

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Feitt	:	
	:	
v.	:	C-2023-3040660
	:	
Peoples Natural Gas Company LLC	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A Formal Complaint challenging a utility’s billing presentation and procedure is dismissed because the Commission has already issued two decisions regarding this same claim which has become conclusive upon both parties.

HISTORY OF THE PROCEEDING

On May 5, 2023, Karen Feitt (Complainant) filed a Formal Complaint (complaint) against Peoples Natural Gas LLC (Peoples). The Complainant checked the box on the Formal Complaint form for “Other” and stated:

“Billing error.” This utility company statement of account (the bill?) reflects debt, but not the credit so it is a billing error. It is our right, title, interest, and equity. Please send a true bill.

The Complainant did not note any specific bill that she alleged was incorrect. As relief the Complainant stated, after a lengthy explanation, that she is owed a credit by Peoples.

Peoples filed an Answer and New Matter on June 5, 2023, denying that the Complainant's bill was inaccurate. In New Matter Peoples stated that this is the third complaint that the Complainant or a member of her household has filed alleging a billing error. In new matter, Peoples notes that the first two complaints were dismissed by the Commission therefore this complaint is barred by Section 316 of the Public Utility Code,¹ and precluded by the doctrines of *res judicata* and *collateral estoppel*.

Also on June 5, 2023, Peoples filed Preliminary Objections which included a notice to plead. The basis for the preliminary objections is that the current complaint is legally insufficient and should be dismissed with prejudice because it is barred by *res judicata* and constitutes an abuse of administrative process.

The Complainant did not file an answer to the New Matter or a response to the Preliminary Objections.

On June 20, 2023, Higinio Mendoza Jr. filed a document entitled "Notice of Occupancy of the Executor Office."

By notice dated July 24, 2023, the Commission assigned Peoples' Preliminary Objections to me for disposition.

FINDINGS OF FACT

1. The Complainant is Karen Feitt who receives utility service at 1036 Jackman Avenue, Pittsburgh, PA (Service Address). Formal Complaint.
2. Higinio Mendoza is a member of Ms. Feitt's household and occupies the Service Address. Peoples' New Matter ¶ 9.

¹ 66 Pa.C.S. § 316.

3. The Respondent is Peoples Natural Gas Company, LLC, a jurisdictional public utility.

DISCUSSION

Issue and claim preclusion, *res judicata* and *collateral estoppel*, are judicially created doctrines which allow a tribunal to limit or dismiss a matter where a claim or an issue has been decided in an earlier proceeding. The premise of both doctrines is that it is not fair to require a respondent to repeatedly relitigate a claim or an issue, involving the same parties.

As a matter of procedure, both *res judicata* and *collateral estoppel* are affirmative defenses. Therefore, it is not technically appropriate to raise either doctrine by way of a preliminary objection.² Both the courts and this Commission have struggled with the appropriate way to address improperly raised affirmative defenses. The Commonwealth Court has recognized circumstances which permit a tribunal to consider an affirmative defense raised by preliminary objection in three sets of circumstances: where the basis of the defense is apparent on the face of the pleading; where the opposing party fails to object to the defect; or where a defense is clear on the face of the pleading and the non-moving party fails to file a preliminary objection to the preliminary objections.³

The Commission has followed a similar approach. The most common is to employ Commission Regulation 1.2(a)⁴ which permits a presiding officer to overlook a defect in procedure, and to consider the preliminary objection under the standard found in Rule 5.102,⁵ governing judgment on the pleadings and summary judgment. The Commission has recently considered the failure of the complainant to object to the procedural defect as a waiver of any

² See e.g., *Cuff v. PECO Energy Co.*, Docket No. C-2013-2370894 (Final Order entered Oct. 7, 2013); *Wroblewski v. Pa. Elec. Co.*, Docket No. C 2008-2058385 (Opinion and Order entered May 15, 2009).

³ *Wurth by Wurth v. City of Phila.*, 584 A.2d 403 (Pa. Cmwlth. 1990).

⁴ 52 Pa. Code § 1.2(a).

⁵ 52 Pa. Code § 5.102.

objection, particularly when the basis for the affirmative defense is raised both in the complaint and by the fact the complainant responded to the preliminary objection and failed to object.⁶

I am mindful of the Complainant's self-represented status and the Commission's preference for permitting a self-represented litigant to have their "day in court."⁷ However, this preference must be balanced against the expense of time and resources to both Peoples and the Commission. In this case, I find that it is appropriate to consider Peoples' defense of *res judicata*. First, Peoples raised the affirmative defense in both its New Matter and also by Preliminary Objection. Peoples included a recitation of the facts and the Commission decisions upon which its defense was based. Both the New Matter and the Preliminary Objections included a notice to plead which advised the Complainant that she was required to respond.

On June 20, 2023, Higinio Mendoza, the Complainant's partner, filed a document entitled "Executor Letter." This document is not only inscrutable, but is also non-responsive. The document does not dispute any of the factual allegations made by Peoples in its New Matter, it does not offer any defense to Peoples' allegation that the current Complaint raises issues that have been considered and rejected by the Commission, nor does it state any objection to the consideration of Peoples' affirmative defenses raised by preliminary objection.

Ms. Feitt and Mr. Mendoza are not strangers to the Commission's complaint procedure.⁸ While the Commission must consider their status as self-represented complainants, the Commission must also be fair to Peoples. While some procedural leeway is provided to self-represented litigants, a self-represented litigant is still required to comply with the Commission's

⁶ *Stillwater Lakes Coalition of Indep. Owners c/o Ruben Collazo v. Stillwater Sewer Corp.*, Docket No. C-2022-3031532 (Opinion and Order entered Dec. 22, 2022), *affirmed*, 145 C.D. 2023 (Pa. Cmwlth. July 25, 2023) (*Stillwater*).

⁷ *Carlock v. The United Tel. Co. of Pa.*, Docket No. F-00163617 (Opinion and Order entered July 14, 1993)

⁸ *See Feitt v. Duquesne Light Co.*, Docket No. C-2022-3037095 (Initial Decision entered July 20, 2023); *Feitt v. Duquesne Light Co.*, Docket No. F-2017-2636316 (Opinion and Order entered June 13, 2019), *petition for review dismissed*, 1095 C.D. 2019 (Pa. Cmwlth. 2019); *Feitt v. Peoples Nat. Gas Co. LLC – Equitable Div.*, Docket No. F-2018-3003833 (Final Order entered Mar. 29, 2019), *petition for rescission denied* by Opinion and Order entered Oct. 8, 2020; *Mendoza v. Peoples Nat. Gas Co. LLC*, Docket No. F-2019-3015189 (Opinion and Order entered July 15, 2021).

procedural rules.⁹ It is not the function of the administrative law judge to develop a party's argument.¹⁰ Further, as an administrative law judge, I must be a steward of Commission resources. I find that the Complainant had ample notice and opportunity to respond to the factual allegations in Peoples' New Matter. Although Peoples improperly raised affirmative defenses by preliminary objection, it is appropriate to consider Peoples' claims in order to secure a just, speedy and inexpensive result.¹¹

Section 5.102 of the Commission's Rules provides in relevant part:

(a) Generally. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) Answers. An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.^[12]

An administrative law judge may grant a motion for judgment on the pleadings, if the record shows that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise.¹³ All of the opposing party's well-pleaded allegations are viewed as true but only those

⁹ E.g., *Commonwealth v. Lyons*, 833 A.2d 245, 251-52 (Pa. Super. 2003).

¹⁰ *C.M. v. Pa. State Police*, 269 A.3d 1280, 1285 (Pa. Cmwlth. 2022). See also *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985)(pro se litigant must, to some extent, assume the risk that his lack of legal training will prove his undoing.).

¹¹ *Stillwater; Spirat v. Metropolitan Edison Co.*, Docket No. C-2018-3005589 (Order entered Mar. 28, 2019).

¹² 52 Pa. Code § 5.102(a), (b).

¹³ 52 Pa. Code § 5.102(d)(1).

facts admitted may be considered against the non-moving party.¹⁴ In short, in order for Peoples' motion to be granted, no material facts may be at issue and based upon those facts Peoples must be entitled to a judgment as a matter of law.

The doctrine of *res judicata* applies to preclude collateral attack of final orders rendered in proceedings brought before the Commission.¹⁵ *Res judicata* is a judicially-created doctrine. The purposes of the rule are the protection of the litigant from the dual burden of relitigating an issue with the same party or his privy and the promotion of judicial economy through prevention of needless litigation.¹⁶ For the *res judicata* doctrine to prevail, four elements common to both actions, sometimes termed the "four identities," 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 or capacity of the parties suing or being sued.¹⁷

Peoples alleges that that the claims in Ms. Feitt's complaint are identical to the claims made in two other complaints filed by the Complainant and/or Mr. Mendoza, filed in 2018¹⁸ and 2019.¹⁹ According to Peoples, the current complaint should be barred because the Commission has already dismissed the same claims, involving the same parties.

Commission rules permit me to deem the facts raised in Peoples' New Matter as admitted.²⁰ Therefore, it is undisputed that Karen Feitt and Higinio Mendoza are members of the

¹⁴ *Beardell v. Western Wayne School District*, 496 A.2d 1373 (Pa. Cmwlth.1985).

¹⁵ *O'Toole v. Bell Tel. Co. of Pa.*, 77 Pa.P.U.C. 98 (1992).

¹⁶ *In re Coatesville Area Sch. Dist.*, 244 A.3d 373 (Pa. 2021) (*Coatesville*) and cases cited therein.

¹⁷ *Coatesville*.

¹⁸ *Feitt v. Peoples Natural Gas Co.* Docket No. F-2018-3993833 (Opinion and Order entered Oct. 8, 2020) (2018 Complaint).

¹⁹ *Feitt v. Peoples Natural Gas Co.*, Docket No. F-2019-3015189 (Opinion and Order entered July 15, 2021) (2019 Complaint).

²⁰ 52 Pa. Code § 5.63(c).

same household.²¹ The 2018 Complaint was filed by both Ms. Feitt and Mr. Mendoza. The 2019 Complaint was filed by Mr. Mendoza. The current complaint was filed by Ms. Feitt. Peoples alleges in its New Matter that “upon information and belief, Mr. Mendoza occupies the Service Address jointly with the Complainant.”²²

It would have been helpful if Peoples had provided more concrete evidence regarding the status of Ms. Feitt and Mr. Mendoza, such as account information noting that both reside at the service address, are both listed on the account or are both authorized to discuss the account with Peoples. However, as noted above, Ms. Feitt did not dispute the statement that she and Mr. Mendoza occupy the service address. There are other indicia on the current complaint that Mr. Mendoza is involved in the prosecution of the current billing dispute. Mr. Mendoza signed a postage stamp placed in the upper right-hand corner of the Formal Complaint form and lists himself as an “agent” on page 5 of the Formal Complaint. I would further note that in both 2018 Complaint and the 2019 Complaint, the testimony and legal memoranda were offered by Mr. Mendoza, including on the complaint filed jointly by Ms. Feitt and Mr. Mendoza. I conclude that Mr. Mendoza and Ms. Feitt are “in privity” for the purposes of determining that the parties to the 2018 Complaint, 2019 Complaint and current complaints involve the same parties.

It is further not disputed that the current complaint is a general challenge to the Complainant’s obligation to pay for service rendered by Peoples. Ms. Feitt checked the “other box” on the Formal Complaint form stating:

“Billing error.” This utility company statement of account (the bill?) reflects debt, but not the credit so it is a billing error. It is our right, title, interest, and equity. Please send a true bill.

In the “Requested Relief” portion of the Formal Complaint form, the Complainant states, in part:

The Account is ours, therefore the interest (credit) is to be returned, since the inception of the Account . . . it is certain that

²¹ In addition to failing to dispute this fact in Peoples’ New Matter, I further note that Higinio Mendoza signed a postage stamp placed in the upper right-hand corner of the Formal Complaint form and lists himself as an “agent” on page 5 of the Formal Complaint.

²² New Matter ¶ 9.

the “law” will allow the cost recovery, recoupment of the notes, interest, and anything that would rightfully be ours. The Peoples Gas bill, sent monthly, reflects a “debt”, however hides the matching “credit,” and for any debt there must be a matching credit, and for this utility company to send the “bill” without consideration is a violation of law(s).

The Complainant did not dispute a specific bill or a specific charge on any bill. Indeed, the crux of the complaint is that she does not owe any debt at all.²³

Peoples contends that this is the third complaint by the Complainant and/or Mr. Mendoza which challenges the company’s billing practices. The first complaint was filed in 2018 by both Ms. Feitt and Mr. Mendoza.²⁴ On that form, they checked the box requesting a payment arrangement and argued that Peoples must “meet our demand on (sending) invoice, signed under the “full, commercial liabilities” sent to us, regarding coverage for business risk, and payment (one time) afforded by (chapter 14) the responsible utility customer protection act.” A hearing on the complaint was conducted on November 9, 2018. Mr. Mendoza appeared and testified. At the hearing, he stated that he was prepared to pay the bill provided Peoples provided him with a “true bill of commerce.” He further contended that Peoples should present their bill as an accounting record and that the amount that they want them to pay should be expressed as a negative number rather than a positive number. In the Complainants’ view, if Peoples presented the bill with the amount they are to pay expressed as a negative number, this presentation would be a “true bill of commerce.” At the conclusion of the hearing, Mr. Mendoza elected to file a legal memorandum in lieu of a closing statement.

