

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Guagenti	:	
	:	
v.	:	C-2020-3018915
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Michael Guagenti against PECO Energy Company under the doctrine of *lis pendens* due to the pendency of a prior proceeding involving the same parties, cause of action and relief sought.

HISTORY OF THE PROCEEDING

On February 26, 2020, Michael Guagenti (Mr. Guagenti or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, the Company, or Respondent) alleging that the utility is threatening to shut off his service and that there are incorrect charges on his bills from PECO. Specifically, Complainant avers that he is enrolled in PECO's Customer Assistance Program (CAP) but has not received CAP's discounted rate. He also avers that his budget billing has remained unchanged through the years although he has received communications congratulating him for keeping his electricity consumption down. Additionally, Mr. Guagenti challenges a \$262.00 amount that appeared on his bill after he was removed from budget billing. Importantly,

Mr. Guagenti states that he has made the claims about his budget billing before two different Administrative Law Judges.

As relief, the Complainant requested the Commission's assistance in reviewing and correcting his bills.

On March 16, 2020, PECO filed an Answer denying the material allegations of the Complaint and contending that the instant Complaint involved the same parties and issues as a pending Complaint at Docket No. C-2019-3014185, assigned to Deputy Chief Administrative Law Judge, Christopher Pell. PECO avers that, inasmuch as the Complainant has an identical matter pending decision before the Commission, the present Complaint is premature and not ripe for review. Additionally, PECO avers that Mr. Guagenti also filed an almost identical Complaint against PECO in 2018 at Docket No. F-2018-3001891, which he is currently appealing.

By Hearing Notice dated May 11, 2020, an initial telephonic hearing was scheduled for June 23, 2020, at 10:00 a.m.

A Prehearing Order was issued on May 26, 2020, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on June 23, 2020. Mr. Guagenti appeared *pro se*. Khadijah Scott, Esq., represented the Respondent. Prior to the hearing, the parties engaged in settlement discussions with me participating as a Settlement Judge. During the settlement discussion, it became clear that the present Complaint involves the same parties and issues as the Complaint at Docket No. C-2019-3014185 still pending before the Commission. Mr. Guagenti confirmed as much on the record and I ruled to continue the hearing for 90 days to allow the Commission to reach a conclusion on Mr. Guagenti's prior pending Complaint at Docket No. C-2019-3014185. Tr. 7.

Upon further consideration, I have decided that the continuance of the hearing is unnecessary in this case. Instead, I shall rescind my ruling to continue the hearing and shall dismiss the present Complaint based on the doctrine of *lis pendens* in accordance with the discussion below.

FINDINGS OF FACT

1. The Complainant is Michael Guagenti.
2. The Respondent is PECO Energy Company.
3. On December 9, 2019, Complainant filed a formal complaint at Docket No. C-2019-3014185, which was the subject of an evidentiary hearing presided over by Deputy Chief Administrative Law Judge Christopher Pell on January 27, 2020 (based upon Commission records).
4. The parties, issues, and requested relief in the instant Complaint at C-2020-3018915 are the same as those in the pending formal complaint of Michael Guagenti against PECO Energy Company at Docket No. C-2019-3014185. Tr. 7.
5. Complainant had an opportunity to address the issues set forth in the instant Complaint at a hearing which was held on January 27, 2020 before Deputy Chief Administrative Law Judge Christopher Pell in Complainant's prior pending formal complaint at Docket No. C-2019-3014185.
6. The Complaint at Docket No. C-2020-3018915 was never consolidated with the pending formal complaint at Docket No. C-2019-3014185, and was not withdrawn or settled.

DISCUSSION

The purposes of recognizing the doctrine of *lis pendens*, or prior pending action, are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. Penox Technologies, Inc. v. Foster Med. Corp., 376 Pa.Super. 450, 453, 546 A.2d 114, 115 (1988); Norristown Auto. Co., Inc. v. Hand, 386 Pa.Super. 269, 273–74, 562 A.2d 902, 904 (1989).

"[L]is pendens is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions." Procacina v. Susen, 301 Pa.Super. 392, 394, 447 A.2d 1023, 1025 (1982) (citations omitted). The Commission's regulation at 52 Pa. Code § 5.101(a)(6) recognizes the pendency of a prior proceeding as a defense and incorporate it as part of the grounds for filing preliminary objections.

Although *lis pendens* is typically asserted as a defense, "[i]t is purely a question of law determinable from an inspection of the records in the two causes.'" Hillgartner v. Port Authority of Allegheny Cty, 936 A.2d 131, 138 (Pa.Cmwlth. 2007) (Hillgartner), *citing* Susen, 447 A.2d at 1025 (Pa. Super. 1982) (quoting Hessenbruch v. Markle, 593 45 A. 669, 671 (Pa. 1900)). The doctrine of *lis pendens* requires identical parties, issues, and requested relief. Hillgartner.

A review of the two formal complaints, in addition to Mr. Guagenti's affirmation, reveals that the parties in the two cases are identical and that the issues and requested relief in the instant case are contained within the prior pending case at Docket No. C-2019-3014185. See Tr. 7. While dismissal of *pro se* complaints based upon preliminary motions may not be favored, I note that, in the instant case, Mr. Guagenti has been provided a full and fair opportunity to present his case at a hearing in front of Deputy Chief Administrative Law Judge Christopher Pell and has availed himself of that opportunity in the prior pending proceeding at Docket No. C-2019-3014185.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). It would be a waste of Commission and party resources for the litigants to be forced to relitigate matters which have previously been addressed in a prior proceeding.

Accordingly, for the foregoing reasons, I conclude that the Complaint of Michael Guagenti at Docket No. C-2020-3018915 is appropriately dismissed.

CONCLUSIONS OF LAW

1. The purposes of recognizing the doctrine of *lis pendens*, or prior pending action, are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. Penox Technologies, Inc. v. Foster Med. Corp., 376 Pa.Super. 450, 453, 546 A.2d 114, 115 (1988); Norristown Auto. Co., Inc. v. Hand, 386 Pa.Super. 269, 273–74, 562 A.2d 902, 904 (1989).

2. "[L]is pendens is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions." Procacina v. Susen, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

3. The Commission's regulations recognize the pendency of a prior proceeding as a defense and incorporate it as part of the grounds for filing preliminary objections. 52 Pa. Code § 5.101(a)(6).

4. Although *lis pendens* is typically asserted as a defense, "[i]t is purely a question of law determinable from an inspection of the records in the two causes." Hillgartner v. Port Authority of Allegheny Cty, 936 A.2d 131, 138 (Pa.Cmwlt. 2007), citing Procacina v.

Susen, 447 A.2d 1023, 1025 (Pa. Super. 1982) (*quoting*, Hessenbruch v. Markle, 45 A. 669, 671 (Pa. 1900)).

5. The Commission may dismiss a complaint without a hearing if a hearing is not necessary or in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

6. Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984).

ORDER

THEREFORE:

IT IS ORDERED:

1. That the formal Complaint filed by Michael Guagenti against PECO Energy Company at Docket No. C-2020-3018915 is dismissed.

2. That the Secretary's Bureau mark this docket closed.

Dated: August 26, 2020

/s/
Eranda Vero
Administrative Law Judge