

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Leininger	:	
	:	
v.	:	C-2020-3021150
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants the motion for judgment on the pleadings and dismisses the Complaint.

HISTORY OF THE PROCEEDING

On July 16, 2020, Nancy Leininger (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light or the Company) alleging incorrect charges on her Duquesne Light electric bill and providing further that “account balance and smart energy meter is defective.” As relief, Complainant requests that the bill be expunged and that all billings cease until this matter is resolved.

On August 25, 2020, Duquesne Light filed an Answer and New Matter to the Formal Complaint. In the Answer, Duquesne Light avers Complainant seeks to re-litigate issues already decided in a previous case against Duquesne Light at Docket No. F-2018-3003226

(previous complaint). Duquesne Light avers Complainant's allegations concerning the accuracy of her bill and the accuracy of her meter have already been fully litigated and subject to a final Commission order on the merits dismissing the previous complaint. Duquesne Light incorporates the paragraphs of its Answer into New Matter and requests that the Complaint be dismissed with prejudice pursuant to the doctrine of collateral estoppel.

On September 21, 2020, Duquesne Light filed a motion for judgment on the pleadings averring that the undisputed facts establish Complainant is not entitled to re-litigation of the allegation that incorrect charges appear on her bills because the initial decision dismissing the previous complaint became final by Commission Order entered on December 19, 2019.

On October 7, 2020, counsel for Complainant, John P. Corcoran, Jr., Esquire, filed a response to the motion for judgment on the pleadings wherein Complainant denied that this matter is the result of a defective meter, averring, "[t]o the contrary, the transformer is now at issue." Response in Opposition to Motion for Judgment on the Pleadings, p. 2.

On October 13, 2020, the undersigned was assigned this motion for judgment on the pleadings. The motion for judgment on the pleadings is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Nancy Leininger.
2. Respondent is Duquesne Light Company.
3. On July 16, 2020, Complainant filed a Formal Complaint against Respondent alleging incorrect charges on her Duquesne Light electric bill and providing further that "account balance and smart energy meter is defective."
4. As relief, Complainant requests that the bill be expunged and that all billings cease until this matter is resolved.

5. On August 25, 2020, Respondent filed an Answer and New Matter averring that Complainant seeks to re-litigate issues already decided in a previous case against Duquesne Light at Docket No. F-2018-3003226. Respondent avers that Complainant's allegations concerning the accuracy of her bill and the accuracy of her meter have already been fully litigated and subject to a final Commission order on the merits dismissing the complaint.

6. On September 21, 2020, Respondent filed a motion for judgment on the pleadings averring that the undisputed facts establish Complainant is not entitled to re-litigation of the allegation that incorrect charges appear on her bills because the initial decision dismissing the previous complaint became final by Commission Order entered on December 19, 2019.

7. On October 7, 2020, Complainant filed a response to the motion for judgment on the pleadings wherein Complainant denied that this matter is the result of a defective meter, averring, "[t]o the contrary, the transformer is now at issue." Response in Opposition to Motion for Judgment on the Pleadings, p. 2.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure state that a party may move for judgment on the pleadings after the pleadings are closed, but within a time so that the hearing is not delayed. 52 Pa.Code § 5.102(a). The pleadings in an action before the Commission include the following: (1) application and protest; (2) formal complaint, answer, new matter and reply to new matter; (3) order to show cause and answer; (4) petition and answer; (5) preliminary objections; and (6) motions. *See* 52 Pa.Code § 5.1(a). In the present case, I will grant the motion for judgment on the pleadings because I find that the applicable pleadings show that there is no genuine issue of material fact.

The standard for granting a motion for judgment on the pleadings is contained in 52 Pa.Code § 5.102(d)(1): "The judgment sought will be rendered if the applicable pleadings . . . 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." 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 her may be considered against her. *Beardell v. W. Wayne School Dist.*, 496 A.2d 1373 (Pa. Cmwlt. 1985).

The doctrine of *res judicata* reflects the refusal of the law to tolerate the re-litigation 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 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 (Pa. Super. 1983) (*Day*); *O'Toole v. Bell Tel. 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 1319. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the re-litigation 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).

No question exists that in both this case and the previous complaint case at Docket No. F-2018-3003226 the same issues, causes of action, parties, and capacities of parties existed. Moreover, the issues 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 she had a full and fair opportunity to litigate the issues in question in the prior action.

Therefore, consideration of these issues is barred by the doctrines of *res judicata* and 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.

66 Pa.C.S. § 316. The Commission's Final Order entered on December 19, 2019 likewise remains conclusive upon the parties to the present action. For these reasons, these issues will receive no further consideration here.

In Complainant's response to the motion for judgment on the pleading, Complainant contends that the transformer providing electricity to the service address is now at issue. There are no allegations in the present Complaint that the power supply to the service address was inadequate, that a surge occurred, or that there was damage to appliances as a result of the electricity that entered through the meter into the home.

Complainant's claims of incorrect charges and questioning the accuracy of her smart meter were thoroughly addressed in the previous complaint proceeding between these two parties and they will not be addressed here. A transformer on the utility side of the smart meter would not impact Complainant's metered consumption.

The Commission is granted discretion to 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). A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593, *app. den.*, 836 A.2d 123 (Pa. Cmwlth. 2003); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Com., v. Pa. Pub. Util. Comm'n*, 623

A.2d 6 (Pa. Cmwlth. 1993). This case does not involve disputed questions of fact. Because there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law, a hearing in this case is not necessary or in the public interest and would be a fruitless exercise.

For the reasons stated above, Respondent's motion for judgment on the pleadings will be granted and Ms. Leininger's Complaint will be dismissed in its entirety.

CONCLUSIONS OF LAW

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

2. Commission regulations provide for the filing of motions for judgment on the pleadings. 52 Pa.Code § 5.102.

3. A motion for judgment on the pleadings is properly granted where the pleadings 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. 52 Pa.Code § 5.102(d)(1).

4. 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).

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. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983); *O'Toole v. Bell Tel. Co. of Pa.*, 77 Pa. PUC 98 (1992).

6. 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 1319.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion for Judgment on the Pleadings seeking to dismiss the Complaint filed by Nancy Leininger at Docket No. C-2020-3021150 is granted.

2. That the Complaint filed by Nancy Leininger against Duquesne Light Company, at Docket No. C-2020-3021150, is dismissed.

3. That the Docket for this proceeding be marked closed.

Dated: December 10, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge