

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer

v.

PPL Electric Utilities Corporation

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C-2021-3031294

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains, in part, and denies, in part, the Preliminary Objections filed by PPL Electric Utilities Corporation against the formal Complaint filed by Jay Larry Moyer as his Complaint is legally insufficient and is barred by the principle of *res judicata* in that it seeks to re-litigate identical issues already decided by the Commission in four earlier Complaints relative to electric metering and billing (virtual meter aggregation). The Complaint is also dismissed as legally insufficient because it seeks to amend PPL's lawfully filed tariff and to impose new requirements on PPL based on those amendments without first meeting the due process rights of notice and an opportunity to be heard which must be afforded to all potentially affected parties. This Complaint is not the correct proceeding for attempting to revise PPL's rates, terms and conditions of service. Because this is the fifth in a series of identical Complaints filed by Mr. Moyer, it will also be dismissed with prejudice as an abuse of administrative process.

HISTORY

On February 22, 2022, Jay Larry Moyer (Complainant), filed a Complaint against PPL Electric Utility Corporation (PPL, Company, or Respondent) with the Pennsylvania Public Utility Commission (Commission), alleging a billing dispute with respect to Complainant's metered service. Specifically, Complainant contends that he is not being correctly compensated for the energy generated by the solar panels attached to the residence at the service address in the Complaint.

On March 28, 2022, PPL filed an Answer and New Matter to the Complaint. In its New Matter, PPL cites the four identical Complaints previously filed by Complainant, all of which were dismissed, and requests the dismissal of the Complaint under the principle of *res judicate* and the doctrine of collateral estoppel. The New Matter was properly endorsed with a Notice to Plead.

Complainant filed no Answer or responsive pleading to PPL's New Matter.

On March 28, 2022, PPL filed a Preliminary Objection to the Complaint, asserting that the Complaint is essentially the same Complaint that Complainant has filed in four previous Commission proceedings, is barred by the principle of *res judicata*, is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4) and should be dismissed with prejudice under the doctrine of collateral estoppel because Complainant is barred by an Order from the Schuylkill County Court of Common Pleas, subsequently upheld by the Commonwealth Court, from initiating *pro se* litigation against PPL that raises the same or related issues to those previously adjudicated by Pennsylvania courts.

On April 6, 2022, Complainant filed an Answer to PPL's Preliminary Objection. In that Answer, Complainant asserts that his situation is unique and so must be addressed. The majority of the Answer is a reiteration of the underlying Complaint and argument related to the that Complaint.

On May 10, 2022, this matter was assigned to me to rule on the Preliminary Objections.

As will be explained in detail, below, PPL's Preliminary Objections to the Complaint and request that it be dismissed on the basis of legal insufficiency are granted as the Complaint is barred by the principle of *res judicata*. PPL's request for dismissal with prejudice on the basis of collateral estoppel is denied. The Complaint will be dismissed with prejudice as its filing is an abuse of administrative process.

FINDINGS OF FACT

1. Jay Larry Moyer is the Complainant in this matter.
2. PPL Electric Utilities Corporation, is a Commission jurisdictional electric distribution company.
3. Complainant receives service from PPL at 73 Woods Road, Klingerstown, PA, in part as a customer-generator participating in PPL Electric's virtual meter aggregation program. Complaint at 1; PPL Answer at ¶ 1.
4. Complainant has filed multiple Complaints concerning the Company's virtual meter aggregation at the Complainant's properties and the Company's billing processes.
5. The First and Second Complaints based on allegations regarding PPL's virtual meter aggregation program and billing processes were filed at Docket Nos. C-2011-2273645 and C-2014-2444864.
6. Both the Commission and the Commonwealth Court denied the Complainant's claims made in the First and Second Complaints about PPL Electric's virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denied the Complainant's Petition for Allowance of Appeal. *Moyer v. PPL Elec. Utils. Corp.*, Docket

Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016), *affirmed*, *Moyer v. Pa. Pub. Util. Comm'n*, 2017 Pa. Commw. Unpub. LEXIS 167 (Pa. Cmwlth. 2017) (*Moyer I*), *allocatur den.*, *Moyer v. Pa. Pub. Util. Comm'n*, 2017 Pa. LEXIS 2145 (Pa. 2017).

