyle M. Denlinger v. PPL Electric Utilities Corporation*, Docket No. C-2018-3005721 (Final Order entered September 26, 2019) (*Kyle Denlinger Order*). The earlier matter was dismissed because that Complainant failed to respond to a Motion to Compel. This Complainant filed the instant Complaint which also objects to an AMI meter installation; but also, raised claims about privacy and health impacts. The ALJ dismissed the instant Complaint based on *res judicata* because the matter had been adjudicated by the Commission in the *Kyle Denlinger Order*.

As a matter of law, *res judicata* should not apply if a matter is dismissed on procedural matters, like a failure to appear, because there has been no substantive determination on the merits. *Scharf v. DeCou Company*, 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); *Acobacey v. Acobacey*, 22 Phila. 333, 191 Phila. Cty. Rptr. LEXIS 42 (1991); *Monroeville v. Liberatore*, 1999 Pa. Commw. LEXIS 537, 736 A.2d 31, 34 (1999). In addition, the identify of the parties is not identical here because the first complainant was the husband whereas the instant Complainant is the wife.

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 in the earlier proceeding other than the first Complainant's failure to respond to a Motion to Compel. Since there are no facts to create *prima facie evidence* under Section 316, Section 316 cannot sustain dismissal of the second Complaint.

This kind of detailed legal analysis arises largely because this Commission continues to dismiss *pro se* complainants based on *res judicata* even when there is no identity of the parties and the prior matter was dismissed on procedural grounds, effectively precluding a determination on the merits. I would have preferred that this Complainant be provided a hearing.

A handwritten signature in black ink that reads "Gladys Brown Dutrieuille". The signature is written in a cursive style with a horizontal line underneath the name.

DATE: May 21, 2020

**GLADYS BROWN DUTRIEUILLE
CHAIRMAN**