Following a full consideration of the testimony and exhibits, and Mr. Mendoza’s legal memorandum, the complaint was dismissed on February 14, 2019. The Complainants did not file timely exceptions, but on April 26, 2019, they filed a petition for rescission. In its decision rendered on October 8, 2020, the Commission stated:

²³ See *Feitt v. Duquesne Light Co.*, Docket No. C-2022-3037095 (Initial Decision entered July 20, 2023)(discussing vapor money theory).

²⁴ 2018 Complaint.

The first and main issue raised in the Petition in the Affidavit of Truth portion is the Petitioners' assertion that they need a "True Bill of Commerce" to properly settle any debt they have accrued. They aver that their bill can be paid by operation of law through use of their signatures and endorsement. In making this claim, the Petitioners refer to the U.S. Constitution, a 1933 House Joint Resolution of the U.S. Congress, and the "Collective Entity Doctrine."^[25]

The Commission rejected the complainants' request for reconsideration:

During the hearing, Mr. Mendoza made several requests that the Complainants be provided a "True Bill of Commerce" from Peoples and discussed the harms that he and Ms. Feitt suffered as a result of not having this document. Tr. at 19-20, 22-23, 39, 44. After due consideration of the request, ALJ Long denied the Complainants' request, which she characterized as a motion to compel. Tr. at 18. It is our understanding that the Complainants' concerns with their bill arise from their assertion that the bill does not conform with Generally Accepted Accounting Principles (GAAP), thus, the Complainants were unable to understand that the arrearage presented (\$406.55) was owed and not representative of payments they already made. As the ALJ correctly held, there is no requirement that a utility bill be presented in GAAP format; nor is there a requirement that all customers be able to understand the bill if the billing format is objectively understandable. See I.D. at 4, 6-7; *Keffalas v. West Penn Power Company*, Docket No. F-2013-235594 (Final Order entered December 5, 2013).^[26]

Before the Commission entered its decision on the Complainants' request for reconsideration of the dismissal of their complaint in February 2019, Mr. Mendoza filed another formal complaint against Peoples on December 21, 2019.²⁷ In that complaint he checked the box on the complaint form noting that there were incorrect charges on his bill. In the section of the

²⁵ *Feitt v. Peoples Natural Gas Co.*, Docket No. F-2018-3003833 (Opinion and Order entered Oct. 8, 2020), at p.5.

²⁶ *Id.* at pp. 5-6

²⁷ 2019 Complaint.

form requesting relief, the Complainant wrote “obtaining a “True Bill”/State of Account. \$\$\$ returned.”

At the hearing on the 2019 Complaint, Mr. Mendoza testified and again the parties were provided with an opportunity to provide legal memoranda in support of their positions. Although Peoples argued that the complaint should be dismissed on the basis of *res judicata*, the allegations in the Complaint were not considered on the merits because the Commission had not yet rendered a final order on the request for reconsideration of the 2018 Complaint. Following a consideration of the testimony and legal arguments, the 2019 Complaint was also dismissed:

Similar to the arguments made in *Feitt*, the Complainant argues that he cannot pay his Peoples’ bill as it is currently rendered. The Complainant contends that he “is willing to settle the account upon a properly adjusted (TRUE BILL OF COMMERCE) statement of account. . . .” In the current Complaint, he adds that Peoples must issue a “1099 OID” to the Complainant before his account can be paid.

The Complaint will be dismissed. The Complainant has not cited any support in the Public Utility Code for his position that Peoples’ bill presentation or billing method is unreasonable or violates any statutory or regulatory requirements. He did not explain in his testimony or his legal memorandum, how the issuance of a 1099-OID, a federal tax form, would result in the payment of his past due balance. Instead, the Complainant strings sentences together “that sound as though they belong in a legal document, but which in reality, are incomprehensible, signifying nothing.” Like the *Feitt* complaint, this Complaint must be dismissed because the Complainant failed to sustain his burden of proving that Peoples violated to the Public Utility Code or Commission regulations.^[28]

Mr. Mendoza filed timely exceptions. The Commission reviewed the initial decision and Mr. Mendoza’s exceptions and rejected his argument:

²⁸ 2019 Complaint, Initial Decision at p. 5 (footnotes omitted).

The issues the Complainant has raised in this proceeding are squarely within the Commission’s jurisdiction, because they pertain to the charges on the Complainant’s bills for natural gas utility service and the manner in which the Complainant may lawfully pay the Company for this service. While the Complainant is proposing a different method by which to pay Peoples in this case, namely by using a Federal Tax form 1099-OID, this case is similar to other recent Commission cases in which the Complainant proposed to pay his utility bills using forms of payment other than United States currency, and in which the Commission found that the utility’s forms of acceptable payment were reasonable and in compliance with the Code and Commission Regulations. See October 2020 Order; June 2019 Order.^[29]

A strict preclusion analysis of these complaints is challenging. All three complaints are billing disputes. However, the Complainants check different boxes and their basis for each billing dispute is slightly different and difficult to understand. Nevertheless, in reviewing the complaints, the initial decisions and the Commission decisions, the Complainants basically challenge Peoples presentation of the bill and contend that if the bill were properly presented it would be evident that they do not owe any debt to Peoples. In the 2018 Complaint and 2019 Complaint proceedings, the Commission considered and rejected the Complainants’ arguments. Specifically, the Commission has concluded that the presentation of Peoples’ bill complies with the Commission’s regulations and that there is no requirement that a different format be used, *i.e.* a “true bill” or a bill showing a corresponding credit for each debt. The challenge in the current complaint is essentially the same claim: that Peoples is not correctly presenting its bill. That claim has been considered and rejected by the Commission twice before. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.³⁰ There is no need for another hearing on the current Complaint.

²⁹ 2019 Complaint, at pp. 7-8.

³⁰ 66 Pa.C.S. § 703(b).

Peoples also contends that this third complaint constitutes an abuse of the Commission's administrative process, relying on the Commission's decision in *Moyer v. PPL*.³¹ In that case, the complainant filed four complaints on the same issue, all of which had been reviewed, denied and dismissed. PPL filed preliminary objections seeking dismissal of the fifth complaint on the grounds of *res judicata* and abuse of administrative process. In upholding the ALJ's dismissal the Commission held:

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.^[32]

I agree that the same conditions are present here: the Complainants have filed a nearly identical complaint to two previous complaints that have been reviewed, denied and dismissed. Accordingly, this third complaint will be dismissed with prejudice, consistent with the Commission's decision in *Moyer*.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. § 701.
2. *Res judicata* is an affirmative defense that should properly be raised in new matter. *Cuff v. PECO Energy Co.*, Docket No. C-2013-2370894 (Final Order entered

³¹ *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2022-3031294 (Opinion and Order entered Dec. 8, 2022) (*Moyer*).

³² *Moyer*, p. 14. See also *Cannon v. Verizon Pa., LLC*, Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014).

October 7, 2013); *Wroblewski v. Pa. Elec. Co.*, Docket No. C 2008-2058385 (Opinion and Order entered May 15, 2009).

3. Preliminary objections raising *res judicata* may be treated as a motion for judgement on the pleadings. *Stillwater Lakes Coalition of Independent Owners c/o Ruben Collazo v. Stillwater Sewer Corp.*, Docket No. C-2022-3031532 (Opinion and Order entered Dec. 22, 2022), *affirmed*, 145 C.D. 2023 (Pa. Cmwlth. July 25, 2023); 52 Pa. Code § 1.2(a).

4. For the *res judicata* doctrine to prevail, four elements common to both actions, sometimes termed the “four identities,” 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 or capacity of the parties suing or being sued. *In re Coatesville Area Sch. Dist.*, 244 A.3d 373 (Pa. 2021).

5. This complaint is barred by the doctrine of *res judicata*.

6. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

7. Use of the administrative process to repeatedly raise the same issues which have been previously decided constitutes an abuse of administrative process. *Moyer v. PPL Elec. Utils. Corp.* Docket No. C-2022-3031294 (Opinion and Order entered Dec. 8, 2022).

ORDER

THEREFORE

IT IS ORDERED:

1. That the Preliminary Objections filed by Peoples Natural Gas Company, LLC is treated as a Motion for Judgment on the Pleadings.

2. That the Motion for Judgment on the Pleadings filed by Peoples Natural Gas Company, LLC, is granted.

3. That the Complaint filed by Karen Feitt against Peoples Natural Gas Company, LLC, is dismissed with prejudice.

4. That Karen Feitt and Higinio Mendoza are precluded from filing further informal and formal complaints pertaining to the issues already adjudicated with respect to Peoples Natural Gas LLC's billing presentation for the gas account at 1036 Jackman Avenue, Pittsburgh, Pennsylvania.

5. That the Secretary mark this docket closed.

Date: August 22, 2023

/s/
Mary D. Long
Administrative Law Judge