7. The Commission dismissed the Complainant's Third Complaint, which raised identical issues concerning PPL Electric's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered August 8, 2019).

8. The Commission dismissed the Complainant's Fourth Complaint regarding the Company's virtual meter aggregation billing practices. *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered October 28, 2021).

9. The Complainant did not appeal the Commission's October 28, 2021 Order dismissing his Fourth Complaint. *Moyer v. PPL Electric Utilities Corp.*, Docket No. 587 C.D. 2019, 2020 Pa. Commw. Unpub. LEXIS 514, No. 587 C.D. 2019 (Pa. Cmwlth. 2021).

10. On February 22, 2022, Complainant filed a Complaint against PPL alleging that he does not receive full retail value on his monthly electric bills and that the Commission has not established a rate schedule which defines the "full retail value," for his generation, the generation in question being provided by solar panels on Complainant's home.

11. On March 28, 2022, PPL filed an Answer to the Complaint in which PPL contends that at all times relevant to the instant Complaint, PPL Electric has billed and credited Complainant's accounts in accordance with its established virtual meter aggregation billing practices, and that the Complainant has received the full amount of credits and year-end cash-outs to which he is entitled to receive.

12. In its Answer, PPL states that it has timely and substantially responded to questions from the Complainant about his bills, including answering questions and providing supporting data about the credits for electric generation produced by his solar facility.

13. In its Answer, PPL states that the present Complaint is the fifth Complaint that Complainant has filed with the Commission with regard to the same matter and that the Complaint is barred by principles of *res judicata* and collateral estoppel as well as the fact that Complainant has been barred by Court Order from filing such a Complaint by Order of the Court of Common Pleas of Schuylkill County as affirmed by the Commonwealth Court of Pennsylvania. *Moyer v. PPL Elec. Utils. Corp.*, Court of Common Pleas, Schuylkill County, Case No. S-145-19 (April 3, 2019) *aff'd*, *Moyer v. PPL Elec. Utils. Corp.*, No. 587 C.D. 2019, 241 A.3d 119; 2020 WL 6240793 (Pa. Cmwlth. Oct. 23, 2020).

14. Complainant filed no Answer or responsive pleading to PPL's New Matter.

15. On March 28, 2022, PPL filed a Preliminary Objection to the Complaint, asserting that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4) and requesting that the Complaint be dismissed with prejudice under the doctrine of collateral estoppel.

16. On April 6, 2022, Complainant filed an Answer to PPL's Preliminary Objection asserting that his situation is unique and so must be addressed.

17. The Complaint filed at this docket seeks to relitigate issues previously adjudicated by the Commission and to establish a new rate schedule and billing procedures for his virtual meter aggregation.

DISCUSSION

Before setting forth the legal standards that are directly applicable to the resolution of this matter, it is necessary to understand that the basis for ruling on any Preliminary Objection is set forth in the Commission's procedural regulations:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General v. SERS*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically

admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Complainant's Allegations

In this matter, the facts alleged by Mr. Moyer (as derived from his Complaint, the attachments thereto, and from his Answer to PPL's Preliminary Objection)¹ are as follows: Complainant has affixed to the residence at his service address solar panels from which he claims an energy credit but for which he contends that he "does not receive full retail value on his monthly electric bills." Complaint ¶ 4. Complainant further contends that he is entitled to and has been denied, "the precise per-unit value of my electric generation or the per-unit values of credit that must be applied." *Id.* Complainant states, "The Commission has not established a rate schedule which defines the 'full retail value' (per-unit) which I should receive for my generation," the generation in question being provided by the solar panels on the residence. *Id.*

Complainant then goes on to make what he terms a "side-by-side comparison" of the PPL rate he claims that he is compensated under versus a rate that he feels that he should be compensated under. In his request for relief, Complainant requests that the Commission generate a rate schedule which defines the per-unit "full retail value" (*i.e.* "full retail kilowatt-hour rate") that applies to generation which is reported by Complainant's solar meter. He also requests that the Commission require PPL to identify the precise, per-unit "full retail value" of electricity which applies each month to the electric "use" at his residential meter.

Complainant also asks that the Commission require PPL to apply the "full retail value" of credit properly to each of his two meters respectively; and that the Commission require PPL to provide him with data for the process of applying monthly credit to each of his meters under what will be a new rate schedule.

¹ Complainant's detailed allegations and requests for relief are attached to his Complaint in two separate attachments, neither of which has numbered paragraphs for reference.

PPL's Preliminary Objections

For its part, PPL states that the present Complaint is the fifth identical Complaint that the Complainant has filed with the Commission against PPL concerning the Company's virtual meter aggregation program and billing practices. PPL argues that to the extent that the Complainant attempts to re-litigate issues from prior proceedings, those issues have already been ruled on by the Commission and Pennsylvania appellate courts and, therefore, should be dismissed for legal insufficiency. Answer at 3; Preliminary Objection at 1.

PPL also contends that the Complaint is barred under the doctrine of collateral estoppel by Order issued by the Schuylkill Court of Common Pleas as a result of a civil action filed in that Court by Complainant against PPL in January, 2019. Specifically, on April 3, 2019, that Court granted PPL Electric's Motion to Dismiss the Complainant's civil action pursuant to Pennsylvania Rule of Civil Procedure 233.1,² and barred the Complainant from initiating any further *pro se* litigation against PPL involving the same or related matters without leave of Court. On October 23, 2020, the trial Court's decision was upheld on appeal by the Commonwealth Court. PPL contends that without leave of the Schuylkill County Court, Complainant is legally barred from initiating any *pro se* litigation against PPL on the same or related subjects as his prior Complaints. Preliminary Objection at 2.

PPL maintains that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4) and should be dismissed with prejudice because without leave from the Court of Common Pleas, the Complainant is barred from initiating *pro se* litigation against PPL that raises the same or related issues to those previously adjudicated by the Commission and Pennsylvania courts. PPL asserts that the present Complaint once again raises issues concerning the Company's virtual meter aggregation of his residential and solar accounts and PPL Electric's billing processes. Preliminary Objection at ¶¶ 29-33; Preliminary Objection Exhibit A.

²

See, Pa.R.Civ.P. 233.1 (relating to frivolous litigation, *pro se* plaintiff, motion to dismiss).

PPL cited Mr. Moyer's past Complaints with respect to PPL's virtual meter aggregation program and billing processes, including a case in which the Pennsylvania Supreme Court denied the Complainant's Petition for Allowance of Appeal of a Commission Order dismissing the first two of his identical Complainants (the First and Second Complaints). See *Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016), *aff'd*, *Moyer v. Pa. Pub. Util. Comm'n*, LEXIS 167 (Pa. Cmwlth. 2017), *allocatur den.*, *Moyer v. Pa. Pub. Util. Comm'n*, LEXIS 2145 (Pa. 2017).

PPL states that like the First and Second Complaints, the Commission dismissed the Complainant's Third Complaint, which raised identical issues concerning PPL's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered August 8, 2019).

PPL further maintains that as with the First, Second, and Third Complaints, the Commission dismissed the Complainant's Fourth Complaint regarding the Company's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered October 28, 2021) (*October 28, 2021 Order*). The Complainant did not appeal the Commission's October 28, 2021 Order dismissing his Fourth Complaint.

In its extensive Order denying Mr. Moyer's exceptions at Docket No. C-2017-2629683 (the Fourth Complaint) the Commission provides a history of the three previous Complaints, of the Fourth Complaint, and provides a summary of all of the Complaints filed by Mr. Moyer. *October 28, 2021 Order* at 9-11. All of the preceding Complaints filed by Complainant (including his Fourth Complaint) concerned identical issues related to virtual meter aggregation billing by PPL. All of the Complaints were dismissed.

PPL argues that because this is Complainant's Fifth Complaint with respect to the same cause of action, the Complaint should be dismissed as legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4). I agree. PPL requests that the Complaint be dismissed with prejudice in accord with the doctrine of collateral estoppel. I agree that the present Complaint should be

dismissed with prejudice, but only because it is an abuse of administrative process as will be discussed, below.³

Complainant's Answer to PPL's Preliminary Objection

Most of Complainant's Answer to PPL's Preliminary Objections do not refute PPL's invocation of *res judicata* as dispositive of the present Complaint. The Answer takes the form of the same arguments that Complainant has made in his previous cases which have been previously heard, considered and rejected by the Commission in its previous decisions. That much is clear on the face of all of the pleadings filed in this case which essentially go over the same ground as in the four preceding Complaints. Complainant does assert that the circumstances of his generating system are unique and have no parallel in PPL's service area. This will be addressed, below.

Legal Standards

In addition to the basic procedural requirements attendant to ruling on Preliminary Objections set forth at 52 Pa. Code § 5.101(a), we must consider PPL's Preliminary Objection that asserts that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4), and that the Complaint should be dismissed in accord with the principle of *res judicata* because Complainant is attempting to relitigate matters already decided by the Commission in four prior Complaints. PPL also asserts that Complainant is barred by the related doctrine of collateral estoppel from filing the present Complaint because Complainant failed to secure permission to file the Complaint from the Court of Common Pleas of Schuylkill County which issued an Order barring Complainant from further litigation of his billing dispute with PPL absent the Court's permission.

³ I note that in its Answer, PPL also argued that the present Complaint is barred by 66 Pa.C.S. § 316. Section 316 states, in relevant part: “[w]henver 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.

Specifically, *res judicata* is appropriately raised as a defense if all of the issues between the parties in the current proceeding have been previously decided in a prior proceeding, where the parties had an opportunity to appear and be heard. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) (*Day*). The essential inquiry in applying the principle of *res judicata* is whether the ultimate and controlling issues in a complaint have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. *Stevens Painton Corp. v. First State Ins. Co.*, 746 A.2d 649 (Pa. Super. 2000).

With respect to collateral estoppel, the four requirements for the related defense of collateral estoppel 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 in the prior action; (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 the prior action. See *Day*.

Collateral Estoppel and Applicability of the Order of the Court of Common Pleas of Schuylkill County

We may first dispose of the contention that Complainant is barred by the doctrine of collateral estoppel from filing of a Complaint with the Commission under the terms of the Order of the Court of Common Pleas attached to PPL's Preliminary Objection as Exhibit A. The doctrine of collateral estoppel is not applicable in this matter.

On its face, PPL's Preliminary Objection based on collateral estoppel appears to be a viable defense. The Order of the Court of Common Pleas, however, which PPL attached to its pleadings makes reference to civil courts, not to the Commission. Likewise, the Order of the Commonwealth Court attached to PPL's Preliminary Objection as Exhibit B refers to the civil courts rather than to the Commission.⁴

⁴ The Commonwealth Court's decision, while unreported, may be cited and relied upon when it is relevant under the doctrine of law of the case, *res judicata* or collateral estoppel as the Court itself notes at the beginning of its decision.

Even if we assume *arguendo* that the Commission is included in the Order of the Court of Common Pleas by implication, it is questionable whether the Commission would accede to a decision which is not based on any Order issued by the Commission but rather considers the Complaint before a Court of Common Pleas and appealed by Complainant of that to the Commonwealth Court. The Commission's jurisdiction is limited to hearing cases involving the Public Utility Code, Commission orders or regulations or Commission approved tariffs of the utilities. The Commission does not have jurisdiction over matters heard by courts of common pleas.

On its face, the Commonwealth Court Order addresses civil litigation, not administrative Complaints. Further, any request for implementation of an Order should be directed to the Court that issued it (in this case, the Schuylkill County Court of Common Pleas). While a subsequent Order from that court might create its own issues if directed to the Commission, no such Order to the Commission has been issued. Thus, we need not go into an analysis of whether a civil court may abrogate by Order the right of a person to file a Complaint with an administrative agency of the Commonwealth, and PPL's Preliminary Objection in this regard and request for dismissal of the Complaint with prejudice is denied.

PPL's argument that the present Complaint is barred by the principle of *res judicata*, however, requires a deeper analysis.

Applicability of Res Judicata

The doctrine of *res judicata* will preclude an action where the former and latter suits possess the following common elements: (1) identity of issues; (2) identity in the cause of action; (3) identity of persons and parties to the action; and (4) identity of the capacity of the parties suing or being sued. *Daley v. A.W. Chesterton, Inc.*, 37 A.3d 1175 (Pa. 2012) (quoting *In the Matter of Iulo*, 766 A.2d 335, 337 (Pa. 2001)).

In this case, PPL has established (and a review of the cases confirms) that the issues presented in this case are identical with those of the previous four Complaints. All of the

Complaints are based on Complainant's challenges to virtual meter aggregation and PPL's billing methodology. The cause of action in every case is, essentially, a billing dispute. In all of the cases, including the present Complaint, the parties to the action are identical: Jay Larry Moyer and PPL Electric Utilities Corporation, as is their legal capacity.

Specifically, in his Complaint, Complainant alleges that he, "does not receive full retail value on his monthly electric bills." Complaint ¶ 4. Complainant contends that he is entitled to and has been denied, "the precise per-unit value of my electric generation or the per-unit values of credit that must be applied." *Id.* Complainant further avers, "The Commission has not established a rate schedule which defines the 'full retail' value (per-unit) which I should receive for my generation," the generation in question being provided by solar panels on his home. *Id.*

Complainant then goes on to make what he terms a "side-by-side comparison" of the rate he claims that he is compensated under versus a rate that he feels that he should be compensated under.

In his request for relief, Complainant requests that the Commission: 1) generate a rate schedule which defines the per-unit "full retail value" (i.e. "full retail kilowatt-hour rate") that applies to generation which is reported by his solar meter (Acct. #67277-97002); 2) require PPL to identify the precise, per-unit "full retail value" of electricity which applies each month to the electric "use" at his house meter (Acct. #06476-21001); 3) require PPL to apply the "full retail value" of credit properly to each of his two meters respectively; and, 4) require PPL to provide complete and accurate data for the process of applying monthly credit to each of his meters.

In his Complaint, Complainant also avers that: the Commission has not, at any time defined the "full retail kilowatt-hour rate" ("Full Retail Value") for generation at the solar panels, nor has it defined the monthly per-unit rates (price per kilowatt hour) which should determine credit that is applied to Complainant's residential account. Again, the Complaint seeks an unequivocal determination by the Commission regarding the monthly per-unit values of

his electric generation; an unequivocal determination of the monthly per-unit rates on which his credit should be based at each meter; and redress for past errors allegedly made by PPL. A number of attachments are appended to the Complaint, none of which expand the scope of the Complaint or requested relief.

PPL in its Answer contends that at all times relevant to the instant Complaint, PPL Electric has billed and credited Complainant's accounts in accordance with its established virtual meter aggregation billing practices (set forth in its lawfully filed tariff), and that Complainant has received the full amount of credits and year-end cash-outs to which he is entitled to receive. PPL avers that it has timely and substantially responded to questions from the Complainant about his bills, including answering questions and providing supporting data about the credits for electric generation produced by his solar facility. PPL Answer at ¶ 4.

PPL argues that the present Complaint is the fifth Complaint that Complainant has filed with the Commission with regard to the same matter. In both its Answer and New Matter, PPL asserts that Complainant is barred from filing the present Complaint and invokes the principle of *res judicata*. PPL provides a detailed chronology of Complainant's prior litigation as well as citations to the court decisions supporting its request that the Commission dismiss the Complaint with prejudice as the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4).

Specifically, PPL cites Mr. Moyer's past Complaints about PPL's virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denial of Complainant's Petition for Allowance of Appeal. See *Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016), *aff'd*, *Moyer v. Pa. Pub. Util. Comm'n*, LEXIS 167 (Pa. Cmwlth. 2017), *allocatur den.*, *Moyer v. Pa. Pub. Util. Comm'n*, LEXIS 2145 (Pa. 2017). PPL states the Commission dismissed Complainant's First and Second Complaints, and then the Commission dismissed the Complainant's Third Complaint, each of which raised the same issues concerning PPL Electric's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered August 8, 2019). PPL further maintains that as with the First, Second, and Third Complaints, the

Commission dismissed the Complainant's Fourth Complaint regarding the Company's virtual meter aggregation billing practices. *See, Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered October 28, 2021). The Complainant did not appeal the Commission's *October 28, 2021 Order* dismissing his Fourth Complaint.

I find the Third Complaint filed by Mr. Moyer at Docket No. C-2015-2511904, (*2015 Case*) particularly telling as that case goes into extensive factual detail with the issues related to meter aggregation and billing. In sum, presiding Administrative Law Judge (ALJ) Joel Cheskis thoroughly reviewed the record and found that PPL supplied substantial and detailed evidence to establish how the Complainant's bills are aggregated. The ALJ pointed to PPL's description of its manual billing process, including the calculations made for virtual meter aggregation and where on the Complainant's account the results of those calculations appear. The ALJ also emphasized that the Commission previously addressed issues regarding PPL's virtual meter aggregation process in response to the Complainant's prior complaints. The ALJ's analysis in the *2015 Case* and his dismissal of that Complaint was upheld by the Commission when it denied Complainant's exceptions in *Moyer v. PPL Electric Utilities Corp.*, Docket No. C-2015-2511904 (Order entered August 8, 2019).

In sum, all four required elements of *res judicata* are present, here, in that the issues, cause of action, persons and parties to the action, and capacity of the parties are the same in all five Complaints filed by Complainant, and his Complaint must be dismissed.

Complainant's Assertion of Unique Circumstances

We now address Complainant's claim that, "The circumstances of my generating system are unique and have no parallel in PPL's service area. [Footnote omitted] Mine is the only known system in PPL service area which has no business activity or function, but which is nevertheless designated 'commercial' (GS-1)." Complaint ¶ 4.

Upon first reading, it may appear that Complainant has raised a new issue of fact that requires an evidentiary hearing. This is not the case. Even if this assertion is accepted as

true (as required in ruling on Preliminary Objections), it does not invalidate the application of *res judicata* and dismissal of the Complaint, because whether his system and billing are unique or not within PPL's system, Complainant's physical layout is exactly the same as it has been in all previous Complaints that he has filed with the Commission as is the structure of billing which is controlled by PPL's tariff.

It is essential to understand that what Complainant is actually requesting is to have the Commission direct PPL to establish a new and separate billing classification for Complainant outside of the correct procedure of a rate case. Indeed, Complainant's entire argument hinges on acceptance of rate and billing treatment that he seeks to define outside of the existing requirements of PPL's lawfully filed tariff by having the Commission create a new rate classification. This alteration of PPL's tariff is not permissible outside of a rate proceeding. This is a billing Complaint.

It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations, and practices so that the public may inspect its contents. 66 Pa.C.S. § 1302; 52 Pa. Code § 53.25; *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Phila. Suburban Water*). "Tariff provisions approved by the Commission are *prima facie* reasonable." *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996); *see also, Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

The Commission has no authority to allow a public utility to deviate from its tariff. A complainant seeking to avoid the effect of existing tariff provisions carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the

application of the tariff provisions unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

Having been repeatedly unsuccessful in his billing challenges (“The Commission has not established a rate schedule which defines the ‘full retail value’ (per-unit) which I should receive for my generation),” Complainant proposes what he terms a “side-by-side comparison” of the PPL rate he is compensated under versus the presently non-existent rate that he feels that he should be compensated under. It is clear that Complainant is attempting to create his own rate classification within the context of a formal Complaint.

In his request for relief, Complainant requests that the Commission direct PPL to, “generate a rate schedule which defines the per-unit ‘full retail value’ (*i.e.* “full retail kilowatt-hour rate”) that applies to generation which is reported by Complainant’s solar meter (‘solar panels’).” (Emphasis added). Complainant also asks the Commission to require PPL to apply the “full retail value” of credit established by this *de facto* tariff amendment to each of his two meters respectively and that the Commission require PPL to provide him with complete and accurate data for the process of applying monthly credit to each of his meters based on this theoretical construct.

All of Complainant’s requests and Complainant’s comparative billing analysis are based not on PPL’s existing and lawfully filed tariff but on the theoretical construct that Complainant is asking the Commission to either validate and impose on PPL or to create so that Complainant may litigate this case in the context of that newly established rate. In other words, having no tariff provision under which he can proceed, Complainant is asking the Commission to create and apply new tariff provisions based entirely on Complainant’s theories and without first providing due process to all other parties that might be affected by what is, in effect, a new rate classification and billing methodology. This request is contrary to the most basic principles of due process that must be afforded to all potentially affected parties, and the Complaint must be dismissed.

Dismissal with Prejudice

PPL asks that the subject Complaint be dismissed with prejudice as it is the Fifth Complaint that has been filed by Complainant with respect to the same matter. In this sense, PPL's contention is that the repeated filing of essentially identical Complaints based on the same facts and cause of action, which four Complaints have all been dismissed by the Commission, constitutes an abuse of administrative process. I agree. Abuse of administrative process is an exploitation of due process and is a basis for dismissal of a matter with prejudice. *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa. PUC 714, 717 (1988). Complainant has abused administrative process by filing five successive, identical Complaints, the first four of which were dismissed by the Commission. Beyond this point, acceptance of a sixth identical Complaint would be an obvious waste of the Commission's resources and those of PPL, with the cost to the latter likely being passed on to all customers in PPL's service territory in a base rate case.

Disposition

Based on the analysis, above, the Preliminary Objection of PPL to the Complaint filed by Jay Larry Moyer at Docket No. C-2021-3031924 is sustained in part, denied in part, and the Complaint is dismissed, with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission's procedural regulation with respect to Preliminary Objections and grounds for dismissal of a Complaint are found at 52 Pa. Code § 5.101(a).
3. Legal insufficiency of a complaint constitutes grounds for dismissing a complaint on the basis of Preliminary Objections. 52 Pa. Code § 5.101(a)(4).

4. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

5. In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General v. SERS*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

6. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

7. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

8. *Res judicata* is appropriately raised as a defense if all of the issues between the parties in the current proceeding have been previously decided in a prior proceeding, where the parties had an opportunity to appear and be heard. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

9. The essential inquiry in applying the principle of *res judicata* is whether the ultimate and controlling issues in a complaint have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. *Stevens Painton Corp. v. First State Ins. Co.*, 746 A.2d 649 (Pa. Super. 2000).

10. The principle of *res judicata* is applicable to this case as Complainant has now filed five successive identical Complaints against the same Respondent, alleging the same causes of action under the same facts in proceedings where the parties have had an opportunity to

appear and be heard, and consideration of the present Complaint is barred under that principle. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

11. The four requirements for a defense of collateral estoppel 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 the prior action. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

12. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

13. A complainant seeking to avoid the effect of existing tariff provisions carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

14. The present Complaint of Jay Larry Moyer against PPL Electric Utilities Corporation is legally insufficient in that it is barred by the principle of *res judicata* and therefore must be dismissed. 52 Pa. Code § 5.101(a)(4).

15. Abuse of administrative process is an exploitation of due process and is a basis for dismissal of a matter with prejudice. *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa. PUC 714, 717 (1988).

