

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Jay Larry Moyer

C-2022-3031294

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Jay Larry Moyer (Complainant or Mr. Moyer), filed on June 27, 2022, to the Initial Decision (I.D.) of Administrative Law Judge Dennis J. Buckley (ALJ Buckley), issued on June 8, 2022. PPL Electric Utilities Corporation (PPL or Company) filed Replies to Exceptions on July 8, 2022. For the reasons stated below, we will adopt the Initial Decision, and dismiss the Complaint, with prejudice, consistent with the discussion in this Opinion and Order.

I. History of the Proceeding

On February 22, 2022, Mr. Moyer filed a Formal Complaint (Complaint) with the Commission against PPL alleging that PPL was not properly compensating Mr. Moyer for energy generated by solar panels owned by Mr. Moyer. He alleged that PPL was incorrectly compensating him under PPL's virtual meter aggregation program for electric generation at the lower "commercial" classification rather than "residential" classification. Complaint at 4.

On March 28, 2022, PPL filed its Answer and New Matter (Answer), with a Notice to Plead, in which PPL generally denied the allegations in the Complaint, and asserted the present Complaint is the fifth such complaint based upon the same issues. In its Answer, PPL denied it failed to honor the terms of its virtual meter aggregation program. Answer at 2.

Also on March 28, 2022, PPL filed Preliminary Objections to the Complaint, seeking dismissal of the Complaint, with prejudice, asserting that the Complaint is legally insufficient under 52 Pa. Code § 5.101(a)(4), as barred by the doctrines of collateral estoppel and *res judicata* based upon court order and the Commission's prior decisions denying the same Complaint.

On April 6, 2022, the Complainant filed an Answer to PPL's Preliminary Objections, asserting that the facts of the present Complaint are distinguishable from prior complaints.

By Order of Motion Judge Assignment, dated May 10, 2022, the Parties were notified that the matter was assigned to ALJ Buckley for disposition and scheduling of hearing if necessary.

In ruling upon PPL's Preliminary Objections to the Complaint, in the Initial Decision, issued June 8, 2022, ALJ Buckley sustained the Preliminary Objections, in part, and denied, in part, and dismissed the Complaint *with prejudice* as legally insufficient and as an abuse of administrative process.

As previously noted, the Complainant filed Exceptions to the ALJ's Initial Decision on June 27, 2022. PPL filed Replies to Exceptions on July 8, 2022.

II. Discussion

A. Legal Standards

1. Preliminary Objections

Section 5.101(a) of our Rules of Practice and Procedure states that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). Preliminary objections must be accompanied by a notice to plead, and 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).

The Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion, all well-pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). Thus, the Commission must view a complaint in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Here, PPL's Preliminary Objection asserted that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4), in that the Complaint is barred by *res judicata* and collateral estoppel, based upon the four prior Complaints predicated upon the same issues and set of facts which the Commission ultimately dismissed.

The provision at 52 Pa. Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists, and the matter in dispute is purely a legal question. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557, 564 (Pa. Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 548, 556-557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006, 1008-9 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. PUC*, 103 A.2d 502, 507 (Pa. Super. 1954).

2. Res Judicata

Res judicata is appropriately raised as a defense if all 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).

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)).

3. Dismissal with Prejudice

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. See *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995), see also, e.g., *Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission's (and respondent's) time and resources, we have, on many occasions, dismissed *pro se* complaints with prejudice for failure to appear at a hearing. See, e.g., *Cynthia Santore Smith v. PECO Energy Company*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Marilyn Day v. PECO Energy Company*, Docket No. C-2010-2181515 (Order entered June 10, 2011); and *Geary*.

B. The ALJ's Initial Decision

In the Initial Decision, the ALJ made seventeen Findings of Fact and reached three Conclusions of Law. I.D. at 3-5 and 21. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

As a procedural matter, the ALJ's disposition turned upon the grant of PPL's Preliminary Objection to the Complaint, finding that the Complaint, which raised the same issues, between the same parties, based upon the same circumstances, which were previously rejected in four prior complaints, was barred by *res judicata* and must be

dismissed pursuant to 52 Pa. Code Section 5.101 (a)(4) for legal insufficiency of the Complaint. I.D. at 20.

Initially, the ALJ explained the Parties' positions. I.D. at 7-10. The ALJ summarized the Complaint as a billing dispute which challenges PPL's virtual meter aggregation and billing methodology. The ALJ specifically noted that the Complainant alleges that he, "does not receive full retail value on his monthly electric bills" for electric generation and that 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." I.D. at 7, citing, Complaint ¶ 4. The ALJ further noted the Complainant asserts that the Commission has failed to establish a rate schedule which defines the 'full retail' value (per-unit) which should be paid for electric generation produced by solar panels on his property. *Id.*

The ALJ then summarized the averments of both PPL's Answer and Preliminary Objection in response to the Complaint. The ALJ noted that PPL asserted that the present Complaint is the *fifth* identical Complaint that the Complainant has filed against PPL alleging billing disputes based on PPL's virtual meter aggregation program and billing practices. The ALJ also noted that 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, pursuant to 52 Pa. Code § 5.101(a)(4). I.D. at 8, citing, Answer at 3; Preliminary Objection at 1. Finally, the ALJ noted that PPL further alleged the Complaint should be dismissed with prejudice because the Complainant is barred by judicial order from initiating *pro se* litigation against PPL raising the same or related issues to those previously adjudicated by the Commission and Pennsylvania courts. I.D. at 8, citing, Preliminary Objections at 2.

The ALJ explained that PPL contends that the Complaint is barred under the doctrine of collateral estoppel, citing, *Moyer v. PPL Electric Utils. Corp.*, 241 A.3d 119 (2020 Pa. Commw. Unpub.) LEXIS 514* (*Moyer v. PPL Unpub.*), an unpublished opinion of the Commonwealth Court in which the Court upheld an Order issued by the Schuylkill Court of Common Pleas arising from a civil action filed in that Court by the Complainant against PPL, raising a net metering dispute.

In that case, the Common Pleas Court granted PPL's Motion to Dismiss the Complainant's civil action and barred the Complainant from initiating any further *pro se* litigation against PPL involving the same or related matters without leave of the Court, pursuant to Pennsylvania Rule of Civil Procedure 233.1. On review, the Commonwealth Court affirmed based upon its examination of the multiple cases litigated before PUC based upon the Complainant's net metering disputes against PPL.

The ALJ noted that PPL contended that, based on *Moyer v. PPL Unpub.*, without leave of the Schuylkill County Court, the Complainant is legally barred from initiating any *pro se* litigation against PPL on the same or related subjects as his prior Complaints. I.D. at 8, citing, Preliminary Objections at 2.

In ruling on PPL's Preliminary Objections, the ALJ declined to apply collateral estoppel based upon the Commonwealth Court's holding in *Moyer v. PPL Unpub.*, reasoning that the application of the Commonwealth Court's holding was limited to the jurisdiction of the Common Pleas courts and did not extend to the jurisdiction of state agencies, including the PUC. I.D. at 11-12. However, the ALJ concluded that the application of *res judicata* was appropriate where, as here, the Complainant raises the same legal and factual issues which have been decided against the Complainant in four prior complaint proceedings before the Commission. I.D. at 12-15, citing, *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. PUC*, LEXIS 167 (Pa. Cmwlth. 2017), *allocatur*

denied, Moyer v. Pa. PUC, LEXIS 2145 (Pa. 2017); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered August 8, 2019); *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683 (Order entered October 28, 2021). The ALJ further concluded that dismissal with prejudice was warranted in the circumstances, finding that since the present Complaint is the fifth Complaint with respect to the same net metering matter.

C. Exceptions and Replies

The Complainant raises seven Exceptions which challenge the ALJ's dismissal with prejudice on the ground that some issue of fact or law remains in dispute, and therefore, the grant of PPL's Preliminary Objection on the grounds of *res judicata* is inappropriate. In summary, the Complainant alleges: (1) that the ALJ erred as a factual matter in the description of the location of the solar panels; (2) that the ALJ erred as a matter of law by concluding no issue of law remains in dispute since the ALJ declined to address the question of the "proper per-unit compensation" for the Complainant; (3) that the ALJ failed to properly consider the Complainant's evidence of the "side-by-side comparison" at Complaint, Item #4, p.5; (4) that the ALJ erred in concluding the present Complaint raises "the same matter" and "identical issues" as the Complainant's four previous complaints; (5) that the ALJ erred as a matter of fact or law by showing "no regard for the context of this Complaint;" (6) that the ALJ erred as a matter of fact or law by failing to resolve the question of the Complainant's net metering; and, (7) the ALJ erred as a matter of fact by drawing conclusions which contradict the evidence in this case. Exc. at 2-10.

In Reply to the Complainant's Exceptions, PPL counters each of the Exceptions' specific disagreement with the findings set forth in the Initial Decision. In summary, PPL counters: (1) with respect to Exception No. 1, the ALJ's factual reference to the location of the solar panels is immaterial to the ALJ's disposition; (2) with respect

to Exceptions Nos. 2, 3, 6, and 7, the ALJ considered and rejected all of the allegations raised in the present Complaint; (3) with respect to Exception No. 4, the ALJ properly found the present Complaint barred by *res judicata*; (4) with respect to Exception No. 5, the ALJ did not ignore the fact that the Complainant's solar panels have a commercial rate schedule. PPL contends that the Complainant's Exceptions should be dismissed because they fail to identify any error of law or finding of fact in the Initial Decision as required by 52 Pa. Code § 5.533(b). R. Exc. at 3-8.

D. Disposition

At the outset, we note that the procedural posture of this case presents us with the question as to whether the ALJ properly granted PPL's Preliminary Objection and dismissed the case with prejudice based upon the finding that the present Complaint is barred by *res judicata* and constitutes an abuse of administrative process. The Complainant's Exception No. 4 may be viewed as a general challenge to the ALJ's application of *res judicata*, while the remaining Exceptions assert factual and legal errors which also seek a reversal of the ALJ's dismissal based upon *res judicata*. Because we conclude, as discussed more fully *infra*, the ALJ's dismissal with prejudice was appropriate in the circumstances, we shall deny the Complainant's Exception No. 4. Accordingly, review of the Complainant's remaining Exceptions, which are predicated upon allegations of factual and legal errors underpinning the ALJ's dismissal, is unnecessary as the remaining Exceptions are deemed to be without merit and moot.

Turning to the ALJ's application of *res judicata*, we conclude that the ALJ's decision to bar the present Complaint, as legally insufficient and an abuse of administrative process, was appropriate in the circumstances. Although the Complainant asserts that the facts and issues raised in the present case are distinct from those raised in

the Complainant's *four prior proceedings* before the Commission, the record of those four prior complaints belies that assertion.

As the ALJ's thorough review of the four prior proceedings considered PPL's assertions, as follows:

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-20172629683 (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-20172629683 (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.

I.D. at 9.

Upon review of PPL's assertions regarding the four prior Commission proceedings, the ALJ noted that all four prior complaints had been dismissed by the Commission. The ALJ concluded that the overwhelming evidence is that the prior four proceedings were regarding the same facts and issues. In reaching his conclusion, the ALJ stated:

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.

I.D. at 15.

Based upon our review, we conclude that the ALJ's thorough review of the prior four proceedings established conclusively that the facts and issues raised in the prior four proceedings were identical to the present Complaint. We agree with the ALJ's conclusion that the elements necessary for the application of *res judicata* are satisfied in the present case. As previously noted, 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)).

Here the record of the present and prior four proceedings satisfy all four elements for application of *res judicata*: (1) identity of issues, *i.e.*, the terms of Complainant's net metering with PPL; (2) identity in the cause of action, *i.e.*, Complainant seeks more favorable terms under PPL's net metering program; (3) and (4) identities of parties and capacity of the parties, *i.e.*, Complainant and PPL as participants in net metering. Therefore, we find that the ALJ properly applied *res judicata* in the circumstances to bar the present Complaint.

We further find that the ALJ properly found that the present Complaint, in view of the prior four identical proceedings before the Commission, constitutes the fifth identical complaint brought by the Complainant, all of which have been reviewed, denied and dismissed. On that basis, the ALJ properly concluded the present Complaint constitutes an abuse of process, and should be dismissed with prejudice.

As the ALJ properly noted, the Commission has previously found that the abuse of process is the basis for dismissal of a matter with prejudice. *See* I.D. at 18, citing, *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa. PUC 714, 717 (1988). The Commission has recognized that the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995), *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995).

The facts of the present case reflect an egregious example of the Complainant's use of the administrative process to repeatedly raise the same issues which have been previously decided against him. This proceeding demonstrates that both the agency and the utility, PPL, have expended substantial resources to address claims which have been previously reviewed and decided. Accordingly, in these extreme circumstances, in view of the substantial wasteful use of the Commission's and the respondent's time, energy and resources, we conclude that dismissal with prejudice is appropriate.

Because we find that the ALJ properly applied *res judicata* to bar the present Complaint as legally insufficient, and properly dismissed the Complaint with prejudice as an abuse of administrative process, we conclude that the Complainant's Exceptions Nos. 1-7 are denied as without merit.

III. Conclusion

Upon review, for the foregoing reasons, as well as those more fully explained in the well-reasoned decision of ALJ Buckley, we shall deny the Exceptions, adopt the ALJ's Initial Decision without modification and dismiss the Complaint with

prejudice as legally insufficient and an abuse of administrative process, consistent with our discussion in this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Jay Larry Moyer filed on June 27, 2022, to the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on June 8, 2022 at Docket No. C-2022-3031294 are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on June 8, 2022, is adopted, consistent with this Opinion and Order.

3. That the Complaint filed by Jay Larry Moyer against PPL Electric Utilities Corporation at Docket No. C-2022-3031294, is dismissed with prejudice as legally insufficient and as an abuse of administrative process.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022