

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Raymond Kochis	:	
	:	
v.	:	C-2019-3012955
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses the complaint filed in this matter because the issues raised concerning termination and incorrect charges on bills were already litigated by the same two parties in a prior case and decided. Complainant failed to meet his burden of proof regarding incorrect charges on his bills incurred after his prior case was heard and Complainant withdrew his request for a payment arrangement at the hearing.

**HISTORY OF THE PROCEEDING**

On September 17, 2019, A. Raymond Kochis (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light or Company). Complainant alleges Duquesne Light is threatening to shut off his service and that he wants a payment arrangement. Complainant

also alleges incorrect charges on his bills and references a prior formal complaint proceeding at Docket No. C-2017-2601038 that was heard and decided regarding the same issues.<sup>1</sup>

Duquesne Light filed its answer and new matter on October 8, 2019. According to Duquesne Light, the allegations that the Company improperly attempted to terminate Complainant's electric service and improperly billed him are barred from being litigated again due to the doctrine of collateral estoppel (issue preclusion). Answer and New Matter ¶ 21. The answer denied the material allegations contained in the complaint. Complainant did not file a reply to the new matter.

On November 14, 2019, Duquesne Light filed a Motion for Judgment on the Pleadings requesting that the allegations pertaining to the Company's termination attempts and the charges on Complainant's electric service be denied on the basis of collateral estoppel and that Complainant's request for a payment arrangement be denied because Complainant has not made a good faith attempt to pay for his electric service. Duquesne Light also requested that the complaint be dismissed with prejudice. Complainant did not file an answer to the motion.

By Telephonic Hearing Cancellation/Reschedule Notice dated January 3, 2020, the Commission scheduled this matter for an initial in-person hearing on February 10, 2020. I issued a prehearing order dated November 5, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted an initial in-person hearing on February 10, 2020, as scheduled. Complainant appeared *pro se* and testified on his own behalf. Complainant offered one exhibit that was marked and admitted as Complainant's Ex. 1. Duquesne Light was represented by Emily Farah, Esquire. Duquesne Light presented one witness, Margaret Mueller. Duquesne Light offered pre-marked exhibits A, C, G, L, and M that were admitted into evidence.

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<sup>1</sup> The Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on January 30, 2018, at Docket No. C-2017-2601038, became the final action of the Commission when no exceptions were filed.

After the presentation of Complainant's case, counsel for Duquesne Light moved to dismiss the complaint on the basis that the issue of whether Complainant is responsible for electric charges while he is away from home was fully litigated and a final Commission decision was rendered on that issue. Transcript (Tr.) 53-54. The motion was taken under advisement.

The record consists of the transcript of the hearing held on February 10, 2020 and the aforementioned exhibits. The record was closed by interim order on May 13, 2020.

### FINDINGS OF FACT

1. Complainant, A. Raymond Kochis, resides at 416 Commonwealth Avenue, West Mifflin, PA 15122 (Tr. 10).
2. Respondent, Duquesne Light Company, provides residential electric utility service to Complainant (Tr. 10).
3. In 2018, Complainant occupied his home for 96 days and he was away from his home for 269 days (Tr. 15).
4. In 2019, Complainant occupied his home for 89 days and he was away from his home for 276 days (Tr. 16).
5. Complainant withdrew his request for a payment arrangement at the hearing (Tr. 55).
6. On January 5, 2020, Complainant's account balance for electric service provided by Duquesne Light was \$760.80 (Tr. 65; Exhibit A).
7. Complainant's monthly electric bills are all based on actual meter readings (Tr. 78; Exhibit A).

8. On October 24, 2019, Complainant's electric meter was tested by Duquesne Light at full load and light load and it accurately measures usage (Tr. 77-78; Exhibit G).

9. The initial decision issued in the prior complaint case between these parties at Docket No. C-2017-2601038 became final without further Commission action on May 6, 2018.

### DISCUSSION

Complainant alleged Duquesne Light is threatening to shut off his service and that he wanted a payment arrangement. Complainant also alleged incorrect charges on his bills and referenced a prior formal complaint proceeding at Docket No. C-2017-2601038 that was heard and decided regarding the same issues. On his formal complaint form, under the box checked for incorrect charges on his bill, Complainant wrote, "these data are in my records sent to you in my prior complaint over the past 2-3 years C-2017-2601098."<sup>2</sup> Formal Complaint, p. 2. Complainant further provided, "[S]ee data submitted in formal complaint at C-2017-2601098, especially monthly charges during absence from my house and proofs submitted as per monthly DLC filings." Formal Complaint, p. 2.

