

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ben Mroz III	:	
	:	
v.	:	C-2020-3019143
	:	
Aqua Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his wastewater utility regarding its monthly wastewater fee. This decision dismisses the complaint as the Commission has already issued a decision and order regarding this same matter which has become conclusive upon both parties.

HISTORY OF THE PROCEEDING

On February 18, 2020, Ben Mroz III (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Aqua or Respondent) at Docket No. C-2020-3019143. In the complaint, Complainant argues that a \$100 per month wastewater fee charged by Aqua is extensive, unreasonable, unfair and the most expensive utility bill he was receiving. Complainant further argues that wastewater should be metered or its rate capped.

On March 30, 2020, Aqua filed an answer with new matter with a notice to plead in response to the complaint. In its answer, Aqua admitted or denied the various averments of

the complaint. In its new matter, Aqua averred that the \$100 monthly wastewater fee referenced by the Complainant is consistent with its 2019 Commission-approved tariff and therefore has the force and effect of law and was binding on both Aqua and its customers. Therefore, Aqua argued that Complainant was precluded from attempting to re-litigate his previous objection to the rate increase under the doctrine of *res judicata* as his previous complaint was dismissed by the Commission in the *2019 Rate Order*. Aqua requested that the complaint be dismissed with prejudice.

On or about April 13, 2020, Complainant filed a response to Aqua's new matter.¹ In this response, the Complainant provides further argument that Aqua's wastewater fee is too high and unfair.

On May 8, 2020, a hearing notice was issued scheduling this matter for an initial call-in telephonic hearing on June 25, 2020. Also on May 8, 2020, Aqua filed a motion for judgment on the pleadings which was accompanied by a notice to plead. In this motion, Aqua averred that on November 8, 2018, it had filed a rate application with the Commission in which it requested an increase in wastewater rates at Docket No. R-2018-3003561 (2018 Rate Application). The Complainant filed a formal complaint against the 2018 Rate Application at Docket No. C-2018-3004563 [sic.]² contending that the proposed wastewater rate increase was not fair. The Commission subsequently consolidated this complaint with the 2018 Rate Application proceeding.

In its motion, Aqua further stated that a joint petition for settlement was proposed by several of the parties to resolve the 2018 Rate Application proceeding. The Complainant filed

¹ The Complainant addressed his response to the Commission's Secretary's Bureau and provided a copy to counsel for Aqua, which was forwarded to me by counsel. Because of the closure of the Commission's offices beginning on March 16, 2020 due to the Covid-19 pandemic, the Complainant's response has not yet been processed or docketed by the Secretary's Bureau.

² In both Aqua's answer, new matter and motion, Aqua incorrectly identified the Complainant's previous complaint as Docket No. C-2018-3004563. However, the Complainant's formal complaint to Aqua's 2018 Rate Application was docketed at Docket No. C-2018-3004531. Nonetheless, Aqua's typographical error or inadvertent mistake to the correct docket number does not affect the disposition of this decision.

objections to the proposed Settlement arguing the agreed upon proposed rate increase was not fair and he could not afford an increase in his rates. By order entered May 9, 2019 (*2019 Rate Order*), the Commission approved the wastewater rate increase to become effective January 1, 2020 and dismissed the Complainant's objections as well as his formal complaint in Docket No. C-2018-3004563 [sic].³ Aqua further noted that the Complainant did not appeal the Commission's *2019 Rate Order* and it subsequently filed its compliance tariff on May 23, 2019 which was accepted by the Commission.

Aqua argues that the formal complaint filed by the Complainant in this matter is an attempt to relitigate his previous compliant and objections to the wastewater increase which have already been addressed by the Commission. As such, Aqua seeks to have the complaint in this matter dismissed with prejudice under the doctrines of *res judicata* and collateral estoppel. Complainant's response to Aqua's motion was due on or about May 28, 2020; however, he did not file a response.⁴

The record in this matter closed on May 28, 2020, the date Complainant's response to Aqua's motion was due. Aqua's motion for judgment on the pleadings is now ready for disposition. For the reasons discussed below, the motion will be granted and the complaint in this matter will be dismissed with prejudice. The hearing scheduled for June 25, 2020 will be cancelled.

