

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Kristen Flaherty

v.

Duquesne Light Company

Public Meeting October 19, 2023

3039314-ALJ

Docket No. C-2023-3039314

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission) for disposition is an Initial Decision (ID) dismissing the above-captioned Formal Complaint under the doctrine of *res judicata*.¹ The ID essentially reasons that Ms. Flaherty filed a prior complaint against Duquesne Light Company (Duquesne Light) on September 19, 2022, at Docket No. C-2022-3035389 (2022 Complaint) that was identical to the complaint she filed against Duquesne Light at the above-captioned docket on March 28, 2023 (2023 Complaint). According to the ID, the issues and causes of action in both complaints involve: (a) the same residential electric service account, (b) the same claims of threats to shut off electric service, and (c) the same requests for a payment arrangement as relief. As a result, the ID grants Duquesne Light's motion to dismiss the Complaint on *res judicata* grounds.

The ID also finds abuse of process and prohibits the Complainant from filing any further informal or formal complaints with the Commission regarding her Duquesne Light electric account until the current outstanding balance is paid in full or is otherwise forgiven.

The Joint Motion finds the ID to be erroneous on two fronts. First, the Joint Motion does not agree that *res judicata* applies here because the 2022 Complaint was not decided on the merits. According to the Joint Motion, the 2022 Complaint was dismissed for failure to prosecute, which is not a decision on the merits. Second, the Joint Motion does not agree with finding an abuse of process and does not agree with barring Ms. Flaherty from filing further complaints at this Commission. As a result, the Joint Motion proposes to remand this matter to the Commission's Office of Administrative Law Judge so the complaint can be heard on the merits.

I agree with the Joint Motion's findings and analysis on the abuse of process issue. However, I do not fully agree with how the Joint Motion proposes to address the *res judicata* issue, and I do not agree with the decision to remand this matter. Rather, I believe the 2023 Complaint should be dismissed with prejudice under Section 316 of the Public Utility Code (Code), 66 Pa. C.S. § 316.

¹ Under *res judicata*, matters that were actually litigated in a prior action cannot be re-litigated in a subsequent action.

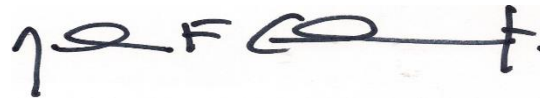
One of the required elements of *res judicata* is that the case acting as a bar must have been a final judgment. *McNeil v. Owens-Corning Fiberglas Corp.*, 545 Pa. 209, 213, 680 A.2d 1145,1147-48 (1996). As noted in the ID, the 2022 Complaint was dismissed for failure to appear for the hearing and prosecute the Complaint. In one case, the Commission noted it is debatable whether a decision to dismiss a complaint with prejudice when the complainant fails to appear is a “final judgment” for purposes of *res judicata*. See *Howell v. Philadelphia Gas Works*, Docket No. C-2016-2568426, (Opinion and Order entered May 2, 2017) (*Howell*). In other cases, the Commission has found that a dismissal on procedural grounds is not a “final judgment” for purposes of *res judicata*. See, e.g., *Reynolds v. PPL Elec. Util. Corp.*, Docket No. C-2011-2255268 (Opinion and Order entered January 5, 2012). In any event, it is not necessary to use *res judicata* here because the question of whether to dismiss a complaint brought on the same allegations as a complaint that was already dismissed with prejudice is answered by Section 316 of the Public Utility Code (Code), 66 Pa. C.S. § 316.²

Section 316 of the Code precludes a complainant from raising issues previously decided by the Commission. Under Code Section 316, a Commission order dismissing a complaint with prejudice has conclusive effect and remains as a bar to subsequent litigation of the issues raised in the complaint unless set aside by this Commission or modified on judicial review. Here, the Commission’s Order dismissing the 2022 Complaint with prejudice was not set aside by the Commission or by the courts and thus, has conclusive effect. Consequently, Ms. Flaherty is barred by Code Section 316 from re-litigating the issues raised in her 2022 Complaint, and her 2023 Complaint should be dismissed accordingly.

While not bound by the rule of *stare decisis*, the Commission must render consistent opinions and should either follow, distinguish, or overrule its own precedent. *Bell Atl. v. Pa. Pub. Util. Comm’n.*, 672 A.2d 352, (Pa. Cmwlth. 1995); citing *Pennsylvania Trust v. Dep’t of Env’tl. Prot.*, 863 A.2d 93, 107 (Pa. Cmwlth. 2004). A dismissal of the 2023 Complaint with prejudice under Code Section 316 would follow Commission precedent. See, e.g., *Howell*. Such a dismissal also would align with my belief that a complainant should not receive a “second bite at the apple” to prosecute issues raised in a complaint that previously was dismissed with prejudice on valid legal grounds.

For these reasons, I will not be supporting the Joint Motion.

Date: October 19, 2023



**JOHN F. COLEMAN, JR.
COMMISSIONER**

² Section 316 of the Code provides, in pertinent part, that: “Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.” The Commission’s decision dismissing the 2022 Complaint contained findings of fact, including that Complainant was properly notified of the hearing, failed to appear for the hearing, and did not contact the Commission to explain why her failure to appear at the hearing was unavoidable.