At the hearing, Complainant testified that he did not want a payment arrangement. Consequently, the request for a payment arrangement will not be addressed further in this proceeding.

#### A. Collateral Estoppel

The doctrine of *res judicata* reflects the refusal of the law to tolerate the relitigation of a matter decided by a court of competent jurisdiction. A final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on

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<sup>2</sup> The correct docket number of Complainant's former Formal Complaint is C-2017-2601038.

the same cause of action. 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. Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313, 1316-17 (Pa. Super. 1983); O'Toole v. Bell Telephone Co. of Pa., 77 Pa. PUC 98 (1992).

Similar to the doctrine of *res judicata* is the doctrine of collateral estoppel. However, it is a broader concept. Collateral estoppel prevents a question of law or an issue of fact that has been once litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit. The four requirements for a plea of collateral estoppel to prevail are: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action. Day, 464 A.2d at 1318-19. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the relitigation of a finally litigated issue in a subsequent proceeding between the same parties. Baker v. Pa. Human Relations Comm., 462 A.2d 881 (Pa.Cmwlth. 1983).

The prior complaint at Docket No. C-2017-2601038 contained two of the same allegations in the present complaint: that the Company improperly attempted to terminate Complainant's electric service, and that incorrect charges appeared on Complainant's Duquesne Light bills. At the hearing, Complainant raised the same issues concerning metered usage at his home when he is not occupying it and regarding his responsibility for distribution charges because he alleges he is not using any electricity when he is not home. Tr. 17-18. He testified regarding the days he was absent from his home in the years 2018 and 2019 and he testified that he did not use electricity while he was gone. Tr. 15-16. He further testified that he should not be billed for distribution charges when he is absent from his home and allegedly not using any electricity. Tr. 17-18. These same issues, both involving incorrect charges, have already been decided by the Commission.

No question exists that in both this case and Complainant's previous complaint case at Docket No. C-2017-2601038, the same issues regarding incorrect charges, parties, and capacities of parties existed. Moreover, the issues delineated above in both instances are the same, a final judgment on the merits in the previous complaint case was entered, Complainant was the same person identified in the previous case, and he had a full and fair opportunity to litigate the issues in question in the prior action. Therefore, consideration of these issues regarding incorrect charges are barred by the doctrine of collateral estoppel.

In addition, these issues are barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, which states 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.

The Commission's Opinion and Order at Docket No. C-2017-2601038 likewise remains conclusive upon the parties to the present action. For these reasons, these issues will receive no further consideration here.

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint and alleging incorrect charges on his bills after the disposition of his prior complaint at Docket No. C-2017-2601038, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. Complainant has failed to meet this burden.

In Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980), the Commission outlined the general dynamics for the burden of proof in a case that raises a high bill dispute. In order to determine whether a complainant has established a *prima facie* case where there are claims of unusually high bills, the Commission has declared that certain factors must be considered. While the accuracy of the meter is an important factor in

resolving a billing dispute, it is not the sole criterion. *Id.* at 100. A complainant may establish a *prima facie* case by showing that: (1) the disputed bill was abnormally high when compared to prior usage patterns; and (2) his/her pattern of usage had not changed. *Id.* In looking at these criteria, one may consider the billing history of the account, any change in the number of occupants residing in the household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980). In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001).

In Thomas v. PECO, Docket No. C-2010-2187197 (Order entered November 15, 2011), the Commission reiterated its position as set forth in Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), which clarifies the Waldron rule provision that a complainant may establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*” *Id.* at 6 (emphasis added).

Although Complainant here was not claiming he had *high* bills after his last complaint proceeding, he was complaining that Duquesne Light billed him for a minimal amount of metered usage that he alleges did not occur because he was away from the home and had turned everything using electricity in his home off. Complainant did not offer any evidence to substantiate his claims that there are incorrect charges on his bills other than his testimony. He did not meet his burden of proof regarding claims of incorrect charges incurred since his last complaint proceeding and his complaint is therefore denied in the ordering paragraphs to follow.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on Complainant.
3. Complainant has not met his burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).
4. The four requirements for a plea of collateral estoppel to prevail are: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action. Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313, 1318-19 (Pa. Super. 1983).
5. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the relitigation of a finally litigated issue in a subsequent proceeding between the same parties. Baker v. Pa. Human Relations Comm'n, 462 A.2d 881 (Pa.Cmwlt. 1983).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of A. Raymond Kochis against Duquesne Light Company at Docket No. C-2019-3012955 is denied.