FINDINGS OF FACT

1. The Complainant in this matter is Ben Mroz III.
2. The Respondent in this matter is Aqua Pennsylvania, Inc.

³ See n.2 above for correct complaint docket number.

⁴ At the time counsel forwarded Complainant's response to the new matter, counsel confirmed that they had not received any response to Aqua's motion from the Complainant.

3. On February 18, 2020, Complainant filed the within formal complaint alleging that the \$100 per month wastewater fee charged by Aqua is extensive, unreasonable, unfair and the most expensive utility bill he is receiving; Complainant also argues that wastewater should be metered or its rate capped.

4. The \$100 per month wastewater fee was approved by the Commission in Aqua's 2018 Rate Application. Pa. Pub. Util. Comm'n et al. v. Aqua Pa. Inc., R-2018-3003561 et al. (Opinion and Order entered May 9, 2019) (*2019 Rate Order*).

5. On September 4, 2018, the Complainant filed a formal complaint in response to Aqua's 2018 Rate Application at Docket No. C-2018-3004531 averring that Aqua's proposed wastewater rate increase was excessive, unreasonable, and unfair; Complainant also averred that Aqua's wastewater should be metered or its rate capped.

6. On February 8, 2019, a joint petition for settlement was filed by several of the parties to resolve the 2018 Rate Application proceeding.

7. On February 19, 2019, the Complainant filed objections to the joint petition for settlement arguing that the proposed settlement which called for a rate increase of \$100 per month was not fair and he could not afford an increase in his rates.

8. The Commission's *2019 Rate Order* approved the joint petition for settlement filed in the 2018 Rate Application.

9. The Commission's *2019 Rate Order* dismissed the Complainant's objections to the joint petition for settlement and his formal complaint in Docket No. C-2018-3004531.

10. The Complainant did not appeal the Commission's *2019 Rate Order* or the dismissal of his complaint in Docket No. C-2018-3004531.

DISCUSSION

Section 5.102 of the Commission's regulations relates to the motion for judgment on the pleadings which Aqua has filed. It provides in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion...

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

52 Pa.Code § 5.102(a)-(b), (d)(1),(3). For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party's well-pleaded allegations are viewed as

true but only those facts admitted by him may be considered against him. Beardell v. Western Wayne School District, 496 A.2d 1373 (Pa. Cmwlth. 1985) (Beardell). In short, in order for Aqua's motion to be granted, no material facts may be at issue and based upon those facts Aqua must be entitled to a judgment as a matter of law.

The question of whether there are material facts at issue will be addressed first.

Here, it is undisputed that the Complainant has filed two separate formal complaints concerning Aqua's wastewater fees, one in 2018 and one in 2020. Complainant's 2018 complaint challenged Aqua's proposed rate increase which was dismissed by the Commission's *2019 Rate Order*; Complainant's 2020 complaint herein challenges Aqua's current wastewater rate, which was approved by the Commission's *2019 Rate Order*.

In 2018, the Complainant filed his first complaint in Docket No. C-2018-3004531 in response to Aqua's 2018 Rate Application in Docket No. R-2018-3003561. There, Complainant argued that Aqua's proposed wastewater increase was too high and unfair. The Complainant objected to the proposed settlement reached by several parties which included a wastewater rate increase to \$100 per month. However, in approving the proposed joint petition for settlement, the Commission addressed the Complainant's objections and resolved the dispute by dismissing his complaint in that matter. The Complainant did not appeal the Commission's *2019 Rate Order* which dismissed his 2018 complaint.

In 2020, the Complainant filed his second complaint which was docketed in the matter now before me. In this complaint, the Complainant again argues that Aqua's \$100 per month wastewater fee is too high and unfair, which are the identical complaints he raised in his first complaint and in particular, to his objections to the joint petition for settlement in the 2018 Rate Investigation.⁵

⁵ It should be noted that in both the 2018 and 2020 complaints, the Complainant also made the same arguments that wastewater should be metered or that Aqua's fees should be capped.

Thus, there are no facts at issue in this matter. The facts are not in dispute. There is no allegation that the Complainant is not being billed consistent with Aqua's Commission-approved tariff. Rather, the Complainant has filed a second complaint arguing against Aqua's Commission-approved wastewater fee.

The next question to address with respect to a motion for judgment on the pleadings under 52 Pa.Code § 5.102(d)(1) is whether Aqua as the moving party is entitled to a judgment as a matter of law.

In both its new matter and motion, Aqua argued that the complaint in this matter should be barred by the doctrine of *res judicata*. The doctrine of *res judicata* is designed to promote certainty, finality and judicial economy. It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction. The courts have repeatedly stated that a final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. McCarthy v. Township of McCandless, 300 A.2d 815 (Pa. Cmwlth. 1973) (McCandless); Martin v. Poole, 177 A.2d 339 (Pa. Super. 1975). Under *res judicata*, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound "not only as to every matter which was offered and received, but also as to any other admissible matter which might have been offered." Commission v. Sunnen, 333 U.S. 591, 597 (1948); Jones v. Costlow, 47 A.2d 259 (Pa. 1946).

For the doctrine to prevail, four conditions must be met: (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 and capacity of the parties suing or sued. Safeguard Mutual Insurance Co. v. Williams, 345 A.2d 664 (Pa. 1975) and Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313 (Pa. Super. 1983); Northwestern Lehigh School District v. Pa. Agricultural Lands Condemnation Approval Board, 578 A. 2d 614 (Pa. Cmwlth. 1990). The Commonwealth Court stated that, "[F]or the purposes of *res judicata*, there is identity of causes of action when in both the old and new proceedings, the subject matter and the ultimate issues are the same." Howard

v. Pa. Dep't of Public Welfare, 529 A.2d 1231, 1233 (Pa. Cmwlth. 1987) (quoting McCandless, 300 A.2d at 820.

Although the Commission's procedural rules do not specifically address *res judicata*, the Commission has adopted this well-settled legal principle. Simms v. Philadelphia Electric Co., Docket No. F-889246 (1988). The Commission has recognized the applicability of the doctrine of *res judicata* in proceedings before it. O'Toole v. Bell Telephone Co. of Pa., 77 Pa. PUC 98 (1992). Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC LEXIS 52 (1997). The Pennsylvania courts have affirmed the Commission's application of the doctrine in the context of utility rate proceedings. Philadelphia Electric Co. v. Pa. Pub. Util. Comm'n, 433 A.2d 620 (Pa. Cmwlth. 1981); *see also*, Kentucky West Va. Gas Co. v. Pa. Pub. Util. Comm'n, 721 F. Supp. 710 (M.D. Pa. 1989), *aff'd*, 899 F.2d 1217 (3d Cir. 1990) (acknowledging the role of *res judicata* and collateral estoppel in administrative proceedings).

Here, all four conditions required for a finding of *res judicata* have been met:

1) The issues are identical - both complaints pertain to the wastewater rate increase contained in Aqua's 2018 Rate Application and approved in the Commission's May 9, 2019 Order;

2) The causes of action are identical – both complaints argue that Aqua's \$100 per month wastewater fee is too high and unfair;

3) The persons and parties to the action are identical - both complaints involve the same Complainant and Respondent; and

4) The quality and capacity of the parties suing or sued are also identical.

Therefore, it must be concluded that the complaint filed in this matter at Docket No. C-2020-3019143 is barred under the doctrine of *res judicata* as a result of the Commission's opinion and order previously issued in Docket No. C-2018-3004531.

In addition to *res judicata*, a complaint is prohibited by Section 316 of the Public Utility Code from raising issues previously decided. Section 316 provides, in pertinent 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. . . .

66 Pa. C.S. § 316. This section of the Public Utility Code precludes a collateral attack upon a Commission order which has not been reversed upon appeal. Recently, in the case of Howell v. PGW, Docket No. C-2016-2568426 (Opinion and Order entered May 2, 2017), the Commission held that Section 316 supports the dismissal of a second complaint filed on the same subject matter because an order of the Commission remains “conclusive on all parties affected thereby, unless set aside.” Here, the Commission’s *2019 Rate Order* which dismissed the Complainant’s first complaint in Docket No. C-2018-3004531 has not been reversed upon appeal or set aside. Therefore, Section 316 of the Public Utility Code provides an additional bar to the Complainant’s second complaint in this matter.

Consequently, the complaint in this matter is barred by *res judicata* as well as 66 Pa. C.S. § 316. Aqua has established that there are no genuine issues as to a material fact between the Complainant’s first complaint in 2018 regarding the proposed wastewater increase and the current 2020 complaint which challenges the Commission-approved amount of the wastewater increase and its fairness. Aqua, as the moving party, is entitled to a judgment as a matter of law. Therefore, the motion for judgment on the pleadings will be granted and the complaint in this matter dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. 52 Pa.Code § 5.102(a)-(b), (d)(1),(3).

3. A final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. McCarthy v. Township of McCandless, 300 A.2d 815 (Pa. Cmwlth. 1973); Martin v. Poole, 177 A.2d 339 (Pa. Super. 1975).

4. Under *res judicata*, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound "not only as to every matter which was offered and received, but also as to any other admissible matter which might have been offered." Commission v. Sunnen, 333 U.S. 591, 597 (1948); Jones v. Costlow, 47 A.2d 259 (Pa. 1946).

5. For the doctrine of *res judicata* to prevail, four conditions must be met: (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 and capacity of the parties suing or sued. Safeguard Mutual Insurance Co. v. Williams, 345 A.2d 664 (Pa. 1975) and Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313 (Pa. Super. 1983); Northwestern Lehigh School District v. Pa. Agricultural Lands Condemnation Approval Board, 578 A. 2d 614 (Pa. Cmwlth. 1990).

6. For the purposes of *res judicata*, there is identity of causes of action when in both the old and new proceedings, the subject matter and the ultimate issues are the same. Howard v. Pa. Dep't of Public Welfare, 529 A.2d 1231 (Pa. Cmwlth. 1987).

7. The Commission has recognized the applicability of the doctrine of *res judicata* in proceedings before it. O'Toole v. Bell Telephone Co. of Pa., 77 Pa. PUC 98 (1992). Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC LEXIS 52 (1997).

8. The Pennsylvania courts have affirmed the Commission's application of the doctrine in the context of utility rate proceedings. Philadelphia Electric Co. v. Pa. Pub. Util. Comm'n, 433 A.2d 620 (Pa. Cmwlth. 1981); see also, Kentucky West Va. Gas Co. v. Pa. Pub. Util. Comm'n, 721 F. Supp. 710 (M.D. Pa. 1989), *affd*, 899 F.2d 1217 (3d Cir. 1990) (acknowledging the role of *res judicata* and collateral estoppel in administrative proceedings).

9. A complaint is prohibited by Section 316 of the Public Utility Code from raising issues previously decided. 66 Pa. C.S. § 316.

10. *Res judicata* is an affirmative defense that should be raised in new matter pursuant to Section 5.62(b) of the Commission's regulations. 52 Pa. Code § 5.62(b).

11. 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, Docket No. C-20028539 (Order entered December 19, 2003).

12. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. 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).

13. Aqua Pennsylvania, Inc. has established based upon the applicable pleadings that there is no dispute as to a material fact and that as the moving party it is entitled to a judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).

