

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANIA 17120**

**Nancy Leininger
v.
Duquesne Light Company**

**Public Meeting held May 20, 2021
3021150-OSA
Docket No. C-2020-3021150**

MOTION OF VICE CHAIRMAN DAVID W. SWEET

Before the Commission is the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer in the case captioned Nancy Leininger v. Duquesne Light Company which grants Duquesne's Motion for Judgment on the Pleadings and dismisses the formal complaint. Ms. Leininger filed exceptions and Duquesne filed reply exceptions.

Ms. Leininger filed a complaint on June 25, 2018,¹ alleging that her electric bills from November 2017 through April 2018 were high based on past usage and alleging further that her smart meter was inaccurate. Following litigation which included the introduction of evidence of both sides and the results of two meter tests finding the meter to be accurate, the complaint was dismissed for failure to prove the allegations.

Ms. Leininger filed the present complaint on July 16, 2020, nearly two years after the filing of the prior complaint. She alleged that the bill for the month of February 2020 included incorrect high charges and that her smart meter is defective. Duquesne filed its answer stating that the complaint seeks to re-litigate matters that had already been decided in the prior complaint docket.

On September 21, 2020, Duquesne filed its Motion for Judgment on the Pleadings arguing that the matter has already been litigated and that Ms. Leininger is not entitled to relitigate the issues. Ms. Leininger filed a response in which she claimed that the meter is not at issue but that the transformer is the real cause of the high bill.

DCALJ Hoyer found that the doctrine of collateral estoppel applied and that re-litigation of the issues was barred. In exceptions, Ms. Leininger reiterates her claim that the transformer is now the cause of her high bill. Duquesne's reply to exceptions states that the attempt to relitigate the prior billing dispute is barred by the doctrines of res judicata and collateral estoppel. Duquesne states that claim preclusion applies as the issue of defective equipment was either already litigated or could have been litigated in the prior complaint docket.

It is well settled that a commission order is prima facie evidence of the facts found and shall remain conclusive upon all parties affected unless set aside, annulled, or modified on judicial review.² In addition, res judicata and collateral estoppel both have four-pronged tests that must be met in order to act as a bar to a subsequent claim.³ Both of these doctrines have the

¹ *Nancy Leininger v. Duquesne Light Company*, Docket No. C-2018-3003226.

² 66 Pa. C.S.A. §316.

³ Res judicata: (1) identify 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. Issue preclusion: (1) the issues in both cases must be identical; (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. *See Robinson v. Fye*, 192 A.3d 1225, 2018 Pa. Commw. LEXIS 414.

same goal: to prevent the re-litigation of a finally litigated issue in a subsequent proceeding between the same parties.

I agree that Ms. Leininger cannot change the cause of action in an attempt to circumvent the final order of the Commission. However, I do not agree that res judicata and issue preclusion can be applied when the actual bills in question are different. It is possible that a complainant may experience a high billing issue for a legitimate reason even after she has failed to sustain her burden of proving that prior bills were high two years earlier. And, a meter working well for several years may subsequently break or suffer damage later. If Ms. Leininger had filed the second complaint immediately after the first, then I would be inclined to see the second case as a re-litigation of the issues raised in the first case. However, there were two years between the filings, and that is sufficient time for errors to occur.

Because the bills from the first case are separated by two years, it is improper to apply the doctrines of issue preclusion and res judicata to bar the second complaint. Accordingly, I move to remand the matter for proceedings on the merits consistent with this motion.

THEREFORE,

I MOVE:

1. That the Initial Decision of Deputy Chief Counsel Mark A. Hoyer in the matter captioned Nancy Leininger v. Duquesne Light Company at Docket Number C-2020-3021150 is vacated.
2. That the matter be remanded to the Office of Administrative Law Judge for proceedings consistent with this Motion.
3. That the Office of Special Assistants prepare an appropriate Order consistent with this Motion.

May 20, 2021
DATE



DAVID W. SWEET
VICE CHAIRMAN